
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **July 31, 2009**

CLEAN HARBORS, INC.

(Exact name of registrant as specified in its charter)

Massachusetts
(State or other jurisdiction
of incorporation)

001-34223
(Commission
File Number)

04-2997780
(IRS Employer
Identification No.)

**42 Longwater Drive, Norwell,
Massachusetts**
(Address of principal executive offices)

02061-9149
(Zip Code)

Registrant's telephone number, including area code **(781) 792-5000**

Not Applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Item 1.01. Entry into a Material Definitive Agreement.

On July 31, 2009, Clean Harbors, Inc. (the “Company” or “Clean Harbors”) replaced its previous \$70.0 million revolving credit facility and \$50.0 million synthetic letter of credit facility with a new revolving credit facility which will allow the Company to borrow or obtain letters of credit for up to \$120.0 million (with a \$110.0 million sub-limit for letters of credit). Availability under the new facility is subject to a borrowing base comprised of 85% of the Company’s and its U.S. subsidiaries’ eligible accounts receivable and 97% of eligible cash pledged under the new facility. The new facility has a term of four years. Bank of America, N.A. (“BofA”) is the administrative agent and collateral agent for the lenders and the issuing bank for letters of credit under the new facility, and Banc of America Securities LLC is the lead arranger and book manager for the lenders under the new facility.

Borrowings under the new revolving credit facility bear interest at a rate of, at the Company’s option, either (i) LIBOR plus an applicable margin ranging from 3.25% to 3.75% per annum based on the then level of the Company’s fixed charge coverage ratio or (ii) BofA’s base rate plus an applicable margin ranging from 2.25% to 2.75% per annum based on such fixed. There is also an unused line fee, calculated on the then unused portion of the lenders’ \$120.0 million maximum commitment, ranging from 0.50% to 0.75% per annum of the unused commitment. For outstanding letters of credit, the Company will pay to the lenders under the new facility a fee equal to the then applicable LIBOR margin described above, and will pay to BofA a standard fronting fee and customary fees and charges in connection with all amendments, extensions, draws and other actions with respect to letters of credit.

The Company’s obligations under the new revolving facility (including revolving loans and reimbursement obligations for outstanding letters of credit) are guaranteed by substantially all of the Company’s U.S. subsidiaries and secured by a first lien on substantially all of the Company’s and its U.S. subsidiaries’ accounts receivable and the proceeds thereof, as well as certain other assets of the Company and its U.S. subsidiaries. The Company’s obligations under the new facility are also secured by a second lien on substantially all of the other assets of the Company and its U.S. subsidiaries.

As described in Item 2.01 of this report, the Company also completed on July 31, 2009 the acquisition of Eveready Inc. (“Eveready”), which became a wholly-owned indirect subsidiary of the Company. Under a credit agreement with a syndicate of lenders for which Canadian Imperial Bank of Commerce is now the agent, Eveready now has a Cdn \$95.0 million revolving, renewable credit facility and a Cdn \$150.0 million term loan. Amounts borrowed under these credit facilities bear interest, at Eveready’s option, at bank prime or bankers’ acceptance rates, plus a credit spread based on a sliding scale, which is determined by the ratio of funded senior debt to earnings before interest, taxes, depreciation, and amortization (“EBITDA”).

The revolving credit facility (the “Revolver”) requires payments of interest only and is renewable annually, subject to Eveready’s and the lending syndicate’s consent. In April 2009, the Revolver was renewed for an additional 364 day period. As part of the renewal, the total amount available under the Revolver was slightly reduced to Cdn \$95.0 million from Cdn \$100.0 million. In addition, the stand-by fee calculated on the unused portion of the Revolver increased to a rate of 0.50% per annum from 0.25% per annum previously. If the Revolver were not to be renewed in April 2010, the outstanding credit facility would be subject to a 12-month interest-only phase, followed by a 12-month straight-line amortization period. The term loan requires fixed monthly payments of Cdn \$125,000 and a balloon payment of Cdn \$142.5 million due May 2012. Eveready may prepay all or part of the term loan at any time, subject to the payment of a breakage fee. Concurrently with the renewal, the credit spreads applicable to Eveready’s credit facilities increased by between 200 and 225 basis points.

Copies of the Company's new credit agreement and the Eveready credit agreement, as amended to date, are filed as exhibits to this report. The foregoing description of the terms of those agreements is qualified in its entirety by reference to the full text of those agreements.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On July 31, 2009, the Company acquired all of the outstanding shares of Eveready. The purchase price consisted of USD \$56 million in cash, 2.4 million shares of Clean Harbors common stock, and the assumption or payment of approximately USD \$235 million of Eveready debt (consisting primarily of approximately U.S. \$167 million outstanding under the Eveready credit facilities described in Item 1.01 of this report).

Eveready is an Alberta corporation headquartered in Edmonton, Alberta, that provides industrial maintenance and production, lodging, and exploration services to the oil and gas, chemical, pulp and paper, manufacturing and power generation industries. Operating from 79 locations in the United States, Canada, and internationally, Eveready currently employs over 2,100 employees and operates a service fleet of nearly 2,000 truck and trailer mounted units and over 1,400 specialized pieces of equipment. Prior to the acquisition, Eveready shares traded on the Toronto Stock Exchange under the trading symbol "EIS".

In connection with the acquisition, the Company agreed with the Canadian Commissioner of Competition that it will divest Eveready's Pembina Area Landfill, located near Drayton Valley, Alberta, due to its proximity to Clean Harbors' existing landfill in the region. The Pembina Area Landfill represented less than two percent of Eveready's revenue in 2008 and less than four percent of Eveready's EBITDA in 2008.

Item 2.02. Results of Operations and Financial Condition.

On August 3, 2009, the Company issued a press release announcing the Company's results of operations for the second quarter and six months ended June 30, 2009. A copy of that press release is furnished with this report as Exhibit 99.1.

Item 3.02. Unregistered Sales of Equity Securities.

As described in Item 2.01 of this report, the Company acquired Eveready on July 31, 2009 and, as a portion of the consideration, the Company issued to the Eveready shareholders 2.4 million shares of Clean Harbors common stock. Such shares represent approximately 10.1% of the total number of primary shares of Clean Harbors common stock which were outstanding prior to the completion of the acquisition.

Section 3(a)(10) of the Securities Act of 1933, as amended (the "Securities Act"), exempts from the registration requirements under that Act the issue and exchange of securities which have been approved, after a hearing upon the fairness of the terms and conditions on which all persons to whom it is proposed the securities will be issued shall have the right to appear, by any court expressly authorized by law to grant such approval. Under the acquisition agreement, Eveready submitted a Plan of Arrangement (the "Plan") to the Court of Queen's Bench of Alberta (the "Court") pursuant to the Business Corporations Act (Alberta) and, following the requisite approval of that Plan by the Eveready shareholders and a hearing at which such persons had the right to appear, Eveready obtained a final order from the Court as to the fairness of the Plan. The issuance of the 2.4 million Clean Harbors shares to the Eveready shareholders was therefore exempt from the registration requirements under the Securities Act pursuant to Section 3(a)(10) thereof.

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

(d) Election of new director.

On July 30, 2009, the Company's board of directors elected Rod Marlin, the former President and Chief Executive Officer of Eveready, as a Class II director, effective as of the closing of the Eveready acquisition (July 31, 2009) as described in Item 2.01 of this report.

In connection with a termination of a consulting agreement which Mr. Marlin previously had with Eveready, the Company has agreed to pay to Mr. Marlin a lump sum severance payment of Cdn \$752,561 and to continue to provide certain benefits for a period of one year after the closing of the Eveready acquisition by Clean Harbors. Mr. Marlin has agreed not to compete with the Company in Canada for a period of the later of two years after the closing or one year after termination of his service as a consultant and member of the Clean Harbors board of directors. Mr. Marlin has also agreed to serve as a consultant to the Company and to assist with the transition for a period of six months after the closing, for which he will receive Cdn \$25,000 per month for his services. If requested by the Company, he will provide additional consulting services after the initial transition period for Cdn \$12,500 per month.

Item 8.01. Other Events.

On July 24, 2009, the Company repaid its \$30.0 million term loan which was due in 2010. On July 31, 2009, the Company discharged its \$23.0 million of outstanding senior secured notes by calling such notes for redemption on August 31, 2009 and depositing with the trustee the redemption price of \$23.7 million and accrued interest of \$0.3 million through the redemption date. The Company financed the repayment of its term loan and outstanding senior secured notes solely with a portion of the Company's available cash.

Item 9.01. Financial Statements and Exhibits.

(a) and (b) Financial statements of business acquired and pro forma financial information.

Financial statements of Eveready Inc., and pro forma financial information giving effect to the acquisition, are not included herein but will be filed by an amendment to this report on Form 8-K not later than 71 days after the due date for the filing of this report.

(d) Exhibits

- 4.33 Second Amended and Restated Credit Agreement dated as of July 31, 2009 among Clean Harbors, Inc., as the Borrower, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, and the other Lenders party thereto, and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager
- 4.34 Amended and Restated Credit Agreement dated as of December 31, 2008 among Eveready Energy Services Corp., as Borrower, the other Credit Parties signatory thereto, as Credit Parties, and GE Canada Asset Financing Holding Company, as Agent and Lender, and the Lenders signatory thereto from time to time, as Lenders, and GE Capital Markets, Inc. and GE Capital Markets (Canada) Ltd., as Lead Arrangers, and Bank of Montreal and Canadian Imperial Bank of Commerce, as Co-Syndication Agents, and Bank of Nova Scotia, as Documentation Agent
- 4.34A First Amending Agreement dated as of April 24, 2009 to the Amended and Restated Credit Agreement dated as of December 31, 2008, among Eveready Energy Services Corp., as Borrower, the other Credit Parties signatory thereto, as Credit Parties, and GE Canada Asset Financing Holding Company and Canadian Imperial Bank of Commerce, as Co-Agents and Lenders, and the Lenders signatory thereto from time to time, as Lenders, and GE Capital Markets, Inc. and GE Capital Markets (Canada) Ltd., as Lead Arrangers, and Bank of Montreal and Canadian Imperial Bank of Commerce, as Co-Syndication Agents, and Bank of Nova Scotia, as Documentation Agent
- 4.34B Second Amending Agreement dated as of July 27, 2009 to the Amended and Restated Credit Agreement dated as of December 31, 2008, among Eveready Energy Services Corp., as Borrower, the other Credit Parties signatory thereto, as Credit Parties, and GE Canada Asset Financing Holding Company and Canadian Imperial Bank of Commerce, as Co-Agents and Lenders, and the Lenders signatory thereto from time to time, as Lenders, and GE Capital Markets, Inc. and GE Capital Markets (Canada) Ltd., as Lead Arrangers, and Bank of Montreal and Canadian Imperial Bank of Commerce, as Co-Syndication Agents, and Bank of Nova Scotia, as Documentation Agent

SIGNATURES

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

Clean Harbors, Inc.
(Registrant)

August 3, 2009

/s/ James M. Rutledge
Executive Vice President and Chief Financial Officer

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of July 31, 2009

among

Clean Harbors, Inc.,

as the Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent, Swing Line Lender and
L/C Issuer,

and

The Other Lenders Party Hereto

BANC OF AMERICA SECURITIES LLC,
as Sole Lead Arranger and Sole Book Manager

TABLE OF CONTENTS

	<u>Page</u>	
ARTICLE I.	DEFINITIONS AND ACCOUNTING TERMS	1
1.01.	Defined Terms	1
1.02.	Other Interpretive Provisions	36
1.03.	Accounting Terms	37
1.04.	Rounding	37
1.05.	Times of Day	37
1.06.	Letter of Credit Amounts	37
1.07.	Currency Equivalents Generally	37
ARTICLE II.	THE COMMITMENTS AND CREDIT EXTENSIONS	38
2.01.	The Loans	38
2.02.	Borrowings, Conversions and Continuations of Loans	38
2.03.	Letters of Credit	40
2.04.	Swing Line Loans	48
2.05.	Prepayments	51
2.06.	Termination or Reduction of Commitments	52
2.07.	Repayment of Loans	53
2.08.	Interest	53
2.09.	Fees	54
2.10.	Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate	54
2.11.	Evidence of Debt	55
2.12.	Payments Generally; Administrative Agent's Clawback	55
2.13.	Sharing of Payments by Lenders	57
2.14.	Intentionally Omitted	58
2.15.	Increase in Revolving Credit Facility	58
ARTICLE III.	TAXES, YIELD PROTECTION AND ILLEGALITY	60
3.01.	Taxes	60
3.02.	Illegality	63
3.03.	Inability to Determine Rates	64
3.04.	Increased Costs; Reserves on Eurodollar Rate Loans	64

TABLE OF CONTENTS
(continued)

	<u>Page</u>	
3.05.	Compensation for Losses	65
3.06.	Mitigation Obligations; Replacement of Lenders	66
3.07.	Survival	66
ARTICLE IV.	CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	67
4.01.	Conditions of Initial Credit Extension	67
4.02.	Conditions to all Credit Extensions	70
ARTICLE V.	REPRESENTATIONS AND WARRANTIES	71
5.01.	Existence, Qualification and Power	71
5.02.	Authorization; No Contravention	71
5.03.	Governmental Authorization; Other Consents	71
5.04.	Binding Effect	72
5.05.	Financial Statements; No Material Adverse Effect	72
5.06.	Litigation	73
5.07.	No Default	73
5.08.	Ownership of Property; Liens; Investments	73
5.09.	Environmental Compliance	74
5.10.	Insurance	75
5.11.	Taxes	75
5.12.	ERISA Compliance	75
5.13.	Subsidiaries; Equity Interests; Loan Parties	76
5.14.	Margin Regulations; Investment Company Act	76
5.15.	Disclosure	77
5.16.	Compliance with Laws	77
5.17.	Intellectual Property; Licenses, Etc	77
5.18.	Solvency	78
5.19.	Casualty, Etc	78
5.20.	Labor Matters	78
5.21.	Collateral Documents	78
5.22.	Bank Accounts	78
5.23.	Trade Relations	78

TABLE OF CONTENTS
(continued)

	<u>Page</u>
5.24. Restrictions on Subsidiaries	79
5.25. Material Contracts	79
5.26. Payable Practices	79
5.27. Interdependent Businesses and Operations	79
5.28. Anti-Terrorism Law	79
5.29. Properties	80
5.30. Disclosure	81
5.31. Survival of Warranties; Cumulative	81
ARTICLE VI. AFFIRMATIVE COVENANTS	81
6.01. Financial Statements	81
6.02. Certificates; Other Information	83
6.03. Notices	86
6.04. Payment of Obligations	87
6.05. Preservation of Existence, Etc	87
6.06. Maintenance of Properties	87
6.07. Maintenance of Insurance	88
6.08. Compliance with Laws, Immediate Notice in respect of Hazardous Material	88
6.09. Books and Records	89
6.10. Inspection Rights	89
6.11. Use of Proceeds	89
6.12. Covenant to Guarantee Obligations and Give Security	89
6.13. Compliance with Environmental Laws	90
6.14. Preparation of Environmental Reports, Environmental Indemnity	91
6.15. Compliance with ERISA	91
6.16. Further Assurances	92
6.17. Compliance with Terms of Leaseholds	92
6.18. License Agreements	92
6.19. Material Contracts	93
6.20. Costs and Expenses	93

TABLE OF CONTENTS
(continued)

	<u>Page</u>	
6.21.	Cash Collateral Accounts	94
6.22.	Cash Management Arrangements	94
6.23.	Information Regarding Collateral	94
6.24.	Anti-Terrorism Law; Anti-Money Laundering	95
6.25.	Mortgages	95
6.26.	Control Agreements	96
6.27.	The Acquisition	96
6.28.	Intellectual Property Security Agreements	97
ARTICLE VII.	NEGATIVE COVENANTS	98
7.01.	Liens	98
7.02.	Indebtedness	99
7.03.	Investments	101
7.04.	Fundamental Changes	103
7.05.	Dispositions	103
7.06.	Restricted Payments	105
7.07.	Change in Nature of Business	105
7.08.	Transactions with Affiliates	105
7.09.	Burdensome Agreements	105
7.10.	Use of Proceeds	106
7.11.	Financial Covenants	106
7.12.	Amendments of Organization Documents	107
7.13.	Accounting Changes	107
7.14.	Prepayments, Etc. of Indebtedness	107
7.15.	Amendment, Etc. of Related Documents	107
7.16.	Change of Name or Chief Executive Office	107
7.17.	Intentionally Omitted	108
7.18.	Embargoed Person	108
7.19.	Sale and Leaseback Transactions	108
ARTICLE VIII.	EVENTS OF DEFAULT AND REMEDIES	108
8.01.	Events of Default	108

TABLE OF CONTENTS
(continued)

	<u>Page</u>
8.02. Remedies upon Event of Default	111
8.03. Application of Funds	112
ARTICLE IX. ADMINISTRATIVE AGENT	113
9.01. Appointment and Authority	113
9.02. Rights as a Lender	113
9.03. Exculpatory Provisions	113
9.04. Reliance by Administrative Agent	114
9.05. Delegation of Duties	115
9.06. Resignation of Administrative Agent	115
9.07. Non-Reliance on Administrative Agent and Other Lenders	116
9.08. No Other Duties, Etc	116
9.09. Administrative Agent May File Proofs of Claim	116
9.10. Collateral and Guaranty Matters	117
9.11. Secured Cash Management Agreements and Secured Hedge Agreements	118
ARTICLE X. MISCELLANENOUS	118
10.01. Amendments, Etc	118
10.02. Notices; Effectiveness; Electronic Communications	119
10.03. No Waiver; Cumulative Remedies; Enforcement	121
10.04. Expenses; Indemnity; Damage Waiver	122
10.05. Payments Set Aside	124
10.06. Successors and Assigns	124
10.07. Treatment of Certain Information; Confidentiality	128
10.08. Right of Setoff	129
10.09. Interest Rate Limitation	129
10.10. Counterparts; Integration; Effectiveness	130
10.11. Survival of Representations and Warranties	130
10.12. Severability	130
10.13. Replacement of Lenders	130
10.14. Governing Law; Jurisdiction; Etc	131
10.15. Waiver of Jury Trial	132

TABLE OF CONTENTS
(continued)

	<u>Page</u>
10.16. No Advisory or Fiduciary Responsibility	132
10.17. Electronic Execution of Assignments and Certain Other Documents	133
10.18. USA PATRIOT Act	133
10.19. Judgment Currency	133

SCHEDULES

2.01	Commitments and Applicable Percentages
2.03	Existing Letters of Credit
5.03	Certain Authorizations
5.08(b)	Existing Liens
5.09	Environmental Matters
5.13	Subsidiaries and Other Equity Investments; Loan Parties
5.20	Labor Matters
5.25	Material Contracts
6.12	Guarantors
7.02	Permitted Existing Indebtedness
7.03(c)	Investments in Subsidiaries
7.09	Burdensome Agreements
10.02	Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

<i>Form of</i>	
A-1	Committed Loan Notice
A-2	Swing Line Notice
B	Revolving Credit Note
C	Compliance Certificate
D	Assignment and Assumption
E	Administrative Questionnaire
F	Guaranty
G	Security Agreement
H-1	Opinion Matters – Counsel to Loan Parties
H-2	Opinion Matters – New York Counsel to Loan Parties
I	Borrowing Base Certificate

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT ("Agreement") is entered into as of July 31, 2009, among Clean Harbors, Inc., a Massachusetts corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

PRELIMINARY STATEMENTS:

WHEREAS, this Agreement was originally entered into on June 30, 2004 and amended on July 20, 2004 (as so amended, the "Original Credit Agreement"), amended and restated on December 1, 2005, and further amended and supplemented through the date hereof (as so amended, restated, and supplemented, the "Existing Credit Agreement"), among the Administrative Agent, certain other agents, certain of the Lenders and the Borrower and certain of its Subsidiaries, and the parties hereto desire to make certain modifications to their credit arrangements and amend and restate the Existing Credit Agreement as herein set forth;

WHEREAS, pursuant to the Acquisition Agreement dated as of April 29, 2009 (the "Acquisition Agreement") by and among the Borrower, Clean Harbors Canada, Inc., and Eveready Inc. (the "Target Company"), the Borrower has agreed to acquire (the "Acquisition") all of the outstanding capital stock of the Target Company; and

WHEREAS, the Borrower has requested that the Lenders provide an amended and restated revolving credit and letter of credit facility, and the Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

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

"Accounts" has the meaning given such term in the UCC and includes, without limitation, all present and future rights of the Loan Parties to payment of a monetary obligation, wither 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.

"Accounts Collateral" has the meaning given such term in the Security Agreement.

“Acquired Indebtedness” means Indebtedness of a Person or any of its Subsidiaries

- (a) existing at the time such Person becomes a Subsidiary of the Borrower or merges or consolidates with the Borrower or any of its Subsidiaries, or
- (b) assumed in connection with the acquisition of assets from such Person,

in each case, not incurred by such Person in connection with, or in contemplation of, such Person becoming a Subsidiary of the Borrower or such acquisition, merger or consolidation.

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

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

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

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

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

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

“Agreement” means this Second Amended and Restated Credit Agreement, as it may hereafter be further amended, restated and/or supplemented in accordance with its terms.

“Applicable Fee Rate” means, at any time, in respect of the Revolving Credit Facility, (a) from the Closing Date to the date which is six months after the Closing Date, 0.50% per annum and (b) thereafter, the applicable percentage per annum set forth below determined by reference to Facility Usage of the Revolving Credit Facility:

Applicable Fee Rate

Pricing Level	Facility Usage	Unused Line Fee
1	Facility Usage < 50%	0.75%
2	Facility Usage > 50%	0.50%

Any increase or decrease in the Applicable Fee Rate resulting from a change in Facility Usage shall become effective as of the first Business Day immediately following such change.

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

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

“[Applicable Property](#)” means any Real Property owned or leased by the Borrower or any of its Subsidiaries which, in the good faith determination of the Borrower’s Board of Directors, and subject to the prior written consent of the Administrative Agent, is determined to be (i) not a Real Property on which the Administrative Agent wishes to acquire or retain a Mortgage, (ii) not needed for the conduct of the Permitted Business of the Borrower and its Subsidiaries, and (iii) more beneficially used by the Borrower or any such Subsidiary if contributed in kind by the Borrower or such Subsidiary to an Applicable Property Entity.

“[Applicable Property Entity](#)” shall mean a Person that is not the Borrower or one of its Subsidiaries that is established or exists for the purpose of holding and/or operating one or more of the Applicable Properties.

“[Applicable Rate](#)” means (a) in respect of the Revolving Credit Facility, (i) from the Closing Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to [Section 6.02\(a\)](#) for the fiscal quarter ending March 31, 2010, 2.25% per annum for Base Rate Loans and 3.25% per annum for Eurodollar Rate Loans and Letter of Credit Fees and (ii) thereafter, the applicable percentage per annum set forth below determined by reference to the Consolidated Fixed Charge Coverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to [Section 6.02\(a\)](#):

Applicable Rate

Pricing Level	Consolidated Fixed Charge Coverage Ratio	Eurodollar Rate (Letters of Credit)	Base Rate (Swing Line Loans)
1	≥1.00:1 but <1.50:1	3.75%	2.75%
2	≥1.50:1 but <2.00:1	3.50%	2.50%
3	≥2.00:1	3.25%	2.25%

Any increase or decrease in the Applicable Rate resulting from a change in the Fixed Charge Coverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 1 shall apply in respect of the Revolving Credit Facility as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the date on which such Compliance Certificate is delivered.

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

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

“Approved Fund” means any Fund that is administered 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.

“Arranger” means Banc of America Securities LLC, in its capacity as sole lead arranger and sole book manager.

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

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

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2008, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Availability Period” means, in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination

of the Revolving Credit Commitments pursuant to Section 2.06, and (iii) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) the Eurodollar Rate for an Interest Period of 1-month beginning on such day plus 1.0%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

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

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

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

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

“Borrowing Base” means, as to the Loan Parties, the amount equal to (a) eighty-five percent (85%) of the Net Amount of Eligible Accounts of the Loan Parties (including all Municipal Government Accounts of Loan Parties that are Eligible Accounts) subject to a cap of \$12,000,000 on unbilled Eligible Accounts, plus (b) the lesser of eighty-five percent (85%) of the Net Amount of Federal Government Accounts of the Loan Parties that are Eligible Accounts (which amount may include Accounts that are not Eligible Accounts solely because such accounts are not compliant with the Assignment of Claims Act of 1940) or \$5,000,000, plus (c) ninety-seven percent (97%) of Eligible Pledged Cash, minus (d) any Reserves attributable to the Loan Parties.

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit I.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Canadian Assets” means assets of any Canadian Subsidiary.

“Canadian Dollars” or “CDN” means Dollars in lawful currency of Canada.

“Canadian Subsidiary” means any Subsidiary of the Borrower organized under the laws of Canada or any province thereof.

“Canadian Target Debt” means the Indebtedness existing under the Canadian Target Debt Agreement.

“Canadian Target Debt Agreement” means, collectively, (i) the amended and restated credit agreement, dated as of December 31, 2008, among Eveready Energy Services Corp., as borrower, the Target and other Subsidiaries of the Target signatory thereto, as credit parties, GE Asset Financing Holding Company and Canadian Imperial Bank of Commerce, as co-agents and lenders, and the other lenders signatory thereto, as lenders, as such agreement has heretofore been amended and may hereafter be amended, restated, supplemented or otherwise modified from time to time, (ii) 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 Subsidiaries of the Target Company or Canadian Subsidiaries of the Borrower as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreement, and (iii) 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.

“Canadian Target Debt Documents” means those documents executed in connection with the Canadian Target Debt Agreement.

“Capital Expenditures” means, 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 Equity Interests of, any other Person, provided that there shall be excluded from Capital Expenditures the purchase price paid in any Permitted Acquisition, to the extent such purchase price would have otherwise constituted Capital Expenditures, 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 the Borrower and its Subsidiaries prepared in accordance with GAAP, shall be excluded from Capital Expenditures.

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

“Cash Collateral” means cash deposited into a Cash Collateral Account.

“Cash Collateral Account” means a blocked deposit account of one or more of the Loan Parties at Bank of America (or another commercial bank selected in compliance with Section 6.22) in the name of the Administrative Agent and under the sole dominion and control of the

Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

“Cash Collateralize” has the meaning specified in Section 2.03(g).

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

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

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$250,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof;

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

(d) 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 purchase 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;

(g) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market and mutual fund investment programs registered under the Investment Company Act of 1940, which are administered by financial

institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a) through (f) of this definition; and

(h) variable rate bond or short term money market instruments whose rate is reset periodically through an auction process, in an aggregate amount not to exceed \$5,000,000.

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

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

“Casualty Event” means 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 the Borrower 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 or 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.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

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

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

(a) except as may be permitted under Section 7.04 hereof, the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of any Loan Party to any “person” or “group” (as such terms are used in Sections 13(d)(3) and 14(d) of the Securities Exchange Act of 1934);

(b) except as may be permitted under Section 7.04 hereof, the liquidation or dissolution of any Loan Party or the adoption of a plan by the stockholders of any Loan Party relating to the dissolution or liquidation of any Loan Party;

(c) the acquisition by any Person or group ((as such terms are used in Sections 13(d)(3) and 14(d) of the Securities Exchange Act of 1934), except for one or more Permitted Holders, of beneficial ownership, directly or indirectly of 50% or more of the voting power of the total outstanding Voting Stock of the Borrower;

(d) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the board of directors of the Borrower (together with any new directors who have appointed by any Permitted Holder, or whose nomination for election by the stockholders of the Borrower, 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 the Borrower then still in office;

(e) in the case of any Loan Party other than the Borrower, the Borrower or Loan Parties that own beneficially and of record, Voting Stock of other Loan Parties on the Closing Date shall cease to own beneficially and of record, one hundred percent (100%) of the voting power of the total outstanding Voting Stock of such other Loan Party or shall cease to control the appointment of the board of directors of each such Loan Party;

(f) the occurrence of a change of control under any Material Indebtedness; or

(g) a “change of control” or any comparable term under, and as defined in, the Canadian Target Debt Agreement, the Other Permitted Canadian Debt Documents, the Senior High Yield Indenture or any Other Secured Debt Agreement shall have occurred.

“Chattel Paper” has the meaning given such term in the UCC.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the Internal Revenue Code of 1986.

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

“Collateral Documents” means, collectively, the Security Agreement, the Copyright Security Agreement, the Trademark Security Agreement, the Patent Security Agreement, the Mortgages, each of the mortgages, collateral assignments, security agreements, supplements to such agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties,

including, but not limited to, deposit account control agreements, lockbox agreements and securities account control agreements.

“Commitment” means a Revolving Credit Commitment.

“Committed Loan Notice” means a notice of (a) a Revolving Credit Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A-1.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income taxes, (iii) depreciation and amortization expense, (iv) transaction expenses relating to the Transactions not to exceed \$10,000,000 in the aggregate, and (v) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Borrower and its Subsidiaries for such Measurement Period) and minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income.

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination and for the Measurement Period most recently ended, the ratio of (a) (i) Consolidated EBITDA, less the sum of (ii) aggregate amount of Federal, state, local and foreign income taxes paid or payable in cash, (iii) the aggregate amount of all Capital Expenditures (other than those financed by Indebtedness permitted under Section 7.02), (iv) the aggregate amount of all Restricted Payments, and (v) Environmental Expenditures, to (b) the sum of (i) Consolidated Interest Charges to the extent paid or payable in cash, and (ii) the aggregate principal amount of all regularly scheduled principal payments paid or payable with respect to Indebtedness, in each case, of or by the Borrower and its Subsidiaries for the most recently completed Measurement Period.

“Consolidated Interest Charges” means, for any Measurement Period, (i) the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations (but, in the case of clauses (a) and (b), excluding amortization of financing fees and original issue discount), and (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that the calculation of Consolidated Net Income shall exclude (a)

extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso), (d) any accretion expense attributable to Environmental Liabilities for such Measurement Period, provided that such (1) such expense is non-cash and (2) determined on a consolidated basis in accordance with GAAP, and (e) non-recurring employee severance costs in an amount not to exceed \$1,200,000 in any twelve month period.

“Contra Account” means an account on the balance sheet of a Person that offsets the balance of a related and corresponding account.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreement” has the meaning given such term in the Security Agreement.

“Copyright Security Agreement” means that certain Grant of Security Interest in Copyright Rights, to be dated within thirty (30) days of the Closing Date, by and among the applicable Loan Parties and the Administrative Agent, as amended, supplemented or otherwise modified from time to time (together with each other grant of security interest in copyright rights delivered pursuant to Section 6.12 of this Agreement and Section 8.13 of the Security Agreement).

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

“Credit Suisse Term Debt” means the \$30,000,000 term note issued pursuant to the Credit Suisse Term Loan Supplement.

“Credit Suisse Term Loan Supplement” means that certain Term Loan Supplement, dated as of August 18, 2006, among the Borrower, certain of its U.S. Subsidiaries under the Amended

Credit Agreement, the guarantors party to the Amended Credit Agreement, the term loan lenders party thereto, Credit Suisse Securities (USA) LLC, and Credit Suisse.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means any Lender that (a) has failed to fund any portion of the Revolving Credit Loans, participations in L/C Obligations or participations in Swing Line Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, or (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute.

“Dilution Percentage” means a percentage, calculated at the end of each field examination with respect to the Collateral by the Administrative Agent, reflecting the amount of dilution of Eligible Accounts that should (based on the results of such field examination), in the determination of the Administrative Agent, be taken into account when calculating such Borrowing Base; provided that each such percentage shall be represented by a whole number without decimal places. The Dilution Percentage shall remain in effect from and after each such field examination until the completion of a new field examination and the determination by the Administrative Agent of a new Dilution Percentage, at which time the Dilution Percentage shall reflect such new field examination and the determination by the Administrative Agent of such new Dilution Percentage.

“Dilution Reserve Percentage” means, as of any time, the Dilution Percentage as of such time minus 5%; provided that if the Dilution Percentage as of such time is below 5%, then the Dilution Reserve Percentage as of such time shall be deemed to be 0%.

“Disclosed Litigation” has the meaning set forth in Section 5.06.

“Disposition” or “Dispose” means any direct or indirect conveyance, sale, lease, sublease, assignment, transfer or other disposition (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 the Borrower or any of its Subsidiaries.

“Disqualified Equity Interests” means any Equity Interests 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 or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests 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.

“Dollar” and “\$” mean lawful money of the United States.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in Canadian Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with Canadian Dollars.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Eligible Accounts” means Accounts of the Borrower and its Subsidiaries subject to the Lien of the Collateral Documents, the value of which shall be determined by taking into consideration, among other factors, their book value determined in accordance with GAAP; provided, however, that none of the following classes of Accounts shall be deemed to be Eligible Accounts:

- (a) Accounts that do not arise out of sales of goods or rendering of services in the ordinary course of the Borrower’s or the relevant Subsidiary’s business;
- (b) Accounts payable other than in Dollars or that are otherwise on terms other than those normal or customary in the Borrower’s or the relevant Subsidiary’s business;
- (c) Accounts more than 90 days past original invoice date;
- (d) Accounts owing from any Person that is an Affiliate of the Borrower;
- (e) Accounts arising out of sales to account debtors outside the United States and Canada;
- (f) Accounts owing from any Person from which an aggregate amount of 50% or more of the Accounts owing therefrom are otherwise ineligible;
- (g) Accounts in respect of Contra Accounts;
- (h) Accounts owing from an account debtor that is an agency, department or instrumentality of the United States or any state, agency, instrumentality or municipality thereof

unless the Borrower or its relevant Subsidiary shall have satisfied the requirements of the Assignment of Claims Act of 1940, and any similar state legislation and the Administrative Agent is satisfied as to the absence of setoffs, counterclaims and other defenses on the part of such account debtor; provided that Accounts that are not compliant with the Assignment of Claims Act of 1940 may be included in the Borrowing Base as provided in clause (b) of the definition of Borrowing Base;

(i) Accounts in excess of 20% of all Eligible Accounts owing to any account debtor or Affiliate of such account debtor whose total Accounts comprise greater than 20% of all Eligible Accounts.

(j) Accounts owing from any Person that (i) has disputed liability for any Accounts owing from such Person or (ii) has otherwise asserted any claim, demand or liability against the Borrower or any of its Subsidiaries, whether by action, suit, counterclaim or otherwise; provided that for purposes of subclause (j)(i), such Accounts shall be excluded only to the extent of the amounts being disputed by such Person at any date of determination;

(k) Accounts owing from any Person that shall take or be the subject of any action or proceeding of a type described in Section 8.01(f);

(l) Accounts (i) owing from any Person that is also a supplier to or creditor of the Borrower or any of its Subsidiaries unless such Person has waived any right of setoff in a manner acceptable to the Administrative Agent or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling the Borrower or any of its Subsidiaries to discounts on future purchase therefrom;

(m) Accounts arising out of sales on a bill-and-hold, progress billing, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, setoff or charge back;

(n) Accounts with respect to which the representations and warranties set forth in Section 3 of the Security Agreement applicable to Accounts are not correct; and

(o) Accounts in respect of which the Security Agreement, after giving effect to the related filings of financing statements that have then been made, if any, does not or has ceased to create a valid and perfected first priority lien or security interest in favor of the Administrative Agent, on behalf of the Secured Parties, securing the Obligations.

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

"Eligible Collateral" means Eligible Accounts and Eligible Pledged Cash.

"Eligible Pledged Cash" means cash or Cash Equivalents subject to a legal, valid and enforceable first priority Lien in favor of the Administrative Agent on behalf of the Secured Parties and, if applicable, held in a deposit account governed by a Control Agreement or a securities account governed by a Control Agreement.

“Environmental Expenditures” means 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.

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

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equipment” has the meaning given such term in the UCC.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any

ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) 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 PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“Eurodollar Rate” means, for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurodollar Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

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

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

“Excess Availability” means the amount, as determined by the Administrative Agent, equal to the (a) lesser of (i) the Borrowing Base at such time and (ii) \$120,000,000, minus (b) the sum of (i) the Outstanding Amount of the Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations at such time.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), and (d) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States withholding tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or

designates a new Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01(a)(ii) or (iii).

"Existing Credit Agreement" has the meaning specified in the Preliminary Statements.

"Existing Letters of Credit" means those letters of credit now outstanding under the Existing Credit Agreement set forth on Schedule 2.03.

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments.

"Facility" means the Revolving Credit Facility.

"Facility Usage" means the percentage of the Revolving Credit Facility in use as measured by the (a) the sum of (i) the Outstanding Amount of Revolving Credit Loans, (ii) the Outstanding Amount of L/C Obligations, and (iii) the Outstanding Amount of Swing Line Loans, over (b) the Revolving Credit Facility.

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

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

"Fee Letters" means the letter agreements, each dated July 31, 2009, among the Borrower, and each of the Lenders.

"Foreign Government Scheme or Arrangement" has the meaning specified in Section 5.12(d).

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when

acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Plan” has the meaning specified in Section 5.12(d).

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

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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

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

“Guarantee” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

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

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

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

“Hart-Scott Rodino Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“Impacted Lender” means a Lender as to which (a) the Administrative Agent, Swing Line Lender or L/C Issuer reasonably believes, in good faith, that such Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (b) any Lender or Person that controls such Lender has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding or other similar proceeding.

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than 150 days after the date on which such trade account was created);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

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

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

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

“Information” has the meaning specified in Section 10.07.

“Initial Senior High Yield Debt” means the indebtedness arising under the first issuance of the Senior High Yield Notes pursuant to the Senior High Yield Indenture, in an aggregate principal amount not to exceed \$250,000,000.

“Initial Senior High Yield Notes” means the notes issued under incurrence of the Initial Senior High Yield Debt in an aggregate principal amount not to exceed \$250,000,000.

“Intercreditor Agreement” means (a) that intercreditor agreement now or hereafter entered into between the Administrative Agent and the trustee, collateral agent, administrative agent or other agent for the benefit of the holders of the Senior High Yield Notes, (b) that intercreditor agreement now or hereafter entered into between the Administrative Agent and the trustee, collateral agent, administrative agent or other agent for the benefit of the noteholders or lenders under any Other Secured Debt Agreement, or (c) any other intercreditor agreement, in all cases such agreement to be in form, scope and substance reasonably satisfactory to the Administrative Agent and the Required Lenders.

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

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

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Instrument” has the meaning given such term in the UCC.

“Inventory” has the meaning given such term in the UCC.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

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

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any

Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

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

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

“Letter of Credit” means any letter of credit issued or outstanding hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

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

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

“Letter of Credit Sublimit” means an amount equal to \$110,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“License Agreement” has the meaning specified in Section 5.17.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Liquidity” means the sum of Unpledged Cash and Excess Availability.

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

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letters, (f) each Issuer Document, (g) the Intercreditor Agreement, (h) the Secured Cash Management Agreement; (i) the Post-Closing Agreement and (j) any other agreement entered into now or in the future that is designated as a “Loan Document” hereunder.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Contract” means (a) any contract or other agreement (other than the Loan Documents), written or oral, of any Loan Party involving monetary liability of or to any Person in an amount in excess of \$5,000,000 in any fiscal year and (b) any other contract or other agreement (other than the Loan Documents), whether written or oral, to which any Loan 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 Loan Party or the validity or enforceability of this Agreement, any of the other Loan Documents, or any of the rights and remedies of the Administrative Agent or Secured Parties hereunder or thereunder.

“Material Indebtedness” means any Indebtedness of the Borrower or any Subsidiary of the Borrower under (i) any instrument (other than Indebtedness incurred under this Agreement) or (ii) Swap Contracts, in each case, in an aggregate outstanding principal amount exceeding \$30,000,000. For purposes of determining Material Indebtedness, the principal of any Swap

Contracts 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 Swap Contract were terminated at such time.

“Maturity Date” means July 31, 2013.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the Borrower.

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

“Mortgage” has the meaning specified in Section 6.25(a).

“Mortgage Policy” has the meaning specified in Section 6.25(b).

“Mortgage Property” means (a) any real property owned by a Loan Party which has a value in excess of \$1,000,000 and (b) any other Real Property, whether owned or leased, for which a Mortgage is granted to secure the Senior High Yield Debt Documents or Other Secured Debt Documents.

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

“Municipal Government Account” means 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.

“Net Amount of Eligible Accounts” means 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.

“Net Amount of Federal Government Accounts” means 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 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.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries, or any sale or issuance of any Equity Interest by the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so

received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction, (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds, (D) amounts provided as a reserve, in accordance with GAAP, against (x) liabilities under any indemnification obligations associated with such Disposition or issuance or sale of Equity Interests, or (y) any liabilities retained by the Borrower or its Subsidiaries associated with the properties sold in the Disposition or sale of Equity Interests, and (E) Borrower's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within 180 days of a Disposition (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 Disposition or sale of Equity Interests, such cash proceeds shall constitute Net Cash Proceeds);

(b) with respect to the issuance and sale of the Senior High Yield Notes, or the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary 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.

“Non-Accounts Collateral” means “Collateral” as defined in the Security Agreement and any other property of any Loan Party which has been pledged to secure the Obligations pursuant to any Collateral Document, but excluding the Accounts Collateral and Eligible Pledged Cash.

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

“NPL” means the National Priorities List under CERCLA.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Permitted Canadian Debt” means Indebtedness of any Canadian Subsidiary; provided, that no Default or Event of Default shall exist either immediately or after the incurrence thereof, and the aggregate amount of all Canadian Target Debt and Other Permitted Canadian Debt then outstanding shall not exceed 30% of the book value shown on the relevant Canadian Subsidiary’s balance sheet of the total Canadian Assets at any time.

“Other Permitted Canadian Debt Documents” means the documents executed or to be executed in connection with any Other Permitted Canadian Debt.

“Other Secured Debt” means Indebtedness arising under any Other Secured Debt Agreement; provided that (i) the final maturity and weighted average life to maturity of any such Other Secured Debt shall be after the Maturity Date, (ii) the covenants (including any financial covenants) and events of default applicable thereto shall be less restrictive to the Borrower and its Subsidiaries in all material respects as those contained herein; (iii) no such Indebtedness shall contain a cross default to other Indebtedness on terms less favorable to the Borrower and its Subsidiaries than under the Senior Secured Notes Indenture; and (iv) Liens incurred in connection with any Other Secured Debt shall be subject to an intercreditor agreement in form and substance satisfactory to the Administrative Agent and the Required Lenders; provided further that (x) the Initial Senior High Yield Debt shall be deemed to satisfy the conditions set forth in clauses (i) through (iv) of this paragraph and (y) the intercreditor agreement referred to in clause (a) of the definition of Intercreditor Agreement shall be the intercreditor agreement agreed to by the Administrative Agent and the Required Lenders in connection with the issuance of the Initial Senior High Yield Notes under the issuance of the Initial Senior High Yield Debt.

“Other Secured Debt Agreement” means a loan agreement or other document entered into in connection with the Other Secured Debt, which may include any Senior High Yield Notes in addition to the Initial Senior High Yield Notes issued under the Senior High Yield Indenture, between the Borrower and an agent for the benefit of certain lenders, in form and substance reasonably satisfactory to the Administrative Agent and Required Lenders prior to the closing of such Other Secured Debt Agreement (it being understood that if such loan agreement or other document is the Senior High Yield Indenture in the form approved by the Administrative Agent and the Required Lenders at the time of the issuance of the Initial Senior High Yield Debt, such agreement or document shall be satisfactory to the Administrative Agent and the Required Lenders for the purposes of this definition).

“Other Secured Debt Documents” means the documents executed or to be executed in connection with any Other Secured Debt.

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

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

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

“Patent Security Agreement” means that certain Grant of Security Interest in Patent Rights, to be dated within thirty (30) days of the Closing Date, by and among the applicable Loan Parties and the Administrative Agent, as amended, supplemented or otherwise modified from time to time (together with each other grant of security interest in patent rights delivered pursuant to Section 6.12 of this Agreement and Section 8.13 of the Security Agreement).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Perfection Certificate” means the perfection certificate dated as of the Closing Date and executed by each of the Loan Parties.

“Permitted Acquisition” means 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 Equity Interests 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 such 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 or Puerto Rico;

(c) none of the Borrower 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 7.02;

(d) the person or business to be acquired shall be, or shall be engaged in, a business of the type the Borrower and the Subsidiaries are engaged on the Closing Date and any business reasonably related, ancillary or complementary to the business in which the Borrower and its Subsidiaries are engaged on the Closing Date;

(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, the Borrower shall have delivered to the Administrative Agent and the Lenders a certificate signed by a Responsible Officer of the Borrower, 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) as of the last day of the most recent period for which a Compliance Certificate was required to be delivered pursuant to Section 6.02, after giving pro forma effect to such Permitted Acquisition and any Indebtedness incurred in connection therewith (including, without limitation, any Subordinated Indebtedness) as if such Permitted Acquisition was made and any such Indebtedness was incurred on the first day of such most recent period, the Borrower and its Subsidiaries shall be in compliance with Section 7.11 (as the Borrower shall provide to the Administrative Agent a reasonably detailed certificate to such effect signed by a Responsible Officer of the Borrower); and

(i) after giving pro forma effect to the consummation of such Permitted Acquisition, minimum Liquidity shall not be less than \$50,000,000.

“Permitted Business” means the business of the Borrower and the Borrower’s Subsidiaries as existing on the Closing Date and any other businesses that are the same, similar or reasonably related, ancillary or complementary thereto and reasonable extensions thereof.

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

“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, Equity Interests of the Borrower; (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.

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

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning specified in [Section 6.02](#).

“Pledged Debt” has the meaning specified in the Security Agreement.

“Post-Closing Agreement” means that certain Post-Closing Agreement, dated as of July 31, 2009, among the Borrower and the Administrative Agent with respect to certain documents and actions to be delivered or taken after the Closing Date, as amended, restated, supplemented or otherwise modified from time to time.

“pro forma basis” or “pro forma effect” means with respect to compliance with any test or covenant hereunder, (a) that the Acquisition shall be deemed to have occurred and the Target Company and its Subsidiaries shall be deemed to have become Subsidiaries of the Borrower as of the first day of the applicable period of measurement in such test or covenant, or (b) that any Permitted Acquisition, Indebtedness, Investment, repurchase or redemption, as applicable, shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant.

“Public Lender” has the meaning specified in [Section 6.02](#).

“Real Property” means all right, title and interest in and to any and all now owned and hereafter acquired real property of the Loan Parties, including leasehold interests, together with all buildings, structures and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

“Records” shall mean all of the Loan 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 the Loan Parties with respect to the foregoing maintained with or by any other person).

“Reduction Amount” has the meaning set forth in [Section 2.05\(b\)\(ix\)](#).

“Register” has the meaning specified in [Section 10.06\(c\)](#).

“Related Documents” means the Acquisition Agreement and any related bills of sale, instruments of transfer and other documents delivered in connection with the Acquisition Agreement.

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

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Revolving Credit Loans, a Committed Loan Notice, and (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, (i) if the total number of Lenders is three or fewer, all the Lenders, and (ii) if the total number of Lenders is greater than three, Lenders holding at least 66-2/3% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Reserves” means, as of the date of determination, such amounts as the Administrative Agent may from time to time establish and revise in good faith reducing the amount of the Revolving Credit Loans and L/C Obligations which would otherwise be available to the Borrowers under the lending formula provided for herein: (a) to reflect events, conditions, contingencies or risks which, as determined by the Administrative Agent in good faith, adversely affect, or would have a reasonable likelihood of adversely affecting, (i) the Collateral; (ii) the assets, business or prospects of any Loan Party, or (iii) the security interests and other rights of the Administrative Agent in the Collateral; or (b) to reflect the Administrative Agent’s good faith belief that any collateral report or financial information furnished by or on behalf of any Loan Party to the Administrative Agent is or may have been incomplete, inaccurate or misleading in any material respect; or (c) to reflect the L/C Obligations as provided in Section 2.03 hereof; or (d) in respect of any state of facts which the Administrative Agent determines in good faith constitutes a Default or Event of Default; or (e) to reflect the Administrative Agent’s good faith estimate of the amount necessary to reflect changes in applicable currency exchange rates or currency exchange markets; or (f) to reflect the Dilution Reserve Percentage. To the extent the 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 the Administrative Agent, the Administrative Agent shall not establish a Reserve for the same purpose. The amount of any Reserve established by the Administrative Agent shall have a reasonable relationship to

the event, condition or other matter which is the basis for such as reserve as determined by the Administrative Agent in good faith.

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

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Revaluation Date” means, with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in Canadian Dollars, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in Canadian Dollars, and (iv) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require.

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

“Revolving Credit Commitment” means, as to each Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

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

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

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

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

“Rolling Stock” means all trucks, trailers, tractors, service vehicles, automobiles and other registered mobile equipment.

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

“Sale and Leaseback Transaction” has the meaning specified in Section 7.19.

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

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

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

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

“Security Agreement” means the security agreement, in substantially the form of Exhibit G (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12).

“Senior High Yield Debt” means the indebtedness arising under the Senior High Yield Notes.

“Senior High Yield Documents” means the documents executed or to be executed in connection with the Senior High Yield Indenture.

“Senior High Yield Notes” means the Initial Senior High Yield Notes and any additional Senior High Yield Notes now or hereafter issued pursuant to the Senior High Yield Indenture.

“Senior High Yield Indenture” means the indenture, now or hereafter entered into, between the Borrower and the trustee or other agent for the benefit of the holders of the Senior High Yield Notes, such indenture to be in a form reasonably satisfactory to the Administrative Agent and Required Lenders prior to the closing of such Senior High Yield Indenture, and to be subject to the Intercreditor Agreement.

“Senior Secured Notes” means the \$23,032,000 outstanding aggregate principal amount of 1 1/4% Senior Secured Notes issued on June 30, 2004 and outstanding on the date of this Agreement pursuant to the Senior Secured Notes Indenture.

“Senior Secured Notes Documents” means those documents executed in connection with the Senior Secured Notes Indenture.

“Senior Secured Notes Indenture” means the indenture, dated as of June 30, 2004, among the Borrower, the guarantors party thereto, and U.S. Bank National Association, as Trustee.

“Significant Subsidiary” with respect to any Person means (1) any 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 Closing Date (assuming such Person is the registrant referred to in the definition of “significant subsidiary” in such Regulation) and (2) any Subsidiary that, when aggregated with all other Subsidiaries that are not otherwise Significant Subsidiaries and as to which any event described in clause (e), (f), (g) or (h) of Section 8.1 has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition; provided that each reference to “10 percent” in the criteria for a “significant subsidiary” as defined in Regulation S-X under the Securities Act as such Regulation is in effect on the Closing Date shall be replaced with the words “5 percent”.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Spot Rate” has the meaning given such term in Section 1.07.

“Subordinated Indebtedness” means unsecured Indebtedness of the Borrower or its Subsidiaries that is by its terms expressly subordinated, on terms acceptable to the Administrative Agent and the Required Lenders, to the Discharge of ABL Obligations (as defined in the Intercreditor Agreement), provided that (i) the terms of such Indebtedness may allow for payment of regularly scheduled payments of interest so long as no Event of Default shall have occurred and be continuing at the time such payment is made, (ii) the final maturity of such Indebtedness is at least one year after the Maturity Date, (iii) the terms of such Indebtedness provide that no payments of principal shall or may occur prior to the Discharge of ABL Obligations (as defined in the Intercreditor Agreement), (iv) the covenants and events of default applicable thereto shall be at least as favorable to the Borrower and its Subsidiaries in all

material respects as those contained herein, but in any event no financial maintenance covenants shall be applicable thereto and no such Indebtedness shall contain a cross-default to the Indebtedness under the Loan Documents for a non-payment default and (v) the remedies with respect thereto shall be subject to customary standstill provisions acceptable to the Administrative Agent; provided further that the terms of such Indebtedness may provide for payments of principal or require the issuer thereof to redeem or repurchase such Indebtedness upon the occurrence of a change in control or asset sale occurring prior to maturity if such terms provide that the issuer thereof will not make any such payments or redeem or repurchase any such Indebtedness pursuant to such provisions prior to the Discharge of ABL Obligations (as defined in the Intercreditor Agreement).

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

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

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

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit A-2.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$12,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Target Company” has the meaning specified in the Preliminary Statements.

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

“Threshold Amount” means \$5,000,000.

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

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

“Trademark Security Agreement” means that certain Grant of Security Interest in Trademark Rights, to be dated within thirty (30) days of the Closing Date, by and among the applicable Loan Parties and the Administrative Agent, as amended, supplemented or otherwise modified from time to time (together with each other grant of security interest in trademark rights delivered pursuant to Section 6.12 of this Agreement and Section 8.13 of the Security Agreement).

“Transactions” means, collectively, (a) the consummation of the Acquisition, (b) the entering into by the Loan Parties of the Loan Documents and the Related Documents to which they are or are intended to be a party, and (c) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

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

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

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

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

“Unpledged Cash” means any cash other than the Eligible Pledged Cash.

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

“Voting Stock” means with respect to any Person, (a) one (1) or more classes of Equity Interests of each 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 Equity Interests of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Equity Interests of such Person convertible or exchangeable without restriction at the option of the holder thereof into Equity Interests of such Person described in clause (a) of this definition.

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

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

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

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03. Accounting Terms. (a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

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

1.04. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

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

1.06. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07. Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall

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

ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

2.01. The Loans. (a) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment as set forth on Schedule 2.01; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility or the Borrowing Base, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Revolving Credit Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender’s Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender’s Revolving Credit Commitment. Within the limits of each Revolving Credit Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(a), prepay under Section 2.05, and reborrow under this Section 2.01(a). Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

2.02. Borrowings, Conversions and Continuations of Loans. (a) Each Revolving Credit Borrowing, each conversion of Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower

is requesting a Revolving Credit Borrowing, a conversion of Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be advanced or converted to a Eurodollar Rate Loan.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the Revolving Credit Facility of the Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than 5 Interest Periods in effect in respect of the Revolving Credit Facility.

2.03. Letters of Credit. (a) **The Letter of Credit Commitment.** (i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or Canadian Dollars for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility or the Borrowing Base, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit, which are set forth on Schedule 2.03, shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

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

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

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

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any

Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

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

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial Letter of Credit, or \$500,000, in the case of a standby Letter of Credit;

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

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(F) a default of any Lender's obligations to fund under Section 2.03(c) exists or any Lender is at such time a Defaulting Lender or an Impacted Lender hereunder, unless the L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the L/C Issuer's risk with respect to such Lender.

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

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

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

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

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

(ii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary

thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations. (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer, in Dollars, at the Administrative Agent’s Office in an amount equal to its Applicable Percentage of the Dollar Equivalent of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent,

whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

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

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the

amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. (i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

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

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

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

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

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

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or

purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. Upon the request of the Administrative Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. Sections 2.05 and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.05 and Section 8.02(c), “Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(i) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Percentage a Letter of Credit fee (the “Letter of Credit Fee”) (i) for each commercial Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit and (ii) for each standby Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each month, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a monthly basis in arrears. If there is any change in the Applicable

Rate during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate specified in the Fee Letter between the Borrower and the Administrative Agent, computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and the L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in such Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each month in respect of the most recently-ended month (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

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

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

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

at such time, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender at such time, plus such Revolving Credit Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Revolving Credit Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Lender's Revolving Credit Commitment, and provided further that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, in its discretion, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower at its office by crediting the account of the Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans. (i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 4.02. The Swing

Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(i) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(ii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iii) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations. (i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05. Prepayments. (a) Optional. (i) Subject to the last sentence of this Section 2.05(a)(i), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the Revolving Credit Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) Each prepayment of Loans pursuant to the following provisions of this Section 2.05(b) shall be applied to the Revolving Credit Facility in the manner set forth in clause (iii) of this Section 2.05(b).

(ii) If for any reason, including, without limitation, as a result of exchange rate fluctuations, the Total Revolving Credit Outstandings at any time exceed the lesser of the Borrowing Base at such time and the Revolving Credit Facility at such time, the Borrower shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations.

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

2.06. Termination or Reduction of Commitments. (a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line

Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit.

(b) **Mandatory.** If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit or the Swing Line Sublimit shall be automatically reduced by the amount of such excess.

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

2.07. Repayment of Loans. (a) **Revolving Credit Loans.** The Borrower shall repay to the Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(b) **Swing Line Loans.** The Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date five Business Days after such Loan is made and (ii) the Maturity Date, provided that the Swing Line Lender may, in its sole discretion, require the Borrower to repay such Swing Line Loan more frequently by providing notice of such repayment date to the Borrower.

2.08. Interest. (a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate and, (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

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

(a) Unused Line Fee. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an unused line fee equal to the Applicable Fee Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans, and (ii) the Outstanding Amount of L/C Obligations. The unused line fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable monthly in arrears on the last Business Day of each month, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Credit Facility. The unused line fee shall be calculated monthly in arrears, and if there is any change in the Applicable Fee Rate during any month the actual daily amount shall be computed and multiplied by the Applicable Fee Rate separately for each period during such month that such Applicable Fee Rate was in effect.

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

(ii) The Borrower shall pay to the Administrative Agent for the accounts of the Lenders such fees as are set forth in the Fee Letters in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10. Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate. (a) All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination

by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Fixed Charge Coverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Fixed Charge Coverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.11. Evidence of Debt. (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12. Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all

payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the Revolving Credit Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate

Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

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

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

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

2.13. Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of the Revolving Credit Facility due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Revolving Credit Facility due and payable to all

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

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

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

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

2.14. Intentionally Omitted.

2.15. Increase in Revolving Credit Facility. (a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time, request an increase in the Revolving Credit Facility by an amount (for all such requests) not exceeding \$30,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000, and (ii) the Borrower may make a maximum of two such requests. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each

Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Credit Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Revolving Credit Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, and subject to the approval of the Administrative Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Revolving Credit Facility is increased in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date (the "Revolving Credit Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Revolving Credit Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Credit Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Revolving Credit Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (B) no Default exists. The Borrower shall prepay any Revolving Credit Loans outstanding on the Revolving Credit Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Revolving Credit Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01. Taxes. (a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.** (i) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Borrower or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

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

(c) **Tax Indemnifications.** (i) Without limiting the provisions of subsection (a) or (b) above, the Borrower shall, and does hereby, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower or the Administrative Agent or paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative

Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the L/C Issuer shall, and does hereby, indemnify the Borrower and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Administrative Agent) incurred by or asserted against the Borrower or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to the Borrower or the Administrative Agent pursuant to subsection (e). Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders: Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States,

(A) any Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

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

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(f) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03. Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04. Increased Costs; Reserves on Eurodollar Rate Loans. (a) **Increased Costs Generally.** If any Change in Law shall:

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

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

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

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or

such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

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

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

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

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

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

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

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

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

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

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

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

3.07. Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01. Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent, except to the extent such conditions are subject to the Post-Closing Agreement:

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

- (i) executed counterparts of this Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;
- (ii) a Note executed by the Borrower in favor of each Lender requesting a Note;
- (iii) executed counterparts of each other Loan Document, together with:
 - (A) instruments evidencing the Pledged Debt accompanied by undated allonges executed in blank,
 - (B) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement,
 - (C) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby,
 - (D) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, the Copyright Security Agreement, the Trademark Security Agreement and the Patent Security Agreement has been taken (including receipt of duly executed payoff letters, UCC-3 termination statements and landlords' and bailees' waiver and consent agreements);
- (iv) the Perfection Certificate, duly executed by each Loan Party;
- (v) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this

Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

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

(vii) a favorable opinion of Davis, Malm & D'Agostine, P.C., counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to the matters set forth in Exhibit H-1 and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) a favorable opinion of Herrick, Feinstein LLP, New York counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to the matters set forth in Exhibit H-2 and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(ix) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the consummation by such Loan Party of the Transactions (other than with regard to the Acquisition) (including, governmental, shareholder and third party consents such as clearance under the Hart-Scott Rodino Act) and the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(x) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying that no material change has occurred since March 31, 2009, the date of the pro forma combined balance sheet of the Borrower and its Subsidiaries after giving effect to the Transactions which the Borrower previously provided to the Administrative Agent, with respect to either the Borrower or the Target Company or their respective Subsidiaries which would have a material adverse effect on the combined financial condition of the Borrower and the Target Company and their respective Subsidiaries as reflected in such pro forma combined balance sheet;

(xii) a business plan and budget of the Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower for a

period at least through the Maturity Date, including consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries, and prepared on a quarterly basis for the first year following the Closing Date;

(xiii) interim financial statements for the Borrower and the Target Company as of a date no more than 60 days prior to the Closing Date;

(xiv) a certificate attesting to the Solvency of each Loan Party before and after giving effect to the Transactions, from its chief financial officer;

(xv) evidence that all property and liability insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance and endorsements, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(xvi) a Borrowing Base Certificate duly certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower relating to the initial Credit Extension;

(xvii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrower ended June 30, 2009, signed by chief executive officer, chief financial officer, treasurer or controller of the Borrower;

(xviii) evidence that loans made pursuant to the Existing Credit Agreement by any lender other than those party to this Agreement have been paid off and that letters of credit issued under the Existing Credit Agreement by any letter of credit issuer other than those party to this Agreement have been replaced; and

(xix) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or any Lender reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arranger on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(c) The Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and such counsel).

(d) The Administrative Agent, Lenders and Arranger shall have completed a due diligence investigation, including such collateral reviews, field examinations, audits, assessments or other reviews that the Administrative Agent deems appropriate, of the Borrower, the Target

Company and their respective Subsidiaries in scope, and with results, satisfactory to the Administrative Agent, Lenders, and Arranger and shall have been given such access to the management, records, books of account, contracts and properties of the Borrower, the Target Company and their respective Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as they shall have requested;

(e) The Administrative Agent shall be satisfied with the Borrower's corporate, capital and ownership structure.

(f) The Administrative Agent and Arranger shall be satisfied that there has been no material adverse change in the business, assets, properties, liabilities, operations, condition or prospects of the Borrower or the Target Company.

(g) No action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality could, in the judgment of the Administrative Agent or Arranger, reasonably be expected to have a material adverse effect on the business, assets, properties, liabilities, operations, condition or prospects of the Borrower or the Target Company, or could impair the Borrower's ability to perform any of its obligations under the Loan Documents, or could reasonably be expected to materially and adversely affect the Transactions.

(h) On the Closing Date, the Borrower shall discharge all of the \$23,032,000 of outstanding Senior Secured Notes in accordance with the applicable provisions of the Senior Secured Notes Indenture.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02. Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

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

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Borrowing Base exceeds the Outstanding Amount of the Revolving Credit Loans, Swing Line Loans and L/C Obligations at such time, after giving effect to such Credit Extension.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

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

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

5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document and Related Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.03. Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any

other Loan Document or Related Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including, subject to Liens permitted by Section 7.01 and the provisions of the Intercreditor Agreement, the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for the authorizations, approvals, actions, notices and filings listed on Schedule 5.03, all of which have been duly obtained, taken, given or made and are in full force and effect.

5.04. Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

5.05. Financial Statements; No Material Adverse Effect. (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated March 31, 2009, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Such unaudited consolidated balance sheet (including the notes thereto) sets forth all material indebtedness and other liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The consolidated pro forma balance sheet of the Borrower and its Subsidiaries (including, for this purpose, the Target Company and its Subsidiaries) as at March 31, 2009, and the related consolidated pro forma statements of income of the Borrower and its Subsidiaries (including, for this purpose, the Target Company and its Subsidiaries) for the 12 months ended December 31, 2008 and the three months ended March 31, 2009, certified by the chief financial

officer or treasurer of the Borrower, copies of which have been furnished to each Lender, fairly present the consolidated pro forma financial condition of the Borrower and its Subsidiaries as at such date and the consolidated pro forma results of operations of the Borrower and its Subsidiaries for such periods, in each case giving effect to the Transactions, all in accordance with GAAP.

(e) The consolidated forecasted balance sheet, statements of income and cash flows of the Borrower and its Subsidiaries (including, for this purpose, the Target Company and its Subsidiaries) delivered pursuant to Section 4.01 or Section 6.01(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's best estimate of its future financial condition and performance.

5.06. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transactions, or (b) except as specifically disclosed in footnote (10), "Commitments and Contingencies" to the unaudited consolidated financial statements of the Borrower and its Subsidiaries dated March 31, 2009 described in Section 5.05(a) (the "Disclosed Litigation"), either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07. No Default. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08. Ownership of Property; Liens; Investments. (a) Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, all Real Property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Other than Liens (i) to be discharged pursuant to Section 4.01(a)(iii)(D) or (ii) permitted by Section 7.01, Schedule 5.08(b) sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party, showing as of the date hereof the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party subject thereto. The property of each Loan Party is subject to no Liens, other than Liens set forth on Schedule 5.08(b), and as otherwise permitted by Section 7.01.

(c) Schedules 8(a) and 8(b) of the Perfection Certificate set forth a complete and accurate list of all Real Property owned by each Loan Party, showing as of the date hereof the street address, county or other relevant jurisdiction, state and record owner thereof. Each Loan Party has good, marketable and insurable fee simple title to the Real Property owned by such

Loan Party, free and clear of all Liens, other than Liens (i) to be discharged pursuant to Section 4.01(a)(iii)(D) or (ii) permitted by Section 7.01.

(d) (i) Schedule 8(b) of the Perfection Certificate sets forth a complete and accurate list of all leases of Real Property under which any Loan Party is the lessee, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor and lessee thereof. Each such lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms.

(ii) Schedule 8(c) of the Perfection Certificate sets forth a complete and accurate list of all leases of Real Property under which any Loan Party is the lessor, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms.

5.09. Environmental Compliance. (a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that, except as specifically disclosed in Schedule 5.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 5.09, none of the properties currently or formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries.

(c) Except as otherwise set forth on Schedule 5.09, neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

(d) The Loan 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 the Loan Parties and their Subsidiaries under any Environmental Law and all such licenses, permits, certificates, approvals or similar authorizations are valid and in full force and effect. No Liens have been recorded with respect to any Collateral under any Environmental Law. There are no past or present occurrences, conditions, activities or events that could reasonably be expected to prevent the Borrower or any Subsidiary from compliance with, or result in liability under, any applicable Environmental Law.

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

5.11. Taxes. The Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed. All information in such tax returns and reports is complete and accurate in all material respects. The Borrower and its Subsidiaries have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

5.12. ERISA Compliance. (a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrower and each ERISA Affiliate have made all required contributions to each 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 knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects

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) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(d) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a “Foreign Plan”):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

5.13. Subsidiaries; Equity Interests; Loan Parties. As of the Closing Date (and after giving effect to the consummation of the Acquisition), no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) free and clear of all Liens except those permitted by Section 7.01. No Loan Party has any equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable. Set forth on Schedule 1(a) to the Perfection Certificate is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number. The copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a)(vi) is a true and correct copy of each such document, each of which is valid and in full force and effect. No Equity Interests of any of the Subsidiaries of the Loan Parties 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 its Equity Interests or securities convertible or exchangeable for such shares.

5.14. Margin Regulations; Investment Company Act. (a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of

purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15. Disclosure. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

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

5.17. Intellectual Property; Licenses, Etc. Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, and Schedules 14(a) and 14(b) to the Perfection Certificate set forth a complete and accurate list of all such IP Rights owned or used by each Loan Party. To the best knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of its Subsidiaries infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Schedules 14(a) and 14(b) to the Perfection Certificate set forth all of the agreements or other arrangements of the Loan Parties pursuant to which any Loan Party has a license or other right to use any trademarks, logos, designs, representations or other IP Rights owned by another Person as in effect on the Closing Date and the dates of the expiration of such agreements or other arrangements of any Loan Party as in effect on the Closing Date (collectively, together with such agreements or other arrangements as may be entered into by any Loan Party after the Closing Date, collectively, the

“License Agreements” and individually, a “License Agreement”). No trademark, servicemark, or other IP Right at any time used by any Loan Party which is owned by another Person, or owned by any Loan Party subject to any security interest, Lien, collateral assignment, pledge or other encumbrance in favor of any Person other than a Secured Party, is fixed to any Inventory, except to the extent permitted under the term of the License Agreements listed on Schedule 14(a) and 14(b) to the Perfection Certificate.

5.18. Solvency. The Borrower and each of its Significant Subsidiaries is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

5.19. Casualty, Etc. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.20. Labor Matters. Set forth on Schedule 5.20 is a list (including dates of termination) of all collective bargaining agreements or Multiemployer Plans covering the employees of the Loan Parties as of the Closing Date. There is (i) no significant unfair labor practice complaint pending against any Loan Party or, to the best of Loan Parties’ knowledge, threatened against any Loan 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 Closing Date against any Loan Party or, to best of Loan Parties’ knowledge, threatened against any Loan Party, and (iii) no significant strike, labor dispute, slowdown or stoppage is pending against any Loan Party or, to the best of Loan Parties’ knowledge, threatened against any Loan Party, and (iv) no Loan Party has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

5.21. Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.01 and the provisions of the Intercreditor Agreement) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

5.22. Bank Accounts. All of the deposit accounts, investment accounts or other accounts in the name of or used by the Loan Parties maintained at any bank or other financial institution as of the Closing Date are set forth in the Perfection Certificate.

5.23. Trade Relations. There exists no actual or threatened termination, cancellation or limitation of, or any modification or change in, the business relationship between any Loan 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 Loan 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 Loan Party or any of its Subsidiaries or prevent any Loan 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.

5.24. Restrictions on Subsidiaries. Except for restrictions contained in this Agreement or any other agreement with respect to Indebtedness of Loan Parties permitted hereunder, there are no contractual or consensual restrictions on any Loan Party or any of their Subsidiaries which prohibit or otherwise restrict (a) the transfer of cash or other assets (i) between any Loan Party and any of its Subsidiaries or (ii) between any Subsidiaries of Loan Parties or (b) the ability of any Loan Party or any of their Subsidiaries to incur Indebtedness or grant security interests to the Secured Parties in the Collateral.

5.25. Material Contracts. Schedule 5.25 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. To the extent requested by the Administrative Agent, the Borrower has delivered true, correct and complete copies of such Material Contracts to the Administrative Agent on or before the Closing Date. Except as would not have a Material Adverse Effect, the Loan 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.

5.26. Payable Practices. The Loan Parties have not made any material change in the historical accounts payable practices from those in effect immediately prior to the Closing Date.

5.27. Interdependent Businesses and Operations. Each of the operations and businesses of each Loan Party is interdependent with the other Loan Parties and each Loan Party substantially relies on the other Loan Parties in its operations and business. Each Loan Party will derive substantial direct and indirect benefits from the Loans and Letters of Credit made and to be made by the Administrative Agent and Lenders hereunder. Each Loan Party's access to the financing provided hereunder significantly enhances its own financial condition and business prospects and the Loan Parties acknowledge that the financing provided hereunder would only be available on a joint and several basis among all the Loan Parties.

5.28. Anti-Terrorism Law.

(a) No Loan Party and, to the knowledge of the Loan 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 Loan Party and to the knowledge of the Loan Parties, no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Loans, the or the 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;

- Law;
- (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 Loan Party and, to the knowledge of the Loan Parties, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans or the 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.

5.29. Properties.

(a) Each Loan 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 7.01 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 Loan 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 Loan Parties as presently conducted.

(b) No Loan 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 6.07.

(c) Each Loan 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 Loan Party’s business as currently conducted. The use by each Loan 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 Loan 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.

5.30. Disclosure. Neither this Agreement nor any other document, certificate or statement furnished to any Secured Party by or on behalf of any Loan Party in connection herewith 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 was based upon or constitutes a forecast or projection, the Loan 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.

5.31. Survival of Warranties; Cumulative. All representations and warranties contained in this Agreement or any of the other Loan Documents shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to the Administrative Agent and the Lenders on the date of each additional borrowing or other credit accommodation hereunder and shall be conclusively presumed to have been relied on by the Administrative Agent and Lenders regardless of any investigation made or information possessed by the Administrative Agent or Lenders. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which the Loan Parties shall now or hereafter give, or cause to be given, to the Administrative Agent.

ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01. Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower, audited consolidated financial statements of the Borrower 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 the Borrower and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants (and shall not be subject to any going concern or like qualification, exception or explanatory paragraph), which accountants shall be an independent accounting firm selected by the Borrower and reasonably acceptable to the Administrative Agent, that such financial statements have been prepared in accordance with GAAP, and present fairly the results of operations and financial condition of the Borrower and its Subsidiaries as of the end of and for the fiscal year then ended, together with a Compliance Certificate together with a schedule in form reasonably satisfactory to the Administrative Agent

of the calculations used in determining whether the Borrower was in compliance with the covenants set forth in Section 7.11 of this Agreement as of the end of such fiscal year;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended June 30, 2009), 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 the Borrower and its Subsidiaries as of the end of and through such fiscal quarter, certified to be correct by the chief financial officer of the Borrower, subject to normal year-end adjustments and accompanied by a Compliance Certificate together with a schedule in form reasonably satisfactory to the Administrative Agent of the calculations used in determining whether the Borrower was in compliance with the covenants set forth in Section 7.11 of this Agreement as of the end of such fiscal quarter;

(c) as soon as available, but in any event within 30 days after the end of each fiscal month of the first two months of each fiscal quarter, monthly 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 the operations of the Borrower and its Subsidiaries as of the end of and through such fiscal month, certified to be correct by the chief financial officer of the Borrower, subject to normal year-end adjustments; and

(d) as soon as available, but in any event prior to January 31 of each fiscal year of the Borrower, a budget of the Borrower and its Subsidiaries in form reasonably satisfactory to the Administrative Agent (including a projected consolidated balance sheet, income statement and statement of cash flows) for such fiscal year, prepared in summary form and on a monthly basis, 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 the Borrower 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 the Loan Parties, as the Administrative Agent may, from time to time, reasonably request. The Administrative Agent and each Lender is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of the Loan 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 the Administrative Agent reasonably requests the Loan Parties shall deliver, at their expense, copies of the financial statements of the Loan Parties and any reports or management letters prepared by the accountants or auditors to the Loan Parties and to deliver to the Administrative Agent and to each Lender such information as may reasonably be requested. The Loan Parties shall permit the Lenders, through the Administrative Agent or any of the Lenders' other designated representatives, to visit and inspect any of the properties of the Loan Parties or any of their Subsidiaries, to examine the books of account of the Loan Parties and their Subsidiaries (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Loan Parties and their Subsidiaries with, and to be advised as to the same by, its and their officers, and to conduct examinations and verifications (whether by commercial finance examiners or independent

auditors) of all components included in the Borrowing Base, all at such reasonable times and intervals as the Administrative Agent or any Lender may reasonably request.

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

6.02. Certificates; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended June 30, 2009), (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower;

(b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, the National Association of Securities Dealers, Inc., or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(e) upon request of the Administrative Agent, within fifteen (15) days of such request, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify;

(f) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(g) not later than five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any Related Document or instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding the Related Documents and such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may reasonably request;

(h) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(i) upon request of the Administrative Agent, within fifteen (15) days of such request, (i) a report supplementing Schedules 8(a), 8(b) and 8(c) to the Perfection Certificate, including an identification of all owned and leased Real Property disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of property, lessor, lessee, expiration date and annual rental cost thereof) of all Real Property acquired or leased during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; and (ii) a report supplementing Schedules 14(a), 14(b), 14(c) and 14(d) to the Perfection Certificate setting forth (A) a list of registration numbers for all patents, trademarks, service marks, trade names and copyrights awarded to any Loan Party thereof during such fiscal year and (B) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by any Loan Party or any Subsidiary thereof during such fiscal year and the status of each such application;

(j) as soon as available, but in any event within 30 days after the end of each fiscal year of the Borrower, a report supplementing Schedules 5.08(e) and 5.13 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent;

(k) (i) so long as minimum Liquidity is at least \$50,000,000, as soon as available, but in any event within 20 days after the end of each month, or (ii) if minimum Liquidity is less than \$50,000,000, weekly or daily, in the sole discretion of the Administrative Agent, a Borrowing Base Certificate, duly certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower, together with such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable credit judgment;

(l) on a regular basis as required the Administrative Agent, a schedule of sales made, credits issued and cash received;

(m) upon request of the Administrative Agent, within fifteen (15) days of such request, agings of accounts payable (and including information indicating the status of payments to owners and lessors of the leased premises of such Loan Parties);

(n) 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 the Administrative Agent may request, agings of Accounts (together with a reconciliation to the previous month's aging and general ledger);

(o) upon the Administrative 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 the Loan Parties, and (D) copies of Material Contracts entered into after the Closing Date; and

(p) such other reports as to the Collateral as the Administrative Agent or Required Lenders shall request from time to time; and

(q) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

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

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the L/C Issuer materials and/or information

provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

6.03. Notices. Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws; (iv) 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 Loan Party's business, properties, assets, goodwill or condition, financial or otherwise; (v) any Material Contract of any Loan Party being terminated or amended or any new Material Contract entered into (in which event the Loan Parties shall provide the Administrative Agent with a copy of such Material Contract); (vi) any order, judgment or decree in excess of \$1,000,000 in any one case or in the aggregate shall have been entered against any Loan Party or any of its properties or assets, and (vii) any notification of violation of laws or regulations received by any Loan Party;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof, including any determination by the Borrower referred to in Section 2.10(b); and

(e) of the (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(ii), (ii) occurrence of any sale of capital stock or other Equity Interests for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(iii), (iii) incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(iv), and (iv) receipt of any Extraordinary Receipt for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(v).

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

6.04. Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness. The Loan 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 the Loan 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 the Loan 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.

6.05. Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; provided, however, that the Borrower may consummate the Acquisition; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

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

6.07. Maintenance of Insurance. 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 the Administrative Agent as to form, amount and insurer. The Loan Parties shall furnish certificates, policies or endorsements to the Administrative Agent as such Administrative Agent shall require as proof of such insurance, and, if the Loan Parties fail to do so, the Administrative Agent is authorized, but not required, to obtain such insurance at the expense of the Loan Parties. All policies shall provide for at least thirty (30) days prior written notice to the Administrative Agent of any cancellation or reduction of coverage and that the Administrative Agent may act as attorney for the Loan 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. The Loan Parties shall cause the Administrative Agent to be named as a loss payee and an additional insured with respect to the Collateral (without any liability for any premiums) under such insurance policies and the Loan Parties shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance satisfactory to the Administrative Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to the Administrative Agent as its interests may appear and further specify that the Administrative Agent shall be paid regardless of any act or omission by a Loan Party or any of its Affiliates. At its option, the Administrative Agent may apply any insurance proceeds received by the Administrative 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 the Administrative Agent may determine or hold such proceeds as cash collateral for the Obligations.

6.08. Compliance with Laws, Immediate Notice in respect of Hazardous Material. (a) 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, 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 the Loan Parties on a consolidated basis; and

(b) Give written notice to each Administrative Agent immediately upon any Loan Party's receipt of any notice of, or any Loan 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 Loan Party or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material. The Loan Parties shall take prompt and appropriate action to respond to any such noncompliance or potential

liability with any Environmental Laws and shall regularly report to the 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 the Administrative Agent shall be promptly furnished, or caused to be furnished, by the Loan Parties to the Administrative Agent.

6.09. Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Subsidiary, as the case may be.

6.10. Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11. Use of Proceeds. Use the proceeds of the Credit Extensions for general corporate purposes and to finance ongoing working capital needs not in contravention of any Law or of any Loan Document.

6.12. Covenant to Guarantee Obligations and Give Security. (a) Upon the formation or acquisition of any new direct or indirect Subsidiary (other than any CFC or a Subsidiary that is held directly or indirectly by a CFC) by any Loan Party, then the Borrower shall, at the Borrower's expense (and subject to the terms of the Intercreditor Agreement):

(i) within three (3) Business Days after such formation or acquisition, cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within three (3) Business Days after such formation or acquisition, furnish to the Administrative Agent a description of the real and personal properties of such Subsidiary, in detail satisfactory to the Administrative Agent,

(iii) within three (3) Business Days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent a security agreement, copyright security agreement, patent security agreement and trademark

security agreement, as applicable, in form and substance satisfactory to the Administrative Agent, securing the Loan Parties' obligations under the Loan Documents,

(iv) within three (3) Business Days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the filing of Uniform Commercial Code financing statements) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the personal property subject to the Collateral Documents delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms, and

(v) within three (3) Business Days after such formation or acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request.

(b) If the Loan Parties are required by Section 6.25 to provide to the Administrative Agent, on behalf of the Secured Parties, Mortgages on their respective Mortgage Properties and any Loan Party shall thereafter acquire any additional Mortgage Property, then the Borrower shall, at the Borrower's expense (and subject to the terms of the Intercreditor Agreement), within three Business Days after the acquisition of such Mortgage Property, deliver to the Administrative Agent with respect to such Mortgage Property, a Mortgage, a Mortgage Policy and the other documents described in Section 6.25 with respect to the Mortgage Properties for which such documents are required to be delivered under such Section.

(c) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, supplements to Collateral Documents and other security agreements. All such actions in this Section 6.12 shall be taken subject to the Intercreditor Agreement.

6.13. Compliance with Environmental Laws. Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.14. Preparation of Environmental Reports, Environmental Indemnity. Whenever the Administrative Agent reasonably determines that there is non-compliance, or any condition which requires any action by or on behalf of the Loan Parties in order to avoid any non-compliance with or liability under any Environmental Law which, in either case, could reasonably be expected to result in aggregate Environmental Liabilities of \$30,000,000 in excess of reserves for such liabilities then maintained by the Borrower and its Subsidiaries, within 60 days after the Administrative Agent's request and at the Loan Parties' expense: (i) cause an independent environmental consultant acceptable to the Administrative Agent to conduct such assessments and tests of the property and/or facility where the Loan 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; (ii) provide to such Administrative Agent a supplemental report whenever the scope of the matter, or the Loan Parties' response thereto or the estimated costs thereof, shall change in any material respect; and (iii) cause any Subsidiary that owns any property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, subject to the rights of tenants, to enter onto their respective properties to undertake such an assessment; provided that without limiting the generality of the foregoing, if the Administrative Agent determines at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower.

(b) 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 the Loan 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.

6.15. Compliance with ERISA. 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.

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

6.17. Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations in respect of all leases of Real Property to which the Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

6.18. License Agreements. (a) (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 6.19(b), the Loan Parties and any of their Subsidiaries may cancel, surrender or release any material License Agreement in the ordinary course of the business of such Loan Party or Subsidiary; *provided* that the Loan Parties shall give the 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 the Administrative Agent prompt written notice of any material License Agreement entered into by any Loan Party after the Closing Date, together with a true, correct and complete copy thereof and such other information with respect thereto as the Administrative Agent may request, (v) give the 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 the

Administrative Agent (promptly upon the receipt thereof by Loan Party in the case of a notice to any Loan Party, and concurrently with the sending thereof in the case of a notice from any Loan Party) a copy of each notice of default and every other notice and other communication received or delivered by any Loan Party in connection with any material License Agreement which relates to the right of a Loan Party to continue to use the property subject to such License Agreement, and (vi) furnish to the Administrative Agent, promptly upon the request of the Administrative Agent, such information and evidence as the 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) 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 the Administrative Agent or give the Administrative Agent prior written notice that Loan 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 the Loan Parties to extend or renew any material License Agreement, the 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 the Administrative Agent or in the name and behalf of the Loan Party, as the Administrative Agent shall determine at any time that an Event of Default shall exist or have occurred and be continuing. The Administrative Agent may, but shall not be required to, perform any or all of such obligations of any Loan Party under any of the License Agreements, including, but not limited to, the payment of any or all sums due from Loan Party thereunder. Any sums so paid by the Administrative Agent shall constitute part of the Obligations.

6.19. Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so.

6.20. Costs and Expenses. Pay to the Administrative 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 Loan Documents 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 due diligence, 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 blocked accounts, together with the Administrative Agent's customary charges and fees with respect thereto; (c) charges, fees or expenses charged by any bank or issuer in connection with the L/C Obligations; (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 the Administrative Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Loan Documents or defending any claims made or threatened against the Administrative 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 the Administrative Agent during the course of periodic field examinations of the Collateral and the Loan Parties' operations, plus a per diem charge at the rate of \$750 per person per day for the Administrative Agent's examiners in the field and office; and (g) the fees and disbursements of counsel (including legal assistants) to the Administrative Agent and, if an Event of Default under Section 8.01 of this Agreement has occurred and is continuing, Lenders, in connection with any of the foregoing.

6.21. Cash Collateral Accounts. Maintain, and cause each of the other Loan Parties to maintain, all Cash Collateral Accounts with Bank of America or another commercial bank approved by the Administrative Agent, which has accepted the assignment of such accounts to the Administrative Agent for the benefit of the Secured Parties pursuant to the terms of the Security Agreement.

6.22. Cash Management Arrangements. For the purposes of assuring the Administrative Agent's and Secured Parties' first priority, subject to Liens permitted by Section 7.01 and the provisions of the Intercreditor Agreement, secured position in proceeds of the Collateral, maintain, and cause each of the other Loan Parties to maintain the Administrative Agent as the Loan Parties' principal depository bank for the maintenance of operating and deposit accounts, lockbox administration, funds transfer, information reporting services and other treasury management services, and further, to cause all proceeds of Accounts Collateral to be deposited in deposit accounts subject to springing Control Agreements, provided that the Administrative Agent would not exercise its rights of dominion over such deposits accounts unless excess cash on hand falls below \$50,000,000 or upon any Event of Default under this Agreement; provided, that deposit accounts exclusively used for funding zero balance disbursement deposit accounts in respect of payroll, payroll taxes and other employee wage and benefit payments and other deposit accounts the average daily balance of which do not contain more than \$1,000,000 in the aggregate at any time, need not be subject to such a Control Agreement.

6.23. Information Regarding Collateral.

(a) Concurrently with the delivery of financial statements pursuant to Section 6.01 hereof, deliver to the Administrative Agent a Perfection Certificate supplement, and a certificate of a financial officer and the chief legal officer of the Borrower 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 Collateral 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).

6.24. Anti-Terrorism Law; Anti-Money Laundering.

(a) Not, 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 5.28, (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 Loan 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 Loan Parties' compliance with this Section 6.24); and

(b) Not cause or permit any of the funds of such Loan Party that are used to repay Obligations to be derived from any unlawful activity with the result that the making of the Loans would be in violation of law.

6.25. Mortgages.

(a) Enter into any mortgage, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust or any other document (each such document, a "Mortgage") to secure a Lien with respect to any Mortgage Property in favor of the Administrative Agent on behalf of the Secured Parties and for which a Mortgage is provided as part of the Senior High Yield Debt Documents or the Other Secured Debt Documents in connection with the incurrence of the Senior High Yield Debt or Other Secured Debt. In the event the Borrower or any of the other Loan Parties do not enter into or incur the Senior High Yield Debt or Other Secured Debt, the Borrower shall not, and shall not permit any of the other Loan Parties to, enter into any mortgage, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust or any other document to secure a Lien with respect to real property in favor of any other party without the prior written consent of the Administrative Agent.

(b) If any Loan Party shall become required to deliver to the Administrative Agent, for the benefit of the Secured Parties, any Mortgage on a Mortgage Property in accordance with Section 6.25(a), then the Borrower shall, at the Borrower's expense (and subject to the terms of the Intercreditor Agreement), concurrently with the delivery of such Mortgage:

(i) Furnish to the Administrative Agent a description of such Mortgage Property in detail satisfactory to the Administrative Agent,

(ii) Cause the applicable Loan Party to duly execute and deliver to the Administrative Agent, in addition to the Mortgage, supplements to the Collateral Documents and security agreements, as specified by and in form and substance satisfactory to the Administrative Agent, securing payment of all the Obligations under the Loan Documents and constituting Liens on such Mortgage Property,

(iii) Cause the applicable Loan Party to take, whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such Mortgage Property enforceable against all third parties in accordance with their terms,

(iv) Deliver to the Administrative Agent (or any representative of the Administrative Agent designated by it) a mortgage title insurance policy (the "Mortgage Policy") relating to the Mortgage encumbering such Mortgage Property assuring the Administrative Agent that the Mortgage is a valid and enforceable first priority (subject to Liens permitted by Section 7.01 and the provisions of the Intercreditor Agreement) on all right, title and interest of the respective Loan Party in the Mortgage Property described therein;

(v) Deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) Deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to such Mortgage Property, title reports, surveys and engineering, soils and other reports, and environmental assessment reports from an environmental consulting firm acceptable to the Administrative Agent, which report shall identify existing and potential environmental concerns and shall quantify related costs and liabilities, associated with such Mortgage Property, each in scope, form and substance satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such Mortgage Property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

6.26. Control Agreements. Enter into, at the request of the Administrative Agent, a Control Agreement with respect to any deposit account or securities account, such agreement to be in form and substance satisfactory to the Administrative Agent.

6.27. The Acquisition. Enter into and complete the Acquisition, within five (5) Business Days of the Closing Date, subject to the following conditions:

(a) The Acquisition will be consummated in accordance with the Acquisition Agreement and applicable Law.

(b) The Acquisition Agreement shall be in full force and effect.

(c) The Acquisition shall be consummated in accordance with the terms of the Acquisition Agreement, without any waiver or amendment not consented to by the Lenders of any material term, provision or condition set forth therein, and in compliance with all applicable requirements of Law, and the Borrower shall provide to the Administrative Agent before the close of business on the closing date of the Acquisition: (1) a signed and dated, filed copy of the Articles of Arrangement duly filed with the Registrar of Corporations of the Province of Alberta together with Proof of Filing from the Registrar of Corporations of the Province of Alberta of the Arrangement pursuant to which all of the outstanding capital stock of the Target Company shall have been acquired by Clean Harbors Industrial Services Canada, Inc. ("Acquireco"), which is a wholly owned indirect Subsidiary of the Borrower organized under the laws of Alberta for purposes of the Acquisition; and (2) a certified copy of the Certificate and Articles of Amalgamation from the Registrar of Corporations of the Province of Alberta of the amalgamation of the Target Company and Acquireco, with the name of the amalgamated company to be the same as that of Acquireco.

(d) The Administrative Agent shall be satisfied with the Borrower's corporate, capital and ownership structure after giving effect to the Acquisition.

(e) All applicable waiting periods in connection with the Acquisition have expired without any action having been taken by any Governmental Authority restraining, preventing or imposing materially adverse conditions upon the Transactions or the rights of the Loan Parties or their Subsidiaries freely to transfer or otherwise dispose of, or to create any Lien on, any properties now owned or hereafter acquired by any of them.

(f) The Administrative Agent's receipt of a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the consummation of the Acquisition (including, governmental, shareholder and third party consents such as clearance under the Hart-Scott Rodino Act) and the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Acquisition Agreement to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required.

(g) The Administrative Agent's receipt of certified copies of each of the Related Documents, such Related Documents to be in form and substance satisfactory to the Administrative Agent, duly executed by the parties thereto, together with all agreements, instruments and other documents delivered in connection therewith as the Administrative Agent shall request.

6.28. Intellectual Property Security Agreements. Deliver the Copyright Security Agreement, Trademark Security Agreement and Patent Security Agreement pursuant to the requirements set forth in the Security Agreement, including, without limitation, Section 4.4 therein.

**ARTICLE VII.
NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

(a) Liens pursuant to any Loan Document;

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

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP and in each case prior to the commencement of a foreclosure or other similar proceeding;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of 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 the Borrower 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 the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed by ERISA) including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith;

(f) any Lien or deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance and return-of-money bonds, tenders, government contracts and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case

materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

- (h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);
- (i) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;
- (j) Liens shown on the title commitments for title insurance policies delivered under the Existing Credit Agreement;
- (k) Liens securing the Canadian Target Debt;
- (l) Liens securing the Initial Senior High Yield Debt and Other Secured Debt (in each case, subject to the terms of the applicable Intercreditor Agreement);
- (m) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed \$50,000,000, provided that no such Lien shall extend to or cover any Collateral;
- (n) Liens securing Other Permitted Canadian Debt; and
- (o) Liens on acquired assets which secured Acquired Indebtedness which existed prior to the related acquisition, merger or consolidation.

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

- (a) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;
- (b) Indebtedness owed by a Loan Party to any other Loan Party which Indebtedness (x) is hereby subordinated to the prior indefeasible payment in full in cash of the Obligations, (y) is represented by an Instrument in form satisfactory to the Administrative Agent and delivered to the Administrative Agent pursuant to the Security Agreement; and (z) is otherwise permitted under the provisions of Section 7.03;
- (c) Indebtedness under the Loan Documents;
- (d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02; provided that (i) the Loan 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 Closing Date, (ii) the Loan 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 Closing Date except that the Loan Parties may, after prior written notice to the Administrative Agent on behalf of the Secured Parties, 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) the Loan Parties shall furnish to the Administrative Agent all notices or demands in connection with such Indebtedness either received by the any Loan Party or on its behalf, promptly after the receipt thereof, or sent by any Loan Party or on its behalf, concurrently with the sending thereof, as the case may be;

(e) Guarantees of any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower;

(f) purchase money Indebtedness (including Capitalized Leases) arising after the Closing Date to the extent secured by purchase money security interests in Equipment (including Capitalized Leases) and purchase money mortgages on Real Property not to exceed \$25,000,000 in the aggregate at any time outstanding (excluding such Indebtedness outstanding on the Closing Date) so long as such security interests and mortgages do not apply to any property of the Borrower or its Subsidiaries 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;

(g) Indebtedness of the Loan 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;

(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 Loan Parties in an aggregate principal amount not to exceed \$20,000,000 at any time outstanding;

(j) so long as no Default exists immediately prior to or after giving effect to the incurrence thereof, Subordinated Indebtedness, to the extent that the Net Cash Proceeds of such Subordinated Indebtedness are used to pay, substantially contemporaneously with the incurrence thereof, consideration for one or more Permitted Acquisitions, Indebtedness of any Person(s) acquired in such Permitted Acquisition or Permitted Acquisitions or any fees or expenses incurred in connection therewith and any such Permitted Acquisition is made in compliance with the requirements set forth in the definition thereof;

(k) as to the Target Company and its Subsidiaries, and any other Canadian Subsidiaries of the Borrower to the extent they may become parties to the Canadian Target Debt

Agreement, Canadian Target Debt in an aggregate principal amount at any time outstanding of not more than Cdn \$245 million;

(l) so long as no Default or Event of Default exists immediately prior to or after giving effect to the incurrence thereof, the Senior High Yield Debt, provided that prior to or upon the incurrence of the Initial Senior High Yield Debt, the Borrower pays off in full the then outstanding Canadian Target Debt with the proceeds of the Initial Senior High Yield Debt;

(m) so long as (i) no Default or Event of Default exists immediately prior to or after giving effect to the incurrence thereof, and (ii) after giving effect to the incurrence thereof on a pro forma basis, the Borrower's Consolidated Fixed Charge Coverage Ratio is greater than 3.00:1.00, the Borrower and Guarantors may incur Other Secured Debt;

(n) so long as (i) no Default or Event of Default exists immediately prior to or after giving effect to the incurrence thereof, and (ii) after giving effect to the incurrence thereof on a pro forma basis, the Borrower's Consolidated Fixed Charge Coverage Ratio is greater than 2.00:1.00, the Borrower and Guarantors may incur other unsecured Indebtedness, and the Borrower and its Subsidiaries may incur Acquired Indebtedness; and

(o) so long as no Default or Event of Default exists immediately prior to or after giving effect to the incurrence thereof, the Canadian Subsidiaries may incur Other Permitted Canadian Debt.

7.03. Investments. Make or hold any 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 6.22, 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 Loan Parties in other Loan Parties, (2) the existing Investments of Loan Parties in any Person which is not a Loan Party as of the Closing Date set forth on Schedule 7.03(c), (3) additional Investments made by the Borrower or any other Loan Party after the Closing Date in or to another Loan Party in the ordinary course of business, (4) the Investments in the Target Company and its Subsidiaries made as part of the Acquisition; (5) any Investments made by Canadian Subsidiaries provided such Investments are not in violation of the Canadian Target Debt Agreement or any Other Permitted Canadian Debt Documents, and (6) additional Investments in the ordinary course of business by the Borrower or any other Loan Party in or to its respective wholly-owned Subsidiaries organized outside of the United States; provided that, no Default or Event of Default shall exist immediately prior to or after giving effect to such Investments; provided further that the aggregate amount of all such additional Investments by any Loan Party in 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:

(i) in the case of Canadian Subsidiaries, (a) if Liquidity is less than \$100,000,000 but greater than \$50,000,000, \$25,000,000 at any time outstanding, or (b) if Liquidity is less than \$50,000,000, such amount that the Administrative Agent and Required Lenders consent to in their discretion; or

(ii) in the case of any other Subsidiary organized outside of the United States, \$10,000,000 at any time outstanding;

provided further that, after giving effect to any Investment made pursuant to this Section 7.03(c)(6)(i) in Canadian Subsidiaries, (y) the Borrower shall be in compliance with the financial covenants set forth in Section 7.11 after giving effect to such Investment on a pro forma basis, and (z) the difference between Liquidity less such Investment in any Canadian Subsidiaries shall not be less than \$50,000,000;

(d) Permitted Acquisitions;

(e) stock or obligations issued to the Loan Parties by any Person (or the representative of such Person) in respect of Indebtedness of such Person owing to the Loan 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 Administrative Agent, upon the Administrative Agent's request, together with such stock power, assignment or endorsement by the Loan Parties as the Administrative Agent may request;

(f) obligations of account debtors to Loan Parties arising from Accounts which are past due evidenced by a promissory note made by such account debtor payable to the Loan Parties; *provided* that promptly upon the receipt of the original of any such promissory note by the Loan Parties, such promissory note shall be endorsed to the order of the Administrative Agent by the Loan Parties and promptly delivered to the Administrative Agent as so endorsed;

(g) Guarantees permitted by Section 7.02;

(h) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(1)) and set forth on Schedule 5.08(e); provided that as to such loans and advances, (i) the Loan 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) the Loan Parties shall furnish to the Administrative Agent all notices or demands in connection with such loans and advances either received by any Loan Party or on its behalf, promptly after the receipt thereof, or sent by any Loan Party or on its behalf, concurrently with the sending thereof, as the case may be; and

(i) Investments comprising solely of the Applicable Properties in the Applicable Property Entities; and

(j) other Investments that do not exceed \$25,000,000 in the aggregate at any one time outstanding.

7.04. Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

- (a) (i) any Loan Party (other than the Borrower) may be merged into, consolidated with, or amalgamated with any other Loan Party, and (ii) any wholly-owned Subsidiary of any Loan Party may be merged into such Loan Party;
- (b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;
- (c) any Subsidiary that is not a Loan Party may be merged into, consolidated with, or amalgamated with, or may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) with or to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party; and
- (d) in connection with any acquisition permitted under Section 7.03, any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of the Borrower and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person.

7.05. Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Dispositions of inventory in the ordinary course of business;
- (b) the issuance and sale by the Borrower of Equity Interests (other than Disqualified Equity Interests) of the Borrower on and after the Closing Date;
- (c) leases of real or personal property in the ordinary course of business in accordance with past practice and in accordance with the Loan Documents;
- (d) provided that no Default or Event of Default exists immediately prior to or after such Disposition, other Dispositions not to exceed \$20,000,000 in any twelve-month period; provided that at least 80% of the consideration received in any such Disposition is in the form of cash and Cash Equivalents;
- (e) Dispositions permitted by Section 7.04;
- (f) Dispositions involving property or assets acquired in any acquisition by the Borrower or any of its Subsidiaries if such disposition is required by any Governmental Authority having jurisdiction over antitrust, competition or similar matters in connection with such acquisition;

(g) provided that no Default or Event of Default exists immediately prior to or after such Disposition, Dispositions of any Non-Accounts Collateral or assets not constituting Collateral by the Borrower or any of its Subsidiaries so long as:

(i) the Borrower or the applicable Subsidiary, as the case may be, receives consideration at the time of such Disposition at least equal to the fair market value of the assets sold or otherwise disposed of (as determined in good faith by the Borrower's senior management or, in the case of a Disposition in excess of \$25,000,000, the Borrower's board of directors);

(ii) at least 75% of the consideration received by the Borrower or the Subsidiary, as the case may be, from such Disposition shall be in the form of:

(A) cash or Cash Equivalents,

(B) properties and assets to be owned by the Borrower or any of its Subsidiaries and used in a Permitted Business; or

(C) Equity Interests in one or more Persons engaged in a Permitted Business that are or thereby become Subsidiaries of the Borrower;

(iii) upon the consummation of such Disposition, the Borrower will apply, or cause such Subsidiary to apply, the Net Cash Proceeds relating to such Disposition within 365 days of receipt thereof to make an Investment (i) in properties and assets that replace the properties and assets that were the subject of such Disposition or (ii) in properties and assets that will be used by the Borrower or a Subsidiary in a Permitted Business (clauses (i) and (ii) collectively referred to as "Replacement Assets"); and

(iv) the Net Cash Proceeds from any such Disposition of Non-Accounts Collateral is paid as provided for in accordance with the Senior High Yield Documents and the Intercreditor Agreement, to the extent applicable;

(h) Dispositions of equipment in connection with the reinvestment in or the replacement thereof and disposals of worn-out or obsolete equipment;

(i) the grant in the ordinary course of business of non-exclusive licenses to use any patents, trademarks and similar intellectual property;

(j) provided that no Default or Event of Default exists immediately prior to or after such Disposition, the release, surrender or waiver of contract, tort or other claims of any kind in the ordinary course of business as a result of settlement of any litigation or threatened litigation;

(k) the granting or existence of Liens permitted under Section 7.01; and

(l) the making of any Investment permitted under Section 7.05 or any Restricted Payment permitted under Section 7.06;

provided, however, that any Disposition pursuant to Section 7.05(a) through Section 7.05(l) shall be for fair market value.

7.06. Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Loan Party may make Restricted Payments to the Borrower;

(b) any Subsidiary of any Loan Party may make Restricted Payments to such Loan Party or to any other Loan Party which is a wholly-owned Subsidiary of the Borrower; provided that, if such Restricted Payment is then subject to the provision of the Canadian Target Debt Agreement and/or such Other Permitted Canadian Debt Document, such Restricted Payment is permitted under the terms of the Canadian Target Debt Agreement and/or any Other Permitted Canadian Debt Document;

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

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

7.07. Change in Nature of Business. Engage in any business other than the business of the Loan Parties on the Closing Date and any business reasonably related, ancillary or complementary to the business in which the Loan Parties are engaged on the Closing Date.

7.08. Transactions with Affiliates. (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 Loan Party or any officer, director, agent or any Loan Party, except in the ordinary course of and pursuant to the reasonable requirements of any Loan Party's business and upon fair and reasonable terms no less favorable to such Loan Party than such Loan 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 Loan Party except reasonable compensation to officers, employees and directors for services rendered to Loan Parties in the ordinary course of business.

7.09. Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement, any other Loan Document, the Senior High Yield Documents, the Other Secured Debt Documents, and, solely as to the Canadian Subsidiaries, the Canadian Target Debt Documents and the Other Permitted Canadian Debt Documents) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to or invest in the Borrower or any Guarantor, except for any agreement in effect (A) on the date hereof and set forth on Schedule 7.09 or (B) at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not

entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.02(i) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

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

7.11. Financial Covenants.

(a) Liquidity.

(i) Permit Liquidity at any time to be less than \$25,000,000;

(ii) To the extent Liquidity falls below \$50,000,000, the following covenants shall apply:

(A) The Borrower shall not permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter calculated for the period consisting of the one fiscal quarter then ended of the Borrower to be less than 1.00:1;

(B) If Excess Availability is less than 15% of the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, the Borrower shall and shall cause its Subsidiaries to deposit additional cash or Cash Equivalents into the appropriate account to be included as Eligible Pledged Cash in an amount sufficient to provide Excess Availability in an amount greater than 15% of the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations; and

(C) The Borrower shall not make any Restricted Payments, prepay any Indebtedness (including optionally redeeming, repurchasing or repaying any Senior High Yield Notes or Other Secured Debt), or make any Permitted Acquisitions unless and until Liquidity is above \$50,000,000 both before and after giving effect to such Restricted Payments, prepayments of Indebtedness or Permitted Acquisition.

(iii) At all times, from and after the incurrence the Senior High Yield Debt, permit Liquidity at any time to be less than \$50,000,000.

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any Measurement Period of the Borrower to be less than 1.00:1.

7.12. Amendments of Organization Documents. Terminate, amend, modify or change any of its Organization 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 Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, 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 the Borrower may issue such Equity Interests, so long as such issuance is permitted or not prohibited by Section 7.06 or any other provision of the Loan Documents, and may amend its Organization Documents to authorize any such Equity Interests.

7.13. Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.14. Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement; (b) regularly scheduled or required repayments or redemptions of Indebtedness set forth in Schedule 7.02 and refinancings and refundings of such Indebtedness in compliance with Section 7.02(d); and (c) prepayments, redemptions or repurchases of notes under the Senior High Yield Indenture, provided that such prepayments, redemptions or repurchases may be made only if minimum Liquidity both before and after giving effect to each such prepayment, redemption or repurchase shall be no less than \$100,000,000.

7.15. Amendment, Etc. of Related Documents. (a) Cancel or terminate any Related Document or consent to or accept any cancellation or termination thereof, (b) amend, modify or change in any manner any term or condition of any Related Document or give any consent, waiver or approval thereunder, (c) waive any default under or any breach of any term or condition of any Related Document, or (d) take any other action in connection with any Related Document that would impair the value of the interest or rights of any Loan Party thereunder or that would impair the rights or interests of the Administrative Agent or any Lender.

7.16. Change of Name or Chief Executive Office.

(a) In the case of each Loan Party, change its name unless each of the following conditions is satisfied: (i) the Administrative Agent and the Lenders shall have received not less than thirty (30) days' prior written notice from a Loan Party of such proposed change in its name, which notice shall accurately set forth the new name; and (ii) prior to the filing thereof, the Administrative Agent and the Lenders 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 Loan Party providing for the name change and once the filing has been made, the Administrative Agent and the Lenders 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 Loan Party certified by the Secretary of State of the jurisdiction of incorporation or organization of such Loan Party as soon as it is available.

(b) In the case of each Loan Party, change its chief executive office, its mailing address, organizational identification number (or if it does not have one, shall not acquire one), identity or corporate structure, or jurisdiction of organization unless the Administrative Agent and the Lenders shall have received not less than thirty (30) days' prior written notice (or such shorter period as the Administrative Agent may consent to) from the Loan Parties of such proposed change, which notice shall set forth such information with respect thereto as the Administrative Agent may require and the Administrative Agent shall have received such agreements as it may reasonably require in connection therewith in order to preserve and protect its respective Liens on the Collateral.

7.17. Intentionally Omitted.

7.18. Embargoed Person. Cause or permit (a) any of the funds or properties of the Loan 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 Loan 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.

7.19. Sale and Leaseback Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby any Loan Party 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 7.05 and (ii) any Liens arising in connection with its use of such property are permitted by Section 7.01.

**ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES**

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

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

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.03, 6.05, 6.10, 6.11, 6.12, 6.14, 6.21 or Article VII, (ii) any of the Guarantors fails to perform or observe any term, covenant or agreement contained in the Guaranty or (iii) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in any Collateral Document to which it is a party, in each case, to the extent any applicable cure or grace period therefor has expired; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days (in the case of failure to perform or observe the covenants in Sections 6.01, 6.02 and 7.11(a)(ii)), 30 days after the Loan Party receives notice by the Administrative Agent or Required Lenders that such failure will constitute an Event of Default); or

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

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in

either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. The Borrower or any Significant Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

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

(h) Judgments. There is entered against the Borrower or any Significant Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

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

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

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

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (and subject to rights of other secured parties under the Intercreditor Agreement and subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby; or

(m) Subordination. (i) The subordination provisions of the documents evidencing or governing any subordinated Indebtedness (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable subordinated Indebtedness, or in the case of the Intercreditor Agreement, the parties thereto; or (ii) the Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordinated Provisions, (B) that the Subordinated Provisions exist for the benefit of the Administrative Agent, the Lenders and the L/C Issuer or (C) that all payments of principal or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

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

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

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

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

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

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03. Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, Affiliates of Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, first, to other creditors entitled thereto, and second, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash

Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not at such time a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

**ARTICLE IX.
ADMINISTRATIVE AGENT**

9.01. Appointment and Authority. (a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

(a) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03. Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C

Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06. Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties

in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08. No Other Duties, Etc. Anything herein to the contrary notwithstanding, the Sole Lead Arranger and the Sole Book Manager listed on the cover page hereof shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents.

9.09. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

9.10. Collateral and Guaranty Matters. Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank (to the extent required under Section 9.11) shall have been made) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

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

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11. Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

**ARTICLE X.
MISCELLANEOUS**

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

- (a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;
- (b) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 as to any Credit Extension under the Revolving Credit Facility without the written consent of the Required Lenders;
- (c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (d) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;
- (e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such fees or amounts; provided, however, that only the consent of the

Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(f) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender in any manner that materially and adversely affects the Lenders without the written consent of the Required Lenders;

(g) change (i) any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(g)), without the written consent of each Lender;

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

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

(j) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

10.02. Notices; Effectiveness; Electronic Communications. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows,

and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

- (i) if to the Borrower, the Administrative Agent, the L/C Issuer, or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and
- (ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

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

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-

INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer, and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03. No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in

exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04. Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), 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 Loan 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 L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

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

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

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

10.05. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06. Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions

of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under the Revolving Credit Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

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

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans.

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Credit Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding);

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a

sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure

obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to Section 10.06(b), Bank of America may, (i) upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

10.07. Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.15(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the

Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

10.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or,

if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13. Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required

by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and
- (d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.14. Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAWS OF THE STATE OF NEW YORK).

(a) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH GUARANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION

OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) WAIVER OF VENUE. THE BORROWER AND EACH GUARANTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

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

10.16. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger, are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arranger each is and has been acting

solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17. Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.18. USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the Act.

10.19. Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent, the L/C Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, the L/C Issuer or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent, the L/C Issuer or such Lender, as

the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent, the L/C Issuer or any Lender from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, the L/C Issuer or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent, the L/C Issuer or any Lender in such currency, the Administrative Agent, the L/C Issuer or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CLEAN HARBORS, INC., as Borrower

By: /s/ James M. Rutledge

Name: James M. Rutledge

Title: Executive Vice President and
Chief Financial Officer

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

By: /s/ Christopher O'Halloran
Name: Christopher O'Halloran
Title: Vice President



BANK OF AMERICA, N.A., as a Lender, L/C Issuer and Swing Line Lender

By: /s/ Christopher O'Halloran

Name: Christopher O'Halloran

Title: Vice President

SIEMENS FINANCIAL SERVICES, INC., as a Lender

By: /s/ Jennifer Humphrey

Name: Jennifer Humphrey

Title: VP Operations

By: /s/ Uri Sky

Name: Uri Sky

Title: VP Credit

TD BANK, N.A., as a Lender

By: /s/ C. Lee Willingham
Name: C. Lee Willingham
Title: Senior Vice President



AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of December 31, 2008

among

EVEREADY ENERGY SERVICES CORP.,
as Borrower,

THE OTHER CREDIT PARTIES SIGNATORY HERETO,
as Credit Parties,

- and -

GE CANADA ASSET FINANCING HOLDING COMPANY,
as Agent and Lender,

-and-

THE LENDERS SIGNATORY HERETO FROM TIME TO TIME,
as Lenders,

-and-

GE CAPITAL MARKETS, INC. and GE CAPITAL MARKETS (CANADA) LTD.,
as Lead Arrangers,

-and-

BANK OF MONTREAL AND CANADIAN IMPERIAL BANK OF COMMERCE,
as Co-Syndication Agents

-and-

BANK OF NOVA SCOTIA,
as Documentation Agent

Execution Copy

TABLE OF CONTENTS

ARTICLE I AMOUNT AND TERMS OF CREDIT	1
1.1 Amendment and Restatement	1
1.2 Revolving Credit Facility	2
1.3 Swing Line Loans	6
1.4 Term Loan B Facility	8
1.5 Voluntary Reductions; Mandatory Prepayments	9
1.6 Use of Proceeds	11
1.7 Interest and Applicable Margins	12
1.8 Fees	14
1.9 Receipt of Payments	15
1.10 Application and Allocation of Payments on Default	16
1.11 Loan Account and Accounting	16
1.12 Indemnity	16
1.13 Access	18
1.14 Taxes	18
1.15 Capital Adequacy; Increased Costs; Illegality	19
1.16 Currency Matters	21
ARTICLE II CONDITIONS PRECEDENT	21
2.1 Conditions to the Amendment and Restatement	21
2.2 Further Conditions to Each Advance	25
ARTICLE III BANKERS' ACCEPTANCES (REVOLVING CREDIT FACILITY)	25
3.1 General	25
3.2 Terms of Acceptance by the Lenders	25
3.3 BA Equivalent Loans	26
3.4 General Mechanics	27
3.5 Escrowed Funds	28
3.6 Market Disruption	29
ARTICLE IV REPRESENTATIONS AND WARRANTIES	29
4.1 Corporate Existence; Compliance with Law	29
4.2 Executive Offices, Collateral Locations	30
4.3 Corporate Power, Authorization, Enforceable Obligations	30

TABLE OF CONTENTS
(continued)

4.4	Financial Statements and Projections	30
4.5	Material Adverse Effect	31
4.6	Ownership of Property; Liens	31
4.7	Labour Matters	32
4.8	Ventures, Subsidiaries and Affiliates; Outstanding Stock and Indebtedness	33
4.9	Government Regulation	32
4.10	Taxes	33
4.11	No Litigation	33
4.12	Canadian Pension Plan and Benefit Plans	34
4.13	Brokers	34
4.14	Intellectual Property	34
4.15	Full Disclosure	35
4.16	Environmental Matters	35
4.17	Insurance Disclosure	36
4.18	Deposit and Disbursement Accounts	36
4.19	Government Contracts	37
4.20	Customer and Trade Relations	37
4.21	Bonding; Licenses	37
4.22	Solvency	37
	ARTICLE V FINANCIAL STATEMENTS AND INFORMATION	37
5.1	Reports and Notices	37
5.2	Communication with Accountants	42
	ARTICLE VI AFFIRMATIVE COVENANTS	42
6.1	Maintenance of Existence and Conduct of Business	42
6.2	Payment of Charges	43
6.3	Books and Records	43
6.4	Insurance; Damage to or Destruction of Collateral	43
6.5	Compliance with Laws	45
6.6	Supplemental Disclosure	46

TABLE OF CONTENTS
(continued)

6.7	Intellectual Property	47
6.8	Environmental Matters	47
6.9	Landlords' Agreements, Mortgagee Agreements, Bailee Letters and Real Estate Purchases	48
6.10	Further Assurances	48
ARTICLE VII NEGATIVE COVENANTS		48
7.1	Amalgamations, Mergers, Subsidiaries, Etc	49
7.2	Reorganization	52
7.3	Investments; Loans and Advances	53
7.4	Indebtedness	53
7.5	Employee Loans and Affiliate Transactions	54
7.6	Capital Structure and Business	54
7.7	Guaranteed Indebtedness	54
7.8	Liens	55
7.9	Sale of Stock and Assets	55
7.10	Pensions and Benefit Plans	55
7.11	Hazardous Materials	56
7.12	Sale Leasebacks	56
7.13	Restricted Payments	56
7.14	Change of Corporate Name or Location; Change of Fiscal Year	57
7.15	No Impairment of Intercompany Transfers	57
ARTICLE VIII FINANCIAL COVENANTS		57
8.1	Maximum Capital Expenditures	57
8.2	Working Capital Ratio	58
8.3	Fixed Charge Coverage Ratio	58
8.4	Maximum Funded Senior Debt to EBITDA	58
8.5	Funded Debt to EBITDA	58
8.6	Maximum Distribution Payout	58
8.7	Minimum Net Worth	59

TABLE OF CONTENTS
(continued)

8.8	Additional Information	59
ARTICLE IX TERM		60
9.1	Termination	59
9.2	Survival of Obligations Upon Termination of Financing Arrangements	60
ARTICLE X EVENTS OF DEFAULT; RIGHTS AND REMEDIES		60
10.1	Events of Default	60
10.2	Remedies	63
10.3	Waivers by Credit Parties	64
ARTICLE XI ASSIGNMENT AND PARTICIPATIONS; APPOINTMENT OF AGENT		64
11.1	Assignment and Participations	64
11.2	Appointment of Agent	67
11.3	Agent's Reliance, Etc	68
11.4	GE Canada and Affiliates	68
11.5	Lender Credit Decision	68
11.6	Indemnification	69
11.7	Successor Agent	69
11.8	Setoff and Sharing of Payments	70
11.9	Advances; Payments; Non-Funding Lenders; Information; Actions in Concert	71
11.10	Lead Arrangers, Co-Syndication Agents and Documentation Agent	73
ARTICLE XII SUCCESSORS AND ASSIGNS		73
12.1	Successors and Assigns	73
ARTICLE XIII MISCELLANEOUS		74
13.1	Complete Agreement; Modification of Agreement	73
13.2	Amendments and Waivers	74
13.3	Fees and Expenses	76
13.4	No Waiver	77
13.5	Remedies	78
13.6	Severability	78

TABLE OF CONTENTS
(continued)

13.7	Conflict of Terms	78
13.8	Confidentiality	78
13.9	Governing Law	79
13.10	Notices	79
13.11	Section Titles	80
13.12	Counterparts	80
13.13	Press Releases and Related Matters	80
13.14	Reinstatement	81
13.15	Advice of Counsel	81
13.16	No Strict Construction	81
13.17	Judgment Currency	81
13.18	Joint and Several Obligations	82
13.19	Liability of Limited Partners	82

INDEX OF APPENDICES

Annex A (Recitals)	- Definitions
Annex B	- Lenders' Wire Transfer Information
Annex C (Section 11.9)	- Notice Addresses
Annex D (from Annex A – Commitments definition)	- Commitments as of Closing Date
Annex E (from Annex A – Assessed Equipment definition)	- Assessed Equipment
Exhibit 1.2(a)	- Form of Notice of Revolving Credit Advance/Election of BA Periods
Exhibit 1.2(b)	- Form of Revolving Note
Exhibit 1.2(d)	- Form of Notice of Extension
Exhibit 1.4(b)	- Form of Term Loan B Note
Exhibit 3.4(b)	- Form of Notice of Rollover or Conversion
Exhibit 5.1(b)	- Form of Borrowing Base Certificate
Exhibit 6.8(a)	- Form of Environmental Certificate
Exhibit 11.1(b)	- Form of Assignment Agreement
Schedule 5.4	- Insurance
Disclosure Schedule 4.1	- Type of Entity; Jurisdiction of Organization
Disclosure Schedule 4.2	- Executive Offices, Collateral Locations
Disclosure Schedule 4.4(a)	- Financial Statements
Disclosure Schedule 4.4(b)	- Projections
Disclosure Schedule 4.7	- Labour Matters
Disclosure Schedule 4.8	- Ventures, Subsidiaries and Affiliates; Outstanding Stock
Disclosure Schedule 4.10	- Tax Matters

Disclosure Schedule 4.11	- Litigation
Disclosure Schedule 4.12	- Pension and Benefit Plans
Disclosure Schedule 4.13	- Brokers
Disclosure Schedule 4.14	- Intellectual Property
Disclosure Schedule 4.16	- Hazardous Materials
Disclosure Schedule 4.17	- Insurance
Disclosure Schedule 4.18	- Deposit and Disbursement Accounts
Disclosure Schedule 4.19	- Government Contracts
Disclosure Schedule 4.21	- Bonds; Patent, Trademark, Industrial Design Licenses
Disclosure Schedule 6.1	- Trade Names
Disclosure Schedule 7.4	- Indebtedness
Disclosure Schedule 7.5(a)	- Transactions with Affiliates
Disclosure Schedule 7.5(b)	- Transactions with Employees
Disclosure Schedule 7.7	- Guaranteed Indebtedness
Disclosure Schedule 7.8	- Existing Liens

This Amended and Restated Credit Agreement (this “**Agreement**”), dated as of December 31, 2008, among **EVEREADY ENERGY SERVICES CORP.**, a corporation incorporated under the laws of Alberta (“**Borrower**”), the other Credit Parties signatory hereto, and **GE CANADA ASSET FINANCING HOLDING COMPANY** (“**GE Canada**” or “**Agent**”), for itself as Lender and Agent, [**The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement**], as Lenders, and the other Lenders signatory hereto from time to time.

RECITALS:

WHEREAS, Borrower and the Lenders are parties to an amended and restated credit agreement dated as of April 25, 2007, as amended by a first amending agreement dated as of February 15, 2008 and a second amending agreement dated as of April 24, 2008 (the “**Existing Credit Agreement**”); and

WHEREAS, Borrower has requested and the Lenders have agreed to amend and restate the Existing Credit Agreement on the terms and conditions herein set forth, and GE Canada has agreed to act as Agent for the Lenders under the Credit Facilities all on the terms and conditions and for the purposes set out in this Agreement; and

WHEREAS, Borrower has agreed to secure all of its obligations under the Loan Documents by granting to Agent, for the benefit of Agent and other Lenders, a security interest in and hypothecs and lien upon, all of its existing and after-acquired personal property; and

WHEREAS, capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex A and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Annex A shall govern. All Annexes, Disclosure Schedules, Exhibits and other attachments (collectively, “**Appendices**”) hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together with this Agreement, shall constitute but a single agreement. These Recitals shall be construed as part of the Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I
AMOUNT AND TERMS OF CREDIT**

1.1 Amendment and Restatement

- (a) On the date on which all of the conditions set forth in Section 2.1 have been satisfied (or waived in writing by the Requisite Lenders in accordance with Article XIII):
 - (i) The Existing Credit Agreement shall be and is hereby amended and restated in the form of this Agreement; and
-

- (ii) All Loans (as defined in the Existing Credit Agreement) and other amounts outstanding under the Existing Credit Agreement prior to the date hereof shall continue to be outstanding under this Agreement and shall be deemed to be Loans and other Obligations owing by the Borrower to the Lenders under this Agreement. The Lenders hereby agree to take all steps and actions and execute and deliver all agreements, instruments and other documents as may be required by the Agent (including the assignment of interests in, or the purchase or participations in, such outstanding Loans) to give effect to the foregoing and to ensure that the aggregate Obligations owing to each Lender are outstanding in proportion to each Lender's Rateable Portion of all outstanding Obligations after giving effect to the foregoing.
- (b) Notwithstanding the foregoing or any other term hereof, all of the covenants, representations and warranties on the part of the Borrower under the Existing Credit Agreement and all of the claims and causes of action arising against the Borrower in connection therewith, in respect of all matters, events, circumstances and obligations arising or existing prior to the date hereof shall continue, survive and shall not be merged in the execution of this Agreement or any other Loan Documents or any other Advance or provision of any Loan hereunder.
- (c) References herein to the "date hereof" or similar expressions shall be and shall be deemed to be the date of the execution and delivery hereof, being December 31, 2008.

1.2 Revolving Credit Facility

- (a) Extendible Revolving Credit Facility. Subject to the terms and conditions hereof, each Revolving Lender agrees to make available to Borrower from time to time until the Commitment Termination Date its Pro-Rata Share of advances in Cdn.\$ under the Revolving Loan Commitment (each, a "**Revolving Credit Advance**"). The Pro-Rata Share of the Revolving Loan of any Revolving Lender shall not at any time exceed its separate Revolving Loan Commitment. The obligation of each Revolving Lender hereunder shall be several and not joint. Until the Commitment Termination Date, Borrower may from time to time borrow, repay and reborrow under this Section 1.2(a); provided, that the Canadian Dollar amount of any Revolving Credit Advance to be made at any time shall not exceed Borrowing Availability at such time. Each Revolving Credit Advance shall be made on notice by Borrower to the Agent and shall be in principal amounts of not less than \$1,000,000 (or, in the case of Revolving Credit Advances by way of Bankers' Acceptances, \$5,000,000) and in multiples of \$100,000 for any amounts in excess thereof. Any such notice must be given no later than 11:00 a.m. (Toronto time) on the date which is two (2) Business Days prior to the proposed Revolving Credit Advance. Each such notice (a "**Notice of Revolving Credit Advance/Election of BA Periods**") must be given in writing (by telecopy or

overnight courier) substantially in the form of Exhibit 1.2(a), and shall include the information required in such Exhibit and such other information as may be required by Agent.

- (b) Promissory Note. Except as provided in Section 1.11, Borrower shall execute and deliver to each Revolving Lender a note to evidence the Revolving Loan Commitment of such Revolving Lender. Each note shall be in the principal amount of the Revolving Loan Commitment of the applicable Revolving Lender, dated April 25, 2007 and substantially in the form of Exhibit 1.2(b) (each, a “**Revolving Note**” and, collectively, the “**Revolving Notes**”). Each Revolving Note shall represent the obligation of Borrower to pay the amount of the applicable Revolving Lender’s Revolving Loan Commitment or, if less, such Revolving Lender’s Pro Rata Share of the aggregate unpaid principal amount of all Revolving Credit Advances to Borrower together with interest thereon as prescribed in Section 1.7.
- (c) Extension of Commitment Termination Date.
- (i) End of First Commitment Termination Date.

Subject to paragraph 1.2(c)(ii) below, the “**Commitment Termination Date**” will be April 24, 2009.

- (ii) Request for Extension.
- (A) The Borrower may, provided no Default or Event of Default has occurred and is continuing, request an extension of the Revolving Period at such time not more than 90 days and not less than 60 days prior to the then current Commitment Termination Date. Such request shall be made by the Borrower by delivering to the Agent an executed notice of extension in the form of Exhibit 1.2(c) (each such notice, a “**Notice of Extension**”), and, if not previously delivered, the most current financial statements required to be delivered by it hereunder. The Agent shall, within two (2) Business Days of receipt thereof notify each Revolving Lender of such Notice of Extension and each such Revolving Lender shall notify the Agent as to whether or not it agrees (in its sole discretion) to such request no later than 30 days following delivery to the Lenders of the Notice of Extension (the “**Notification Date**”); provided that, if a Revolving Lender does not so notify the Agent on or prior to the Notification Date, such Revolving Lender shall be deemed to have elected not to agree to such request for extension of the Revolving Period.

- (B) If the Borrower fails to make a request for an extension of the Revolving Period within the time provided above, the then current Revolving Period will not be extended.
- (C) To the extent Revolving Lenders holding less than 75% of the Revolving Loan Commitment agree to such request for an extension of the Revolving Period, the Revolving Period will not be extended and the Borrower shall have the option to either: (i) elect to have the undrawn portion of the Revolving Loan cancelled, and, subject to the Borrower's continued compliance with the terms and conditions of the Revolving Loan, the then current outstanding amount of the Revolving Loan shall convert to a Term Loan and be amortized as outlined in Section 1.2(e)(ii) or (ii) repay the entire principal amount of the Revolving Loan then outstanding without payment of the Fee required by Section 1.8(c).
- (D) If Lenders holding 75% or more of the Revolving Loan Commitment agree to such request for an extension of the Revolving Period, the Agent shall forthwith deliver to the Borrower a Notice of Acceptance. Upon delivery of the Notice of Acceptance to the Borrower by the Agent, the then current Revolving Period shall be extended for 364 days from the Commitment Termination Date. If any Revolving Lender that receives notification from the Agent that the Borrower has delivered a Notice of Extension, elects not to, or is deemed not to, deliver a Notice of Acceptance (each a "**Non-Agreeing Lender**"), the Agent shall forthwith so advise each of the other Revolving Lenders which do deliver a Notice of Acceptance and each such Revolving Lender shall have the right (but not the obligation) to purchase the Individual Revolving Loan Commitment Amount of each such Non-Agreeing Lender (collectively, the "**Non-Agreeing Lender Commitment Amount**") for a purchase price in an amount equal to the aggregate principal amount of the Revolving Credit Advances owing to such Non-Agreeing Lenders under the Revolving Loan, together with accrued interest thereon to the date of payment of such principal amount and all other Indebtedness payable by the Borrower to such Non-Agreeing Lenders under this Agreement and the other Loan Documents (including all losses, costs and expenses suffered or incurred by the Non-Agreeing Lenders as a result of complying with this Section 1.2(c)(ii)(D)). Each of the other Revolving Lenders wishing to exercise its rights to purchase the Non-Agreeing Lender Commitment Amount (a "**Purchasing Lender**") shall so notify the Borrower, the Agent and each of the other Revolving Lenders in writing, and such Purchasing Lender shall thereupon be obligated to purchase not

less than 15 days prior to the last day of the then current Revolving Period, or such other time period as the Borrower, the Agent, the Purchasing Lender and any Non-Agreeing Lender may agree, an amount equal to the Non-Agreeing Lender Commitment Amount multiplied by such Purchasing Lender's Rateable Portion of the Revolving Loan Commitment over the aggregate of all Purchasing Lenders' Rateable Portion of the Revolving Loan Commitment, or as otherwise agreed to by the Borrower and all Purchasing Lenders. The Non-Agreeing Lenders, the Purchasing Lenders, the Agent, the Borrower and each of the other Revolving Lenders, if any, shall forthwith duly execute and deliver any necessary documentation to give effect to such purchase, whereupon the Non-Agreeing Lenders shall, as of the effective date thereof, be released from their respective obligations to the Borrower, as they relate to the Revolving Loan, hereunder and under the other Documents arising subsequent to such date. If the Non-Agreeing Lender Commitment Amount is not purchased by an existing Revolving Lender, the Borrower may arrange for a replacement lender or lenders (each, a "**Replacement Revolving Lender**") to purchase the Non-Agreeing Lender Commitment Amount, provided that such Replacement Revolving Lender is deemed acceptable by the Agent. The Fee required by Section 1.8(c) shall not be applicable to any such purchase from a Non-Agreeing Lender.

- (E) If Lenders holding 75% or more of the Revolving Loan Commitment agree to provide an extension of the then current Revolving Period date, but none of the Revolving Lenders agree to purchase all of the Non-Agreeing Lender Commitment Amount from the Non-Agreeing Lenders, the undrawn portion of the Non-Agreeing Lender Commitment Amount shall be cancelled as at the end of the then current Revolving Period and the Non-Agreeing Lender Commitment Amount shall convert from a revolving facility to a non-revolving term facility as provided for in Section 1.2(d).
 - (F) This Section 1.2(c) shall apply from time to time to permit successive extensions of the Revolving Period if and for so long as the Revolving Lenders have agreed in accordance with Section 1.2(c)(ii)
- (d) Conversion to Term Loan. The undrawn portion of the Revolving Loan Commitment will be automatically cancelled at 5:00 p.m. (Toronto time) on the then current Commitment Termination Date as applicable to any Non-Agreeing Lender or all the Revolving Lenders. Effective at such time on such Commitment

Termination Date, and provided no Event of Default or Default exists and is continuing, the applicable Revolving Loan Commitment will cease to be a revolving facility and become a non-revolving term facility (a “**Term Loan**”) having a term equal to the Term Period.

(e) Repayment.

(i) Revolving Nature. During a Revolving Period, the Borrower may borrow, repay and re-borrow Revolving Credit Advances, subject to the terms of this Agreement.

(ii) Term Period. During the Term Period as applicable to any Term Loan:

(A) in respect of the first 12 months of such Term Period, subject to the terms of this Agreement, only interest shall be payable;

(B) in respect of the final 24 months of such Term Period, in addition to interest, the remaining unpaid principal amount of such Term Loan in equal monthly instalments equal to 4¹/₆% of the total remaining unpaid principal amount as at the beginning of such Term Period; and

(C) on the Maturity Date, the Borrower shall pay the Lenders the remaining unpaid principal amount of the applicable Term Loan (if any), together with all accrued and unpaid interest thereon and all other amounts payable hereunder.

(f) Reliance on Notices. Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any Notice of Revolving Credit Advance/Election of BA Periods, Notice of Extension or similar notice believed by Agent to be genuine. Agent may assume that each Person executing and delivering any notice in accordance herewith was duly authorized, unless the responsible individual acting thereon for Agent has actual knowledge to the contrary.

1.3 Swing Line Loans.

(a) Availability. The Swing Line Lender hereby creates a Swing Line Loan as a sub-facility to the Revolving Loan. Borrower may obtain Swing Line Loans under the Revolving Loan by means of Canadian Prime Rate loans on an overdraft basis (including by way of credit card or electronic funds transfer settlement obligations) or by delivering a duly executed Notice of Revolving Credit Advance/Election of BA Periods to the Swing Line Lender not later than noon (Toronto time) on the proposed date of drawdown providing for the nature of the advance, including, if acceptable to the Swing Line Lender, in its sole discretion, letters of credit up to a sublimit of \$5,000,000.

Swing Line Loans shall be made solely by the Swing Line Lender, without assignment to or participation by the other Revolving Lenders (except as provided in this Section 1.3). The making of each Swing Line Loan shall constitute an advance hereunder and shall reduce the availability of the Revolving Loan by the amount of such Swing Line Loan.

- (b) Individual Limits. At no time shall (i) the aggregate principal amount of all Swing Line Loans owing to the Swing Line Lender exceed the Swing Line Loan Limit, provided that the Swing Line Lender may, provided that it has the contractual right to set-off and consolidate account balances in all accounts of the Credit Parties, quantify the outstanding Swing Line Loans based on net amounts among such accounts with the Swing Line Lender, or (ii) the aggregate principal amount of all Swing Line Loans owing to the Swing Line Lender plus such Revolving Lender's portion of the aggregate principal amount of all Revolving Loans exceed such Revolving Lender's Individual Revolving Loan Commitment Amount; provided that Agent may, in its discretion, acting reasonably, adjust each Revolving Lender's (including the Swing Line Lender's) Rateable Portion of Revolving Loans in accordance with its customary practice if and to the extent required to ensure that, subject to Section 1.3(g), any undrawn availability of Swing Line Loans or Revolving Loans, as applicable, is capable of being fully drawn.
- (c) Repayment. Except for any letters of credit drawn thereunder, each Swing Line Loan shall be repaid by Borrower (or converted into a Revolving Loan in accordance with Section 1.3(g)) within 30 days after the relevant date of drawdown. No notice of repayment shall be required to be given by Borrower in respect of any such repayment of any Swing Line Loan.
- (d) Mandatory Repayment. If Borrower requests a Revolving Loan and the Swing Line Lender's Rateable Portion of such Revolving Loan would cause its Rateable Portion of all Revolving Loans then outstanding together with the aggregate principal amount of all Swing Line Loans to exceed the Swing Line Lender's Individual Revolving Loan Commitment, then Borrower shall be required to repay such Swing Line Loans (or to convert some into a Revolving Loan in accordance with Section 1.3(g)) to the extent of such excess, on or before the requested date of such Revolving Loan.
- (e) Prepayments. The Borrower may make prepayments of Swing Line Loans at any time and from time to time without notice or penalty.
- (f) Sole Account. All interest payments, acceptance fees and principal repayments of or in respect of Swing Line Loans shall be solely for the account of the Swing Line Lender. Subject to Section 1.3(g), all costs and expenses relating to the Swing Line Loans shall be solely for the account of the Swing Line Lender.

- (g) Conversion to Revolving Loan. Notwithstanding anything to the contrary herein contained, (i) at any time at the option of Borrower or (ii) if an Event of Default occurs, the Borrower shall give notice to the Swing Line Lender and Agent, (which notice shall direct a conversion of such Swing Line Loan into a Revolving Loan and shall specify the particulars of such Swing Line Loans), and Agent shall forthwith provide a copy of such notice to the other Revolving Lenders and, effective on the effective date of such notice, Borrower shall be deemed to have requested a conversion of such Swing Line Loan into a Revolving Loan and in an amount sufficient to repay the relevant Swing Line Loan and accrued and unpaid interest in respect thereof. Subject to the same notice period set out in Section 1.2(a), such other Revolving Lenders shall disburse to Agent for payment to the Swing Line Lender their respective portions of such amounts and such amounts shall thereupon be deemed to have been advanced by such other Lenders to Borrower and to constitute Revolving Loans. Such Revolving Loans shall be deemed to be comprised of principal and accrued and unpaid interest in the same proportions as the corresponding Swing Line Loans.
- (h) Unconditional Obligation. For certainty, it is hereby acknowledged and agreed that, provided that no Default or Event of Default had occurred and was continuing at the time the Swing Line Lender advanced a Swing Line Loan, the Revolving Lenders shall be obligated to disburse to Agent for payment to the Swing Line Lender their respective portions of any Revolving Loans contemplated by Section 1.3(g) regardless of:
- (i) whether a Default or Event of Default has occurred or is then continuing;
 - (ii) whether or not Borrower has, in fact, actually requested such conversion; and
 - (iii) whether or not the obligations of the Revolving Lenders to make Revolving Loans has terminated.
- (i) Existing Letters of Credit. As at the Closing Date, the Credit Parties have the following letters of credit issued by the Swing Line Lender: \$1,355,000 to Alberta Environment, \$10,000 to B.C. Environment and \$860,226 to Alberta Energy and Utilities Board; these letters of credit are deemed to be Obligations under the Swing Line Loan.

1.4 Term Loan B Facility

- (a) Term Credit Facility. Subject to the terms and conditions hereof, each Term Loan B Lender agrees to make available to Borrower its Pro-Rata Share of the advance under the Term Loan B Commitment (a "**Term Loan B Advance**"). The Pro-Rata Share of any Term Loan B Lender shall not at any time exceed its individual Term Loan B Commitment. The obligations of each Term Loan B Lender hereunder shall be several and not joint. The Term Loan B Advance may be

drawn down by the Borrower by way of single drawdown on April 25, 2007 in Canadian Dollars to a maximum of the Term Loan B Commitment as set out in Annex D. Any portion of the Term Loan B Commitment Amount not drawn on the Closing Date shall be immediately cancelled.

- (b) Promissory Note. Except as provided in Section 1.11, Borrower shall execute and deliver to each Term Loan B Lender a note to evidence the Term Loan B Commitment of such Term Loan B Lender. Each note shall be in the principal amount of the Term Loan B Loan Commitment of the applicable Term Loan B Lender, dated the Closing Date and substantially in the form of Exhibit 1.4(b) (each, a “**Term Loan B Note**” and, collectively, the “**Term Loan B Notes**”). Each Term Loan B Note shall represent the obligation of Borrower to pay the amount of the applicable Term Loan B Lender’s Term Loan B Loan Commitment, together with interest thereon as prescribed in Section 1.7.
- (c) Repayment. The Borrower promises to repay the Term Loan B on the first day of each calendar month commencing May 1, 2007 and ending May 1, 2012 in equal monthly principal payments of \$125,000 (based on amortization of 1% per annum and a balloon payment at maturity) and on the Term Loan B Period Maturity Date all amounts outstanding under the Term Loan B, together with interest thereon as prescribed in Section 1.7.
- (d) Separate Loans. For certainty, the Term B Loan is a separate loan from all other Obligations owing under this Agreement.

1.5 Voluntary Reductions; Mandatory Prepayments

- (a) Voluntary Reductions in Revolving Loan Commitments. Borrower may at any time on at least five (5) days’ prior written notice to Agent permanently reduce the Revolving Loan Commitment; provided that (A) any such permanent reductions shall be in a minimum amount of \$1,000,000 and integral multiples of \$250,000 in excess of such amount, and (B) after giving effect to such permanent reductions, Borrower shall comply with Section 1.5(c). Borrower may at any time on at least ten (10) days’ prior written notice to Agent terminate the Revolving Loan Commitment, provided, that upon such termination, all Loans and other Obligations shall be immediately due and payable in full. Any voluntary reduction or termination of the Revolving Loan Commitment must be accompanied by payment of the Fee required by 1.8(c), if any. Upon any such permanent reduction or termination of the Revolving Loan Commitment, Borrower’s right to request Revolving Credit Advances, shall simultaneously be permanently reduced or terminated, as the case may be. Bankers’ Acceptances cannot be prepaid, but any outstanding BA may be funded by payment into an escrow account as set out in Section 3.5.
- (b) Term Loan and Term Loan B Voluntary Prepayments. Borrower may at any time on at least five (5) days’ prior written notice to Agent voluntarily prepay all or part

of the Term Loans (on a *pro-rata* basis) or Term Loan B; provided that any such prepayments shall be in a minimum amount of \$2,500,000 and integral multiples of \$250,000 in excess of such amount. Any such voluntary prepayment must be accompanied by the payment of the Fee required by Section 1.8(c), if any, plus the payment of any funding breakage costs in accordance with Section 1.12(b). Any partial prepayments of the Term Loans or Term Loan B made by Borrower shall be applied to prepay the scheduled instalments of the Term Loans or Term Loan B in inverse order of maturity.

(c) Mandatory Prepayments.

- (i) If at any time the aggregate outstanding balance of the Revolving Loan exceeds the Revolving Loan Commitment, Borrower shall immediately repay the aggregate outstanding Revolving Loan to the extent required to eliminate such excess.
- (ii) If at any time the aggregate outstanding balance of the Revolving Loan, Term Loan and Term Loan B exceeds the Borrowing Base, Borrower shall make an offer (a “**Borrowing Base Excess Offer**”) to prepay the aggregate outstanding Advances to the extent required to eliminate such excess.
- (iii) Upon receipt by any Credit Party of any cash proceeds of any asset disposition (including condemnation proceeds and insurance proceeds resulting from the damage or destruction of any asset), Borrower shall make an offer (an “**Asset Sale Offer**”) to prepay the Loans in an amount equal to all proceeds, net of (A) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by Borrower in connection therewith (in each case, paid to non-Affiliates), (B) goods and services taxes, sales taxes and transfer taxes, as applicable, (C) amounts payable to holders of senior Liens on such asset (to the extent such Liens constitute Permitted Encumbrances hereunder), if any, and (D) an appropriate reserve for income taxes in accordance with GAAP in connection therewith. Unless a Default or Event of Default has occurred and is continuing, any prepayment as a result of the acceptance of an Asset Sale Offer shall be applied in accordance with subsection (iv) below. Borrower shall not be required to make an Asset Sale Offer under this clause (ii) in respect of the following: (1) proceeds of sales of Inventory in the ordinary course of business, provided that for greater certainty any sale of goods and other personal property that are held by or on behalf of any Credit Party for rent or lease shall not be considered a sale of Inventory in the ordinary course of business for the purpose of this Section 1.5(c); (2) asset disposition proceeds of less than \$2,500,000 in the aggregate in any Fiscal Year and (3) asset

disposition proceeds that are reinvested in Equipment within one hundred and eighty (180) days following receipt thereof; provided that Borrower notifies Agent of its intent to reinvest at the time such proceeds are received and when such reinvestment occurs.

- (iv) Borrower shall make the Asset Sale Offer or Borrowing Base Excess Offer by delivering a written notice of such offer to Agent as soon as practicable, and, in any event, no later than three (3) Business Days, following receipt of any applicable proceeds. A Lender may accept such Asset Sale Offer or Borrowing Base Excess Offer by delivering a written notice of acceptance to Borrower within fifteen (15) days after receipt of such offer.
- (d) Application of Certain Mandatory Prepayments. Any prepayments made by Borrower pursuant to Sections 1.5(c)(ii) and 1.5(c)(iii) above shall be applied as follows: first, to Fees and reimbursable expenses of Agent then due and payable pursuant to any of the Loan Documents; second, to interest then due and payable on the Revolving Loan, Term Loan or Term Loan B, as applicable; third, as applicable, to prepay the scheduled principal instalments of the Term Loan and Term Loan B, on a *pro rata* basis in inverse order of maturity, until such Term Loan and Term Loan B shall have been prepaid in full; and fourth, to any outstanding principal balance of Revolving Credit Advances until the same has been paid in full. If at the time of any such mandatory prepayment a Default or Event of Default has occurred and is continuing, then the prepayments shall be applied as set out in Section 1.10. As BA's cannot be prepaid, they will be funded by payment into an escrow account as set out in Section 3.5.
- (e) No Implied Consent. Nothing in this Section 1.5 shall be construed to constitute Agent's or any Lender's consent to any transaction that is not permitted by other provisions of this Agreement or the other Loan Documents.

1.6 Use of Proceeds

Borrower shall utilize the proceeds of the Revolving Loan solely for:

- (a) refinancing the existing indebtedness of the Consolidated Parties;
- (b) financing the working capital of the Consolidated Parties; and
- (c) funding future capital expenditures and Permitted Acquisitions of the Consolidated Parties.

Borrower shall utilize the proceeds of the Term Loan B solely for:

- (d) refinancing the existing indebtedness of the Consolidated Parties; and

(e) funding future Capital Expenditures and Permitted Acquisitions of the Consolidated Parties.

1.7 Interest and Applicable Margins

(a) The Borrower shall pay to the Agent:

- (i) interest on the Revolving Loan or Term Loan, for the rateable benefit of applicable Lenders in arrears on each applicable Interest Payment Date, for Canadian Prime Rate Loans at the applicable Canadian Prime Rate plus the applicable margin indicated in the table below;
- (ii) for Bankers' Acceptances, a stamping fee based on the BA margin (the "**BA Stamping Fee**") indicated on the table below; and
- (iii) on the Term Loan B, for the rateable benefit of the applicable Lenders in arrears on each Interest Payment Date, interest based on the BA Rate plus the applicable margin based on the table below:

Level	(Funded Debt less Subordinated Debt) to EBITDA for prior rolling 4 quarters	Financing Rate and Credit Spread	
		Canadian Prime Loan	BA Margin
1	≤ 1.50:1	•%	•%
2	>1.50:1 but ≤ 2.0:1	•%	•%
3	>2.0:1 but ≤ 2.50:1	•%	•%

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Except as otherwise elected in a Notice of Revolving Credit Advance/Election of BA Periods, Loans under Term Loan B will bear interest at the rate applicable to 1 month Bankers' Acceptances and Loans under the Revolving Loan or Term Loan will be Canadian Prime Rate Loans. Each such election shall be made by giving Agent at least three (3) Business Days' prior notice and Agent shall promptly notify each Lender of its receipt of a Notice of Revolving Credit Advance/Election of BA Periods and of the options selected therein. As of the Closing Date, pricing will be based on Level 3. The pricing will be reset as of each date falling three (3) Business Days after delivery of each Compliance Certificate and *pro forma* financials (to the extent that they take into account a Permitted Acquisition that has closed or any other acquisition that the Lenders have consented to and that has closed) and will be based on the financials delivered in such documents. Any change to the BA Margin will apply proportionately to any outstanding

BA's based on the number of days remaining in the applicable BA Periods and will be paid (or credited) on the date of the next following Revolving Credit Advance.

- (b) Extension to Next Business Day. If any payment on a Loan becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate(s) during such extension.
- (c) Calculation of Rates. All computations of Fees and interest in this Agreement or in any other Loan Document shall be made by Agent on the basis of a 365-day or 366-day year, as the case may be, in each case for the actual number of days occurring in the period for which such interest and Fees are payable. Each determination by Agent of an interest rate and Fees hereunder and under any other Loan Document shall be presumptive evidence of the correctness of such rates and Fees.
- (d) Default Rate. So long as an Event of Default has occurred and is continuing under Section 10.1(a), 10.1(h) or 10.1(i), or so long as any other Event of Default has occurred and is continuing, and at the election of Agent (or upon the written request of the Lenders confirmed by written notice from Agent to Borrower, the interest rates applicable to the Loans shall, subject to the Interest Act (Canada), be increased by two percentage points (2%) per annum above the rates of interest or the rate of such Fees otherwise applicable hereunder unless the Lenders elect to impose a smaller increase (the "**Default Rate**"), and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the initial date of such Event of Default until that Event of Default is cured or waived and shall be payable upon demand. BA Stamping Fees will be paid pursuant to Section 1.7(a)(ii).
- (e) Limitation on Interest. If any provision of this Agreement or of any of the other Loan Documents would obligate Borrower or any other Credit Party to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by such Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to such Lender under this Section 1.7, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if a Lender shall have received an amount in excess of the

maximum permitted by that section of the *Criminal Code* (Canada), Borrower shall be entitled, by notice in writing to such Lender, to obtain reimbursement from such Lender in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by such Lender to Borrower. Any amount or rate of interest referred to in this Section 1.7(e) shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Closing Date to the Termination Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

- (f) Interest Act (Canada). For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of a 360 day year or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.

1.8 Fees

- (a) Borrower shall pay to the Agent the Fees specified in the GE Fee Letter at the times specified for payment therein.
- (b) As additional compensation for the Revolving Lenders, Borrower shall pay to Agent, for the rateable benefit of the Revolving Lenders, in arrears, on the first Business Day of each month prior to the Commitment Termination Date and on the Commitment Termination Date, a Fee for Borrower's non use of available funds in an amount equal to 0.25% per annum (calculated on the basis of a 365-day or 366-day year, as the case may be,) multiplied by the difference between (x) the Revolving Loan Commitment (as it may be reduced from time to time) and (y) the average for the period of the daily closing balance of the Revolving Loan outstanding during the period for which the such Fee is due.
- (c) If Borrower pays after acceleration, or prepays all or any portion of any Term Loan or Term Loan B, or reduces or terminates the Revolving Loan Commitment, whether voluntarily or involuntarily and whether before or after acceleration of the Obligations or if the Revolving Loan Commitment is otherwise terminated (including, for clarity, pursuant to the terms of Section 1.2(d)), Borrower shall pay to Agent for the benefit of the Lenders, as liquidated damages and compensation for the costs of being prepared to make funds available hereunder an amount equal to the Applicable Percentage (as defined below) multiplied by (i) the

principal amount of the Term Loan paid after acceleration or prepaid, (ii) the principal amount of the Term Loan B paid after acceleration or prepaid, or (iii) the amount of the reduction of the Revolving Loan Commitment, as applicable. As used herein, the term "**Applicable Percentage**" shall mean (x) three percent (3%), in the case of a prepayment on or prior to April 25, 2008, (y) two percent (2%), in the case of a prepayment after April 25, 2008 but on or prior to April 25, 2009, and (z) one percent (1%), in the case of a prepayment after April 25, 2009 but on or prior to April 25, 2010. The Credit Parties agree that the Applicable Percentages are a reasonable calculation of the applicable Lenders' lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early termination of the Commitments. Notwithstanding the foregoing, no prepayment fee shall be payable by Borrower (a) upon a mandatory prepayment made pursuant to Section 1.5(c), or (b) in connection with any revolving payment made in the ordinary course during the Revolving Period or in connection with any scheduled payment made in respect of the Term Loan or Term Loan B; provided that Borrower does not permanently reduce or terminate the Revolving Loan Commitment, Term Loan or Term Loan B (as applicable) upon any such prepayment.

- (d) In connection with each extension of the Revolving Loan Commitment pursuant to Section 1.2(c), and in addition to the fee contemplated by Section 1.8(b), Borrower shall pay to Agent, for the rateable benefit of the Revolving Lenders providing such extension on the date that would have been the Commitment Termination Date had no extension occurred, a Fee in an amount equal to 0.25% (calculated on the basis of a 365-day or 366-day year, as the case may be,) multiplied by the Revolving Loan Commitment (as it may be reduced from time to time)

1.9 Receipt of Payments

Borrower shall make each payment under this Agreement not later than 2:00 p.m. (Toronto time) on the day when due for value on that day to the Collection Account. For purposes of computing interest and Fees and determining Borrowing Availability as of any date, all payments shall be deemed received on the Business Day on which immediately available funds therefor are received in the Collection Account prior to 2:00 p.m. Toronto time. Payments received after 2:00 p.m. Toronto time on any Business Day or on a day that is not a Business Day shall be deemed to have been received on the following Business Day. Without limiting Section 13.17, if Agent receives any payment from or on behalf of a Credit Party in any currency other than the currency in which the Obligation is denominated Agent may convert the payment (including the proceeds of realization upon any collateral) into the currency in which such Obligation is denominated at the Rate of Exchange (as such term is defined in Section 13.17(c)).

1.10 Application and Allocation of Payments on Default

Following the occurrence and during the continuance of any Default or Event of Default, Borrower hereby irrevocably waives the right to direct the application of any and all payments received from or on behalf of Borrower, and Borrower hereby irrevocably agrees that Agent shall apply any and all such payments against the Obligations in the following order: (1) to Fees and reimbursable expenses of Agent then due and payable pursuant to any of the Loan Documents; (2) to interest then due and payable on the Revolving Loan, Term Loan or Term Loan B, as applicable; (3) as applicable, to prepay (i) the Obligations under any Term Loans (ii) subject to Section 3.5 in the case of Bankers' Acceptances or BA Equivalent Loans, the Obligations under any Revolving Loans, (iii) the Obligations under Term Loan B, and (iv) the Obligations in respect of any Secured Rate Contracts; in each case on a pro rata basis, in inverse order of maturity, until such Obligations shall have been prepaid in full; and (4) to all other Obligations including expenses of Lenders to the extent reimbursable under Section 13.3.

1.11 Loan Account and Accounting

Agent shall maintain a loan account (the "**Loan Account**") on its books to record: all Revolving Advances, the Term Loan B Advances and, when applicable, the Term Loan, all payments made by Borrower, and all other debits and credits as provided in this Agreement with respect to the Loans or any other Obligations. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded on Agent's most recent printout or other written statement, shall, absent manifest error, be presumptive evidence of the amounts due and owing to Agent and Lenders by Borrower; provided that any failure to so record or any error in so recording shall not limit or otherwise affect Borrower's duty to pay the Obligations. Agent shall render to Borrower a monthly accounting of transactions with respect to the Loans setting forth the balance of the Loan Account for the immediately preceding month, such monthly accounting to be provided within fifteen (15) days of the last day of the immediately preceding month. Unless Borrower notifies Agent in writing of any objection to any such accounting (specifically describing the basis for such objection), within thirty (30) days after the date thereof, each and every such accounting shall be presumptive evidence of all matters reflected therein. Only those items expressly objected to in such notice shall be deemed to be disputed by Borrower. Notwithstanding any provision herein contained to the contrary, any Lender may elect (which election may be revoked) to dispense with the issuance of Notes to that Lender and may rely on the Loan Account as evidence of the amount of Obligations from time to time owing to it.

1.12 Indemnity

- (a) Each Credit Party shall indemnify and hold harmless the Agent and each Lender and their respective Affiliates, and each such Person's respective officers, directors, employees, legal counsel, agents and representatives (each, an "**Indemnified Person**"), from and against any and all suits, actions, proceedings,

orders, claims, damages, losses, liabilities and expenses (including reasonable legal fees and disbursements, consultants fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of or in connection with credit having been extended, suspended or terminated under this Agreement or the other Loan Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith including the taking of any enforcement actions by Agent, including any and all Environmental Liabilities and legal costs and expenses arising out of or incurred in connection with disputes between or among any parties to any of the Loan Documents (collectively, "**Indemnified Liabilities**"); provided, that no such Credit Party shall be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results from that Indemnified Person's gross negligence or wilful misconduct. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY LOAN DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY LOAN DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

- (b) To induce Lenders to provide the Loans on the terms provided herein, if (i) any Loans are repaid in whole or in part prior to the last day of any applicable BA Period (whether that repayment is made pursuant to any provision of this Agreement or any other Loan Document or occurs as a result of acceleration, by operation of law or otherwise); (ii) Borrower shall default in payment when due of the principal amount of or interest on any Loan; or (iii) Borrower shall fail to make any prepayment of a Loan after Borrower has given a notice thereof in accordance herewith, then Borrower shall indemnify and hold harmless each Lender from and against all losses, costs and expenses resulting from or arising from any of the foregoing. Such indemnification shall include any loss (including loss of margin) or expense arising from the reemployment of funds obtained by it or from fees payable to terminate deposits from which such funds were obtained. For the purpose of calculating amounts payable to a Lender under this subsection, each Lender shall be deemed to have actually funded its relevant Loan through the purchase of a deposit bearing interest at the BA Rate, in an amount equal to the amount of that Loan and having a maturity comparable to the relevant BA Period; provided, that each Lender may fund each of its Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this subsection for Loans on which interest is calculated at

the BA Rate. This covenant shall survive the termination of this Agreement and the payment of the Obligations and all other amounts payable hereunder. As promptly as practicable under the circumstances, each Lender shall provide Borrower with its written calculation of all amounts payable pursuant to this Section 1.12(b), and such calculation shall be binding on the parties hereto unless Borrower shall object in writing within ten (10) Business Days of receipt thereof, specifying the basis for such objection in detail.

1.13 Access

Prior to the occurrence of an Event of Default, each Credit Party shall, during normal business hours, from time to time upon two (2) Business Days' prior notice as frequently as Agent reasonably determines to be appropriate: (a) provide Agent and any of its officers, employees and agents access to its properties, facilities, advisors, officers and employees of each Credit Party and to the Collateral, (b) permit Agent, and any of its officers, employees and agents, to inspect, audit and make extracts from any Credit Party's books and records, and (c) permit Agent, and its officers, employees and agents, to inspect, examine, review, evaluate and make test verifications and counts of the Accounts, Inventory and other Collateral of any Credit Party. If an Event of Default has occurred and is continuing, or if access is necessary to preserve or protect the Collateral, as determined by Agent, each such Credit Party shall provide such access to Agent and to each Lender at all times and without advance notice. Furthermore, so long as any Event of Default has occurred and is continuing, Borrower shall provide Agent and each Lender with access to its suppliers and customers. Each Credit Party shall make available to Agent and its counsel, reasonably promptly originals or copies of all books and records that Agent may reasonably request. Each Credit Party shall deliver any document or instrument necessary for Agent, as it may from time to time request, to obtain records from any service bureau or other Person that maintains records for such Credit Party, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by such Credit Party. Agent will give Lenders at least five (5) days' prior written notice of regularly scheduled audits. Representatives of the Lenders may accompany Agent's representatives on regularly scheduled audits at no charge to Borrower.

1.14 Taxes

- (a) Any and all payments by or on behalf of a Credit Party hereunder or under the Notes or any other Loan Document shall be made, in accordance with this Section 1.14, free and clear of and without deduction for any and all present or future Taxes (excluding Taxes imposed on or measured by the net income or capital of any Lender by the jurisdiction under the laws of which it is organized or is resident or carries on business through a permanent establishment located therein or any political subdivisions thereof). If a Credit Party shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under the Notes or any other Loan Document (excluding Taxes imposed on or measured by the net income or capital of any Lender by the jurisdiction under the laws of

which it is organized or is resident or carries on business through a permanent establishment located therein or any political subdivisions thereof), (i) the sum payable shall be increased as much as shall be necessary so that, after making all required withholdings and deductions (including withholdings and deductions applicable to additional sums payable under this Section 1.14), the Lenders, as applicable, receive an amount equal to the sum they would have received had no such withholdings or deductions been made, (ii) the applicable Credit Party shall make such withholdings and deductions, and (iii) the applicable Credit Party shall pay the full amount withheld or deducted to the relevant taxing or other authority in accordance with applicable law. Within thirty (30) days after the date of any payment of Taxes, Borrower shall furnish to Agent the original or a certified copy of a receipt evidencing payment thereof.

- (b) In addition, each Credit Party agrees to pay any present or future Taxes that arise from any payment made under this Agreement or under any other Loan Document or from the execution, sale, transfer, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents and any other agreements and instruments contemplated hereby or thereby (except for Taxes imposed on or measured by the net income or capital of Agent or any other Lender by the jurisdiction under the laws of which it is organized or is resident or carries on business through a permanent establishment located therein or any political subdivisions thereof). Each Lender agrees that, as promptly as reasonably practicable after it becomes aware of any circumstances referred to above which would result in additional payments under this Section 1.14, it shall notify Borrower thereof.
- (c) Each Credit Party hereby indemnifies Agent and each other Lender for the full amount of Taxes (excluding Taxes imposed on or measured by the net income or capital of Agent or any other Lender by the jurisdiction under the laws of which it is organized or is resident or carries on business through a permanent establishment located therein or any political subdivisions thereof but including any Taxes imposed by any jurisdiction on amounts payable by such Credit Party under this Section 1.14) paid by Agent or such other Lender, as appropriate, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally asserted. Each payment under this indemnification shall be made within ten (10) days after Agent makes written demand therefor, for its own benefit or the benefit of the affected Lender.

1.15 Capital Adequacy; Increased Costs; Illegality

- (a) If any Lender shall have determined that any law, treaty, governmental (or quasi governmental) rule, regulation, guideline or order regarding capital adequacy, reserve requirements or similar requirements or compliance by any Lender with any request or directive regarding capital adequacy, reserve requirements or similar requirements (whether or not having the force of law), in each case,

adopted after the Closing Date, from any central bank or other Governmental Authority increases or would have the effect of increasing the amount of capital, reserves or other funds required to be maintained by such Lender and thereby reducing the rate of return on such Lender's capital as a consequence of its obligations hereunder, then Borrower shall from time to time upon demand by such Lender (with a copy of such demand to Agent) pay to Agent, for the account of such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to the amount of that reduction and showing the basis of the computation thereof submitted by such Lender to Borrower and to Agent shall be presumptive evidence of the matters set forth therein.

- (b) If, due to either (i) the introduction of or any change in any law or regulation (or any change in the interpretation thereof) or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), in each case adopted after the Closing Date, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining any Loan, then Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to Agent), pay to Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to Borrower and to Agent by such Lender, shall be presumptive evidence of the matters set forth therein. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, the affected Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrower pursuant to this Section 1.15(b).
- (c) Within thirty (30) days after receipt by Borrower of written notice and demand from any Lender (an "**Affected Lender**") for payment of additional amounts or increased costs as provided in Section 1.14(a), 1.15(a) or 1.15(b), Borrower may, at its option, notify Agent and such Affected Lender of its intention to replace the Affected Lender. So long as no Default or Event of Default has occurred and is continuing, Borrower, with the consent of Agent, may obtain, at Borrower's expense, a replacement Lender ("**Replacement Lender**") for the Affected Lender, which Replacement Lender must be reasonably satisfactory to Agent. If Borrower obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender must sell and assign its Loans and Commitments to such Replacement Lender for an amount equal to the principal balance of all Loans held by the Affected Lender and all accrued interest and Fees with respect thereto through the date of such sale and such assignment shall not require the payment of an assignment fee to Agent; provided, that Borrower shall have reimbursed such Affected Lender for the additional amounts or increased costs that it is entitled to receive under this Agreement through the date of such sale and assignment. Notwithstanding the foregoing, Borrower shall not have the

right to obtain a Replacement Lender if the Affected Lender rescinds its demand for increased costs or additional amounts within 15 days following its receipt of Borrower's notice of intention to replace such Affected Lender. Furthermore, if Borrower gives a notice of intention to replace and does not so replace such Affected Lender within ninety (90) days thereafter, Borrower's rights under this Section 1.15(c) shall terminate with respect to such Affected Lender and Borrower shall promptly pay all increased costs or additional amounts demanded by such Affected Lender pursuant to Sections 1.14(a), 1.15(a) or 1.15(b).

1.16 Currency Matters

Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to the Agent and the Lenders shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Canadian Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts denominated in other currencies shall be converted in the Equivalent Amount of Canadian Dollars on the date of calculation, comparison, measurement or determination. In particular, without limitation, for purposes of valuations or computations under Article III, Article VI, Article VII, and Article X and calculating the Borrowing Base or Borrowing Availability, unless expressly provided otherwise, where a reference is made to a dollar amount, the amount is to be considered as the amount in Canadian Dollars and, therefore, each other currency shall be converted into the Equivalent Amount thereof in Canadian Dollars.

ARTICLE II CONDITIONS PRECEDENT

2.1 Conditions to the Amendment and Restatement

The amendment and restatement of the Existing Credit Agreement pursuant to Section 1.1 shall not take effect, and no Lender shall be obligated to make any Advance, or to take, fulfill, or perform any other action hereunder, until the following conditions have been satisfied or provided for in a manner reasonably satisfactory to Agent, or waived in writing by Agent and Requisite Lenders:

- (a) Credit Agreement; Loan Documents. This Agreement or counterparts hereof shall have been duly executed by, and delivered to, Borrower, Agent and Lenders; and Agent shall have received such documents, instruments, agreements and legal opinions as Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including, but not limited to:
 - (i) Appendices. All Appendices to the Agreement, in form and substance satisfactory to Agent.

- (ii) Collateral Documents. Duly executed originals of the Collateral Documents or, as applicable in the Agent's sole discretion, acknowledgments of security, and all instruments, documents and agreements executed pursuant thereto.
 - (iii) Acknowledgements. Duly executed originals of the Acknowledgements, and all instruments, documents, and agreements executed pursuant thereto.
 - (iv) Environmental Indemnity. Duly executed originals of the Environmental Indemnity Agreement.
 - (v) Material Documents. Certified copies of the Material Documents, and all instruments, documents and agreements executed pursuant thereto.
 - (vi) Insurance. Satisfactory evidence that the insurance policies required by Section 6.4 are in full force and effect, together with appropriate evidence showing loss payable and additional insured clauses or endorsements, as reasonably requested by Agent, in favour of Lenders.
 - (vii) Security Interests, PPSA Filings and UCC.
 - (A) Evidence satisfactory to Agent that Agent (for the benefit of itself and the Lenders) has a valid and perfected first priority security interest (and valid and published first ranking hypothec, if applicable) in the Collateral, including (i) such documents duly executed by each Credit Party (including financing statements under the PPSA and the UCC and other notice filings and applicable documents under the laws of any jurisdiction with respect to the perfection and publication of Liens) as Agent may request in order to perfect and publish its security interests and hypothecs in the Collateral, and (ii) copies of search reports listing all effective financing statements and other applicable notice of lien filings that name any Credit Party as debtor (including its French form of name), together with certificates of the applicable Governmental Authority constituting evidence thereof, none of which shall cover the Collateral except for Permitted Encumbrances.
 - (B) Evidence satisfactory to Agent, acting reasonably, including copies, of all financing statements and other applicable notices of Lien filings filed in favour of any Credit Party with respect to each location, if any, at which equipment will be stored.
-

- (viii) Credit Party Guarantees. Guarantees or, as applicable in the Agent's sole discretion, acknowledgments of security executed by each of the Credit Parties, other than the Borrower, in favour of the Lenders.
- (ix) Constituting Documents and Status. For each Credit Party, such Person's (a) constituting documents and all amendments thereto, (b) certificates of compliance or status (or applicable equivalent thereof) evidencing Borrower's qualification to conduct business in each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, each dated a recent date prior to the Closing Date and certified by the applicable authorized Governmental Authority.
- (x) Bylaws and Resolutions. For each Credit Party, (a) such Person's bylaws or limited partnership agreements, as applicable, together with all amendments thereto and (b) resolutions of such Person's Board of Directors, approving and authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and the transactions to be consummated in connection therewith, each certified as of the Closing Date by such Person's corporate secretary or an assistant secretary as being in full force and effect without any modification or amendment.
- (xi) Incumbency Certificates. For each Credit Party, signature and incumbency certificates of the officers of each such Person executing any of the Loan Documents, certified as of the Closing Date by such Person's corporate secretary or an assistant secretary as being true, accurate, correct and complete.
- (xii) Opinions of Counsel. Duly executed originals of opinions of Shea Nerland Calnan LLP, counsel for the Credit Parties, together with any local counsel opinions reasonably requested by Agent, each in form and substance reasonably satisfactory to Agent and its counsel, dated the Closing Date, and each accompanied by a letter addressed to such counsel from the Credit Parties, authorizing and directing such counsel to address its opinion to the Lender or to include in such opinion an express statement to the effect that the Lender is authorized to rely on such opinion as though they were addressees.
- (xiii) Pledge Agreements. Duly executed originals of each of the Pledge Agreements accompanied by (as applicable) (a) share certificates representing all of the outstanding Stock being pledged pursuant to such Pledge Agreement and share transfer powers for such share certificates executed in blank or if the constituting documents of the issuer of such Stock contain a private company restriction requiring that transfers of such Stock be approved by the directors of such

issuer (in contrast with the directors or shareholder(s) of such issuer or solely the shareholder(s)) then, at the request of Agent, such share certificates shall be registered in Agent's or its nominee's name when delivered to Agent, and (b) the original intercompany notes and other instruments evidencing Indebtedness being pledged pursuant to such Pledge Agreement, duly endorsed in blank.

- (xiv) Fee Letter. Duly executed originals of the GE Fee Letter.
- (xv) Officer's Certificate. Agent shall have received duly executed originals of a certificate of an officer or director of Borrower, dated the Closing Date, stating that, since December 31, 2007 (a) no event or condition has occurred or is existing which could reasonably be expected to have a Material Adverse Effect; (b) there has been no material adverse change in the industry in which Borrower operates; (c) no Litigation has been commenced which, if successful, would have a Material Adverse Effect or could challenge any of the transactions contemplated by the Agreement and the other Loan Documents; (d) except for Permitted Distributions, there have been no Restricted Payments made by any Credit Party; and (e) before and after giving effect to the transactions contemplated by the Credit Agreement, each Credit Party will be Solvent, and (f) there has been no material increase in liabilities, liquidated or contingent, and no material decrease in assets of Borrower or any of its Subsidiaries.
- (xvi) Subordination and Intercreditor Agreements. Agent and Lenders shall have received any and all subordination and/or intercreditor agreements, all in form and substance reasonably satisfactory to Agent, in its sole discretion, as Agent shall have deemed necessary or appropriate with respect to any Indebtedness of any Credit Party.
- (xvii) Other Documents. Such other certificates, documents and agreements respecting any Credit Party as Agent may reasonably request, each in form and substance reasonably satisfactory to Agent.
- (b) Approvals. Agent shall have received (i) satisfactory evidence that the Credit Parties have obtained all required consents and approvals of all Persons including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Loan Documents or (ii) a certificate of an officer of the Borrower in form and substance satisfactory to Agent, acting reasonably, affirming that no such consents or approvals are required.
- (c) Payment of Fees. Borrower shall have paid the Fees required to be paid on the Closing Date in the respective amounts specified in Section 1.8 (including the Fees specified in the GE Fee Letter), and shall have reimbursed Agent for all fees, costs and expenses of closing presented as of the Closing Date.

2.2 Further Conditions to Each Advance

Except as otherwise expressly provided herein, neither Lender shall be obligated to fund any Advance, if, as of the date thereof:

- (a) any representation or warranty by any Credit Party contained herein or in any other Loan Document is untrue or incorrect as of such date as determined by Agent;
- (b) any Default or Event of Default has occurred and is continuing or would result after giving effect to any Advance; or
- (c) after giving effect to any Advance, the outstanding principal amount of the Revolving Loan would exceed the lesser of (i) the Borrowing Base less outstanding Term Loans and Term Loan B; and (ii) the Revolving Loan Commitment.

ARTICLE III BANKERS' ACCEPTANCES (REVOLVING CREDIT FACILITY)

3.1 General

Each Bankers' Acceptance draft tendered by the Borrower for acceptance by a Lender will be in a form acceptable to the accepting Lenders, acting reasonably, and the Revolving Credit Advance in respect thereof will be in a principal amount of not less than \$5,000,000 and in multiples of \$100,000 for any amounts in excess thereof, and will have terms of not less than 1 month and not more than 6 months, unless otherwise agreed to by the accepting Lenders.

3.2 Terms of Acceptance by the Lenders

- (a) Payment. The Borrower will provide for payment to the Agent for the benefit of the Lenders of each Bankers' Acceptance at its maturity, either by payment of the face amount thereof or through the utilization of a new Revolving Credit Advance (including by way of a Rollover) in accordance with this Agreement, or through a combination thereof. The Borrower waives presentment for payment of Bankers' Acceptances by the Lenders and will not claim from the applicable Lenders any days of grace for the payment at maturity of Bankers' Acceptances. Any amount owing by the Borrower in respect of any Bankers' Acceptance which is not paid at maturity in accordance with this Agreement, will, as and from its maturity date, be deemed to be outstanding as a Canadian Prime Rate Loan.
- (b) Power of Attorney. To facilitate the procedures contemplated in this Agreement, the Borrower appoints each Lender from time to time as the attorney-in-fact of the Borrower to execute, endorse and deliver on behalf of the Borrower drafts or depository bills in the form or forms prescribed by such Lender for Bankers'

Acceptances denominated in Canadian Dollars (each such executed draft or depository bill which has not yet been accepted by a Lender being referred to as a “**Draft**”). Each Bankers’ Acceptance executed and delivered by a Lender on behalf of the Borrower as provided for in this Section 3.2(b) will be as binding upon the Borrower as if it had been executed and delivered by a duly authorized officer of the Borrower. The foregoing appointment will cease to be effective three Banking Days following receipt by the Lender in question of a notice from the Borrower revoking such appointment provided that any such revocation will not affect Bankers’ Acceptances previously executed and delivered by a Lender pursuant to such appointment.

- (c) Purchase of BAs. The Lenders will purchase each Bankers’ Acceptance accepted by them.
- (d) Depository Bills. It is the intention of the Parties that pursuant to the Depository Bills and Notes Act (Canada) (“**DBNA**”), all Bankers’ Acceptances accepted by the Lenders under this Agreement will be issued in the form of a “depository bill” (as defined in the DBNA), deposited with a “clearing house” (as defined in the DBNA), including The Canadian Depository for Securities Ltd. or its nominee CDS & Co. (“**CDS**”). In order to give effect to the foregoing, the Agent will, subject to the approval of the Borrower and the Lenders, establish and notify the Borrower and the Lenders of any additional procedures, consistent with the terms of this Agreement, as are reasonably necessary to accomplish such intention, including:
 - (i) any instrument held by the Agent for purposes of Bankers’ Acceptances will have marked prominently and legibly on its face and within its text, at or before the time of issue, the words “This is a depository bill subject to the Depository Bills and Notes Act (Canada)”;
 - (ii) any reference to the authentication of the Bankers’ Acceptance will be removed; and
 - (iii) any reference to the “bearer” will be removed and such Bankers’ Acceptances will not be marked with any words prohibiting negotiation, transfer or assignment of it or of an interest in it.

3.3 BA Equivalent Loans

In lieu of accepting Drafts on the date of any Advance, or any date of Rollover or Conversion, as applicable, each Non-BA Lender will make a BA Equivalent Loan. Any BA Equivalent Loan will be made on the date of the relevant Advance, or any date of Rollover or Conversion, as applicable, and its Maturity Date will be the Maturity Date of the corresponding Bankers’ Acceptances. The amount of each BA Equivalent Loan will be equal to the Discount Proceeds of the corresponding Bankers’ Acceptances calculated

on the basis that the applicable Lenders were not Non-BA Lenders and were therefore required to purchase such Bankers' Acceptances. On the Maturity Date of a BA Equivalent Loan, the Borrower will pay to the Non-BA Lender an amount equal to the face amount of the Bankers' Acceptance which such Non-BA Lender would have accepted in lieu of making a BA Equivalent Loan if it were not a Non-BA Lender. For greater certainty, unless the context requires otherwise, all provisions of this Agreement with respect to Bankers' Acceptances will apply to BA Equivalent Loans provided that BA Stamping Fees with respect to a BA Equivalent Loan will be calculated on the basis of the amount with respect to such BA Equivalent Loan which the Borrower is required to pay on the Maturity Date.

3.4 General Mechanics

- (a) Bankers' Acceptances. Unless such Lender makes a BA Equivalent Loan pursuant to the terms of Section 3.3, upon acceptance of a Bankers' Acceptance by a Lender, such Lender will purchase, or arrange for the purchase of, each Bankers' Acceptance from the Borrower at the Discount Rate applicable to such Lender for such Bankers' Acceptance accepted by it and provide to the Agent the Discount Proceeds for the account of the Borrower. The BA Stamping Fee payable by the Borrower to a Lender in respect of each Bankers' Acceptance by such Lender will be set off against the Discount Proceeds payable by such Lender under this Section 3.4(a).
- (b) In anticipation of the maturity of Bankers' Acceptances, the Borrower shall, subject to and in accordance with the requirements hereof, do one or a combination of the following with respect to the aggregate face amount at maturity of all such Banker's Acceptances:
 - (i) Affect a Rollover or Conversion of such Bankers' Acceptances in accordance with Sections 3.4(c) and 3.4(d) or 3.4(e), as applicable, below; or
 - (ii) On the Maturity Date of the maturing Bankers' Acceptances, pay to the Agent for the account of the applicable Lenders an amount equal to the aggregate face amount of such Bankers' Acceptances.
- (c) Rollovers and Conversions. The Borrower may from time to time affect a Rollover or Conversion as provided hereunder. Each Rollover or Conversion shall be made on notice by Borrower to the Agent and shall be in principal amounts of not less than \$100,000 and in multiples of \$100,000 for any amounts in excess thereof. Any such notice must be given no later than 11:00 a.m.(Toronto time) on the date which is two (2) Business Days prior to the proposed Rollover or Conversion. Each such notice (a "**Notice of Rollover or Conversion**") must be given in writing (by telecopy or overnight courier) substantially in the form of Exhibit 3.4(c), and shall include the information required in such Exhibit and such other information as may be required by Agent.

- (d) Rollovers. In the case of a Rollover of maturing Bankers' Acceptances, each Lender, in order to satisfy the continuing liability of the Borrower to the Lender for the face amount of the maturing Bankers' Acceptances, will retain for its own account the Net Proceeds of each new Bankers' Acceptance issued by it in connection with such Rollover and the Borrower will, on the Maturity Date of the maturing Bankers' Acceptances, pay to the Agent for the benefit of the Lenders an amount equal to the difference between the face amount of the maturing Bankers' Acceptances and the aggregate Net Proceeds of the new Bankers' Acceptances.
- (e) Conversion from BA's. In the case of a Conversion of a Revolving Credit Advance by way of Bankers' Acceptances into a Canadian Prime Rate Loan, each Lender, in order to satisfy the liability of the Borrower to each Lender for the face amount of the maturing Bankers' Acceptances, will record the obligation of the Borrower to it as a Canadian Prime Rate Loan, unless the Borrower provides for payment to the Agent for the benefit of the Lenders of the face amount of the maturing Bankers' Acceptance in some other manner acceptable to the Lenders.
- (f) Conversion to BA's. In the case of a Conversion from a Canadian Prime Rate Loan into a Revolving Credit Advance by way of Bankers' Acceptances, each Lender, in order to satisfy the continuing liability of the Borrower to each Lender for the amount of the Canadian Prime Rate Loan being converted, will retain for its own account the Net Proceeds of each new Bankers' Acceptance issued by it in connection with such Conversion and the Borrower will, on the date of issuance of the Bankers' Acceptances pay to the Agent for the benefit of the Lenders an amount equal to the difference between the amount of the Canadian Prime Rate Loan being converted including any accrued interest thereon, owing to the Lenders and the Net Proceeds of such Bankers' Acceptances.

3.5 Escrowed Funds

Upon the request of the Agent after the occurrence and during the continuance of an Event of Default or in order to prepay a Bankers' Acceptance in accordance with the terms of this Agreement, the Borrower will forthwith pay to the Agent for deposit into an escrow account maintained by and in the name of the Agent for the benefit of the Lenders, an amount equal to the Lenders' maximum potential liability under then outstanding Bankers' Acceptances (the "**Escrow Funds**"). The Borrower expressly authorizes the Agent to hold such Escrow Funds and apply them for set-off against future Obligations owing by the Borrower to the applicable Lenders in respect of such Bankers' Acceptances. Pending such application, the Escrow Funds will bear interest for the Borrower's account at the rate payable to the Agent by its account bank. If such Event of Default is either waived or cured in compliance with the terms of this Agreement, then the remaining Escrow Funds if any, together with any accrued interest to the date of release, will be released to the Borrower. The deposit of the Escrow Funds by the Borrower with the Agent as herein provided will not operate as a repayment or prepayment, as applicable, of the aggregate principal amount of the relevant Bankers'

Acceptance until such time as the Escrow Funds are actually paid to the Lenders as a repayment or prepayment, as applicable, of the outstanding principal amount thereof.

3.6 Market Disruption

If at any time and from time to time, a Lender determines, in its reasonable discretion, that there no longer exists an active market for Bankers' Acceptances accepted by such Lender or the Discount Rate does not actually reflect the discount rate which would be applicable to a sale of Bankers' Acceptances in the market, then such Lender shall give notice thereof to the Agent who shall so notify the Borrower and, the right of the Borrower to request Bankers' Acceptances or BA Equivalent Loans from such Lender shall be suspended until the Agent determines that the circumstances causing the suspension no longer exist, and so notifies the Borrower. Any outstanding Notice of Revolving Credit Advance/Election of BA Periods requesting an Advance by way of Bankers' Acceptances or BA Equivalent Loans shall be deemed to be a Notice of Revolving Credit Advance/Election of BA Periods requesting an Advance by way of Canadian Prime Rate Loans in the amount specified in the original Notice of Revolving Credit Advance/Election of BA Periods. Any outstanding Notice of Rollover or Conversion requesting a Rollover of an Advance by way of Bankers' Acceptances or BA Equivalent Loans, shall be deemed to be a Notice of Rollover or Conversion requesting a Conversion of such Advance into an Advance by way of Canadian Prime Rate Loans.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

To induce Lenders to make the Loans, each Credit Party executing this Agreement makes the following representations and warranties to Agent and each Lender with respect to all Credit Parties, each and all of which shall survive the execution and delivery of this Agreement.

4.1 Corporate Existence; Compliance with Law

Each Credit Party (a) is a corporation, limited liability company, partnership, trust or limited partnership duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization set forth in Disclosure Schedule 4.1; (b) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not result in exposure to losses or liabilities which could reasonably be expected to have a Material Adverse Effect; (c) has the requisite power and authority and the legal right to own, pledge, mortgage, hypothecate or otherwise encumber and operate its properties, to lease the property it operates under lease and to conduct its business as now conducted and proposed to be conducted; (d) subject to specific representations regarding Environmental Laws, has all licenses, permits, consents or approvals from or by, and has made all material filings with, and has given all notices to, all Governmental Authorities having jurisdiction, to the extent required for such ownership, operation and conduct; (e) is in compliance with its constating documents, bylaws or partnership agreement or operating

agreement, as applicable; and (f) subject to specific representations set forth herein regarding Environmental Laws, tax and other laws, is in compliance with all applicable provisions of law, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.2 Executive Offices, Collateral Locations

As of the Closing Date, the current location of each Credit Party's chief executive office, principal place of business and the warehouses and premises at which any Collateral is located are set forth on Disclosure Schedule 4.2, each of the locations that either (i) is used to store a material amount of Collateral or (ii) is strategically important to such Credit Party's business is marked as a Key Location and none of such locations has changed within four (4) months preceding the Closing Date.

4.3 Corporate Power, Authorization, Enforceable Obligations

The execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party and the creation of all Liens provided for therein: (a) are within such Person's power; (b) have been duly authorized by all necessary corporate, limited liability company, partnership, trust or limited partnership action; (c) do not contravene any provision of such Person's constituting documents, bylaws or partnership agreement or operating agreement, as applicable; (d) do not violate any law or regulation, or any order or decree of any court or Governmental Authority; (e) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any indenture, mortgage, debenture, deed of trust, lease, agreement or other instrument to which such Person is a party or by which such Person or any of its property is bound; (f) do not result in the creation or imposition of any Lien upon any of the property of such Person other than those in favour of Agent, on behalf of itself and the Lenders, pursuant to the Loan Documents; and (g) do not require the consent or approval of any Governmental Authority or any other Person, except those referred to in Section 2.1(b), all of which will have been duly obtained, made or complied with prior to the Closing Date. On or prior to the Closing Date, each of the Loan Documents to which a Credit Party is a party shall have been duly executed and delivered by such Credit Party and each such Loan Document shall then constitute a legal, valid and binding obligation of such Credit Party enforceable against it in accordance with its terms.

4.4 Financial Statements and Projections

Except for the Projections, all Financial Statements concerning the Credit Parties that are referred to below have been prepared in accordance with GAAP consistently applied throughout the periods covered (except as disclosed therein and except, with respect to unaudited Financial Statements, for the absence of footnotes and normal year-end audit adjustments) and present fairly in all material respects the financial position of the Persons covered thereby as at the dates thereof and the results of their operations and cash flows for the periods then ended.

- (a) Financial Statements. The unaudited consolidated balance sheet of the Fund for the period ending September 30, 2008 (attached hereto as Disclosure Schedule 4.4(a)) and the related statements of income and cash flows of the Fund and its Subsidiaries for the Fiscal Years then ended, certified by the Chief Financial Officer, have been delivered on the date hereof.
- (b) Projections. The Projections delivered on the date hereof and attached hereto as Disclosure Schedule 4.4(b) have been prepared by each Credit Party in light of the past operations of its businesses and reflect projections for the 2009 year period beginning on January 1, 2009 on a month-by-month basis for the first year and on a year-by-year basis thereafter. The Projections are based upon the same accounting principles as those used in the preparation of the financial statements described above and the estimates and assumptions stated therein, all of which each Credit Party believes to be reasonable and fair in light of current conditions and current facts known to such Credit Party and, as of the Closing Date, reflect such Credit Party's good faith and reasonable estimates of the future financial performance of such Credit Party, and of the other information projected therein for the period set forth therein. The Projections are not a guarantee of future performance, and actual results may differ from the Projections.

4.5 Material Adverse Effect

Between December 31, 2007 and the Closing Date, (a) no Credit Party has incurred any obligations, contingent or non-contingent liabilities, liabilities for Charges, long-term leases or unusual forward or long-term commitments that are not reflected in the Financial Statements and that, alone or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (b) no contract, lease or other agreement or instrument has been entered into by any Credit Party or has become binding upon any Credit Party's assets and no law or regulation applicable to any Credit Party has been adopted that has had or could reasonably be expected to have a Material Adverse Effect, and (c) no Credit Party is in default and, to the best of each Credit Party's knowledge, no third party is in default under any material contract, lease or other agreement or instrument, that alone or in the aggregate could reasonably be expected to have a Material Adverse Effect. Since the date of the last financials delivered in accordance with Section 5.1, no event has occurred, that alone or together with other events, could reasonably be expected to have a Material Adverse Effect.

4.6 Ownership of Property; Liens

Each Credit Party has good and marketable title to, or valid leasehold interests in, all of its personal property and assets. As of the Closing Date, none of the properties and assets of any Credit Party are subject to any Liens other than Permitted Encumbrances, and there are no facts, circumstances or conditions known to any Credit Party that may result in any Liens (including Liens arising under Environmental Laws) other than Permitted Encumbrances. Each Credit Party has received all deeds, assignments, waivers, consents, non-disturbance and attornment or similar agreements, bills of sale and other documents,

and has duly effected all recordings, filings and other actions necessary to establish, protect, perfect and publish such Credit Party's right, title and interest in and to all its other properties and assets.

4.7 Labour Matters

Except as set forth on Disclosure Schedule 4.7, as of the Closing Date: (a) no strikes or other material labour disputes against any Credit Party are pending or, to any Credit Party's knowledge, threatened; (b) hours worked by and payment made to employees of each Credit Party comply with each federal, provincial, local or foreign law applicable to such matters; (c) each Credit Party has withheld all employee withholdings and has made all employer contributions to be withheld and made by it pursuant to applicable law on account of the Canada Pension plan, employment insurance and employee income taxes; all payments due from any Credit Party for U.S. employee health and welfare insurance have been paid or accrued as a liability on the books of such Credit Party; (d) no Credit Party is a party to or bound by any collective bargaining agreement, management agreement, consulting agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (and true and complete copies of any agreements described on Disclosure Schedule 4.7 have been delivered to Agent); (e) there is no organizing activity involving any Credit Party pending or, to any Credit Party's knowledge, threatened by any labour union or group of employees; (f) there are no certification applications or representative proceedings pending or, to any Credit Party's knowledge, threatened with any labour relations board, and no labour organization or group of employees of any Credit Party has made a pending demand for certificate; and (g) there are no material complaints or charges against any Credit Party pending or, to the knowledge of any Credit Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by any Credit Party of any individual.

4.8 Ventures, Subsidiaries and Affiliates; Outstanding Stock and Indebtedness

Except as set forth in Disclosure Schedule 4.8, as of the Closing Date, no Credit Party has any Subsidiaries, is engaged in any joint venture or partnership with any other Person, or is an Affiliate of any other Person. As of the Closing Date, all of the issued and outstanding Stock of each Credit Party is owned by each of the Stockholders and in the amounts set forth in Disclosure Schedule 4.8. Except as set forth in Disclosure Schedule 4.8, there are no outstanding rights to purchase, options, warrants or similar rights or agreements pursuant to which any Credit Party may be required to issue, sell, repurchase or redeem any of its Stock or other equity securities or any Stock or other equity securities of its Subsidiaries. All outstanding Indebtedness and Guaranteed Indebtedness of each Credit Party, as of the Closing Date (except for the Obligations), is described in Section 7.4 (including Disclosure Schedule 7.4).

4.9 Government Regulation

No Credit Party is subject to regulation under any Canadian federal law or any provincial, local or foreign law that restricts or limits its ability to incur Indebtedness or to perform its obligations hereunder. The making of the Loans by Lenders to Borrower and the application of the proceeds thereof will not violate any provision of any applicable statute or any rule, regulation, order or policy of or issued by any securities commission, securities exchange or other securities regulatory authority.

4.10 Taxes

All federal, provincial and other material tax returns, reports and statements, including information returns, required by any Governmental Authority to be filed by any Credit Party have been filed with the appropriate Governmental Authority, and all Charges have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for non-payment thereof, excluding Charges or other amounts being contested in accordance with Section 6.2(b). Proper and accurate amounts have been withheld by each Credit Party from its respective employees for all periods in full and complete compliance with all applicable federal, provincial, local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities. Disclosure Schedule 4.10 sets forth as of the Closing Date in respect of each of the Credit Parties:

(i) those taxation years that have not yet been assessed by the CRA or the applicable provincial, local or foreign Governmental Authorities, (ii) the taxation years that are currently being audited by the CRA or any other applicable Governmental Authority and (iii) any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding and (iv) the most recent taxation year that an audit (done while such Credit Party was an Affiliate of the Corporation or the Fund, as applicable,) by CRA or the applicable provincial, local or foreign Governmental Authorities has been completed. Except as described in Disclosure Schedule 4.10, as of the Closing Date, no Credit Party has executed or filed with the CRA or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges. None of the Credit Parties and their respective predecessors are liable for any Charges: (a) under any agreement (including any tax sharing agreements) or (b) to each Credit Party's knowledge, as a transferee.

4.11 No Litigation

No action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of any Credit Party, threatened against any Credit Party, before any Governmental Authority or before any arbitrator or panel of arbitrators (collectively, "**Litigation**"), (a) that challenges any Credit Party's right or power to enter into or perform any of its obligations under the Loan Documents to which it is a party, or the validity or enforceability of any Loan Document or any action taken thereunder, or (b) that has a reasonable risk of being determined adversely to any Credit Party and that, if so determined, could reasonably be expected to have a Material Adverse Effect. Except as

set forth on Disclosure Schedule 4.11, as of the Closing Date, there is no Litigation pending or threatened that seeks damages in excess of \$1,000,000 or injunctive relief against, or alleges criminal misconduct of, any Credit Party.

4.12 Canadian Pension Plan and Benefit Plans

As of the Closing Date, Disclosure Schedule 4.12 lists all Canadian Benefit Plans and Canadian Pension Plans currently maintained or contributed to by any Credit Party. The Canadian Pension Plans are duly registered under the ITA and all other applicable laws which require registration. The Credit Parties have complied with and performed all of their obligations in all material respects under and in respect of the Canadian Pension Plans and Canadian Benefit Plans under the terms thereof, any funding agreements and all applicable laws (including any fiduciary, funding, investment and administration obligations). All employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Pension Plan or Canadian Benefit Plan have been paid in a timely fashion in accordance with the terms thereof, any funding agreement and all applicable laws. There have been no improper withdrawals or applications of the assets of the Canadian Pension Plans or the Canadian Benefit Plans. Except as set forth on Disclosure Schedule 4.12, there are no outstanding disputes concerning the assets of the Canadian Pension Plans or the Canadian Benefit Plans. Except as set forth on Disclosure Schedule 4.12, each of the Canadian Pension Plans is fully funded on a solvency basis (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with generally accepted actuarial principles).

4.13 Brokers

Except as set forth on Disclosure Schedule 4.13, no broker or finder acting on behalf of any Credit Party or Affiliate thereof brought about the obtaining, making or closing of the Loans or the Related Transactions, and no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

4.14 Intellectual Property

As of the Closing Date, each Credit Party owns or has rights to use all Intellectual Property necessary to continue to conduct its business as now or heretofore conducted by it or proposed to be conducted by it. Each Patent, Trademark (excluding prints and labels on which they appear or have appeared), Design, Copyright and License so owned or used by a Credit Party is listed, together with application or registration numbers, as applicable, in Disclosure Schedule 4.14. Each Credit Party conducts its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect. Except as set forth in Disclosure Schedule 4.14, no Credit Party is aware of any material infringement claim by any other Person with respect to any Intellectual Property.

4.15 Full Disclosure

No information contained in this Agreement, any of the other Loan Documents, any Projections, Financial Statements or Collateral Reports or other written reports from time to time prepared by any Credit Party and delivered hereunder or any written statement prepared by any Credit Party and furnished by or on behalf of any Credit Party to Agent or any Lender pursuant to the terms of this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. Projections from time to time delivered hereunder are or will be based upon the estimates and assumptions stated therein, all of which Borrower believed at the time of delivery to be reasonable and fair in light of current conditions and current facts known to Borrower as of such delivery date, and reflect Borrower's good faith and reasonable estimates of the future financial performance of Borrower and of the other information projected therein for the period set forth therein. Such Projections are not a guaranty of future performance and actual results may differ from those set forth in such Projections. The Liens granted to Agent, on behalf of the Lenders, pursuant to the Collateral Documents will at all times be fully perfected first priority Liens in and to the Collateral described therein, subject, as to priority, only to Permitted Encumbrances.

4.16 Environmental Matters

- (a) Except as set forth in Disclosure Schedule 4.16, as of the Closing Date: (i) all Real Estate owned, occupied or controlled by the Credit Parties is free of the presence of any Hazardous Material except for such presence that would not adversely impact the value or marketability of such Real Estate, that is not in breach of Environmental Laws, and that would not result in Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate; (ii) no Credit Party has caused or suffered to occur any Release of Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate that could reasonably be expected to result in Environmental Liabilities that exceed \$500,000 in the aggregate; (iii) the Credit Parties are, and have been, in compliance with, all Environmental Laws, except where the failure to so comply with such Environmental Laws would not result in Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate; (iv) the Credit Parties have obtained, and are in compliance with, all Environmental Permits required by Environmental Laws for the operations of their respective businesses as presently conducted or as proposed to be conducted, except where the failure to so obtain or comply with such Environmental Permits would not result in Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate, and all such Environmental Permits are valid, uncontested and in good standing; (v) no Credit Party is involved in operations or knows of any facts, circumstances or conditions, including any Releases of Hazardous Materials, that are likely to result in any Environmental Liabilities of such Credit Party which

could reasonably be expected to exceed \$500,000 in the aggregate; (vi) No Credit Party is subject to any existing, pending, or has knowledge of any, threatened Litigation arising under or related to any Environmental Laws, Environmental Permits or Hazardous Material that seeks damages, penalties, fines, costs or expenses in excess of \$500,000 in the aggregate or injunctive relief against, or that alleges criminal misconduct by, any Credit Party; (vii) no Credit Party has knowledge of, nor has any Credit Party received notice of any actual, pending or threatened investigations, claims, orders, suits, actions or proceedings regarding the breach of any Environmental Laws or the provisions of any Environmental Permits, or which may result in any Environmental Liability, that could reasonably be expected to exceed \$500,000 in the aggregate; and (viii) the Credit Parties have provided to Agent copies of all existing environmental reports, reviews and audits and all written information within their control pertaining to actual or potential Environmental Liabilities, in each case relating to any Credit Party.

- (b) The Assessed Equipment has been maintained and operated in accordance with prudent industry standards and all Environmental Laws and no Credit Party has knowledge of any fact, circumstance or condition in respect of the Assessed Equipment or its maintenance or operation that is likely to result in any Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate, or investigation, claim, order, suit, action or proceedings regarding the breach of any Environmental Laws, or the provisions of any Environmental Permits, that could reasonably be expected to result in Environmental Liabilities that exceed \$500,000 in the aggregate.
- (c) Each Credit Party hereby acknowledges and agrees that Agent (i) is not now, and has not ever been, in control of any Credit Party's affairs, and (ii) does not have the capacity through the provisions of the Loan Documents or otherwise to influence any Credit Party's conduct with respect to the ownership, operation or management of any of its Real Estate or compliance with Environmental Laws or Environmental Permits generally.

4.17 Insurance Disclosure

Disclosure Schedule 4.17 lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Credit Party, as well as a summary of the terms of each such policy.

4.18 Deposit and Disbursement Accounts

Disclosure Schedule 4.18 lists all banks and other financial institutions at which any Credit Party maintains lock boxes, deposit and/or other accounts as of the Closing Date, including any disbursement accounts, and such Schedule correctly identifies the name, address and telephone number of each depository, the name in which the lock box or

account is held, a description of the purpose of the lock box or account, and the complete lock box address or account number therefore.

4.19 Government Contracts

Except as set forth in Disclosure Schedule 4.19, as of the Closing Date, no Credit Party is a party to any contract or agreement with any Governmental Authority and no Credit Party's Accounts are subject to any of the requirements or proceedings applicable to assignments of accounts under the *Financial Administration Act* (Canada), the *Federal Assignment of Claims Act* of 1940 (31 U.S.C. Section 3727) or any similar provincial, local or foreign law.

4.20 Customer and Trade Relations

As of the Closing Date, there exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in: the business relationship of any Credit Party with any customer or group of customers whose purchases during the preceding 12 months caused them to be ranked among the ten largest customers of such Credit Party; or the business relationship of any Credit Party with any supplier material to its operations.

4.21 Bonding; Licenses

Except as set forth on Disclosure Schedule 4.21, as of April 25, 2007, no Credit Party is a party to or bound by any surety bond agreement or bonding requirement with respect to products or services sold by it or any trademark, patent or industrial design license agreement with respect to products sold by it.

4.22 Solvency

Both before and after giving effect to the amendment and restatement of the Existing Credit Agreement pursuant to Section 1.1, (a) the Revolving Loans and the Revolving Advances to be made or incurred on the Closing Date or such other date as Advances requested hereunder are made or incurred, (b) the disbursement of the proceeds of such Advances pursuant to the instructions of Borrower, (c) the payment and accrual of all transaction costs in connection with the foregoing, each Credit Party is and will be Solvent.

**ARTICLE V
FINANCIAL STATEMENTS AND INFORMATION**

5.1 Reports and Notices

(a) The Corporation hereby agrees that from and after the Closing Date and until the Termination Date, it shall deliver, or cause to be delivered, to the Agent, or to the Agent and Lenders, as required, the following Financial Statements, notices, Projections and other information at the times and in the manner herein indicated:

- (i) Quarterly Financials. To Agent and Lenders, within forty-five (45) days after the end of each Fiscal Quarter for and during the first three (3) Fiscal Quarters of each year and, except to the extent otherwise delivered on an audited basis in accordance with Section 5.1(a)(iii), within ninety (90) days after the end of each Fiscal Year, consolidated and consolidating financial information regarding the Corporation and its Subsidiaries certified by the Chief Financial Officer of the Corporation, including (i) unaudited balance sheets as of the close of such Fiscal Quarter and the related statements of income and cash flow for that portion of the Fiscal Year ending as of the close of such Fiscal Quarter and (ii) unaudited statements of income and cash flows for such Fiscal Quarter, in each case setting forth in comparative form the figures for the corresponding period in the prior year and the figures contained in the Projections for such Fiscal Year, all prepared in accordance with GAAP (subject to normal year-end adjustments). Such financial information shall be accompanied by (A) a statement in reasonable detail (each, a “**Compliance Certificate**”) showing the calculations used in determining compliance with each of the Financial Covenants that is tested on a quarterly basis and (B) the certification of the Chief Financial Officer of the Corporation that (i) such financial information presents fairly in accordance with GAAP (subject to normal year-end adjustments) the financial position, results of operations and statements of cash flows of the Corporation and its Subsidiaries on both a consolidated and consolidating basis, as at the end of such Fiscal Quarter and for that portion of the Fiscal Year then ended, (ii) any other information presented is true, correct and complete in all material respects, (iii) all current and special payments required to have been made pursuant to applicable law in respect of Canadian Pension Plans have been made and (iv) that there was no Default or Event of Default in existence as of such time or, if a Default or Event of Default has occurred and is continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default. In addition, the Corporation shall deliver to Agent and Lenders, within forty-five (45) days after the end of each Fiscal Quarter for and during the first three (3) Fiscal Quarters of each year and within ninety (90) days after the end of each Fiscal Year, a management discussion and analysis that includes a comparison to budget for that Fiscal Quarter and a comparison of performance for that Fiscal Quarter or Fiscal Year, as the case may be, to the corresponding period in the prior year.
- (ii) Operating Plan. To Agent and Lenders, as soon as available, but not later than ninety (90) days after the end of each Fiscal Year, an annual operating plan for the Consolidated Parties, approved by the

board of directors of the Corporation, for the following Fiscal Year, which (i) includes a statement of all of the material assumptions on which such plan is based, (ii) includes monthly balance sheets and a monthly budget for the following year and (iii) integrates sales, gross profits, operating expenses, operating profit, cash flow projections and Borrowing Availability projections, all prepared on the same basis and in similar detail as that on which operating results are reported (and in the case of cash flow projections, representing management's good faith estimates of future financial performance based on historical performance), and including plans for personnel, Capital Expenditures and facilities.

- (iii) Annual Audited Financials. To Agent and Lenders, within ninety (90) days after the end of each Fiscal Year, audited Financial Statements for the Corporation and its Subsidiaries on a consolidated and (unaudited) consolidating basis, consisting of balance sheets and statements of income and retained earnings and cash flows, setting forth in comparative form in each case the figures for the previous Fiscal Year, which Financial Statements shall be prepared in accordance with GAAP and certified without qualification, by an independent chartered accounting firm of national standing or otherwise acceptable to Agent. Such Financial Statements shall be accompanied by (i) a statement prepared in reasonable detail showing the calculations used in determining compliance with each of the Financial Covenants, (ii) the annual letters to such accountants in connection with their audit examination detailing contingent liabilities and material litigation matters, and (iii) the certification of the Chief Executive Officer or Chief Financial Officer of the Corporation that all such Financial Statements present fairly in accordance with GAAP the financial position, results of operations and statements of cash flows of the Corporation and its Subsidiaries on a consolidated and consolidating basis, as at the end of such Fiscal Year and for the period then ended, and that there was no Default or Event of Default in existence as of such time or, if a Default or Event of Default has occurred and is continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default.
- (iv) Default Notices. To Agent and Lenders, as soon as practicable, and in any event within five (5) Business Days after an executive officer of a Credit Party has actual knowledge of the existence of any Default, Event of Default or other event which has had a Material Adverse Effect, telephonic or telecopied notice specifying the nature of such Default or Event of Default or other event, including the

anticipated effect thereof, which notice, if given telephonically, shall be promptly confirmed in writing on the next Business Day.

- (v) Securities Filings and Press Releases. To Agent and Lenders, promptly upon their becoming available, copies of: (i) all Financial Statements, reports, notices and proxy statements made publicly available by any Credit Party to its security holders; (ii) all regular and periodic reports and all prospectuses and registration statements, if any, filed by any Credit Party with any securities exchange or securities commission or any governmental or private regulatory authority; and (iii) all press releases and other statements made available by any Credit Party to the public concerning material changes or developments in the business of any such Person.
- (vi) Subordinated Debt and Equity Notices. To Agent, as soon as practicable, copies of all material written notices given or received by any Credit Party with respect to any Subordinated Debt or Stock of such Person, and, within two (2) Business Days after any Credit Party obtains knowledge of any matured or unmatured event of default with respect to any Subordinated Debt, notice of such event of default.
- (vii) Supplemental Schedules. To Agent, supplemental disclosures, if any, required by Section 6.6.
- (viii) Litigation. To Agent in writing, promptly upon learning thereof, notice of any Litigation commenced or threatened against any Credit Party that (i) seeks damages in excess of \$1,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Canadian Pension Plan or ERISA Plan, its fiduciaries or its assets or against any Credit Party or ERISA Affiliate in connection with any Canadian Pension Plan or ERISA Plan, (iv) alleges criminal misconduct by any Credit Party, (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Liabilities; or (vi) involves any product recall.
- (ix) Insurance Notices. To Agent, disclosure of losses or casualties required by Section 6.4.
- (x) Lease Default Notices. To Agent, (i) within two (2) Business Days after receipt thereof, copies of any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located, and (ii) such other notices or documents as Agent may reasonably request.
- (xi) Hedging Agreements. To Agent within two (2) Business Days after entering into such agreement or amendment, copies of all interest

rate, commodity or currency hedging agreements or amendments thereto.

- (xii) Other Documents. To Agent and Lenders, such other financial and other information respecting any Credit Party's business or financial condition as Agent or any Lender shall, from time to time, reasonably request.

(b) The Borrower hereby agrees that from and after the Closing Date and until the Termination Date, it shall deliver, or cause to be delivered, to the Agent, or to the Agent and Lenders, as required, the following Collateral Reports (including Borrowing Base Certificates in the form Exhibit 5.1(b)):

- (i) Borrower shall deliver or cause to be delivered to the Agent within thirty (30) days after the end of each Fiscal Month:
 - (A) the most recent Borrowing Base, as determined in accordance with Section 5.1(c);
 - (B) a reconciliation of the outstanding Loans as set forth in the monthly Loan Account statement provided by Agent to Borrower's general ledger, in each case accompanied by such supporting detail and documentation as shall be requested by Agent in its reasonable discretion;
- (ii) Borrower, at its own expense, shall deliver to Agent such appraisals of its assets as Agent may request at any time after the occurrence and during the continuance of a Default or an Event of Default, such appraisals to be conducted by an appraiser, and to be in form and substance satisfactory to Agent, acting reasonably; and
- (iii) Such other reports, statements and reconciliations with respect to the Borrowing Base or Collateral or Obligations of any or all Credit Parties as Agent shall from time to time request in its reasonable discretion.

(c) The amount of the Borrowing Base shall be determined, and if necessary, adjusted, by the Agent:

- (i) on a monthly basis, as it relates to:
 - (A) eligible accounts receivable;
 - (B) eligible Inventory;
 - (C) new Equipment purchases (excluding eligible appraised Equipment; and

- (D) Equipment sales; and
- (ii) on a quarterly basis, as it relates to eligible appraised Equipment (on a physical basis for no less than 12.5% of the Equipment, in terms of monetary value, and on a desktop basis for the remainder of the Equipment); in furtherance of the foregoing, the Borrower, at its own expense, agrees to provide such appraisals within 30 days following the end of each such Fiscal Quarter, such appraisals to be conducted by an appraiser, and to be in form and substance including the schedule of Equipment to be appraised, satisfactory to Agent, acting reasonably, and of that 12.5%, no less than 50% of the value is to be derived from assets with a gross orderly liquidation value of less than \$300,000.

5.2 Communication with Accountants

Each Credit Party authorizes Agent to communicate directly with its independent chartered accountants, and authorizes and shall instruct those accountants and advisors to disclose and make available to Agent any and all Financial Statements and other supporting financial documents, schedules and information relating to any Credit Party with respect to the business, results of operations and financial condition of any Credit Party.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Credit Party agrees as to all Consolidated Parties that from and after the date hereof and until the Termination Date:

6.1 Maintenance of Existence and Conduct of Business

Each Consolidated Party shall: (a) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and its material rights and franchises; (b) continue to conduct its business substantially as now conducted or as otherwise permitted hereunder; (c) at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business, and keep the same in good repair, working order and condition in all material respects (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices; and (d) transact business only in such corporate and trade names as are set forth in Disclosure Schedule 6.1. The Borrower shall provide updates of Disclosure Schedule 6.1 to the Agent promptly upon any permitted change, amendment, dissolution or alteration to the corporate and trade names set out therein.

6.2 Payment of Charges

- (a) Subject to Section 6.2(b), each Consolidated Party shall pay and discharge or cause to be paid and discharged promptly all Charges payable by it before any thereof shall become past due, including (i) Charges imposed upon it, its income and profits, or any of its property (real, personal or mixed) and all Charges with respect to employee source deduction obligations and employer obligations to its employees, (ii) lawful claims for labour, materials, supplies and services or otherwise, and (iii) all storage or rental charges payable to warehousemen and bailees, in each case, before any thereof shall become past due, except in the case of clauses (ii) and (iii) where the failure to pay or discharge such Charges would not result in aggregate liabilities in excess of \$200,000.
- (b) Each Consolidated Party may in good faith contest, by appropriate proceedings, the validity or amount of any Charges, Taxes or claims described in Section 6.2(a); provided, that (i) adequate reserves with respect to such contest are maintained on the books of such Consolidated Party, in accordance with GAAP; (ii) no Lien shall arise or be imposed to secure payment of such Charges (other than payments to warehousemen and/or bailees) that is superior to any of the Liens securing payment of the Obligations and such contest is maintained and prosecuted continuously and with diligence and operates to suspend collection or enforcement of such Charges, (iii) none of the Collateral becomes subject to forfeiture or loss as a result of such contest, (iv) such Consolidated Party shall promptly pay or discharge such contested Charges, Taxes or claims and all additional charges, interest, penalties and expenses, if any, and shall deliver to Agent evidence reasonably acceptable to Agent of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to such Consolidated Party or the conditions set forth in this Section 6.2(b) are no longer met; and (v) Agent has not advised Borrower in writing that Agent reasonably believes that non-payment or non-discharge thereof could have or result in a Material Adverse Effect.

6.3 Books and Records

Each Consolidated Party shall keep adequate books and records with respect to its business activities in which proper entries, reflecting all financial transactions, are made in accordance with GAAP and on a basis consistent with the Financial Statements attached as Disclosure Schedule 4.4(a)).

6.4 Insurance; Damage to or Destruction of Collateral

- (a) The Consolidated Parties shall, at their sole cost and expense, maintain policies of insurance in accordance with the requirements described on Disclosure Schedule 6.4 or otherwise in form and amounts and with insurers reasonably acceptable to Agent. If any Consolidated Party at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay all premiums

relating thereto, Agent may at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that Agent deems advisable. Agent shall have no obligation to obtain insurance for any Consolidated Party or pay any premiums therefor. By doing so, Agent shall not be deemed to have waived any Default or Event of Default arising from any Consolidated Party's failure to maintain such insurance or pay any premiums therefor. All sums so disbursed, including legal fees, court costs and other charges related thereto, shall be payable on demand by Borrower to Agent and shall be additional Obligations hereunder secured by the Collateral.

- (b) Agent reserves the right at any time upon any change in any Consolidated Party's risk profile (including any change in the product mix maintained by any Consolidated Party or any laws affecting the potential liability of such Consolidated Party) to require additional forms and limits of insurance to, in Agent's opinion, adequately protect interest of Agent, on behalf of the Lenders, in all or any portion of the Collateral and to ensure that each Consolidated Party is protected by insurance in amounts and with coverage customary for its industry. If reasonably requested by Agent, each Consolidated Party shall deliver to Agent on an annual basis a report of a reputable insurance broker reasonably satisfactory to Agent, with respect to its insurance policies. Such broker shall advise the Agent promptly in writing of any default in the payment of any premiums or any other act or omission, on the part of any Person, which might invalidate or render unenforceable, in whole or in part, any insurance provided by the Consolidated Parties hereunder.
- (c) Provided any Default or Event of Default has occurred and is continuing, each Credit Party irrevocably makes, constitutes and appoints Agent (and all officers, employees or agents designated by Agent) as each Credit Party's true and lawful agent and attorney in fact for the purpose of making, settling and adjusting claims under such "All Risk" policies of insurance, endorsing the name of such Credit Party on any cheque or other item of payment for the proceeds of such "All Risk" policies of insurance and for making all determinations and decisions with respect to such "All Risk" policies of insurance. Agent shall have no duty to exercise any rights or powers granted to it pursuant to the foregoing power-of-attorney.
- (d)
 - (i) The affected Credit Party shall promptly notify Agent of any loss, damage, or destruction to the Collateral in the amount of \$1,000,000 or more, whether or not covered by insurance. Upon receipt of any such insurance proceeds, the Borrower shall make an Asset Sale Offer in accordance with Section 1.5(c)(iii), provided that if no Default or Event of Default has occurred and is continuing, such Credit Party will replace, restore, repair or rebuild within 180 days of such casualty;

- (ii) all insurance proceeds that are to be made available to replace, repair, restore or rebuild the Collateral shall be applied by Agent to reduce the outstanding principal balance of the Revolving Loan (which application shall not result in a permanent reduction of the Revolving Loan Commitment) and upon such application, Agent shall establish a Reserve against the Borrowing Base in an amount equal to the amount of such proceeds so applied; and
 - (iii) Thereafter, such funds shall be made available to such Credit Party to provide funds to replace, repair, restore or rebuild the Collateral as follows: (i) Borrower shall request a Revolving Credit Advance be made to such Credit Party in the amount requested to be released; (ii) so long as the conditions set forth in Section 2.2 have been met, the Lenders shall make such Revolving Credit Advance; and (iii) in the case of insurance proceeds applied against the Revolving Loan, the Reserve established with respect to such insurance proceeds shall be reduced by the amount of such Revolving Credit Advance. To the extent not used to replace, repair, restore or rebuild the Collateral, such insurance proceeds shall be applied in accordance with Section 1.5(c).
- (e) Notwithstanding the foregoing, the existing Inland Marine Insurance deductible exceeds \$25,000 and has a \$1,000,000 aggregate policy limit per year which is a breach of the covenant in Section 6.4(a) and Disclosure Schedule 6.4(a) and consequently would be an Event of Default under Section 10.1(b) (the “**Insurance Deductible Default**”). Until April 30, 2009, the Insurance Deductible Default is waived, after which date the Inland Marine Insurance deductible shall not exceed \$25,000, provided that until such date the annual insurance premium shall be reduced by a minimum of \$800,000.

6.5 Compliance with Laws

- (a) General. Each Consolidated Party shall comply with all federal, provincial, local and foreign laws and regulations applicable to it, including ERISA and those relating to employment and labour matters (except to the extent that the failure to comply with ERISA and those laws and regulations relating to employment and labour matters, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect), and Environmental Laws and Environmental Permits.
- (b) Canadian Pension Plans and Benefit Plans
 - (i) For each existing, or hereafter adopted, Canadian Pension Plan and Canadian Benefit Plan, each Consolidated Party shall in a timely fashion comply with and perform in all material respects all of its obligations under and in respect of such Canadian Pension Plan or

Canadian Benefit Plan, including under any funding agreements and all applicable laws (including any fiduciary, funding, investment and administration obligations).

- (ii) All employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Canadian Pension Plan or Canadian Benefit Plan shall be paid or remitted by each Consolidated Party in a timely fashion in accordance with the terms thereof, any funding agreements and all applicable laws.
- (iii) Borrower shall deliver to Agent (i) if requested by Agent, copies of each annual and other return, report or valuation with respect to each Canadian Pension Plan as filed with any applicable Governmental Authority; (ii) promptly after receipt thereof, a copy of any direction, order, notice, ruling or opinion that any Consolidated Party may receive from any applicable Governmental Authority with respect to any Canadian Pension Plan; and (iii) notification within 30 days of any increases having a cost to one or more of the Consolidated Parties in excess of \$100,000 per annum in the aggregate, in the benefits of any existing Canadian Pension Plan or Canadian Benefit Plan, or the establishment of any new Canadian Pension Plan or Canadian Benefit Plan, or the commencement of contributions to any such plan to which any Consolidated Party was not previously contributing.

6.6 Supplemental Disclosure

From time to time as may be reasonably requested by Agent (which request will not be made more frequently than once each year absent the occurrence and continuance of an Event of Default) or at Credit Parties' election, the Credit Parties shall supplement each Disclosure Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter hereafter arising that, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Disclosure Schedule or as an exception to such representation or that is necessary to correct any information in such Disclosure Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Disclosure Schedule, such Disclosure Schedule shall be appropriately marked to show the changes made therein); provided that (a) no such supplement to any such Disclosure Schedule or representation shall amend, supplement or otherwise modify any Disclosure Schedule or representation, or be or be deemed a waiver of any Default or Event of Default resulting from the matters disclosed therein, except as consented to by Agent and Requisite Lenders in writing, and (b) no supplement shall be required or permitted as to representations and warranties that relate solely to the Closing Date.

6.7 Intellectual Property

Each Consolidated Party will conduct its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect and shall comply in all material respects with the terms of its Licenses.

6.8 Environmental Matters

- (a) Environmental Certificates. The Borrower will provide an Environmental Certificate (in the form attached in Exhibit 6.8(a)) to the Agent with sufficient copies for each of the Lenders at the same time as the delivery of the annual financial statements referred to in Section 6.3.
- (b) Additional Environmental Information. The Borrower will upon the request of the Agent make available for discussion with the Agent or its nominee at all reasonable times the individuals who were involved in the preparation of any Environmental Certificate.
- (c) Environmental Audit. The Borrower will, and will cause the other Consolidated Parties to, at the request of Agent and no more than once per year, conduct environmental audits of the business of each Consolidated Party by an independent consultant selected by the Agent. The reasonable costs of each such audit will be for the account of the Borrower; provided that the Borrower shall not be required to account for the costs of more than a single audit during any 12 month period. Should the result of such audit indicate that:
 - (i) a Consolidated Party is in breach, or with the passage of time will be in breach, of any Environmental Law which could result in aggregate liabilities in excess of \$100,000; or
 - (ii) the business of each Consolidated Party has not been conducted and operated in accordance with all Environmental Laws or that a Consolidated Party should have knowledge of any fact, circumstance or condition in respect of the Assessed Equipment or its maintenance or operation that is likely to result in any Environmental Liabilities or investigation, claim, order, suit, action or proceedings regarding the breach of any Environmental Laws or the provisions of any Environmental Permits, which could result in aggregate liabilities in excess of \$100,000,

and without in any way prejudicing or suspending any of the rights and remedies of the Agent and the Lenders under the Loan Documents, the Borrower will forthwith commence and diligently proceed to rectify or cause to be rectified such breach, potential breach, fact, circumstance or condition, as the case may be, and will keep the Lenders fully advised of the actions it intends to take and has taken to rectify such breach or potential breach and the progress it is making in

rectifying same. The Agent will be permitted to retain, for the account of the Borrower (to the extent such account is reasonable), the services of a consultant to monitor the applicable Consolidated Party's compliance with this Section 6.8(c).

- (d) Notice of Environmental Damage. The Borrower will, forthwith upon acquiring knowledge thereof, notify the Agent of the discovery of any breach, potential breach, fact, circumstance or condition that is likely to result in any Environmental Liabilities or investigation, claim, order, suit, action or proceedings regarding the breach of any Environmental Laws or the provisions of any Environmental Permits including, without limitation, any knowledge or discovery of any Releases of a Hazardous Material from or upon the land or property owned (either individually or jointly), operated or controlled by any Consolidated Party, which could result in aggregate liabilities in excess of \$100,000.

6.9 Landlords' Agreements, Mortgagee Agreements, Bailee Letters and Real Estate Purchases

Each Credit Party shall use commercially reasonable efforts (such efforts not to include payment of any fees or deposits) to obtain a landlord's agreement, mortgagee agreement or bailee letter, as applicable, from the lessor of each leased property, mortgagee of owned property or bailee with respect to the warehouse, processor or converter facility or other location that is a New Key Location where Collateral is stored or located, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord, mortgagee or bailee may assert against the Collateral at that New Key Location, and shall otherwise be reasonably satisfactory in form and substance to Agent. Each Credit Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

6.10 Further Assurances

Each Credit Party agrees that it shall, and shall cause each other Consolidated Party to, at such Credit Party's expense and upon the reasonable request of Agent, duly execute and deliver, or cause to be duly executed and delivered, to Agent such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of Agent to carry out more effectively the provisions and purposes of this Agreement and each Loan Document.

**ARTICLE VII
NEGATIVE COVENANTS**

Each Credit Party agrees as to all Consolidated Parties that from and after the date hereof until the Termination Date:

7.1 Amalgamations, Mergers, Subsidiaries, Etc.

- (a) Except as otherwise provided in Section 7.2 or in this Section 7.1 below, no Consolidated Party shall directly or indirectly, by operation of law or otherwise, (a) form or acquire any Subsidiary, or (b) amalgamate or merge with, consolidate with, acquire all or substantially all of the assets or Stock of, or otherwise combine with or acquire, any Person. Notwithstanding the foregoing, any Consolidated Party may enter into a Permitted Acquisition to acquire all or substantially all of the assets or Stock of any Person (the “**Target**”) subject to the satisfaction of each of the following conditions:
- (i) such Permitted Acquisition shall only involve assets located in Canada and the U.S. and comprise a business, or those assets of a business, of the type engaged in by Credit Parties (on a consolidated basis) as of the Closing Date, and which business would not subject either Lender to regulatory or third party approvals in connection with the exercise of its rights and remedies under this Agreement or any other Loan Documents other than approvals applicable to the exercise of such rights and remedies with respect to such Consolidated Party prior to such Permitted Acquisition;
 - (ii) such Permitted Acquisition shall be consensual and shall have been approved by the Target’s board of directors;
 - (iii) no additional Indebtedness, Guaranteed Indebtedness, contingent obligations or other liabilities shall be incurred, assumed or otherwise be reflected on a consolidated balance sheet of such Consolidated Party and Target after giving effect to such Permitted Acquisition, except (A) the Loans made hereunder and (B) ordinary course trade payables, accrued expenses and unsecured Indebtedness of the Target to the extent no Default or Event of Default has occurred and is continuing or would result after giving effect to such Permitted Acquisition;
 - (iv) the sum of all amounts payable in connection with all Permitted Acquisitions (including all transaction costs and all Indebtedness, liabilities and contingent obligations incurred or assumed in connection therewith or otherwise reflected on a consolidated balance sheet of such Consolidated Party and Target) shall not exceed \$40,000,000 during any Fiscal Year and the portion thereof allocable to goodwill and intangible assets for all such Permitted Acquisitions during any Fiscal Year shall not exceed \$28,000,000;
 - (v) the Target shall not have incurred an operating loss for the trailing twelve-month period preceding the date of the Permitted Acquisition, as determined based upon the Target’s financial statements for its

most recently completed fiscal year and its most recent interim financial period completed within sixty (60) days prior to the date of consummation of such Permitted Acquisition;

- (vi) any debt associated with Liens on the business and assets acquired in such Permitted Acquisition shall be paid out on the closing of such Permitted Acquisition and, within 30 days following the closing of such Permitted Acquisition, the discharge of the registrations of such Liens shall have occurred;
- (vii) within 30 days following the closing of any Permitted Acquisition involving the acquisition of assets only, Agent will be granted a first priority perfected Lien (subject to Permitted Encumbrances) in all such assets acquired pursuant thereto of the Target, and such Credit Parties and the Target shall have executed such documents and taken such actions as may be required by Agent in connection therewith;
- (viii) within 180 days following the closing of any Permitted Acquisition involving the acquisition of Stock, or the next Notification Date, whichever is earlier, Agent will be granted a first priority perfected Lien (subject to Permitted Encumbrances) in all such Stock and assets acquired pursuant thereto of the Target, and such Consolidated Parties and the Target shall have executed such documents and taken such actions as may be required by Agent in connection therewith;
- (ix) on or prior to the closing date of any Permitted Acquisition equal to or in excess of \$10,000,000, the Corporation shall have delivered to Agent, in form and substance reasonably satisfactory to Agent:
 - (A) a *pro-forma* consolidated balance sheet, income statement and cash flow statement of the Corporation and its Subsidiaries (the "**Acquisition Pro Forma**"), based on recent financial statements, which shall be complete and shall fairly present in all material respects the assets, liabilities, financial condition and results of operations of the Corporation and its Subsidiaries in accordance with GAAP consistently applied, but taking into account such Permitted Acquisition and the funding of all Loans in connection therewith, and such Acquisition Pro Forma shall reflect that on a *pro-forma* basis (after giving effect to such Permitted Acquisition and all Loans funded in connection therewith as if made on the first day of such period) and the Acquisition Projections (as herein defined) shall reflect that no Event of Default has occurred and is continuing or would result after giving effect to such Permitted Acquisition and the Corporation and its Subsidiaries would have been in compliance with the Financial Covenants set forth in Article VIII for the period reflected in the Compliance Certificate

most recently delivered to Agent pursuant to 5.1(a) prior to the consummation of such Permitted Acquisition (after giving effect to such Permitted Acquisition and all Loans funded in connection therewith as if made on the first day of such period);

- (B) updated versions of the most recently delivered Projections covering the one (1) year period commencing on the date of such Permitted Acquisition and otherwise prepared in accordance with the Projections (the “**Acquisition Projections**”) and based upon historical financial data of a recent date reasonably satisfactory to Agent, taking into account such Permitted Acquisition; and
- (C) a certificate of the Chief Financial Officer of the Corporation to the effect that: (w) the Corporation and such Consolidated Party will be Solvent upon the consummation of the Permitted Acquisition; (x) the Acquisition Pro Forma fairly presents the financial condition of Corporation (on a consolidated basis) as of the date thereof after giving effect to the Permitted Acquisition; (y) the Acquisition Projections are reasonable estimates of the future financial performance of the Corporation (on a consolidated basis) subsequent to the date thereof based upon the historical performance of the Corporation and the Target and show that the Corporation shall continue to be in compliance with the Financial Covenants set forth in Article VIII for the 3-year period thereafter; and (z) such Consolidated Party has completed their due diligence investigation with respect to the Target and such Permitted Acquisition, which investigation was conducted in a manner similar to that which would have been conducted by a prudent purchaser of a comparable business and the results of which investigation were delivered to Agent and Lenders;
- (x) in connection with a Permitted Acquisition equal to or in excess of \$10,000,000, on or prior to the date of such Permitted Acquisition, Agent shall have received, in form and substance reasonably satisfactory to Agent, copies of the acquisition agreement and related agreements and instruments, and all opinions, certificates, lien search results and other documents reasonably requested by Agent, including those specified in the last sentence of Section 6.9;
- (xi) such Permitted Acquisition shall have been the subject of a Phase I Environmental Site Assessment and, if necessary, a Phase II Environmental Site Assessment, by an independent consultant selected by Agent, and the Consolidated Party shall have caused the performance of an internal environmental, health and safety audit of the business of the Consolidated Party, and the results of any such assessment and audit shall have been provided to Agent; and

- (xii) at the time of such Permitted Acquisition and after giving effect thereto, no Default or Event of Default has occurred and is continuing.

7.2 Reorganization. Any Credit Party that has provided Collateral Documents accepted by the Agent may, from time to time, amalgamate, merge or consolidate with another Credit Party, or transfer the stock or assets of any Target to another Credit Party or Subsidiary of a Credit Party, provided that in the case of any such amalgamation, merger, consolidation or transfer:

- (a) no Default or Event of Default shall have occurred and be continuing at the time of such amalgamation, merger, consolidation or transfer, and no Default or Event of Default will result from such amalgamation, merger, consolidation or transfer;
- (b) contemporaneously with or not less than three (3) Business Days following the consummation of such amalgamation, merger, consolidation or transfer, as the case may be, the resulting Person by way of such amalgamation, merger, consolidation or transfer, will have executed and/or delivered to the Agent such instruments and done such things as in the reasonable opinion of the Agent are necessary or advisable to establish that such Person will be a Credit Party, including:
 - (i) the successor entity is a Person formed under the laws of Canada or one of its provinces which will have assumed, whether by operation of law or by an acknowledgement or other writing in pursuance hereof, all the covenants and obligations of such Person's predecessor Credit Parties under the Loan Documents;
 - (ii) the Loan Documents of such successor Person, including to the extent required, any Collateral Documents or other Loan Documents (in substitution for such corresponding Collateral Documents and other Loan Documents to which such Persons' respective predecessors were parties), all of which shall be valid and binding obligations of the successor entity entitling the Lenders and the Agent, as against the successor entity, to exercise all their rights and benefits thereunder;
 - (iii) the Lien created by the Collateral Documents will continue to be a Lien against the property of the successor entity in substantially the same manner and to the same extent and priority as existed immediately prior to such Person's amalgamation, merger, consolidation or transfer, as the case may be;
 - (iv) the rights and benefits afforded or intended to be afforded the Lenders and the Agent under the Loan Documents are not materially prejudiced; and

- (v) legal opinions of counsel to such Person (as successor Credit Party) in form satisfactory to the Agent; and
- (c) no Material Adverse Effect could reasonably be expected to occur as a result of such amalgamation, merger, consolidation or transfer.

7.3 Investments; Loans and Advances

Except as otherwise expressly permitted by this Article VII, no Consolidated Party shall make or permit to exist any investment in, or make, accrue or permit to exist loans or advances of money to, any Person, through the direct or indirect lending of money, holding of securities or otherwise, except that: (a) the Credit Parties may hold investments comprised of notes payable, or stock or other securities issued by Account Debtors to Borrower pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices; (b) each Consolidated Party may make new investments, loans and advances to other Credit Parties; and (c) each Credit Party may maintain its existing investments as of the Closing Date and make new investments, loans and advances not otherwise permitted hereunder, provided that such new investments, loans and advances by a Credit Party do not exceed \$2,000,000 in the aggregate.

7.4 Indebtedness

- (a) No Consolidated Party shall create, incur, assume or permit to exist any Indebtedness, except (without duplication) (i) Indebtedness secured by purchase money security interests and Capital Leases permitted in Section 7.8, (ii) the Loans and the other Obligations, (iii) Indebtedness permitted in Sections 7.3(b) and 7.3(c), (iv) existing Indebtedness described in Disclosure Schedule 7.4 and refinancings thereof or amendments or modifications thereof that do not have the effect of increasing the principal amount thereof or changing the amortization thereof (other than to extend the same) and that are otherwise on terms and conditions no less favourable to any Consolidated Party, Agent or any Lender, as determined by Agent, than the terms of the Indebtedness being refinanced, amended or modified, (v) Indebtedness to any Credit Parties, (vi) Indebtedness specifically permitted under Section 7.1 and (vii) obligations of any Credit Party under any Secured Rate Contracts or Secured Rate Contract Support Documents entered into for the sole purpose of hedging in the normal course of business and consistent with industry practices.
- (b) No Consolidated Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness, other than (i) the Obligations; (ii) Indebtedness secured by a Permitted Encumbrance if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 7.9 (b) or (c); (iii) Indebtedness permitted by Section 7.4(a)(ii); (iv) Indebtedness

permitted by Section 7.4(a)(iii) upon any refinancing thereof in accordance with Section 7.4(a)(iii).

7.5 Employee Loans and Affiliate Transactions

- (a) No Consolidated Party shall enter into or be a party to any transaction with any other Credit Party or any Affiliate thereof except in the ordinary course of and pursuant to the reasonable requirements of such Consolidated Party's business and upon fair and reasonable terms that are no less favourable to such Consolidated Party than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of such Consolidated Party. In the aggregate, the terms of these transactions must be disclosed in advance to Agent and Lenders. All such transactions existing as of the date hereof are described in Disclosure Schedule 7.5(a).
- (b) No Consolidated Party shall enter into any lending or borrowing transaction with any employees of any Consolidated Party, except loans to its respective employees on an arm's length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of \$300,000 to any employee and up to a maximum of \$1,000,000 in the aggregate at any one time outstanding. All such transactions existing as of the date hereof are described in Disclosure Schedule 7.5(b).

7.6 Capital Structure and Business

If all or part of a Consolidated Party's Stock is pledged to Agent, that Consolidated Party shall not issue additional Stock. No Consolidated Party shall amend its constituting documents, by-laws, partnership agreement or operating agreement, as applicable, in a manner that would adversely affect Agent or Lenders or such Consolidated Party's duty or ability to repay the Obligations. No Consolidated Party shall engage in any business other than the businesses currently engaged in by it or businesses reasonably related thereto. No Consolidated Party shall amend its constituting documents to add provisions which require director consent only to the transfer of such Consolidated Party's shares or other equity securities.

7.7 Guaranteed Indebtedness

No Consolidated Party shall create, incur, assume or permit to exist any Guaranteed Indebtedness except (a) by endorsement of instruments or items of payment for deposit to the general account of any Credit Party, (b) for Guaranteed Indebtedness incurred for the benefit of any other Credit Party if the primary obligation is expressly permitted by this Agreement, (c) Employee Unit Plan Guarantees and (d) existing Guaranteed Indebtedness described in Disclosure Schedule 7.7.

7.8 Liens

No Consolidated Party shall create, incur, assume or permit to exist any Lien on or with respect to its Accounts or any of its other properties or assets (whether now owned or hereafter acquired) except for (a) Permitted Encumbrances; (b) Liens in existence on the date hereof and summarized on Disclosure Schedule 7.8 securing Indebtedness described on Disclosure Schedule 7.4 and permitted refinancings, extensions and renewals thereof, including extensions or renewals of any such Liens; (c) Liens in respect of existing and future operating leases of personal property so long as (i) annual payments and other obligations under such existing and future operating leases of personal property are equal to or less than \$15,000,000 in the aggregate, and (ii) such Liens attach only to the assets that are subject thereto; (d) Liens in respect of existing and future operating leases of real property; and (e) the Credit Parties' Capital Leases equal to or less than \$45,000,000. In addition, no Consolidated Party shall become a party to any agreement, note, indenture or instrument, or take any other action, that would prohibit the creation of a Lien on any of its properties or other assets in favour of Agent, on behalf of the Lenders of, as additional collateral for the Obligations, except operating leases, Capital Leases or Licenses which prohibit Liens upon the assets that are subject thereto.

7.9 Sale of Stock and Assets

No Consolidated Party shall sell, transfer, convey, assign or otherwise dispose of any of its properties or other assets, including the Stock of any of its Subsidiaries (whether in a public or a private offering or otherwise) or any of its Accounts, other than (a) the sale of Inventory in the ordinary course of business, and (b) the sale or other disposition by a Consolidated Party of Equipment, Fixtures or Real Estate that are obsolete or no longer used or useful in such Consolidated Party's business and having a Book Value, not exceeding \$5,000,000 in the aggregate in any Fiscal Year and (c) the sale or other disposition of other Equipment and Fixtures having a Book Value not exceeding \$2,500,000 in the aggregate in any Fiscal Year, without the prior written consent of the Lenders.

7.10 Pensions and Benefit Plans

- (a) No Consolidated Party shall permit its unfunded pension fund and other employee benefit plan obligations and liabilities to remain unfunded other than in accordance with applicable law.
- (b) No Consolidated Party shall, or shall cause or permit any ERISA Affiliate to, cause or permit to occur (i) an event that could result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA or (ii) an ERISA Event to the extent such ERISA Event would reasonably be expected to result in taxes, penalties and other liability in excess of \$250,000 in the aggregate.

7.11 Hazardous Materials

No Consolidated Party shall cause or permit a Release of any Hazardous Material on, at, in, under, above, to, from or about any of the Real Estate or maintain or operate the Assessed Equipment in contravention with Environmental Laws or in such a way that is likely to result in any Environmental Liabilities or investigation, claim, order, suit, action or proceedings regarding the breach of any Environmental Laws or the provisions of any Environmental Permits in excess of \$100,000 in the aggregate.

7.12 Sale Leasebacks

Except to the extent permitted within the limits set out in Section 7.8, no Consolidated Party may engage in any sale leaseback, synthetic lease or similar transaction involving any of its assets and in no circumstances will a Consolidated Party engage in any sale leasebacks, synthetic leases or similar transactions involving assets that form any part of the Borrowing Base except to the extent of any such assets acquired in the 120 days prior to such transaction and provided the Borrowing Base will remain in excess of the aggregate Loans.

7.13 Restricted Payments

No Consolidated Party shall make any Restricted Payment, except (a) intercompany loans and advances between the Credit Parties to the extent permitted by Section 7.4, (b) dividends and distributions by Subsidiaries of a Credit Party paid to a Credit Party, (c) employee loans permitted under Section 7.5(b), (d) scheduled payments of principal and interest on Subordinated Debt and (e) other Permitted Distributions provided, that (i) no Default or Event of Default has occurred and is continuing or would result after giving effect to any Restricted Payment otherwise permitted pursuant to the foregoing; (ii) such Permitted Distribution is within the limits under Section 8.6, and for purposes of any Permitted Distribution set out in (d) of the definition thereof, (iii) at the end of the preceding month, Funded Debt minus Subordinated Debt, both measured as of the last day of such preceding month, to EBITDA for the twelve months then ended is equal to or less than 2.50:1, and (iv) at the end of the preceding month, Funded Debt measured as of the last day of such preceding month, to EBITDA for the twelve months then ended is equal to or less than 3.00:1.

For purposes of the tests set out in Section 7.13(iii) and 7.13(iv) above, the tests need only be demonstrated monthly until quarterly financials and a Compliance Certificate are delivered in accordance with Section 5.1(a)(i) and these demonstrate compliance with such tests, following which such test need only be demonstrated quarterly. In order to evidence compliance with such tests set out in this Section 7.13, the Borrower must provide a monthly or quarterly (as applicable) Compliance Certificate and financials to evidence such compliance in each case in the form set out in Section 5.1(a)(i).

7.14 Change of Corporate Name or Location; Change of Fiscal Year

Subject to Section 7.2, no Credit Party shall (a) change its incorporated name, or if not a corporation, its name as it appears in official filings in the jurisdiction of its organization, (b) change its chief executive office, principal place of business, corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its jurisdiction of incorporation or organization, in each case without at least thirty (30) days prior written notice to Agent and after Agent's written acknowledgment that any reasonable action requested by Agent in connection therewith, including to continue the perfection of any Liens in favour of Agent, on behalf of the Lenders, in any Collateral, has been completed or taken, and provided, that with respect to paragraphs (b) and (d), any such new location shall be in Canada or the United States of America. Subject to Section 7.2, without limiting the foregoing, no Credit Party shall change its name, identity or corporate or organizational structure in any manner that might make any financing statement filed in connection herewith or any other Loan Document materially misleading within the meaning of the PPSA (or any comparable provision then in effect) except upon prior written notice to Agent and after Agent's written acknowledgement that any reasonable action requested by Agent in connection therewith, including to continue the perfection of any Liens in favour of Agent, on behalf of the Lenders, in any Collateral, has been completed or taken. No Credit Party shall change its Fiscal Year.

7.15 No Impairment of Intercompany Transfers

No Consolidated Party shall directly or indirectly enter into or become bound by any agreement, instrument, indenture or other obligation (other than this Agreement and the other Loan Documents) that could directly or indirectly restrict, prohibit or require the consent of any Person with respect to the payment of dividends or distributions or the making or repayment of intercompany loans by a Subsidiary of Borrower to Borrower.

ARTICLE VIII FINANCIAL COVENANTS

The Corporation shall not breach or fail to comply with any of the following financial covenants (the "**Financial Covenants**"), each of which shall be calculated in accordance with GAAP consistently applied:

8.1 Maximum Capital Expenditures

The total of all Unfinanced Capital Expenditures of the Corporation and its Subsidiaries on a consolidated basis during any Fiscal Year shall not exceed \$20,000,000 per such year.

8.2 Working Capital Ratio

The Corporation and its Subsidiaries, on a consolidated basis, shall have at the end of each Fiscal Quarter a Working Capital Ratio of not less than 1.25:1.

8.3 Fixed Charge Coverage Ratio

- (a) The Corporation and its Subsidiaries, on a consolidated basis, shall have at the end of each Fiscal Quarter, a Fixed Charge Coverage Ratio of equal to or greater than 1.5:1.
- (b) upon any proposed acquisition exceeding the Permitted Acquisition threshold and requiring Lender approval, the ratio referenced in (a) shall be adjusted on a proforma basis acceptable to the Requisite Lenders, acting reasonably.

8.4 Maximum Funded Senior Debt to EBITDA

- (a) The Corporation and its Subsidiaries, on a consolidated basis, shall maintain a ratio of, at the end of each Fiscal Quarter, Funded Debt minus Subordinated Debt, both measured as of the last day of each Fiscal Quarter, to EBITDA for the four Fiscal Quarters then ended equal to or less than 2.50:1.
- (b) upon any proposed acquisition exceeding the Permitted Acquisition threshold and requiring Lender approval, the ratio referenced in (a) shall be adjusted on a proforma basis acceptable to the Requisite Lenders, acting reasonably.

8.5 Funded Debt to EBITDA

- (a) The Corporation and its Subsidiaries, on a consolidated basis, shall maintain a ratio of, at the end of each Fiscal Quarter, Funded Debt measured as of the last day of each Fiscal Quarter, to EBITDA for the four Fiscal Quarters then ended equal to or less than 3.00:1.
- (b) upon any proposed acquisition exceeding the Permitted Acquisition threshold and requiring Lender approval, the ratio referenced in (a) shall be adjusted on a proforma basis acceptable to the Requisite Lenders, acting reasonably.

8.6 Maximum Distribution Payout

Except from one Credit Party to another, the Credit Parties, in the aggregate, shall not make Restricted Payments (excluding the aggregate of all payments and/or distributions made by the Credit Parties which are subsequently reinvested by the Credit Parties pursuant to the DRIP) during any rolling 12 month period in excess of 80% of Excess Cash Flow of the Corporation and its Subsidiaries on a consolidated basis.

8.7 Minimum Net Worth

The Corporation and its Subsidiaries on a consolidated basis shall at all times (tested at the end of each Fiscal Quarter) maintain a Net Worth of not less than the sum of (i) \$167,000,000 plus (ii) 20% of Excess Cash Flow measured on a cumulative basis beginning September 30, 2008 (without deduction for losses) and ending on the last day of such Fiscal Quarter.

8.8 Additional Information

Unless otherwise specifically provided herein, any accounting term used in the Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. That certain items or computations are explicitly modified by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. If any "Accounting Changes" (as defined below) occur and such changes result in a change in the calculation of the Financial Covenants, standards or terms used in the Agreement or any other Loan Document, then Borrower, Agent and Lenders agree to enter into negotiations in order to amend such provisions of the Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Corporation's and its Subsidiaries' financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made; provided, however, that the agreement of Requisite Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. "Accounting Changes" means (i) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Chartered Accountants (or successor thereto or any agency with similar functions), (ii) changes in accounting principles concurred in by the Corporation's independent chartered accountants; and (iii) the reversal of any reserves established as a result of purchase accounting adjustments. All such adjustments resulting from expenditures made subsequent to the Closing Date (including capitalization of costs and expenses or payment of pre-Closing Date liabilities) shall be treated as expenses in the period the expenditures are made and deducted as part of the calculation of EBITDA in such period. If Agent, Borrower and Requisite Lenders agree upon the required amendments (and all other Credit Parties shall be deemed to agree to such amendments so agreed to by Borrower), then after appropriate amendments have been executed and the underlying Accounting Change with respect thereto has been implemented, any reference to GAAP contained in the Agreement or in any other Loan Document shall, only to the extent of such Accounting Change, refer to GAAP, consistently applied after giving effect to the implementation of such Accounting Change. If Agent, Borrower and Requisite Lenders cannot agree upon the required amendments within thirty (30) days following the date of implementation of any Accounting Change, then all Financial Statements delivered and all calculations of Financial Covenants and other standards and terms in accordance with the Agreement and the other Loan Documents shall be prepared, delivered and made without regard to the underlying Accounting Change. For purposes of this Article VIII, a breach of

a

Financial Covenant contained in this Article VIII shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified measurement period, regardless of when the Financial Statements reflecting such breach are delivered to Agent.

ARTICLE IX TERM

9.1 Termination

The financing arrangements contemplated hereby shall be in effect until the final Maturity Date of a Term Loan or Term Loan B, whichever is later, and the Loans and all other Obligations shall be automatically due and payable in full on such date.

9.2 Survival of Obligations Upon Termination of Financing Arrangements

Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any financing arrangement under this Agreement shall in any way affect or impair the obligations, duties and liabilities of the Credit Parties or the rights of Agent and Lenders relating to any unpaid portion of the Loans or any other Obligations, due or not due, liquidated, contingent or unliquidated or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Loan Document, all undertakings, agreements, covenants, warranties and representations of or binding upon the Credit Parties, and all rights of Agent and the Lenders, all as contained in the Loan Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect until the Termination Date; provided, that the provisions of Article XIII, the payment obligations under Sections 1.14 and 1.15, and the indemnities contained in the Loan Documents shall survive the Termination Date.

ARTICLE X EVENTS OF DEFAULT; RIGHTS AND REMEDIES

10.1 Events of Default

The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “**Event of Default**” hereunder:

- (a) Borrower (i) fails to make any payment of principal of, or interest on, or Fees owing in respect of, the Loans or any of the other Obligations when due and payable, or (ii) fails to pay or reimburse any Lender for any expense reimbursable hereunder or under any other Loan Document within ten (10) days following Agent’s demand for such reimbursement or payment of expenses.

- (b) Any Consolidated Party fails or neglects to perform, keep or observe any of the provisions of Sections 1.6, 6.4(a), Article VII or Article VIII.
- (c) Borrower fails or neglects to perform, keep or observe any of the provisions of Section 5.1, and the same shall remain unremedied for three (3) Business Days or more.
- (d) Any Consolidated Party fails or neglects to perform, keep or observe any other provision of this Agreement or of any of the other Loan Documents (other than any provision embodied in or covered by any other clause of this Section 10.1) and the same shall remain unremedied for twenty (20) days or more.
- (e) A default or breach shall occur under any other agreement, document or instrument to which any Consolidated Party is a party that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness or Guaranteed Indebtedness (other than the Obligations) of any Credit Party in excess of \$500,000 in the aggregate (including (x) undrawn committed or available amounts and (y) amounts owing to all creditors under any combined or syndicated credit arrangements), or (ii) causes, or permits any holder of such Indebtedness or Guaranteed Indebtedness or an agent or a trustee therefor to cause, Indebtedness or Guaranteed Indebtedness or a portion thereof in excess of \$500,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or cash collateral to be demanded in respect thereof, in each case, regardless of whether such default is waived, or such right is exercised, by such holder, agent or trustee.
- (f) Any information contained in any Borrowing Base Certificate is untrue or incorrect in any respect in the aggregate in any Borrowing Base Certificate, or any representation or warranty herein or in any Loan Document or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate) made or delivered to Agent or any Lender by any Credit Party is untrue or incorrect in any material respect as of the date when made or deemed made.
- (g) Assets of any Credit Party are attached, seized, levied upon or subjected to execution, garnishment, distress or any other similar process, or come within the possession of any interim receiver, receiver, receiver and manager, trustee, custodian, liquidator, administrator, sequestrator, sheriff, bailiff or assignee for the benefit of creditors of any Credit Party and such condition continues for thirty (30) days or more.
- (h) Any involuntary case or proceeding (including the filing of any notice of intention in respect thereof) is commenced against any Credit Party under any Insolvency Law, any incorporation law or other applicable law in any jurisdiction in respect of the:

- (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations;
 - (i) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations;
 - (ii) appointment of a trustee, interim receiver, receiver, receiver and manager, liquidator, administrator, custodian, sequestrator, agent or other similar official for Borrower, or for all or a substantial part of the assets of Borrower; or
 - (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets, of such Credit Party and such case or proceeding shall remain undismitted or unstayed for 30 days or more or such court shall enter a decree or order granting the relief sought in such case or proceeding.
 - (iv) Any Credit Party (i) files a petition or application seeking relief under any Insolvency Law, (ii) commences or fails to contest in a timely and appropriate manner or consents to the institution of any proceeding referred to in Sections 10.1(h) or 10.1(g) above or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, interim receiver, receiver and manager, liquidator, assignee, trustee or sequestrator (or similar official) of any Credit Party or of all or any substantial part of any such Credit Party's assets, or (iii) makes an assignment for the benefit of creditors or (iv) takes action in furtherance of any of the foregoing or of any of the proceedings referred to in Sections 10.1(h) or 10.1(g), or (v) admits in writing its inability to, or is generally unable to, pay its debts as such debts become due or is otherwise insolvent.
- (j) A final judgment or judgments for the payment of money in excess of \$250,000 in the aggregate at any time is entered or rendered against one or more of the Credit Parties (which judgments are not covered by insurance policies as to which liability has been accepted by the insurance carrier), and the same are not, within thirty (30) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.
- (k) Any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Credit Party or other Person Party to a Loan Document shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased

to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Lien created under any Loan Document ceases to be a valid and perfected, or becomes a prohibited, first priority or ranking Lien (except as otherwise permitted herein or therein) in any of the Collateral purported to be covered thereby.

- (l) Any Change of Control occurs.
- (m) Any event occurs, whether or not insured or insurable, as a result of which revenue-producing activities cease or are substantially curtailed at any facility or location of the Corporation generating more than 25% of the Corporation's revenues for the Fiscal Year preceding such event and such cessation or curtailment continues for more than thirty (30) days.
- (n) Any Credit Party defaults in the observance or performance of any non-monetary obligation, covenant or condition to be observed or performed by it pursuant to any agreement to which it is a party, including the Material Documents, or by which any of its property is bound, where such default could reasonably be expected to have a Material Adverse Effect and such default continues for a period of 30 days after notice thereof is given to the Borrower by the Agent.

10.2 Remedies

- (a) If any Default or Event of Default shall have occurred and be continuing, Agent may, and shall upon the Requisite Lenders' direction, without notice, suspend the Revolving Loan facility with respect to additional Advances, whereupon any additional Advances shall be made or extended in each Lender's sole discretion so long as such Default or Event of Default is continuing. If any Default or Event of Default has occurred and is continuing, Agent may, and shall upon the Requisite Lenders' direction, without notice except as otherwise expressly provided herein, and subject to applicable statutory law, increase the rate of interest applicable to the Revolving Loan, any Term Loans and Term Loan B to the Default Rate.
- (b) If any Event of Default has occurred and is continuing, Agent may, and shall upon the Requisite Lenders' direction, without notice:
 - (i) terminate the Revolving Loan facility with respect to further Advances or the incurrence of further letter of credit obligations; (ii) reduce the Revolving Loan Commitment from time to time; (iii) declare all or any portion of the Obligations, including all or any portion of the Term Loan or Term Loan B to be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower and each other Credit Party; or (iv) exercise any rights and remedies provided to Agent under the Loan Documents or at law or equity, including all remedies provided under the PPSA and other applicable laws; provided, that upon the occurrence of an Event of Default specified in Section 10.1(h) or 10.1(i), the Commitments shall be immediately terminated and all of the Obligations, including the Revolving Loan, Term Loan or Term Loan B

(as applicable), shall become immediately due and payable without declaration, notice or demand by any Person.

- (c) If any Event of Default has occurred and is continuing, Borrower shall, upon request of Agent, ensure that the Assessed Equipment is:
 - (i) cleaned in accordance with prudent industry standards and all Environmental Laws and (ii) in marketable condition.

10.3 Waivers by Credit Parties

Except as otherwise provided for in this Agreement or by applicable law, each Credit Party waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents of title, instruments, chattel paper and guarantees at any time held by Agent on which any Credit Party may in any way be liable, and hereby ratifies and confirms whatever Agent may do in this regard, (b) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Agent to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshalling and exemption laws. All payments to be made by each Credit Party shall be made without set-off or counterclaim and without deduction of any kind.

ARTICLE XI ASSIGNMENT AND PARTICIPATIONS; APPOINTMENT OF AGENT

11.1 Assignment and Participations

- (a) Right to Assign. Each Lender may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans) to (i) any existing Lender, (ii) any Affiliate or Approved Fund of any existing Lender or (iii) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to Agent and, as long as no Event of Default is continuing, the Borrower; provided, however, that (x) such sales do not have to be ratable between the Loans but must be ratable among the Obligations owing to and owed by such Lender with respect to a Loan and (y) for each Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable assignment) of the Loans and Commitments subject to any such Sale shall be in a minimum amount of \$1,000,000, unless such sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in such Facility or is made with the prior consent of the Borrower and Agent.

- (b) Procedure. The parties to each sale made in reliance on clause 11.1(a) above (other than those described in clause 11.1(d) or 11.1(e) below) shall execute and deliver to Agent an assignment agreement (an “**Assignment Agreement**”) substantially in the form attached hereto as Exhibit 11.1(b) or such other form acceptable to the Agent, acting reasonably, evidencing such sale, together with any existing Note subject to such sale (or any affidavit of loss therefor acceptable to Agent) and payment of an assignment fee in the amount of \$3,500, provided that (1) if a sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such sale, and (2) if a sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in accordance with Section 11.1(a)(iii), upon Agent (and the Borrower, if applicable) consenting to such assignment, from and after the effective date specified in such Assignment Agreement the assignee will be a Lender hereunder.
- (c) Effectiveness. Subject to the recording of an Assignment Agreement by Agent, (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment Agreement, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).
- (d) Grant of Security Interests. In addition to the other rights provided in this Section 11.1, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender’s securities by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

- (e) Participants and SPVs. In addition to the other rights provided in this 11.1, each Lender may, (x) with notice to Agent, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from Agent or the Borrower, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents; provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Credit Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations, except that (A) each such participant and SPV shall be entitled to the benefit of Sections 1.15 (Capital Adequacy; Increased Costs; Illegality) and 1.14 (Taxes), but only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in Section 13.2(c)(ii) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in Section 13.2(c)(v). No party hereto shall institute (and the Borrower shall cause each other Credit Party not to institute) against any SPV grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to get reimbursed by such SPV for any such liability). The

agreement in the preceding sentence shall survive the termination of the Commitments and the payment in full of the Obligations.

11.2 Appointment of Agent

GE Canada is hereby appointed to act on behalf of all Lenders as Agent under this Agreement and the other Loan Documents. The provisions of this Section 11.2 are solely for the benefit of Agent and the Lenders and no Credit Party nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and the other Loan Documents, Agent shall act solely as an agent of the Lenders and does not assume, and shall not be deemed to have assumed, any obligation toward or relationship of agency or trust with or for any Credit Party or any other Person. Agent shall have no duties or responsibilities except for those expressly set forth in this Agreement and the other Loan Documents. The duties of Agent shall be mechanical and administrative in nature and Agent shall not have, or be deemed to have, by reason of this Agreement, any other Loan Document or otherwise a fiduciary relationship in respect of any other Lender. Except as expressly set forth in this Agreement and the other Loan Documents, Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to any Credit Party or any of their respective Subsidiaries or any Account Debtor that is communicated to or obtained by GE Canada or any of its Affiliates in any capacity. Neither Agent nor any of its Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Lender for any action taken or omitted to be taken by it hereunder or under any other Loan Document, or in connection herewith or therewith, except for damages caused by its or their own gross negligence or wilful misconduct.

If Agent shall request instructions from Requisite Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, then Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Requisite Lenders or all affected Lenders, as the case may be, and Agent shall not incur liability to any Person by reason of so refraining. Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Loan Document (a) if such action would, in the opinion of Agent, be contrary to law or the terms of this Agreement or any other Loan Document, (b) if such action would, in the opinion of Agent, expose Agent to Environmental Liabilities or (c) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of Requisite Lenders or all affected Lenders, as applicable.

11.3 Agent's Reliance, Etc.

Neither Agent nor any of its Affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for damages caused by its or their own gross negligence or wilful misconduct. Without limiting the generality of the foregoing, Agent: (a) may treat the payee of any Note as the holder thereof until Agent receives written notice of the assignment or transfer thereof signed by such payee and in form reasonably satisfactory to Agent; (b) may consult with legal counsel, accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (c) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (d) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Credit Party or to inspect the Collateral (including the books and records) of any Credit Party; (e) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (f) shall incur no liability under or in respect of this Agreement or the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

11.4 GE Canada and Affiliates

With respect to its Commitments hereunder, GE Canada shall have the same rights and powers under this Agreement and the other Loan Documents as any other Lender and may exercise the same as though it were not Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include GE Canada in its individual capacity. GE Canada and its Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Credit Party, any of their Affiliates and any Person who may do business with or own securities of any Credit Party or any such Affiliate, all as if GE Canada were not Agent and without any duty to account therefor to Lenders. GE Canada and its Affiliates may accept fees and other consideration from any Credit Party for services in connection with this Agreement or otherwise without having to account for the same to Lenders. Each Lender acknowledges the potential conflict of interest between GE Canada as a Lender holding disproportionate interests in the Loans and GE Canada as Agent.

11.5 Lender Credit Decision

Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender and based on the Financial Statements referred to in Section 4.4(a) and such other documents and information as it has deemed appropriate, made its own credit

and financial analysis of the Credit Parties and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon 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. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of Lenders holding disproportionate interests in the Loans, and expressly consents to, and waives any claim based upon, such conflict of interest.

11.6 Indemnification

Lenders agree to indemnify Agent (to the extent not reimbursed by Credit Parties and without limiting the obligations of any Credit Party hereunder), rateably according to their respective Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by Agent in connection therewith (including without limitation any Environmental Liabilities); provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross negligence or wilful misconduct. Without limiting the foregoing, each Lender agrees to reimburse Agent promptly upon demand for its rateable share of any out-of-pocket expenses (including reasonable legal costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Loan Document, to the extent that Agent is not reimbursed for such expenses by Credit Parties.

11.7 Successor Agent

Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to Lenders and Borrower. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or other entity whose business includes making commercial loans, in each case, organized under the laws of Canada or of any province thereof or named in Schedule III to the *Bank Act* (Canada) and has a combined capital and surplus of at least \$100,000,000. If no successor Agent has been appointed pursuant to the foregoing, within thirty (30) days after the date such notice of resignation was given by the resigning Agent, such resignation shall become effective and the Requisite Lenders shall thereafter perform all the duties of Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Agent as provided above. Any successor Agent

appointed by Requisite Lenders hereunder shall be subject to the approval of Borrower, such approval not to be unreasonably withheld or delayed; provided, that such approval shall not be required if a Default or an Event of Default has occurred and is continuing. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any appointment as Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents, except that any indemnity rights or other rights in favour of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Article XI shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as Agent under this Agreement and the other Loan Documents.

11.8 Setoff and Sharing of Payments

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, and subject to Section 11.9(f), each Lender is hereby authorized at any time or from time to time, without notice to any Credit Party or to any other Person other than Agent, any such notice being hereby expressly waived, to offset and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower or any Credit Party (regardless of whether such balances are then due to Borrower or any Credit Party) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of Borrower or any Credit Party against and on account of any of the Obligations that are not paid when due; provided that the Lender exercising such offset rights shall give notice thereof to the affected Credit Party promptly after exercising such rights. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares, (other than offset rights exercised by any Lender with respect to Section 1.15). Each Lender's obligation under this Section 11.8 shall be in addition to and not in limitation of its obligations to purchase a participation in an amount equal to its Pro Rata Share of the Revolving Loan under Section 1.3(g). Borrower and each other Credit Party agrees, to the fullest extent permitted by law, that (a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may sell participations in such amounts so offset to other Lenders and holders and (b) any Lender so purchasing a participation in the Loans made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Loans and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the

offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

11.9 Advances; Payments; Non-Funding Lenders; Information; Actions in Concert

- (a) Settlement Date. Not less than once during each calendar week or more frequently at Agent's election (each, a "**Settlement Date**"), Agent shall advise each Lender by telephone, or telecopy of the amount of such Lender's Pro Rata Share of principal, interest and Fees paid for the benefit of Lenders with respect to each applicable Loan. Provided that each Lender has funded all payments and Advances required to be made by it and purchased all participations required to be purchased by it under this Agreement and the other Loan Documents as of such Settlement Date, Agent shall pay to each Lender such Lender's Pro Rata Share of principal, interest and Fees paid by Borrower since the previous Settlement Date for the benefit of such Lender on the Loans held by it. To the extent that any Lender (a "**Non-Funding Lender**") has failed to fund all such payments and Advances or failed to fund the purchase of all such participations, Agent shall be entitled to set off the funding short fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower. Such payments shall be made by wire transfer to such Lender's account (as specified by such Lender in Annex B or the applicable Assignment Agreement) not later than 2:00 p.m. (Toronto time) on the next Business Day following each Settlement Date.
- (b) Availability of Lender's Pro Rata Share. Agent may assume that each Lender will make its Pro Rata Share of the Term Loan B Advance and each Revolving Credit Advance available to Agent on each funding date. If such Pro Rata Share is not, in fact, paid to Agent by such Lender when due, Agent will be entitled to recover such amount on demand from such Lender without setoff, counterclaim or deduction of any kind. If any Lender fails to pay the amount of its Pro Rata Share forthwith upon Agent's demand, Agent shall promptly notify Borrower and Borrower shall immediately repay such amount to Agent. Nothing in this Section 11.9(b) or elsewhere in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder. To the extent that Agent advances funds to Borrower on behalf of any Lender and is not reimbursed therefor on the same Business Day as such Revolving Credit Advance or Term Loan B Advance is made, Agent shall be entitled to retain for its account all interest accrued on such Revolving Credit Advance or Term Loan B Advance until reimbursed by the applicable Lender.

- (c) Return of Payments
- (i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.
 - (ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind.
- (d) Non-Funding Lenders. The failure of any Non-Funding Lender to make any Revolving Credit Advance or Term Loan B Advance or any payment required by it hereunder on the date specified therefor shall not relieve any other Lender (each such other Lender, an “**Other Lender**”) of its obligations to make such Revolving Credit Advance, Term Loan B Advance or other payment or purchase such participation on such date, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make a Revolving Credit Advance or Term Loan B Advance, purchase a participation or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender”, “Revolving Lender” or “Term Loan B Lender” (or be included in the calculation of “Requisite Lenders” hereunder) for any voting or consent rights under or with respect to any Loan Document. At Borrower’s request, Agent or a Person acceptable to Agent shall have the right, with Agent’s consent and in Agent’s sole discretion (but shall have no obligation), to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent’s request, sell and assign to Agent or such Person, all of the Commitments of that Non-Funding Lender for an amount equal to the principal balance of all Loans held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement.
- (e) Dissemination of Information. Agent shall use reasonable efforts to provide Lenders with (i) any notice of Default or Event of Default received by Agent from, or delivered by Agent to, any Credit Party, (ii) with notice of any Event of Default of which Agent has actually become aware, (iii) with notice of any action

taken by Agent following any Event of Default, and (iv) with any other documentation provided by any Credit Party to Agent in accordance with the terms of this Agreement; provided, that Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's gross negligence or wilful misconduct. Lenders acknowledge that Borrower is required to provide Financial Statements and Collateral Reports to Lenders in accordance with Section 5.1 and agree that Agent shall have no duty to provide the same to Lenders.

- (f) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with Agent and each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Notes (including exercising any rights of setoff) without first obtaining the prior written consent of Agent and Requisite Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the Notes shall be taken in concert and at the direction or with the consent of Agent or Requisite Lenders

11.10 Lead Arrangers, Co-Syndication Agents and Documentation Agent

Notwithstanding anything else to the contrary in any Loan Document, the Lead Arrangers, Co-Syndication Agents and Documentation Agent shall have no rights, obligations, duties or liabilities whatsoever in such capacity under any Loan Document.

ARTICLE XII SUCCESSORS AND ASSIGNS

12.1 Successors and Assigns

This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of each Credit Party, the Lenders and their respective successors and assigns (including, to the extent applicable in the case of any Credit Party, a debtor-in-possession on behalf of such Credit Party), except as otherwise provided herein or therein. No Credit Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Credit Party without the prior express written consent of Agent and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Credit Party, Agent and the Lenders with respect to the transactions contemplated hereby and no Person (other than a participant in the Loans being made available hereunder, as provided in Article XI) shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

**ARTICLE XIII
MISCELLANEOUS**

13.1 Complete Agreement; Modification of Agreement

The Loan Documents constitute the complete agreement between the parties with respect to the subject matter thereof and may not be modified, altered or amended except as set forth in Section 13.2. Any letter of interest, commitment letter, fee letter or confidentiality agreement, if any, between any Credit Party and any Lender or any of their respective Affiliates, predating this Agreement and relating to a financing of substantially similar form, purpose or effect shall be superseded by this Agreement. Notwithstanding the foregoing, the GE Fee Letter and any market flex provisions contained in the final commitment letter between Agent and Borrower shall survive the execution and delivery of this Agreement and shall continue to be binding obligations of the parties.

13.2 Amendments and Waivers

- (a) Except for actions expressly permitted to be taken by Agent, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or any consent to any departure by any Credit Party therefrom, shall in any event be effective unless the same shall be in writing and signed by Agent and Borrower, and by Requisite Lenders or all affected Lenders, as applicable. Except as set forth in clauses (b) and (c) below, all such amendments, modifications, terminations or waivers requiring the consent of any Lenders shall require the written consent of Requisite Lenders.
- (b) No amendment, modification, termination or waiver of or consent with respect to any provision of this Agreement that waives compliance with the conditions precedent set forth in Section 2.2 to the making of any Loan shall be effective unless the same shall be in writing and signed by Agent, Requisite Lenders and Borrower. Notwithstanding anything contained in this Agreement to the contrary, no waiver or consent with respect to any Default or any Event of Default shall be effective for purposes of the conditions precedent to the making of Loans set forth in Section 2.2 unless the same shall be in writing and signed by Agent, Requisite Lenders and Borrower.
- (c) No amendment, modification, termination or waiver shall, unless in writing and signed by Agent and each Lender directly affected thereby: (i) increase the principal amount of any Lender's Commitment (which action shall be deemed to directly affect all Lenders); (ii) reduce the principal of, rate of interest on or Fees payable with respect to any Loan of any affected Lender; (iii) extend any scheduled payment date (other than payment dates of mandatory prepayments under Section 1.4(d)) or final maturity date of the principal amount of the Term Loan or Term Loan B; (iv) waive, forgive, defer, extend or postpone any payment of interest or Fees as to any affected Lender; (v) release any Guarantee or, except

as otherwise permitted herein or in the other Loan Documents, release, or permit any Credit Party to sell or otherwise dispose of, any Collateral other than as permitted pursuant to Section 7.9 of this Agreement (which action shall be deemed to directly affect all Lenders); (vi) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that shall be required for Lenders or any of them to take any action hereunder; (vii) amend or waive this Section 13.2 or the definition of the term "Requisite Lender" insofar as such definition affects the substance of this Section 13.2; and (viii) extend the Revolving Period (except in accordance with Section 1.2(c)). Furthermore, no amendment, modification, termination or waiver affecting the rights or duties of Agent under this Agreement or any other Loan Document shall be effective unless in writing and signed by Agent, as the case may be, in addition to Lenders required hereinabove to take such action. No amendment, modification or waiver of this Agreement or any other Loan Document altering the ratable treatment of Obligations arising under Secured Rate Contracts resulting in such Obligations being junior in right of payment to principal on the Loans, or resulting in Obligations owing to any Secured Swap Provider becoming unsecured (other than releases of Liens permitted in accordance with the terms hereof), in each case in a manner adverse to any Secured Swap Provider, shall be effective without the written consent of such Secured Swap Provider, or, in the case of a Secured Rate Contract provided or arranged by GE Capital or an Affiliate of GE Capital, GE Capital. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination or waiver shall be required for Agent to take additional Collateral pursuant to any Loan Document. No notice to or demand on any Credit Party in any case shall entitle such Credit Party or any other Credit Party to any other or further notice or demand in similar or other circumstances.

- (d) If, in connection with any proposed amendment, modification, waiver or termination (a "**Proposed Change**") requiring the consent of all affected Lenders and the consent of Requisite Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (a "**Non-Consenting Lender**"), then, so long as Agent is not a Non-Consenting Lender, at Borrower's request, Agent, or a Person reasonably acceptable to Agent, shall have the right, with Agent's consent and in Agent's sole discretion (but shall have no obligation), to purchase from such Non-Consenting Lenders, and such Non-Consenting Lenders agree that they shall, upon Agent's request, sell and assign to Agent or such Person, all of the Commitments of such Non-Consenting Lenders for an amount equal to the principal balance of all Loans held by the Non-Consenting Lenders and all accrued interest and Fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement.

- (e) Upon the indefeasible payment in full in cash and performance of all of the Obligations (other than indemnification Obligations), termination of the Commitments and a release of all claims against Agent and Lenders, and so long as no suits, actions proceedings, or claims are pending or threatened against any Indemnified Person asserting any damages, losses or liabilities that are Indemnified Liabilities, Agent shall deliver to Borrower financing change statements, mortgage releases and other documents or instruments necessary or appropriate to evidence the termination of the Liens securing payment of the Obligations.

13.3 Fees and Expenses

Borrower shall reimburse (i) Agent for all fees, costs and expenses (including the reasonable fees and expenses of all of its legal counsel, advisors, consultants and auditors) and (ii) Agent (and, with respect to clauses (c) through (d) below, all Lenders) for all fees, costs and expenses, including the reasonable fees, costs and expenses of legal counsel or other advisors (including environmental and management consultants and appraisers) incurred in connection with the negotiation, preparation and filing and/or recordation of the Loan Documents and incurred in connection with:

- (a) any amendment, modification or waiver of, or consent with respect to, or termination of, any of the Loan Documents or advice in connection with administration of the Loans made pursuant hereto or its rights hereunder or thereunder;
- (b) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Agent, any Lender, any Credit Party or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against any or all of the Credit Parties or any other Person that may be obligated to the Lenders by virtue of the Loan Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loans during the pendency of one or more Events of Default; provided that in the case of reimbursement of counsel for Lenders other than Agent, such reimbursement shall be limited to one counsel for all such Lenders; provided, further, that no Person shall be entitled to reimbursement under this clause (b) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or wilful misconduct;
- (c) any attempt to enforce any remedies of Agent or any Lender against any or all of the Credit Parties or any other Person that may be obligated to Agent or any Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the

Loans during the pendency of one or more Events of Default; provided, that in the case of reimbursement of counsel for Lenders other than Agent, such reimbursement shall be limited to one counsel for all such Lenders;

- (d) any work-out or restructuring of the Loans during the pendency of one or more Events of Default; and
- (e) efforts to (i) monitor the Loans or any of the other Obligations, (ii) evaluate, observe or assess any of the Credit Parties or their respective affairs, and (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral;

including, as to each of clauses (a) through (e) above, all reasonable legal counsels' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such legal counsel and others in any way or respect arising in connection with or relating to any of the events or actions described in this Section 13.3, all of which shall be payable, on demand, by Borrower to Agent. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

Notwithstanding the foregoing, the Lender acknowledges that no payment of fees pursuant to this Section 13.3 shall by itself constitute agreement by the Borrower that such fees (at the time of payment) are properly reimbursable pursuant to this Agreement.

13.4 No Waiver

Agents or a Lender's failure, at any time or times, to require strict performance by the Credit Parties of any provision of this Agreement or any other Loan Document shall not waive, affect or diminish any right of Agent or such Lender thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Subject to the provisions of Section 13.2, none of the undertakings, agreements, warranties, covenants and representations of any Credit Party contained in this Agreement or any of the other Loan Documents and no Default or Event of Default by any Credit Party shall be deemed to have been suspended or waived by Agent or any Lender, unless such waiver or suspension is by an instrument in writing signed by an officer of or other authorized employee of Agent and the applicable required Lenders and directed to Borrower specifying such suspension or waiver.

13.5 Remedies

The rights and remedies available to Agent and the Lenders under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that Agent or any Lender may have under any other agreement, including the other Loan Documents, by operation of law or otherwise. Recourse to the Collateral shall not be required.

13.6 Severability

Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any other Loan Document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or such other Loan Document.

13.7 Conflict of Terms

Except as otherwise provided in this Agreement or any of the other Loan Documents by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement conflicts with any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control.

13.8 Confidentiality

Agent and the Lenders agree to use commercially reasonable efforts (equivalent to the efforts Agent or Lenders applies to maintain the confidentiality of their own confidential information) to maintain as confidential all confidential information provided to them by the Credit Parties and designated as confidential until the date that all obligations under this agreement have been paid or satisfied in full, plus a period of two (2) years (the “**Confidentiality Termination Date**”). On the Confidentiality Termination Date the Agent and the Lenders agree to either destroy all confidential information provided to them or return it to the applicable Credit Party.

Notwithstanding the foregoing, Agent and each Lender may retain or disclose such information to the extent that (a) disclosure is made to Persons employed or engaged by Agent or such Lender; (b) disclosure is made to any *bona fide* assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 13.8 (and any such *bona fide* assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) disclosure or retention is required or requested by any Governmental Authority or reasonably believed Agent or such Lender to be compelled by any court order, subpoena or legal or administrative order or process; (d) disclosure or retention is required by law; (e) disclosure or retention is required, in the Agent or such Lender’s sole discretion, in connection with the exercise of any right or remedy under the Loan Documents or in connection with any Litigation to which Agent or such Lender is a

party; or (f) the confidential information ceases to be confidential through no fault of Lender.

13.9 Governing Law

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE LOAN DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ALBERTA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT PROVINCE AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN. EACH CREDIT PARTY HEREBY CONSENTS AND AGREES THAT THE COURTS OF THE PROVINCE OF ALBERTA SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE CREDIT PARTIES, AGENT AND LENDERS PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER. EACH CREDIT PARTY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH CREDIT PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH CREDIT PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH CREDIT PARTY HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) ADDRESSED TO SUCH CREDIT PARTY AT THE ADDRESS SET FORTH IN Annex C OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH CREDIT PARTY'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT WITH CANADA POST, PROPER POSTAGE PREPAID.

13.10 Notices

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to

this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three (3) Business Days after deposit with Canada Post, registered mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or with Canada Post as otherwise provided in this Section 13.10); (c) upon receipt, when sent by electronic mail (with such electronic mail promptly confirmed by delivery of a copy by personal delivery or Canada Post as otherwise provided in this Section 13.10 and such notice, demand, request, consent, approval, declaration or other communication shall be in "pdf" format and shall include the actual signature of the party sending such communication if that signature would be required or customary if the communication was delivered by facsimile; (d) one (1) Business Day after deposit with a reputable courier for overnight delivery with all charges prepaid or (e) when delivered, if hand delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated on Annex C or to such other address (or facsimile number) as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than Borrower or Agent) designated in Annex C to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

13.11 Section Titles

The Section titles and table of contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

13.12 Counterparts

This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one agreement.

13.13 Press Releases and Related Matters

Each Credit Party agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of any Lender or their affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the affected Lenders and without the prior written consent of such Lenders unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult with such Lenders before issuing such press release or other public disclosure. Each Credit Party consents to the publication by Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using its

name, product photographs, logo or trademark. Agent or such Lender shall provide a draft of any advertising material to Borrower for review and comment prior to the publication thereof. Agent and each Lender reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

13.14 Reinstatement

This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

13.15 Advice of Counsel

Each of the parties represents to each other party hereto that it has discussed this Agreement and, specifically, the provisions of Section 13.9, with its counsel.

13.16 No Strict Construction

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

13.17 Judgment Currency

- (a) If, for the purpose of obtaining or enforcing judgment against any Credit Party in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 13.17 referred to as the "**Judgment Currency**") an amount due under any Loan Document in any currency (the "**Obligation Currency**") other than the Judgment Currency, the conversion shall be made at the Rate of Exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Alberta or in the courts of any other jurisdiction that will give effect to such conversion being made on such

date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 13.17 being hereinafter in this Section 13.17 referred to as the “**Judgment Conversion Date**”).

- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 13.17(a), there is a change in the Rate of Exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Credit Party or Parties shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the Rate of Exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the Rate of Exchange prevailing on the Judgment Conversion Date. Any amount due from any Credit Party under this Section 13.17(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.
- (c) The term “**Rate of Exchange**” in this Section 13.17 means the spot rate of exchange published by the Bank of Canada on the relevant date at or about 12:00 noon (Toronto time).
- (d) Unless otherwise specified, all references to dollar amounts in this Agreement shall mean Canadian Dollars.

13.18 Joint and Several Obligations

Notwithstanding any other provision contained in this Agreement or any other Loan Document, if a “secured creditor” (as that term is defined under the *Bankruptcy and Insolvency Act* (Canada)) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then Borrower’s Obligations (and the Obligations of the Corporation and its Subsidiaries), to the extent such Obligations are secured, only shall be several obligations and not joint or joint and several obligations.

13.19 Liability of Limited Partners

It is hereby acknowledged by all parties hereto that all of the parties to this Agreement that are limited partnerships, are limited partnerships formed under the *Partnership Act* (Alberta), a limited partner (if not a general partner) of which is only liable for any of its liabilities or any of its losses to the extent of the amount that he or she has contributed or agreed to contribute to its capital and his or her pro rata share of any undistributed income.

*** THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY ***

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

EVEREADY ENERGY SERVICES CORP., as Borrower

(signed) "Jason Vandenberg"

By: _____

Name: Jason Vandenberg

Title: Chief Financial Officer

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

GE CANADA ASSET FINANCING HOLDING COMPANY, as Agent

(signed) "Ron Tratch"

By: _____
Name: Ron Tratch
Title: SVP Risk, Canada

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

GE CANADA ASSET FINANCING HOLDING COMPANY, as Lender

(signed) "Ron Tratch"

By: _____

Name: Ron Tratch

Title: SVP Risk, Canada

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with Section 12.2(3) of National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement.

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with Section 12.2(3) of National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement.

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with Section 12.2(3) of National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement.

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with Section 12.2(3) of National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement.

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with Section 12.2(3) of National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement.

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with Section 12.2(3) of National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement.

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

EVEREADY INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

JL FILTRATION OPERATING LIMITED PARTNERSHIP, by its General Partner, JL FILTRATION INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY OPERATING LIMITED PARTNERSHIP, by its General Partner, RIVER VALLEY ENERGY SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY ENERGY SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS LIMITED PARTNERSHIP, by its General Partner, EVEREADY HOLDINGS GP LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY OPERATING LIMITED PARTNERSHIP, by its General Partner EVEREADY ENERGY SERVICES CORP.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

EVEREADY INDUSTRIAL WESTERN LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

JL FILTRATION INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY ENERGY SERVICES, INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CANADA-WIDE OILFIELD SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

1225979 ALBERTA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

MOBILE INDUSTRIAL HEALTH SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

TRI-VAX ENTERPRISES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

WINTERHAWK ENTERPRISES (PROVOST) LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**ACQUISITION LIMITED PARTNERSHIP, by its General Partner,
1202867 ALBERTA LTD.**

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

1233460 ALBERTA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

1240609 ALBERTA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

1257427 ALBERTA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CANADA-WIDE OPERATING LIMITED PARTNERSHIP, by its General Partner, CANADA-WIDE OILFIELD SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT TECH OPERATING LIMITED PARTNERSHIP, by its General Partner, CAT TECH CANADA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT TECH, LLC

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

1202867 ALBERTA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

1206894 ALBERTA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY DIRECTIONAL BORING LIMITED PARTNERSHIP, by its General Partner, EVEREADY DIRECTIONAL BORING LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

ASTEC SAFETY SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

DIVERSIFIED PRESSURE SERVICES LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

CAT TECH CANADA LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

BULLSEYE BORING LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS GP LTD.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS (USA) INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY ENERGY SERVICES INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

SAFETY WATCH, LLC

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

GREAT LAKES CARBON TREATMENT, INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

AIRBORNE IMAGING INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

BREATHING SYSTEMS INTERNATIONAL, LLC

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

RODRIGUE'S DIRECTIONAL DRILLING PROJECTS INC.

By: (signed) "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

**WINTERHAWK OPERATING LIMITED PARTNERSHIP, by its
General Partner, WINTERHAWK ENTERPRISES (PROVOST) LTD.**

By: _____
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY INCOME TRUST by its Trustees

By: _____
Name: Jason Vandenberg
Title: Chief Financial Officer

DENMAN INDUSTRIAL OPERATING LP

By: _____
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY DIRECTIONAL BORING LTD.

By: _____
Name: Jason Vandenberg
Title: Chief Financial Officer

**EVEREADY INCOME FUND, by its Administrator, EVEREADY
HOLDINGS GP LTD.**

By: _____
Name: Jason Vandenberg
Title: Chief Financial Officer

DENMAN INDUSTRIAL TRAILERS LTD.

By: _____
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amended and Restated Credit Agreement dated December 31, 2008.

**Annex A
(Recitals)**

to

CREDIT AGREEMENT

DEFINITIONS

Capitalized terms used in the Loan Documents shall have (unless otherwise provided elsewhere in the Loan Documents) the following respective meanings and all references to Sections, Exhibits, Schedules or Annexes in the following definitions shall refer to Sections, Exhibits, Schedules or Annexes of or to the Agreement:

“**Account Debtor**” means any Person who may become obligated to any Credit Party under, with respect to, or on account of, an Account.

“**Accounting Changes**” has the meaning ascribed thereto in Section 8.8.

“**Accounts**” means each and every “account,” as such term is defined in the PPSA, now owned or hereafter acquired by any Credit Party, including (a) all accounts receivable, other receivables, book debts, claims and other forms of obligations (other than obligations evidenced by chattel paper, securities or Instruments) now owned or hereafter received or acquired by or belonging or owing to Borrower, whether arising out of goods sold or services rendered by it or from any other transaction (including any such obligations which may be characterized as an account or contract right under the PPSA), (b) all of each Credit Party’s rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, (c) all of each Credit Party’s rights to any goods represented by any of the foregoing (including unpaid sellers’ rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due or to become due to any Credit Party for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Credit Party or in connection with any other transaction (whether or not yet earned by performance on the part of such Credit Party), and (e) all collateral security and guarantees of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

“**Acknowledgements**” means the acknowledgements of the Collateral Documents presently held by the Agent in favour of the Lenders entered into between the Lender and the Credit Party that is a signatory thereto.

“**Acquisition Pro Forma**” has the meaning ascribed to it in Section 7.1(a)(ix)(A).

“**Acquisition Projections**” has the meaning ascribed to it in Section 7.1(a)(ix)(B).

“**Advance**” means any Revolving Credit Advance or Term Loan B Advance.

“**Affected Lender**” has the meaning ascribed to it in Section 1.15(c).

“**Affiliate**” means, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, 10% or more of the Stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, (c) each of such Person’s officers, directors, joint venturers, partners and trustees and (d) in the case of Borrower, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of Borrower. For the purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; provided, however, that the term “Affiliate” shall specifically exclude Lender.

“**Agent**” has the meaning ascribed thereto in the preamble to the Agreement.

“**Agreement**” means this Credit Agreement among Borrower, the other Credit Parties party thereto, and GE Canada, as Agent and Lender, and the other Lenders from time to time party thereto, as the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Appendices**” has the meaning ascribed thereto in the recitals to the Agreement.

“**Applicable Percentage**” has the meaning ascribed to it in Section 1.8(c).

“**Approved Fund**” means, with respect to any Lender, any Person (other than a natural person) that (a) 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 and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender, or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

“**Articles**” means, as applicable, the Articles of Incorporation, Articles of Amalgamation or Articles of Continuance of a Credit Party, as the same may be amended, restated, supplemented or replaced from time to time as permitted hereunder.

“**Assessed Equipment**” means the equipment listed in Annex E hereto.

“**Asset Sale Offer**” has the meaning ascribed to it in Section 1.5(c)(iii).

“**Assignment Agreement**” has the meaning ascribed to it in Section 11.1(b).

“**BA Advance**” means an Advance comprised of one or more Bankers’ Acceptances or, as applicable, BA Equivalent Loans.

“**BA Equivalent Loan**” means, in relation to an Advance of, Conversion into or continuation of a Bankers’ Acceptance, an Advance in Cdn.\$ made by a Non-BA Lender as part of such Loan.

“**BA Period**” means with respect to any Loan a period of 1, 2 or 3 months.

“**BA Margin**” means the applicable rate of interest set forth under the heading “BA Margin” in the table in Section 1.7(a).

“**BA Rate**” means, on any day, the annual rate of interest equal to and identified as the average discount rate (rounded upwards, if necessary, to the nearest 0.01%) of 1, 2 or 3 month Canadian dollar bankers’ acceptances as displayed on the “Reuters Screen CDOR Page” as at approximately 10:00 a.m. (Toronto time) on the next to last Wednesday (or, if such Wednesday is not a Business Day, the preceding Business Day) of the preceding calendar month; provided, however, that if such rate does not appear on the Reuters Screen CDOR Page as contemplated, then the “BA Rate” shall be, on any day, the annual rate of interest equal to the Bank of Canada composite mid-morning bid discount rate of one-month Canadian dollar bankers’ acceptances as in effect on the next to last Wednesday (or, if such Wednesday is not a Business Day, the preceding Business Day) of the preceding calendar month and displayed in the Bank of Canada Weekly Financial Statistics.

“**Bank Rate**” means, at any date, the annual rate of interest at which the Bank of Canada is prepared to make advances, as effective on such date, and as made public in accordance with Section 21 of the *Bank of Canada Act* (Canada).

“**BA Stamping Fee**” has the meaning ascribed thereto in Section 1.7(a)(ii).

“**Bankers’ Acceptance**” and “**BA**” mean an instrument denominated in Canadian Dollars, drawn by the Borrower and accepted by a Lender in accordance with this Agreement, and includes a “depository note” within the meaning of the *Depository Bills and Notes Act* (Canada) and a bill of exchange within the meaning of the *Bills of Exchange Act* (Canada).

“**Book Value**” means, with respect to any asset, the cost of such asset net of accumulated amortization with respect thereto, in each case as at such time of determination and calculated in accordance with GAAP.

“**Borrower**” has the meaning ascribed thereto in the preamble to the Agreement.

“**Borrowing Availability**” means, as of any date of determination, the lesser of (i) the Revolving Loan Commitment less the amount of the Revolving Loan then outstanding and (ii) the Borrowing Base less the sum of the Revolving Loan then outstanding, the Term Loan then outstanding and Term Loan B then outstanding.

“**Borrowing Base**” means, as of any date of determination by Agent, from time to time, an amount equal to:

- (b) up to seventy-five percent (75%) of the Corporation and its Subsidiaries’ eligible accounts receivable, plus up to sixty percent (60%) of the Corporation and its

Subsidiaries' eligible U.S. domiciled accounts receivable, plus up to ninety percent (90%) of the Corporation and its Subsidiaries' eligible EDC insured amount of any accounts receivable;

- (c) the amount of the Corporation and its Subsidiaries' eligible Inventory, up to the lesser of: (i) fifty percent (50%) of its cost (FIFO) or (ii) fifty percent (50%) of its market value, and, Inventory shall not account for more than 20% of the total Borrowing Base margin; and
- (d) on quarterly determinations, up to seventy-five percent (75%) of the orderly liquidation value of the eligible appraised Equipment, plus on monthly determinations that are not at a quarter end, sixty-five percent (65%) of Book Value, of any Equipment purchased less seventy-five percent (75%) of the previously appraised orderly liquidation value of any Equipment sold in each case since the last quarterly determination.

"Borrowing Base Certificate" means a certificate to be executed and delivered from time to time by Borrower in the form attached to the Agreement as Exhibit 5.1(b).

"Borrowing Base Excess Offer" has the meaning ascribed to it in Section 1.5(c)(ii) of the Agreement.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the City of Toronto.

"Canadian Benefit Plans" means any plan, fund, program, or policy, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, providing material employee benefits, including medical, hospital care, dental, sickness, accident, disability, life insurance, pension, retirement or savings benefits, under which the Borrower has any liability with respect to any employee or former employee, but excluding any Canadian Pension Plans.

"Canadian Dollars" **"Dollars"**, **"Cdn\$"** or **\$** shall mean the lawful currency of Canada.

"Canadian Pension Plans" means each pension plan required to be registered under Canadian federal or provincial law that is maintained or contributed to by a Credit Party for its employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Québec, respectively.

"Canadian Prime Rate" means, for any day, the rate of interest per annum established from time to time by a Schedule I Lender selected by the Agent as the reference rate of interest for the determination of interest rates that such Schedule I Lender posts as its "Prime Rate of Interest" in Canada for Canadian Dollar demand loans in Canada to its most creditworthy customers; provided that if at such time there are no Schedule I Lenders available to be selected by the Agent then the Agent shall select any other Canadian chartered bank listed on Schedule I to the *Bank Act* (Canada) for the purposes of this provision.

“**Canadian Prime Rate Loans**” means any Revolving Credit Advance bearing interest at a rate based on the Canadian Prime Rate.

“**Capital Expenditures**” means, with respect to any Person, all expenditures (by the expenditure of cash or the incurrence of Indebtedness) by such Person during any measuring period for any fixed assets or improvements or for replacements, substitutions or additions thereto, that have a useful life of more than one year and that are required to be capitalized under GAAP.

“**Capital Lease**” means, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, would be required to be classified and accounted for as a capital lease on a balance sheet of such Person.

“**Capital Lease Obligation**” means, with respect to any Capital Lease of any Person, the amount of the obligation of the lessee thereunder that, in accordance with GAAP, would appear on a balance sheet of such lessee in respect of such Capital Lease.

“**Cash Equivalents**” means cash or investments in (A) marketable direct obligations issued or unconditionally guaranteed by Canada, any agency thereof, the United States of America or any agency thereof maturing within one year from the date of acquisition thereof, (B) commercial paper maturing no more than one year from the date of creation thereof and currently having the highest rating obtainable from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (C) certificates of deposit, maturing no more than one year from the date of creation thereof, issued by commercial banks incorporated under the laws of Canada or the United States of America or a State thereof, each having combined capital, surplus and undivided profits of not less than US\$300,000,000 and having a senior unsecured rating of “A” or better by a nationally recognized rating agency (an “**A Rated Bank**”), (D) time deposits, maturing no more than 30 days from the date of creation thereof with A Rated Banks and (E) mutual funds that invest solely in one or more of the investments described in clauses (A) through (D) above.

“**CDOR Rate**” means the arithmetic average of the yields to maturity for bankers’ acceptances quoted on the Reuter’s Canadian Deposit Offered Rate screen, at 10:00 a.m. (Toronto, Ontario time) on the applicable date on which an Advance shall take place, for bankers’ acceptances having a term the same as the term requested for each Bankers’ Acceptance issued pursuant to the applicable Advance.

“**CDS**” has the meaning ascribed to it in Section 3.2(d).

“**Change of Control**” means if, after the Closing Date, any Person, (a) other than another Credit Party, acquires, directly or indirectly, alone or in concert with other Persons, over a period of time or at any one time, capital stock of a Credit Party aggregating in excess of 30% of all of the then issued and outstanding capital stock of a Credit Party, or (b) acquires, directly or indirectly, alone or in concert with other Persons, over a period of time or at any one time, trust units of a trust aggregating in excess of 30% of all of the then issued and outstanding capital stock of a Credit Party.

“**Charges**” means all Taxes assessed, levied or imposed against a Credit Party or upon or relating to (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts or capital of a Credit Party, (d) any Credit Party’s ownership or use of any properties or other assets, or (e) any other aspect of any Credit Party’s business.

“**Chattel Paper**” means any “chattel paper,” as such term is defined in the PPSA, now owned or hereafter acquired by any Credit Party, wherever located.

“**Closing Date**” means December 31, 2008.

“**Collateral**” means the property covered by the Security Agreement, and the other Collateral Documents and any other personal property now existing or hereafter acquired, that may at any time be or become subject to a security interest or other Lien in favour of Agent, on behalf of the Lenders, to secure the Obligations.

“**Collateral Documents**” means the Security Agreement and related acknowledgements of security, the Acknowledgements, the Pledge Agreements, the Guarantees, and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations.

“**Collateral Reports**” means the reports with respect to the Collateral referred to in Section 5.1(b).

“**Collection Accounts**” shall mean Agent’s Canadian Dollar account number 09-716-29 in the name of Agent at National Bank of Canada, Main 600, de la Gauchetière West, Montréal, Québec, H3B 2B2, or such other account(s) as may be specified in writing by Agent as the “Collection Accounts.”

“**Commitment Termination Date**” means the date of termination of the Lenders obligation to make Revolving Credit Advances as determined from time to time in accordance with Section 1.2(c).

“**Commitments**” means as to any Lender, the aggregate of such Lender’s Individual Revolving Loan Commitment and Individual Term Loan B Commitment Amount, as such Commitments are set forth in Annex D to the Agreement and as such Commitments may be reduced, amortized or adjusted from time to time in accordance with the Agreement.

“**Compliance Certificate**” has the meaning ascribed to it in Section 5.1(a).

“**Confidentiality Termination Date**” has the meaning ascribed to it in Section 13.8.

“**Consolidated Net Income**” means, with respect to any Person for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net

income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or one of its Subsidiaries.

“**Consolidated Party**” means the Credit Parties and the Excluded Subsidiaries.

“**Contract Period**” means, with respect to a Bankers’ Acceptance, the number of days in the term of such Bankers’ Acceptance.

“**Contracts**” means all contracts, undertakings, or agreements (other than rights evidenced by chattel paper, securities or Instruments) in or under which Borrower may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account.

“**Conversion**” means in relation to an Advance, a conversion of an Advance into another type of Advance made pursuant to the Agreement.

“**Copyright License**” means any and all rights now owned or hereafter acquired by any Credit Party under any written agreement granting any right to use any Copyright or Copyright registration.

“**Copyrights**” means all of the following now owned or hereafter adopted or acquired by any Credit Party: (a) all copyrights and intangibles of like nature (whether registered or unregistered) now owned or existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the Canadian Copyright Office or in any similar office or agency in any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof.

“**Corporation**” means Eveready Inc.

“**Co-Syndication Agents**” means Bank of Montreal and Canadian Imperial Bank of Commerce.

“**CRA**” means the Canada Revenue Agency.

“**Credit Parties**” means the Corporation, Borrower, and each of their respective Subsidiaries, except for the Excluded Subsidiaries.

“**Current Assets**” means, with respect to any Person, all current assets of such Person as of any date of determination calculated in accordance with GAAP, but excluding cash, Cash Equivalents and debts due from Affiliates.

“**Current Liabilities**” means, with respect to any Person, all liabilities that should, in accordance with GAAP, be classified as current liabilities, and in any event shall include all Indebtedness payable on demand or within one year from any date of determination without any option on the part of the obligor to extend or renew beyond such year, all accruals for federal, provincial or

other taxes based on or measured by income and payable within such year, but excluding the current portion of long-term debt required to be paid within one year and the outstanding principal balance of the Revolving Loan.

“**DBNA**” has the meaning ascribed to it in Section 3.2(d).

“**Default**” means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

“**Default Rate**” has the meaning ascribed to it in Section 1.7(d).

“**Designs**” means all of the following now owned or hereafter acquired by any Credit Party: (a) all industrial designs and intangibles of like nature (whether registered or unregistered), now owned or existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the Canadian Industrial Design Office or in any similar office or agency in any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof.

“**Design Licence**” means rights under any written agreement now owned or hereafter acquired by any Credit Party granting any right to use any Design.

“**Disclosure Schedules**” means the Schedules prepared by Borrower and denominated as Disclosure Schedules 4.1 through 7.8 in the Index to the Agreement.

“**Discount Proceeds**” means, for any BA (or, as applicable, any BA Equivalent Loan), an amount (rounded to the nearest whole cent, and with one half of one cent being rounded up) calculated on the applicable date of Borrowing by multiplying:

- (a) the face amount of the BA (or, as applicable, the undiscounted amount of the BA Equivalent Loan); by
- (b) the quotient of one divided by the sum of one plus the product of:
 - (i) the Discount Rate (expressed as a decimal) applicable to such BA (or as applicable, such BA Equivalent Loan), multiplied by
 - (ii) a fraction, the numerator of which is the Contract Period of the BA (or, as applicable, the BA Equivalent Loan) and the denominator of which is 365,

with such quotient being rounded up or down to the nearest fifth decimal place, and with .000005 being rounded up.

“**Discount Rate**” means, with respect to either a BA for a particular BA Period being purchased by a Lender on any day or a BA Equivalent Loan being made by a Lender on any day, (i) for any Lender which is a Schedule I chartered bank under the *Bank Act* (Canada), the CDOR Rate on such day for such Contract Period; and (ii) for any other Lender, the lesser of (a) the CDOR Rate

on such day for such Contract Period, plus 0.10%, and (b) the percentage discount rate quoted by such Lender as the percentage discount rate at which such Lender would, in accordance with its normal practices, at or about 10:00 a.m. on such date, be prepared to purchase bankers' acceptances or make BA Equivalent Loans having a face amount and term comparable to the face amount and term of such BA or, in the case of a Lender making a BA Equivalent Loan.

"Documentation Agent" means the Bank of Nova Scotia.

"Draft" has the meaning ascribed to it in Section 3.2(b).

"DRIP" means, collectively, any dividend reinvestment plan adopted by any of the Consolidated Parties, as same may be amended from time to time.

"EBITDA" means, with respect to any Person for any fiscal period, without duplication, an amount equal to (a) consolidated net income of such Person for such period, determined in accordance with GAAP, minus (b) the sum of (i) income tax credits, (ii) interest income, (iii) gain from extraordinary items for such period, (iv) any aggregate net gain (but not any aggregate net loss) during such period arising from the sale, exchange or other disposition of capital assets by such Person (including any fixed assets, whether tangible or intangible, all inventory sold in conjunction with the disposition of fixed assets and all securities), and (v) any other non-cash gains that have been added in determining consolidated net income, in each case to the extent included in the calculation of consolidated net income of such Person for such period in accordance with GAAP, but without duplication, plus (c) the sum of (i) any provision for income taxes, (ii) Interest Expense, (iii) loss from extraordinary items for such period, (iv) depreciation and amortization for such period, (v) amortized debt discount for such period, and (vi) the amount of any deduction to consolidated net income as the result of any grant to any members of the management of such Person of any Stock, in each case to the extent included in the calculation of consolidated net income of such Person for such period in accordance with GAAP, but without duplication, and (vii) any other non-cash losses that have been deducted in determining consolidated net income, in each case to the extent included in the calculation of consolidated net income of such Person for such period in accordance with GAAP, but without duplication. For purposes of this definition, the following items shall be excluded in determining consolidated net income of a Person: (1) the income (or deficit) of any other Person accrued prior to the date it became a Subsidiary of, or was amalgamated or consolidated into, such Person or any of such Person's Subsidiaries; (2) the income (or deficit) of any other Person (other than a Subsidiary) in which such Person has an ownership interest, except to the extent any such income has actually been received by such Person in the form of cash dividends or distributions; (3) the undistributed earnings of any Subsidiary of such Person to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation or requirement of law applicable to such Subsidiary; (4) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of income accrued during such period; (5) any write-up of any asset; (6) any net gain from the collection of the proceeds of life insurance policies; (7) any net gain arising from the acquisition of any securities, or the extinguishment, under GAAP, of any Indebtedness, of such Person; (8) in the case of a successor to such Person by consolidation or amalgamation or as a transferee of its assets, any earnings of such successor prior to such

consolidation, amalgamation or transfer of assets; and (9) any deferred credit representing the excess of equity in any Subsidiary of such Person at the date of acquisition of such Subsidiary over the cost to such Person of the investment in such Subsidiary.

“Employee Unit Plan Guarantees” means unsecured guarantees in an aggregate amount not to exceed \$8,300,000 granted by any Credit Parties in favour of the Bank of Montreal in respect of loan obligations incurred by employees of any of the Credit Parties (or any Affiliate thereof) in connection with certain employee unit purchase plans.

“Environmental Indemnity Agreement” means the environmental indemnity agreement dated as of the date hereof among the Borrower, the other Credit Parties party thereto and the Agent, as the same may be amended, supplemented, restated or otherwise modified from time to time.

“Environmental Laws” means all applicable federal, provincial, territorial, municipal, local and foreign laws (including the common law), statutes, ordinances, codes, rules, guidelines, policies, procedures, standards, orders-in-council, and regulations, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree, order or judgment, imposing liability or standards of conduct for or relating to the regulation and protection of human, plant or animal health or safety, the environment or natural resources (including air, surface water, groundwater, wetlands, land, soil, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include, but are not limited to, the *Environmental Protection and Enhancement Act* (Alberta), *Canadian Environmental Protection Act, 1999*, *Fisheries Act*, *Transportation of Dangerous Goods Act, 1992*, the *Migratory Birds Protection Act, 1994*, the *Species At Risk Act*, the *Hazardous Products Act*, the *Canada Shipping Act* and the *Canada Wildlife Act*.

“Environmental Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, costs (including any response, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs), losses, damages (including any punitive damages, property damages, natural resource damages, consequential damages, treble damages) and expenses (including all reasonable fees, disbursements and expenses of legal counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, administrative order, investigation order (including judicial and administrative orders), proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, statute regulation, equity or common law, including any arising under or related to any Environmental Laws, Environmental Permits, or in connection with any Release or threatened Release or presence of a Hazardous Material, whether on, at, in, under, from or about or in the vicinity of any real or personal property.

“Environmental Permits” means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

“Equipment,” as such term is defined in the PPSA, now owned or hereafter acquired by any Credit Party, wherever located and, in any event, including all such Credit Party’s machinery and

equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, all whether now owned or hereafter acquired, and wherever situated, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

“**Equivalent Amount**” means, on any date of determination, with respect to obligations or valuations denominated in one currency (the “**first currency**”), the amount of another currency (the “**second currency**”) which would result from the Agent converting the first currency into the second currency at approximately 12:00 noon (Toronto time) on such day in accordance with Agent’s customary practice for commercial loans being administered by it or at such other rate as may have been agreed in writing between Borrower and Agent.

“**ERISA**” means the *Employee Retirement Income Security Act* of 1974, as amended from time to time, and any regulations promulgated thereunder.

“**ERISA Affiliate**” means, with respect to any Credit Party, any trade or business (whether or not incorporated) that, together with such Credit Party, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the IRC.

“**ERISA Event**” means, with respect to any Credit Party or any ERISA Affiliate, (a) any event described in Section 4043(c) of ERISA with respect to a Title IV Plan; (b) the withdrawal of any Credit Party or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Credit Party or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (f) the failure by any Credit Party or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Title IV Plan unless such failure is cured within thirty (30) days; (g) any other event or condition that would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 or 4245 of ERISA; or (i) the loss of a Qualified Plan’s qualification or tax exempt status; or (j) the termination of a Plan described in Section 4064 of ERISA.

“**ERISA Plan**” mean, at any time, an “employee benefit plan,” as defined in Section 3(3) of ERISA, that any Credit Party or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any Credit Party.

“**Escrow Funds**” has the meaning ascribed to it in Section 3.5.

“**Event of Default**” has the meaning ascribed to it in Section 10.1.

“**Excess Cash Flow**” means, with respect to any Person for any period, (a) the Consolidated Net Income of such Person for such period plus (b) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any depreciation, depletion and amortization expense, (ii) future tax, (iii) accrued but unrealized foreign exchange loss, (iv) unit based compensation expense, and (v) non-cash accretion expense to the extent related to Subordinated Debt, and (vi) any other non-cash expenses that have been deducted in determining Consolidated Net Income, in each case to the extent included in the calculation of Consolidated Net Income of such Person for such period in accordance with GAAP, but without duplication, minus (c) accrued but unrealized foreign exchange gain.

“**Excluded Subsidiaries**” means (i) all Subsidiaries of the Corporation or the Borrower not in Canada or the U.S., provided however that such Subsidiaries do not collectively account at any time for more than 2% of EBITDA or Net Worth (calculated, in each case, with respect to the Corporation and all of its Subsidiaries on a consolidated basis inclusive of the Subsidiaries to which this definition applies), in which case, with effect on and from the date that such percentage threshold is exceeded, the Borrower shall, at its sole discretion, determine which of the above-mentioned Subsidiaries shall permanently cease to be Excluded Subsidiaries in order to ensure such percentage threshold is no longer exceeded and such new Credit Parties shall deliver all security documents, certificates, addition agreements, opinions and other documents, and shall perform all actions as required by Agent, acting reasonably, in connection therewith; (ii) Pembina Area Landfill LP; and (iii) Pembina Area Landfill Ltd.

“**Existing Credit Agreement**” has the meaning ascribed to it in the recitals.

“**Fees**” means any and all fees payable to Agent or any Lender pursuant to the Agreement or any of the other Loan Documents.

“**Financial Covenants**” means the financial covenants set forth in Article VIII.

“**Financial Statements**” means the consolidated and consolidating income statements, statements of cash flows and balance sheets of the Corporation or the Fund, as applicable, delivered in accordance with Sections 4.4 and 5.1(a).

“**Fiscal Month**” means any of the monthly accounting periods of the Corporation or the Fund, as applicable.

“**Fiscal Quarter**” means each quarterly accounting period of the Corporation or the Fund, as applicable.

“**Fiscal Year**” means each annual accounting period of the Corporation or the Fund, as applicable.

“**Fixed Charges**” means, with respect to any Person for any fiscal period, (a) the aggregate of all Interest Expense (excluding accrued interest and accretion expense on convertible debenture and all other non-cash expenses) paid or accrued during such period, plus (b) scheduled payments of principal with respect to Indebtedness during such period, plus (c) all cash distributions to Shareholders during such period, plus (d) any of the permitted distributions as set out in (d) of the definition of “**Permitted Distribution**”.

“**Fixed Charge Coverage Ratio**” means, with respect to any Person on a rolling four quarter basis, the ratio of (i) EBITDA, less Unfinanced Capital Expenditures and less Taxes paid or payable in cash to (ii) Fixed Charges.

“**Fixtures**” means all fixtures (including trade fixtures), facilities and equipment, howsoever affixed or attached to real property or buildings or other structures on real property, now owned or hereafter acquired by any Credit Party.

“**Fund**” means Eveready Income Fund.

“**Funded Debt**” means, with respect to any Person, without duplication, all Indebtedness for borrowed money evidenced by notes, bonds, debentures, or similar evidences of Indebtedness and that by its terms matures more than one year from, or is directly or indirectly renewable or extendible at such Person’s option under a revolving credit or similar agreement obligating the lender or lenders to extend credit over a period of more than one year from the date of creation thereof, and specifically including Capital Lease Obligations, current maturities of long term debt, revolving credit and short term debt extendible beyond one year at the option of the debtor, and also including, in the case of Borrower, the Obligations and, without duplication, Guaranteed Indebtedness consisting of guaranties of Funded Debt of other Persons and all payments that would be required to be made under any Secured Rate Contracts and Secured Rate Contract Support Documents in the event of a termination (or early termination) or the time of determination.

“**GAAP**” means generally accepted accounting principles in the Canada, consistently applied, as such term is further defined in Article VIII to the Agreement.

“**GE Canada**” has the meaning ascribed thereto in the preamble to the Agreement.

“**GE Capital**” means General Electric Capital Corporation, a Delaware corporation.

“**GE Fee Letter**” means that certain letter, dated as of February 6, 2007 between the Lender and Borrower with respect to certain Fees to be paid from time to time by Borrower to GE Canada.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“**Guaranteed Indebtedness**” means, as to any Person, any obligation of such Person guaranteeing, providing comfort or otherwise supporting any Indebtedness, lease, dividend, or

other obligation (“**primary obligation**”) of any other Person (the “**primary obligor**”) in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the Net Worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business) or (e) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guaranteed Indebtedness at any time shall be deemed to be an amount equal to the lesser of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

“**Guarantees**” means, collectively, each guarantee executed by any Guarantor in favour of Agent, for itself and the rateable benefit of the Lenders, in respect of the Obligations of Borrower.

“**Guarantors**” means each Credit Party (other than the Borrower), and each other Person, if any, that executes a guarantee or other similar agreement in favour of the Agent, for itself and the rateable benefit of the Lenders, in connection with the transactions contemplated by the Agreement and the other Loan Documents.

“**Hazardous Material**” means any substance, material or waste that is regulated by, or forms the basis of liability now or hereafter under, any applicable Environmental Laws, including any material or substance that is (a) defined as a “solid waste,” “hazardous waste,” “hazardous material,” “hazardous substance,” “dangerous goods,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” “contaminant,” “hazardous constituent,” “special waste,” “toxic substance” or other similar term or phrase under any applicable Environmental Laws, or (b) petroleum or any fraction or by product thereof, asbestos, polychlorinated biphenyls (PCB’s), or any radioactive substance.

“**Indebtedness**” means, with respect to any Person, without duplication (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property payment for which is deferred 6 months or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are unsecured and not overdue by more than 6 months unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers’ acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and the present value (discounted at the Index Rate as in effect on the

Closing Date) of future rental payments under all synthetic leases, (f) all obligations of such Person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, (h) all Indebtedness referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (i) all annual payments and other obligations under operating leases, and (j) the Obligations.

“**Indemnified Liabilities**” has the meaning ascribed to it in Section 1.12.

“**Indemnified Person**” has the meaning ascribed to it in Section 1.12.

“**Individual Revolving Loan Commitment Amount**” means from time to time, in respect of a Lender, that portion of the Revolving Loan Commitment which such Lender has severally agreed to make available to the Borrower in accordance with this Agreement, subject to adjustment pursuant to the terms of this Agreement.

“**Individual Term Loan B Commitment Amount**” means from time to time, in respect of a Lender, that portion of the Term Loan B Commitment which such Lender has severally agreed to make available to the Borrower in accordance with this Agreement.

“**Insolvency Laws**” shall mean any of the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), and the *Winding-Up and Restructuring Act* (Canada), each as now and hereafter in effect, any successors to such statutes and any other applicable insolvency or other similar law of any jurisdiction, including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it.

“**Instruments**” means all “**instruments**,” as such term is defined in the PPSA, now or hereafter owned or acquired by any Credit Party, wherever located, and, in any event, including, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

“**Intellectual Property**” means any and all Licenses, Patents, Designs, Copyrights, Trademarks, trade secrets and customers lists.

“**Interest Expense**” means, with respect to any Person for any period, (a) consolidated total interest expense of such Person for such period and including, in any event, (i) interest capitalized during such period and net costs under Interest Rate Contracts for such period and (ii) all fees, charges, commissions, discounts and other similar obligations (other than reimbursement obligations) with respect to letters of credit, bank guarantees, bankers’ acceptances, surety bonds and performance bonds (whether or not matured) payable by such Person during such period

minus (b) the sum of (i) consolidated net gains of such Person under Interest Rate Contracts for such period and (ii) consolidated interest income of such Person for such period.

“Interest Payment Date” means (i) for interest calculated based on Canadian Prime Rate, the last day of each Fiscal Month; and (ii) for interest calculated based on the BA Rate, the last day of the applicable BA Period; provided that, in addition to the foregoing, each of (x) the date upon which all of the Commitments have been terminated and the Loans have been paid in full and (y) the Commitment Termination Date shall be deemed to be an “Interest Payment Date” with respect to any interest that has then accrued under the Agreement.

“Interest Rate Contracts” means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

“Inventory” means any “inventory”, as such term is defined in the PPSA, now or hereafter owned or acquired by any Credit Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Credit Party for sale, rent or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in such Credit Party’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

“ITA” means the *Income Tax Act* (Canada).

“Judgment Currency” has the meaning ascribed to it in Section 13.17(a).

“Judgment Conversion Date” has the meaning ascribed to it in Section 13.17(a).

“Key Location” means any location described as such in Disclosure Schedule 4.2, that either (i) is used to store a material amount of Collateral or (ii) is strategically important to such Credit Party’s business, as determined by the Agent, acting reasonably.

“Lead Arrangers” means GE Capital Markets, Inc. and GE Capital Markets (Canada) Ltd.

“Lenders” means (a) initially [**The names of Lenders have been omitted from the SEDAR version of this Agreement in accordance with National Instrument 51-102 in order to comply with the confidentiality requirements of Section 13.13 of this Agreement**] and thereafter, each financial institution which may become a party to this Agreement, as lender, by executing and delivering to the Agent and to the Borrower an Assignment Agreement, and each of their respective successors and permitted assigns, and **“Lender”** means any one of them in such capacity and (b) solely for the purpose of obtaining the benefit of the Liens granted to the Agent for the benefit of the Lenders under the Collateral Documents, a Person to whom any Obligations in respect of a Secured Rate Contract are owed. For the avoidance of any doubt, any Person to whom any Obligations in respect of a Secured Rate Contract are owed, but which Person does not hold any Loans or Commitments, shall not be entitled to any other rights as a “Lender” under this Agreement or any other Loan Document.

“**License**” means any Copyright License, Design License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by any Credit Party.

“**Lien**” means any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the PPSA or comparable notice filing under the law of any other jurisdiction).

“**Limited Partnership Agreements**” means, collectively: (a) the Amended and Restated Limited Partnership Agreement dated as of March 31, 2005 in respect of Eveready Holdings Limited Partnership; (b) the Limited Partnership Agreement dated as of December 3, 2004 in respect of Eveready Operating Limited Partnership; (c) the Limited Partnership Agreement dated as of December 3, 2004 in respect of JL Filtration Operating Limited Partnership; (d) the Amended and Restated Limited Partnership Agreement dated as of May 20, 2005 in respect of River Valley Operating Limited Partnership; (e) the Limited Partnership Agreement dated as of May 1, 2006 in respect of Acquisition Limited Partnership; (f) the Limited Partnership Agreement dated as of July 27, 2007 of Eveready Directional Boring Limited Partnership; (g) the Limited Partnership Agreement dated as of November 30, 2005 in respect of Pembina Area Landfill LP; and (h) the Limited Partnership Agreement of Cat Tech Operating Limited Partnership dated as of August 1, 2006.

“**Litigation**” has the meaning ascribed to it in Section 4.11.

“**Loan Account**” has the meaning ascribed to it in Section 1.11.

“**Loan Documents**” means the Agreement, the Notes, the Collateral Documents and all other agreements, instruments, documents and certificates identified in 2.1(a) executed and delivered to, or in favour of, Agent or any Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Credit Party, or any employee of any Credit Party, and delivered to Agent or any Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“**Loans**” means the Revolving Loan, any Term Loans and the Term Loan B.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of the Credit Parties considered as a whole, (b) Borrower’s ability to pay any of the Loans or any of the other Obligations in accordance with the terms of the Agreement, (c) the Collateral or Agent’s Liens, on behalf of the Lenders, on the

Collateral or the priority of such Liens, or (d) Agent's or any Lender's rights and remedies under the Agreement and the other Loan Documents. Without limiting the generality of the foregoing, any event or occurrence adverse to one or more Credit Parties which results or could reasonably be expected to result in losses, costs, damages, liabilities or expenditures in excess of \$6,000,000 shall constitute a Material Adverse Effect.

"Maturity Date" means, for any Term Loan, the last day of the Term Period applicable to such Term Loan, for the Term Loan B, the last day of the Term Loan B Period and for any Bankers' Acceptance, the date on which a Bankers' Acceptance matures, or the date on which a BA Equivalent Loan becomes due and payable.

"Material Documents" means the Articles and the Limited Partnership Agreements.

"Net Proceeds" means the amount received by the Borrower from the sale of an Advance by way of Bankers' Acceptance (or in the case of a BA Equivalent Loan, the amount of such BA Equivalent Loan), less the applicable BA Stamping Fee.

"Net Worth" means, in accordance with Canadian generally accepted accounting principles, the sum of Shareholder's capital (excluding any goodwill) and contributed surplus plus retained earnings and any subordinated shareholder loans plus Subordinated Debt plus preferred units where the holder has agreed not to redeem the units without the Agent's prior written consent plus, without duplication, the equity component of any Subordinated Debt. For greater clarity, any portion of Subordinated Debt or subordinated shareholder loans due within the next 12 months and classified as current liabilities will not be included as part of Net Worth.

"New Key Location" means, any location acquired after the date of this Agreement that either (i) is used to store a material amount of Collateral or (ii) is strategically important to such Credit Party's business, as determined by the Agent, acting reasonably.

"Non-Agreeing Lender" has the meaning ascribed to it in Section 1.2(c)(ii)(D).

"Non-Agreeing Lender Commitment Amount" has the meaning ascribed to it in Section 1.2(c)(ii)(D).

"Non-BA Lender" means a Lender that (i) is not a bank chartered under the *Bank Act* (Canada); or (ii) has notified the Agent in writing that it is unwilling or unable to accept Drafts.

"Non-Consenting Lender" has the meaning ascribed to it in Section 13.2(d).

"Non-Funding Lender" has the meaning ascribed to it in Section 11.9(a).

"Notes" means the Revolving Notes and Term Loan B Notes.

"Notice of Acceptance" means a notice by the Agent, on behalf of the Revolving Lenders other than the Non-Agreeing Lenders, to the Borrower extending the Revolving Period for 364 days from the Commitment Date.

“**Notice of Extension**” has the meaning ascribed to it in Section 1.2(c).

“**Notice of Revolving Credit Advance/Election of BA Periods**” has the meaning ascribed to it in Section 1.2(a).

“**Notice of Rollover or Notice of Conversion**” means, in relation to Advances by way of Rollover or Conversion, a notice by the Borrower to the Agent substantially in the form of Exhibit 3.4(b) with the blanks completed.

“**Notification Date**” has the meaning ascribed to it in Section 1.2(c)(ii)(A).

“**Obligation Currency**” has the meaning ascribed to it in Section 13.17(a).

“**Obligations**” means all loans, advances, debts, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Credit Party to Agent or any Lender or any Secured Swap Provider, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement, letter of credit agreement or other instrument, arising under the Agreement or any of the other Loan Documents or any Secured Rate Contract. This term includes all principal, interest (including all interest that accrues after the commencement of any bankruptcy or insolvency proceeding upon or after the insolvency of a Credit Party, whether or not allowed in such proceeding), Fees, hedging obligations under swaps, caps and collar arrangements provided or arranged by any Lender or Affiliate thereof, expenses, legal fees and any other sum chargeable to any Credit Party under the Agreement or any of the other Loan Documents.

“**Other Lender**” has the meaning ascribed to it in Section 11.9(d).

“**Patent License**” means rights under any written agreement now owned or hereafter acquired by any Credit Party granting any right with respect to any invention on which a Patent is in existence.

“**Patents**” means all of the following in which any Credit Party now holds or hereafter acquires any interest: (a) all letters patent of invention and all applications for letters patent, all design patents and all registrations and recordings thereof, including registrations, recordings and applications in the Canadian Patent and Trademark Office or in any similar office or agency in any other country or political subdivision thereof, and (b) all reissues, continuations, continuations in part or extensions thereof.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Permitted Acquisition**” means: (a) an acquisition to acquire all or substantially all of the assets or Stock of any Person where the consideration, whether cash or other form of payment, is less than \$10,000,000 (to a maximum of \$40,000,000 on an annual basis) and which meets the conditions contained in Section 7.1 of the Agreement; and (b) an acquisition to acquire all or

substantially all of the assets or Stock of any Person where the consideration, whether cash or other form of payment, is equal to or in excess of \$10,000,000 where (i) the Agent has received at least thirty (30) Business Days' prior written notice of such proposed acquisition, which notice shall include a reasonably detailed description of such proposed Permitted Acquisition, and (ii) the acquisition meets the conditions contained in Section 7.1 of the Agreement, provided that such acquisition is made on terms acceptable to the Agent and the Lenders, acting reasonably.

"Permitted Distribution" means (a) any distribution or payment which the Borrower is permitted to make pursuant to the terms of the Agreement, (b) any dividend paid by the Corporation to its shareholders, (c) any payment or distributions made pursuant to the DRIP, (d) the repurchase for cancellation by the Corporation of any issued and outstanding Shares of the Corporation, and (e) regularly scheduled payments or distributions made pursuant to the Indebtedness of the Corporation pursuant to any of its convertible unsecured subordinated debentures, including, without limitation, the 7.00% convertible unsecured subordinated debentures due June 30, 2011, and any payments by the Borrower or a Credit Party to the Corporation to facilitate such a distribution, provided such distribution has been publicly announced, except to the extent expressly prohibited under the Agreement.

"Permitted Encumbrances" means the following encumbrances: (a) Liens for taxes or assessments or other governmental Charges not yet due and payable or which are being contested in accordance with Section 6.2(b); (b) pledges or deposits of money securing statutory obligations under workmen's compensation, employment insurance, social security or public liability laws or similar legislation; (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which any Credit Party is a party as lessee made in the ordinary course of business; (d) inchoate and unperfected workers', mechanics' or similar liens arising in the ordinary course of business, so long as such Liens attach only to equipment, and/or Fixtures; (e) carriers', warehousemen's, suppliers' or other similar possessory liens arising in the ordinary course of business and securing liabilities in an outstanding aggregate amount not in excess of \$2,000,000 at any time, so long as such Liens attach only to Inventory; (f) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which any Credit Party is a party; (g) any attachment or judgment lien not constituting an Event of Default under Section 10.1(g); (h) presently existing or hereafter created Liens in favour of Agent, on behalf of the Lenders; (i) Liens expressly permitted under clauses (b) and (c) of Section 7.8 of the Agreement; and (j) to the extent not included in clause (a), (d) or (e), Prior Claims that are unregistered and secure amounts that are not yet due and payable.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, provincial, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Pledge Agreements" means either the pledge agreements (i) entered into pursuant to the Existing Credit Agreement or (ii) entered into pursuant to this Agreement or any other Loan Document, by any Credit Party in favour of the Lenders.

“PPSA” shall mean the *Personal Property Security Act* (Alberta) and the Regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of Agent’s security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than Alberta, PPSA shall mean those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

“**Prior Claims**” shall mean all Liens created by applicable law (in contrast with Liens voluntarily granted) which rank or are capable of ranking prior or *pari passu* with Agent’s security interests (or interests similar thereto under applicable law) against all or part of the Collateral, including for amounts owing for employee source deductions, goods and services taxes, sales taxes, harmonized sales taxes, municipal taxes, workers’ compensation, corporate taxes, pension fund obligations and overdue rents.

“**Proceeds**” means “**proceeds**,” as such term is defined in the PPSA, and in any event shall include (a) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to any Credit Party from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to any Credit Party 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), (c) any claim of any Credit Party against third parties (i) for past, present or future infringement of any Patent or Patent License, or (ii) for past, present or future infringement or dilution of any Copyright, Copyright License, Design, Design License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (d) any recoveries by any Credit Party against third parties with respect to any litigation or dispute concerning any of the Collateral including claims arising out of the loss or non-conformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral, (e) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition or dealing with any of the Collateral and all rights arising out of Collateral.

“**Projections**” means the Corporation’s forecasted consolidated and consolidating: (a) balance sheets; (b) profit and loss statements; (c) cash flow statements; and (d) capitalization statements, all prepared on a Subsidiary by Subsidiary or division-by-division basis, if applicable, and otherwise consistent with the historical Financial Statements of Borrower, together with appropriate supporting details and a statement of underlying assumptions.

“**Proposed Change**” has the meaning ascribed to it in Section 13.2(d).

“**Pro-Rata Share**” means with respect to all matters relating to any Lender (a) with respect to the Revolving Loan, the percentage obtained by dividing (i) the Individual Revolving Loan Commitment of that Lender by (ii) the aggregate Revolving Loan Commitments of all Lenders, (b) with respect to all Term Loans, the percentage obtained by dividing (i) the portion of the Term Loan held by that Lender by (ii) the aggregate Term Loans, as any such percentages may

be adjusted by assignments permitted pursuant to Article XI, (c) with respect to the Term Loan B, the percentage obtained by dividing (i) the Individual Term Loan B Commitment of that Lender by (ii) the aggregate Term Loan B Commitments of all Lenders, (d) with respect to all Loans, the percentage obtained by dividing (i) the aggregate Commitments of that Lender by (ii) the aggregate Commitments of all Lenders, and (e) with respect to all Loans on and after the Commitment Termination Date, the percentage obtained by dividing (i) the aggregate outstanding principal balance of the Loans held by that Lender, by (ii) the outstanding principal balance of the Loans held by all Lenders.

“**Purchasing Lender**” has the meaning ascribed to it in Section 1.2(c)(ii)(D).

“**Rateable Portion**” means, at any time and from time to time with respect to each Lender in respect of the Loans, the proportion of the Individual Revolving Loan Commitment Amount of such Lender relative to the Revolving Loan Commitment.

“**Rate Contracts**” means swap agreements (as such term is defined in Section 101 of the U.S. *Bankruptcy Code*) and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates.

“**Rate of Exchange**” has the meaning ascribed to it in Section 13.17.

“**Real Estate**” means any real property of a Credit Party, whether owned, leased, subleased, controlled or used by such Credit Party.

“**Release**” means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

“**Replacement Lender**” has the meaning ascribed to it in Section 1.15(c).

“**Replacement Revolving Lender**” has the meaning ascribed to it in Section 1.2(c)(ii)(D).

“**Requisite Lenders**” means Lenders holding more than 66 2/3% of the Revolving Loan Commitment, any Term Loans and the Term Loan B Commitment, except to the extent applicable to the Revolving Loans, Term Loans or Term Loan B only in which case it means the Lenders holding more than 66 2/3% of such Commitments or Loans.

“**Reserves**” means, with respect to the Borrowing Base of Borrower (a) reserves established pursuant to Section 6.4(c), and (b) such other reserves against Borrowing Availability of Borrower that Agent may, in its reasonable credit judgment, establish from time to time. Without limiting the generality of the foregoing, Reserves established to ensure the payment of Prior Claims, accrued Interest Expenses or Indebtedness shall be deemed to be a reasonable exercise of Agent’s credit judgment.

“Restricted Payment” means, with respect to any Consolidated Party (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of Stock; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of such Consolidated Party’s Stock or any other payment or distribution made in respect thereof, either directly or indirectly; (c) any payment or prepayment of principal of, premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to, any Subordinated Debt; (d) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Stock of such Consolidated Party now or hereafter outstanding; (e) any payment of a claim for the rescission of the purchase or sale of, or for material damages arising from the purchase or sale of, any shares of such Consolidated Party’s Stock or of a claim for reimbursement, indemnification or contribution arising out of or related to any such claim for damages or rescission; (f) any payment, loan, contribution, or other transfer of funds or other property to any Stockholder of such Consolidated Party other than payment of compensation in the ordinary course of business to Stockholders who are employees of such Consolidated Party; and (g) any payment of management fees (or other fees of a similar nature) by such Consolidated Party to any Stockholder of such Consolidated Party or its Affiliates.

“Revolving Credit Advance” has the meaning ascribed to it in Section 1.2(a).

“Revolving Lender” means any Lender under the Revolving Loan Commitment.

“Revolving Loan” means the aggregate amount of Revolving Credit Advances outstanding to Borrower that have not been converted to a Term Loan.

“Revolving Loan Commitment” means the aggregate commitment of the Lenders to make Revolving Credit Advances, which aggregate commitment shall be one hundred million dollars (\$100,000,000) on the Closing Date, as such amount may be adjusted, if at all, from time to time in accordance with the Agreement.

“Revolving Note” has the meaning ascribed to it in Section 1.2(b).

“Revolving Period” means the period commencing on April 25, 2007 and ending at the start of the Term Period.

“Rollover” means, in relation to maturing Banker’s Acceptances, the issuance of new Bankers’ Acceptances in respect of all or any portion of such Bankers’ Acceptances at their Maturity Date.

“Secured Rate Contract” means any Rate Contract between a Credit Party and (i) a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of such Rate Contract) or (ii) a Person with whom a Credit Party has entered into a Rate Contract provided or arranged by GE Capital, or an Affiliate of GE Capital, and any assignee thereof, which meets the requirements of Section 7.4(a)(vi) and which in the case of (i) above, except for Swing Line F/X Contracts representing total hedged currency

amounts of less than \$1,000,000 in the aggregate, the Agent has acknowledged in writing is a “Secured Rate Contract”, such acknowledgement not to be unreasonably withheld.

“**Secured Rate Contract Support Document**” means any document (a) entered into to provide credit enhancements for the benefit of the counterparty to a Rate Contract into which the Borrower entered, which credit enhancements are provided (i) solely to support the payment obligations of the Borrower under such Rate Contract and (ii) by GE Capital or any other Person at a time when such Person is the Agent, a Lender, of an Affiliate of a Lender, and (b) is expressly identified as being a “Secured Rate Contract Support Document” hereunder in a joint notice from the Borrower and the Person providing such credit enhancements delivered to the Agent reasonably promptly after the execution or issuance of such document, unless such Person is the Agent or an Affiliate of the Agent at the time such credit enhancements are provided.

“**Secured Swap Provider**” means any Person that has entered into a Secured Rate Contract with a Credit Party.

“**Security Agreement**” means the Security Agreement (i) of even date herewith or (ii) entered into pursuant to the Existing Credit Agreement between the Lender and the Credit Party that is a signatory thereto.

“**Settlement Date**” has the meaning ascribed to it in Section 11.9(a).

“**Shareholders**” means the shareholders of the Corporation.

“**Solvent**” shall mean, with respect to any Person on a particular date, that on such date (i) the property of such Person is sufficient, if disposed of at a fairly conducted sale under legal process, to enable payment of all its obligations, due and accruing due, (ii) the property of such Person is, at a fair valuation, greater than the total amount of liabilities, including contingent liabilities, of such Person; (iii) such Person has not ceased paying its current obligations in the ordinary course of business as they generally become due; and (iv) such Person is not for any reason unable to meet its obligations as they generally become due. The amount of contingent liabilities (such as litigation, guarantees and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably be expected to become an actual or matured liability.

“**SPV**” means any special purpose funding vehicle identified as such in writing by any Lender to Agent.

“**Stock**” means all shares, options, warrants, general or limited partnership interests, fund or trust units, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, mutual fund, trust, limited liability company or equivalent entity whether voting or non-voting, participating or non-participating, including common stock, preferred stock or any other equity security.

“**Stockholder**” means, with respect to any Person, each holder of Stock of such Person.

“**Subordinated Debt**” means (i) such Indebtedness of any Credit Party that is subordinated to the Loan pursuant to a subordination and postponement agreement or otherwise on terms acceptable to Agent in its sole discretion; and (ii) Indebtedness of the Corporation pursuant to any of its convertible unsecured subordinated debentures, including without limitation, the 7.00% convertible unsecured subordinated debentures due June 30, 2011; and (iii) except for purposes of determining “Net Worth” and “Unfinanced Capital Expenditures”, the Employee Unit Plan Guarantees.

“**Subsidiary**” means, with respect to any Person, (a) any corporation of which an aggregate of more than 50% of the outstanding Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, 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) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of 50% or more of such Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of the Corporation.

“**Swing Line F/X Contracts**” means Rate Contracts between any Credit Party and the majority Swing Line Lender relating to US and Canadian currency exchange rates.

“**Swing Line Lender**” means any Revolving Lender which is designated as such by Agent from time to time.

“**Swing Line Loan**” means Loans made in accordance with Section 1.3.

“**Swing Line Loan Limit**” means \$20,000,000.

“**Target**” has the meaning assigned to it in Section 7.1(a).

“**Tax**” and “**Taxes**” includes all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings and other charges of any nature (including income, corporate, capital (including large corporations), Net Worth, sales, consumption, use, transfer, goods and services, value-added, stamp, registration, franchise, withholding, payroll, employment, health, education, employment insurance, pension, excise, business, school, property, occupation, customs, anti-dumping and countervail taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings and other charges) imposed by any Governmental Authority, together with any fines, interest, penalties or other additions on, to, in lieu of, for non-collection of or in respect of those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings and other charges.

“**Term Loan**” has the meaning assigned to it in Section 1.2(d).

“**Term Loan B**” means the aggregate of the Term Loan B Advances outstanding to the Borrower.

“**Term Loan B Advance**” has the meaning assigned to it in Section 1.4.

“**Term Loan B Commitment**” means the aggregate commitment of the Lenders to make Term Loan B Advances, which aggregate commitment shall be one hundred and fifty million dollars (\$150,000,000) on the Closing Date.

“**Term Loan B Lender**” means any Lender under Term Loan B.

“**Term Loan B Note**” has the meaning ascribed to it in Section 1.4(b).

“**Term Loan B Period**” means, with respect to the Term Loan B, the period commencing at 12: 01 a. m. (Toronto time) on the Closing Date and expiring on the day which is 61 months thereafter.

“**Term Period**” means, with respect to the Term Loan, the period commencing at 5:01 p. m. (Toronto time) on the Commitment Termination Date and expiring on the day which is 36 months thereafter.

“**Trademark License**” means rights under any written agreement now owned or hereafter acquired by any Credit Party granting any right to use any Trademark.

“**Trademarks**” means all of the following now owned or hereafter adopted or acquired by any Credit Party: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing appear or have, to the knowledge of any Credit Party, appeared, designs and Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the Canadian Patent and Trademark Office or in any similar office or agency in any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

“**Unfinanced Capital Expenditures**” means Capital Expenditures which are not financed with the net proceeds of any new equity issuance, Capital Lease, the Loans or Subordinated Debt, provided that for purposes of determining if Capital Expenditures are financed with Revolving Credit Advances, the lesser of: (a) the net increase in the aggregate Revolving Credit Advances during the period plus Excess Cash Flow (plus or minus Working Capital adjustments), and (b) the sum of the Borrowing Availability plus the Revolving Loan then outstanding; will be deemed to have been used to finance Capital Expenditures.

“**Working Capital**” means Current Assets minus Current Liabilities as of the last reporting period.

“**Working Capital Ratio**” means Current Assets to Current Liabilities.

Rules of construction with respect to accounting terms used in the Agreement or the other Loan Documents shall be as set forth in Article VIII. Unless otherwise specified, references in the Agreement or any of the Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in the Agreement. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to the Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in the Agreement or any such Annex, Exhibit or Schedule.

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; the word “or” is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Loan Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. Whenever any provision in any Loan Document refers to the knowledge (or an analogous phrase) of any Credit Party, such words are intended to signify that such Credit Party has actual knowledge or awareness of a particular fact or circumstance or that such Credit Party, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance.

Annex B (Section 11.9(a))

EVEREADY ENERGY SERVICES CORP.

Lenders' Wire Transfer Information

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2 (3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

ANNEX C (Section 13.10)

EVEREADY ENERGY SERVICES CORP.

Notice Addresses

(A) If to Agent or GE Canada, at:

GE Canada Asset Financing Holding Company
530 8th Avenue SW, Suite 720
Calgary, AB, Canada T2P 3S8

Attention: Ron Tratch

Facsimile No.: (403) 215-5831
Telephone No.: (403) 571-2261

(B) If to a Credit Party, at

14904-121A Avenue
Edmonton, AB, Canada T5V 1A3

Attention: President

Facsimile No.: (780) 451-6075
Telephone No.: (780) 451-6969

Annex D (from Annex A)

EVEREADY ENERGY SERVICES CORP.

Commitments as of Closing Date

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Annex E (from Annex A)

EVEREADY ENERGY SERVICES CORP.

Assessed Equipment

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Exhibit 1.2(a)

EVEREADY ENERGY SERVICES CORP.

Notice of Revolving Credit Advance/Election of BA Periods

Capitalized terms used herein which are defined in the amended and restated credit agreement dated as of December 31, 2008 by and among Eveready Energy Services Corp. ("**Borrower**"), the other Credit Parties signatory thereto, GE Canada Asset Financing Holding Company, as Agent, the Persons signatory thereto from time to time as Lenders ("**Lenders**") (the "**Credit Agreement**"), shall have the meanings therein defined. Borrower hereby certifies that on the date hereof and on the borrowing date set forth below: (i) all representations and warranties made by a Credit Party contained in the Credit Agreement and the other Loan Documents are, and will be, true and correct, both before and after giving effect to the Revolving Credit Advance and to the application of the proceeds thereof, as though made on such date, unless stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date and except for changes therein expressly permitted or expressly contemplated by the Credit Agreement; (ii) no Material Adverse Effect has occurred since the Closing Date; (iii) no Default or Event of Default exists, or would result from such Revolving Credit Advance or from the application of the proceeds thereof; and (iv) after giving effect to any Advance, the outstanding principal amount of the Revolving Loan will not exceed the lesser of (A) the Borrowing Base and (B) the Revolving Loan Commitment.

Client and Address Eveready Energy Services Corp. 14904 – 121A Avenue Edmonton, AB T5V 1A3	Name of Contact	Phone
Bank	Wire Information	Fax
Address		ABA#
		Acct#

Bank Contact

1. The drawdown date is the day of , 200 .
 2. Pursuant to Section 1.2(a) of the Credit Agreement, the Borrower hereby irrevocably requests that a Revolving Credit Advance in the amount of \$ be made available by the Lenders on the date referred to in #1 above.
 3. Pursuant to Section 1.7(a) of the Credit Agreement, the Borrower hereby irrevocably elects that **[the BA Period in respect of the Revolving Credit Advance requested in #2 above is [1] [2] [3] month(s).] [or] [the Revolving Credit Advance bear interest at the Canadian Prime Rate plus the applicable margin.] [or] [The Contract Period in respect of the Revolving Credit Advance by way of Bankers' Acceptance is [1] [2] [3] [4] [5] [6] month(s).]**
-

The Borrower has caused this Request to be executed by its duly authorized officer as of the date and year first written above.

Authorization

Requested by:

Duly Authorized Signatory

Fax to: GE Canada Asset Financing Holding Company, as Agent
(403) 215-5831

Phone: (403) 571-2261

Exhibit 1.2(b)

EVEREADY ENERGY SERVICES CORP.

Form of Revolving Note

FORM OF REVOLVING NOTE (CDNS)

Calgary, Alberta

\$()

[Date]

FOR VALUE RECEIVED, the undersigned, Eveready Industrial Services Corp. ("**Borrower**"), HEREBY PROMISES TO PAY to the order of [("**Revolving Lender**") at the offices of **GE CANADA ASSET FINANCING HOLDING COMPANY**, as Agent on behalf of the Lenders ("**Agent**"), at its address at 530-8th Avenue S.W., Suite 720, Calgary, AB, Canada, T2P 3S8, or at such other place as Agent may designate from time to time in writing, in lawful money of Canada and in immediately available funds, the amount of \$ CANADIAN DOLLARS (CDNS) or, if less, the aggregate unpaid amount of all Revolving Credit Advances made to the undersigned under the "Credit Agreement" (as hereinafter defined). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Credit Agreement or in Annex A thereto.

This Revolving Note is one of the Revolving Notes issued pursuant to that certain amended and restated credit agreement dated as of April 25, 2007 by and among Eveready Industrial Services Corp., as Borrower, the other Persons named therein as Credit Parties, Agent on behalf of the Lenders, the other Persons signatory thereto from time to time as Lenders (including all annexes, exhibits and schedules thereto and as from time to time amended, restated, supplemented or otherwise modified, the "**Credit Agreement**") and is entitled to the benefit and security of the Credit Agreement, the Collateral Documents and all of the other Loan Documents referred to therein. Reference is hereby made to the Credit Agreement for a statement of all of the terms and conditions under which the Loans evidenced hereby are made and are to be repaid. The date and amount of each Revolving Credit Advance made by Revolving Lender to Borrower, the rates of interest applicable thereto and each payment made on account of the principal thereof, shall be recorded by Agent on its books; provided, that the failure of Agent to make any such recordation shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Credit Agreement or this Revolving Note in respect of the Revolving Credit Advances made by Revolving Lender to Borrower.

The principal amount of the indebtedness evidenced hereby shall be payable in the amounts and on the dates specified in the Credit Agreement, the terms of which are hereby incorporated herein by reference. Interest thereon shall be paid until such principal amount is paid in full at such interest rates and at such times, and pursuant to such calculations, as are specified in the Credit Agreement.

If any payment on this Revolving Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

Upon and after the occurrence of any Event of Default, this Revolving Note may, as provided in the Credit Agreement, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

Time is of the essence in this Revolving Note. Demand, presentment, protest and notice of non-payment and protest are hereby waived by Borrower.

Except as provided in the Credit Agreement, this Revolving Note may not be assigned by Revolving Lender to any Person.

THIS REVOLVING NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ALBERTA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT PROVINCE.

EVEREADY INDUSTRIAL SERVICES CORP.

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit 1.2(c)

EVEREADY ENERGY SERVICES CORP.

Notice of Extension

TO: GE Canada Asset Financing Holding Company, as Agent
530 8th Avenue SW, Suite 720
Calgary, Alberta T2P 3S8

Attention: Ron Tratch
Fax: (403) 215-5831

DATE: [•]

Dear Sirs/Mesdames:

Capitalized terms used herein which are defined in the Amended and Restated Credit Agreement dated as of December 31, 2008 by and among Eveready Energy Services Corp. (the "**Borrower**"), the other Credit Parties signatory thereto, GE Canada Asset Financing Holding Company, as Agent, and the persons signatory thereto from time to time as Lenders ("**Lenders**") shall have the meanings therein defined.

The Borrower hereby gives notice of its request for an offer of extension of the Revolving Period in respect of the Extendible Revolving Credit Facility for a further period of 364 days from the Commitment Termination Date pursuant to Section 1.2(c) of the Credit Agreement.

As of the date hereof, there exists no Default or Event of Default.

Yours very truly,

EVEREADY ENERGY SERVICES CORP.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Exhibit 1.4(b)

EVEREADY ENERGY SERVICES CORP.

Form of Term Loan B Note

FORM OF TERM LOAN B NOTE (CDNS)

Calgary, Alberta

\$()

[Date]

FOR VALUE RECEIVED, the undersigned, Eveready Industrial Services Corp. ("**Borrower**"), HEREBY PROMISES TO PAY to the order of [] ("**Term Loan B Lender**") at the offices of **GE CANADA ASSET FINANCING HOLDING COMPANY**, as Agent on behalf of the Term Loan B Lenders ("**Agent**"), at its address at 530-8th Avenue SW, Suite 720, Calgary, AB, Canada T2P 3S8, or at such other place as Agent may designate from time to time in writing, in lawful money of Canada and in immediately available funds, the amount of \$ CANADIAN DOLLARS (CDNS) or, if less, the aggregate unpaid amount of all Term Loan B Credit Advances made to the undersigned under the "Credit Agreement" (as hereinafter defined). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Credit Agreement or in Annex A thereto.

This Term Loan B Note is one of the Term Loan B Notes issued pursuant to that certain amended and restated credit agreement dated as of April 25, 2007 by and among Eveready Industrial Services Corp., as Borrower, the other Persons named therein as Credit Parties, Agent on behalf of the Lenders, the other Persons signatory thereto from time to time as Lenders (including all annexes, exhibits and schedules thereto and as from time to time amended, restated, supplemented or otherwise modified, the "**Credit Agreement**") and is entitled to the benefit and security of the Credit Agreement, the Collateral Documents and all of the other Loan Documents referred to therein. Reference is hereby made to the Credit Agreement for a statement of all of the terms and conditions under which the Loans evidenced hereby are made and are to be repaid. The date and amount of each Term Loan B Advance made by Term Loan B Lender to Borrower, the rates of interest applicable thereto and each payment made on account of the principal thereof; shall be recorded by Agent on its books; provided, that the failure of Agent to make any such recordation shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Credit Agreement or this Term Loan B Note in respect of the Term Loan B Advances made by Term Loan B Lender to Borrower.

The principal amount of the indebtedness evidenced hereby shall be payable in the amounts and on the dates specified in the Credit Agreement, the terms of which are hereby incorporated herein by reference. Interest thereon shall be paid until such principal amount is paid in full at such interest rates and at such times, and pursuant to such calculations, as are specified in the Credit Agreement.

If any payment on this Term Loan B Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

Upon and after the occurrence of any Event of Default, this Term Loan B Note may, as provided in the Credit Agreement, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

Time is of the essence in this Term Loan B Note. Demand, presentment, protest and notice of non-payment and protest are hereby waived by Borrower.

Except as provided in the Credit Agreement, this Term Loan B Note may not be assigned by Term Loan B Lender to any Person.

THIS TERM LOAN B NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ALBERTA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT PROVINCE.

EVEREADY INDUSTRIAL SERVICES CORP.

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit 3.4(c)

EVEREADY ENERGY SERVICES CORP.

Notice of Rollover or Notice of Conversion

TO: GE CANADA ASSET FINANCE HOLDING COMPANY (the "Agent") as agent for the Lenders under the Credit Agreement.

RE: EVEREADY ENERGY SERVICES CORP. – Amended and Restated Credit Agreement made as of December 31, 2008 between Eveready Energy Services Corp. (the "Borrower"), the other Credit parties thereto, the Lenders and the Agent (the "Credit Agreement").

1. Capitalized terms used herein which are defined in the Credit Agreement shall have the meanings therein defined.
2. Pursuant to Section 3.4(c) of the Credit Agreement, the undersigned hereby irrevocably notifies the Agent that it will be:
 - (a) rolling over part or all of the Advance made under the Credit Agreement described as:

Type of Advance:
*[Principal Amount:]
Date of Maturity:

into the same Advance made under the Credit Agreement
Date of Maturity:

*if only part of maturing Advance is rolled over, please indicate.
or;

- (b) converting part or all of the Advance under the Credit Agreement described as:

Type of Advance:
*[Principal Amount:]
Date of Maturity:

into an Advance made under the Credit Agreement described as:

*if only part of maturing Advance is converted, please indicate.

Type of Advance:
Principal Amount:
Date of Maturity:

effective the _____ day of _____, _____.

or;

(c) Repaying part or all of the Advance made under the Credit Agreement described as:

Type of Advance:
***[Principal Amount]:**
Date of Maturity:

(1) If only part of the maturing Advance is being repaid, please indicate the applicable amount being repaid including the details provided above in respect thereof and whether the balance will be rolled over or converted.

- 3. To the extent that this Notice rolls over or converts any Advance to Bankers' Acceptances, **[all, Schedule I] [choose one or more as applicable] Lenders will purchase them at the applicable Discount Rate [or] [[the Borrower [will/will not] market the Bankers' Acceptances.]]**
- 4. This Notice is irrevocable.
- 5. No Default or Event of Default has occurred and is continuing.
- 6. Capitalized words and phrases used herein and not otherwise defined herein have the meanings attributed to them in or for the purposes of the Credit Agreement.

The Borrower has caused this notice to be executed by its duly authorized officer this [•] day of [•], 200[•].

EVEREADY ENERGY SERVICES CORP.

By: _____
Name:
Title:



Exhibit 5.1(b)

EVEREADY ENERGY SERVICES CORP.

Borrowing Base Certificate

TO: GE Canada Asset Financing Holding Company, as Agent
530 8th Avenue SW, Suite 720
Calgary, Alberta T2P 3S8

Attention: Ron Tratch
Fax: (403) 215-5831

RE: Amended and Restated Credit Agreement dated as of December 31, 2008 (the "**Credit Agreement**") by and among Eveready Energy Services Corp., the other Credit Parties signatory thereto, the Agent and the persons signatory thereto from time to time as Lenders.

This Borrowing Base Certificate is delivered pursuant to Section 5.1(b) of the Credit Agreement. The Borrower hereby certifies that:

1. This Borrowing Base Certificate is current to [•], 200[•] (the "**Effective Date**").
2. I am familiar with the provisions of the Credit Agreement and I have made or caused to be made under my supervision such reasonable investigations of corporate records and inquiries of other officers and personnel of the Credit Parties as I have deemed necessary for purposes of this Borrowing Base Certificate.
3. As of the Effective Date, the Borrowing Base was Cdn. \$[•], an amount equal to:
 - (a) up to seventy-five percent (75%) of the Fund and its Subsidiaries' eligible accounts receivable, plus up to sixty percent (60%) of the Fund and its Subsidiaries' eligible U.S. domiciled accounts receivable, plus up to ninety percent (90%) of the Fund and its Subsidiaries' eligible EDC insured amount of any accounts receivable;
 - (b) the amount of the Fund and its Subsidiaries' eligible Inventory, up to the lesser of: (i) fifty percent (50%) of its cost (FIFO) or (ii) its market value, and, Inventory shall not account for more than 20% of the total Borrowing Base margin; and
 - (c) up to seventy-five (75%) of the orderly liquidation value of the eligible appraised Equipment,

the detailed calculations of which are attached hereto as Exhibit 1.

Capitalized words and phrases used herein and not otherwise defined herein have the meanings attributed to them in or for the purposes of the Credit Agreement.

The Borrower has caused this Borrowing Base Certificate to be executed and delivered, and the certification contained herein to be made by a duly authorized officer of the Borrower this [•] day of [•], 200[•].

EVEREADY ENERGY SERVICES CORP.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

EXHIBIT 1
TO THE BORROWING BASE CERTIFICATE OF
EVEREADY ENERGY SERVICES CORP.
DATED [•], 200[•]

CALCULATION OF BORROWING BASE

Exhibit 6.8(a)

EVEREADY ENERGY SERVICES CORP.

Form of Environmental Certificate

ENVIRONMENTAL CERTIFICATE

TO: **GE CANADA ASSET FINANCING HOLDING COMPANY**, as agent (the “**Agent**”)

RE: Amended and Restated Credit Agreement dated as of December 31, 2008 (the “**Credit Agreement**”) by and among Eveready Energy Services Corp. (the “**Borrower**”), the other Credit Parties signatory thereto, the Agent and the persons signatory thereto from time to time as Lenders.

The undersigned, John Stevens, being the Chief Financial Officer of the Borrower, hereby certifies in such capacity for and on behalf of the Borrower, and not in his personal capacity, as follows:

1. Except as set forth in Disclosure Schedule (4.16) of the Credit Agreement, as of the date hereof: (i) all Real Estate owned, occupied or controlled by the Credit Parties is free of the presence of any Hazardous Material except for such presence that would not adversely impact the value or marketability of such Real Estate, that is not in breach of Environmental Laws, and that would not result in Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate; (ii) no Credit Party has caused or suffered to occur any Release of Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate that could reasonably be expected to result in Environmental Liabilities that exceed \$500,000 in the aggregate; (iii) the Credit Parties are, and have been, in compliance with, all Environmental Laws, except where the failure to so comply with such Environmental Laws would not result in Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate; (iv) the Credit Parties have obtained, and are in compliance with, all Environmental Permits required by Environmental Laws for the operations of their respective businesses as presently conducted or as proposed to be conducted, except where the failure to so obtain or comply with such Environmental Permits would not result in Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate, and all such Environmental Permits are valid, uncontested and in good standing; (v) no Credit Party is involved in operations or knows of any facts, circumstances or conditions, including any Releases of Hazardous Materials, that are likely to result in any Environmental Liabilities of such Credit Party which could reasonably be expected to exceed \$500,000 in the aggregate; (vi) No Credit Party is subject to any existing, pending, or has knowledge of any, threatened Litigation arising under or related to any Environmental Laws, Environmental Permits or Hazardous Material that seeks damages, penalties, fines, costs or expenses in excess of \$500,000 in the aggregate or injunctive relief against, or that alleges criminal misconduct by, any Credit Party; (vii) no Credit Party has knowledge of, nor has any Credit Party received notice of any actual, pending or threatened

investigations, claims, orders, suits, actions or proceedings regarding the breach of any Environmental Laws or the provisions of any Environmental Permits, or which may result in any Environmental Liability, that could reasonably be expected to exceed \$500,000 in the aggregate; and (viii) the Credit Parties have provided to Agent copies of all existing environmental reports, reviews and audits and all written information within their control pertaining to actual or potential Environmental Liabilities, in each case relating to any Credit Party.

2. The Assessed Equipment has been maintained and operated in accordance with prudent industry standards and all Environmental Laws and no Credit Party has knowledge of any fact, circumstance or condition in respect of the Assessed Equipment or its maintenance or operation that is likely to result in any Environmental Liabilities that could reasonably be expected to exceed \$500,000 in the aggregate, or investigation, claim, order, suit, action or proceedings regarding the breach of any Environmental Laws, or the provisions of any Environmental Permits, that could reasonably be expected to result in Environmental Liabilities that exceed \$500,000 in the aggregate.

The undersigned acknowledges that the Agent is relying on this Certificate in connection with Advances made or to be made under the Credit Agreement.

The undersigned further acknowledges that this certificate is binding on it, and that if there is any false or misleading information provided herein or pursuant hereto, an Event of Default shall be deemed to have occurred under the Credit Agreement.

All capitalized terms used in this Certificate but not defined in this Certificate shall have the meanings given to them in the Credit Agreement.

DATED this [•] day of [•],[•].

EVEREADY ENERGY SERVICES CORP.

By: _____
Name:
Title:

I have authority to bind the Corporation.

Exhibit 11.1(b)

EVEREADY ENERGY SERVICES CORP.

Form of Assignment Agreement

ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Agreement**”) is made as of _____, 200__ between _____ (“**Assignor Lender**”) and _____ (“**Assignee Lender**”) and acknowledged and consented to by **GE CANADA ASSET FINANCING HOLDING COMPANY**, as agent (“**Agent**”). All capitalized terms used in this Agreement and not otherwise defined herein have the respective meanings set forth in the Credit Agreement as hereinafter defined.

RECITALS

WHEREAS Eveready Energy Services Corp., as borrower (“**Borrower**”), the other Credit Parties thereunder from time to time, the other Persons signatory thereto as Lenders from time to time and the Agent entered into an amended and restated credit agreement dated as of December 31, 2008 (as amended, restated, supplemented and otherwise modified from time to time, the “**Credit Agreement**”) pursuant to which Assignor Lender has agreed to make certain Advances to Borrower.

WHEREAS Assignor Lender desires to assign to Assignee Lender [**all/a portion**] of its interest in the Advances and the Collateral and to delegate to Assignee Lender [**all/a portion**] of its Commitments and other duties with respect to the Advances and the Collateral.

WHEREAS Assignee Lender desires to become a Lender under the Credit Agreement and to accept such assignment and delegation from Assignor Lender.

WHEREAS Assignee Lender desires to appoint Agent to serve as Agent for Assignee Lender under the Credit Agreement.

FOR VALUE RECEIVED, Assignor Lender and Assignee Lender agree as follows:

**SECTION 1
ASSIGNMENT, DELEGATION AND ACCEPTANCE**

1.1 Assignment

Assignor Lender hereby transfers and assigns to Assignee Lender, without recourse and without representations or warranties of any kind (except as set forth in Section 3.2), [**all/such percentage**] of Assignor Lender’s right, title, and interest in the [**Revolving Loan**], [**Term Loan**], the Loan Documents and the Collateral as will result in Assignee Lender having, as of the Effective Date (as hereinafter defined), a Pro Rata Share thereof, as follows:

Assignee Lender's Commitment	Principal Amount	Pro Rata Share
[Revolving Loan	\$]%
[Term Loan	\$]%

1.2 Delegation

Assignor Lender hereby irrevocably assigns and delegates to Assignee Lender **[all/a portion]** of its Commitments and its other duties and obligations as a Lender under the Loan Documents equivalent to **[100%/ %]** of Assignor Lender's Commitment under the **[Revolving Loan] [Term Loan]** (such percentage representing a Commitment of \$).

1.3 Acceptance by Assignee

By its execution of this Agreement, Assignee Lender hereby irrevocably purchases, assumes and accepts such assignment and delegation and agrees to be a Lender with respect to the delegated interest under the Loan Documents and to be bound by the terms and conditions thereof. By its execution of this Agreement, Assignor Lender agrees, to the extent provided herein, to relinquish its rights and be released from its obligations and duties under the Credit Agreement.

1.4 Effective Date

Such assignment and delegation by Assignor Lender and acceptance by Assignee Lender will be effective, and Assignee Lender will become a Lender under the Loan Documents, as of the date of this Agreement ("**Effective Date**") and upon payment of the Assigned Amount and the Assignment Fee (as each term is defined below). Interest and Fees accrued prior to the Effective Date are for the account of Assignor Lender, and interest and Fees accrued from and after the Effective Date are for the account of Assignee Lender.

**SECTION 2
INITIAL PAYMENT**

2.1 Payment of the Assigned Amount

Assignee Lender will pay to Assignor Lender, for value not later than 12:00 noon on the Effective Date, an amount equal to its Pro Rata Share of the then outstanding principal amount of the Advances, as set forth above in Section 1.1 together with accrued interest, fees and other amounts as set forth on Schedule 2.1 (the "**Assigned Amount**").

2.2 Payment of Assignment Fee

[Assignor Lender and/or Assignee Lender] will pay to Agent, for its own account, for value not later than 12:00 noon (Toronto time) on the Effective Date, the assignment fee in the amount of \$3,500 (the "**Assignment Fee**"), as required pursuant to Section 11.1(a) of the Credit Agreement.

2.3 Execution and Delivery of Notes.

Following payment of the Assigned Amount and the Assignment Fee, Assignor Lender will deliver to Agent the Notes previously delivered to Assignor Lender for redelivery to Borrower and Agent will obtain from Borrower for delivery to **[Assignor Lender and]** Assignee Lender, new executed Notes evidencing Assignee Lender's **[and Assignor Lender's respective]** Pro Rata Share[s] in the Loan after giving effect to the assignment described in Section 1. Each new Note will be issued in the aggregate maximum principal amount of the **[applicable]** Commitment **[of the Lender to whom such Note is issued] OR [the Assignee Lender]**.

SECTION 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Assignee Lender's Representations, Warranties and Covenants

Assignee Lender hereby represents, warrants, and covenants to Assignor Lender and Agent the following:

- (1) this Agreement is a legal, valid, and binding agreement of Assignee Lender, enforceable against Assignee Lender according to its terms;
- (2) the execution and performance by Assignee Lender of its duties and obligations under this Agreement and the Loan Documents will not require any registration with, notice to, or consent or approval by any Governmental Authority;
- (3) Assignee Lender is familiar with transactions of the kind and scope reflected in the Loan Documents and in this Agreement;
- (4) Assignee Lender has made its own independent investigation and appraisal of the financial condition and affairs of each Credit Party, has conducted its own evaluation of the Loans, the Loan Documents and each Credit Party's creditworthiness, has made its decision to become a Lender to Borrower under the Credit Agreement independently and without reliance upon Assignor Lender or Agent, and will continue to do so;
- (5) Assignee Lender is entering into this Agreement in the ordinary course of its business, and is acquiring its interest in the Loans and the Commitments for its own account and not with a view to or for sale in connection with any subsequent distribution; provided, however, that at all times the distribution of Assignee Lender's property shall, subject to the terms of the Credit Agreement, be and remain within its control; and
- (6) As of the Effective Date, Assignee Lender, (i) is not subject to capital adequacy or similar requirements under Section 1.15(a) of the Credit Agreement, (ii) does not require the payment of any amount on account of increased costs under Section 1.15(b) of the Credit Agreement, and Assignee Lender will indemnify Agent from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or expenses that result from any inaccuracy in the foregoing.

3.2 Assignor Lender's Representations, Warranties and Covenants

Assignor Lender hereby represents, warrants and covenants to Assignee Lender the following:

- (1) Assignor Lender is the legal and beneficial owner of the Assigned Amount;
- (2) this Agreement is a legal, valid and binding agreement of Assignor Lender, enforceable against Assignor Lender according to its terms;
- (3) the execution and performance by Assignor Lender of its duties and obligations under this Agreement and the Loan Documents will not require any registration with, notice to or consent or approval by any Governmental Authority;
- (4) Assignor Lender has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfill the obligations hereunder and to consummate the transactions contemplated hereby;
- (5) Assignor Lender is the legal and beneficial owner of the interests being assigned hereby, free and clear of any adverse claim, lien, encumbrance, security interest, restriction on transfer, purchase option, call or similar right of a third party; and
- (6) this Assignment by Assignor Lender to Assignee Lender complies, in all material respects, with the terms of the Loan Documents.

**SECTION 4
LIMITATIONS OF LIABILITY**

Neither Assignor Lender (except as provided in Section 3.2) nor Agent makes any representations or warranties of any kind, nor assumes any responsibility or liability whatsoever, with regard to (a) the Loan Documents or any other document or instrument furnished pursuant thereto or the Advances or the Commitments or other Obligations, (b) the creation, validity, genuineness, enforceability, sufficiency, value or collectibility of any of them, (c) the amount, value or existence of the Collateral, (d) the perfection or priority of any Lien upon the Collateral, or (e) the financial condition of any Credit Party or other obligor or the performance or observance by any Credit Party of its obligations under any of the Loan Documents. Neither Assignor Lender nor Agent has or will have any duty, either initially or on a continuing basis, to make any investigation, evaluation, appraisal of, or any responsibility or liability with respect to the accuracy or completeness of, any information provided to Assignee Lender which has been provided to Assignor Lender or Agent by any Credit Party. Nothing in this Agreement or in the Loan Documents shall impose upon the Assignor Lender or Agent any fiduciary relationship in respect of the Assignee Lender.

**SECTION 5
FAILURE TO ENFORCE**

No failure or delay on the part of Agent or Assignor Lender in the exercise of any power, right, or privilege hereunder or under any Loan Document will impair such power, right, or privilege

or be construed to be a waiver of any default or acquiescence therein. No single or partial exercise of any such power, right, or privilege will preclude further exercise thereof or of any other right, power, or privilege. All rights and remedies existing under this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise available.

**SECTION 6
NOTICES**

Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given will be in writing and addressed to the respective party as set forth below its signature hereunder, or to such other address as the party may designate in writing to the other.

**SECTION 7
AMENDMENTS AND WAIVERS**

No amendment, modification, termination, or waiver of any provision of this Agreement will be effective without the written concurrence of Assignor Lender, Agent and Assignee Lender.

**SECTION 8
SEVERABILITY**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. In the event any provision of this Agreement is or is held to be invalid, illegal, or unenforceable under applicable law, such provision will be ineffective only to the extent of such invalidity, illegality, or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In addition, in the event any provision of or obligation under this Agreement is or is held to be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions or obligations in any other jurisdictions will not in any way be affected or impaired thereby.

**SECTION 9
SECTION TITLES**

Section and subsection titles in this Agreement are included for convenience of reference only, do not constitute a part of this Agreement for any other purpose, and have no substantive effect.

**SECTION 10
SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**SECTION II
APPLICABLE LAW**

This Agreement will be construed in accordance with and governed by the laws of the Province of Alberta applicable to contracts made and performed in that Province.

**SECTION 12
COUNTERPARTS**

This Agreement and any amendments, waivers, consents, or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, will be deemed an original and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

ASSIGNEE LENDER:

ASSIGNOR LENDER:

By: _____
Name:
Title:

By: _____
Name:
Title:

Notice Address:

Notice Address:

ACKNOWLEDGED AND CONSENTED TO:

GE CANADA ASSET FINANCING HOLDING COMPANY, as Agent

Provided that no Event of Default has occurred and is continuing:
EVEREADY ENERGY SERVICES CORP., as Borrower

By: _____
Name:
Duly Authorized Signatory

By: _____
Name:
Duly Authorized Signatory

Schedule 6.4

EVEREADY ENERGY SERVICES CORP.

Insurance

The Borrower shall arrange and maintain property and casualty insurance with the following preferred specifications for an optimal insurance program:

1. General Requirements:
 - a. insurance companies rated A- X or higher by A.M. Best or reasonably acceptable to the Administrative Agent
 - b. carriers must be authorized to do business in Canada and US for respective exposures
 - c. industry standard or better for terms and conditions, including but not limited to, limits, deductibles and sublimits to the extent not listed in this schedule
 - d. favorable wording for non-vitiation and separation of insureds
 - e. Lenders and Administrative Agent as additional insured on all policies except where prohibited by law (Workers Compensation and Employer's Liability) as their interests may appear
 - f. Lenders and Administrative Agent provided waiver of subrogation on all policies where permitted
 - g. Collateral Agent as additional insured as its interest may appear and loss payee on property (including physical damage for vehicles and mobile equipment), boiler and machinery (if separate) and business interruption policies, during the term of the Financing Agreement
 - h. 30 day prior notice of cancellation except 10 days for non payment of premium
 - i. Administrative Agent reserves the right at any time upon any change in Borrower's risk profile or as a result of any change in law affecting the potential liability of such Borrow to require an increase in coverage or limits
 - j. within ten (10) days of renewal of each policy the Borrower's insurance, Borrower's insurance broker shall provide evidence of such renewal information as reasonably required by Administrative Agent
 - k. Borrower shall notify Administrative Agent of any loss with the potential of exceeding US\$1,000,000

 2. Commercial General Liability
 - a. occurrence policy form or AEGIS claims-first-made policy form
 - b. personal injury / bodily injury, including death
 - c. premises / operations
 - d. products / completed operations — at least \$2,000,000 aggregate
 - e. XCU cover (removal of explosion, collapse and underground exclusion)
-

- f. broad form property damage
 - g. broad form contractual liability
 - h. separation of insureds clause
 - i. cross liability if multiple named insureds
 - j. punitive damages to extent permitted by law
 - k. at least \$1,000,000 per occurrence
 - l. Non-Owned Automobile Coverage

 - 3. Automobile Liability
 - a. cover all owned hired and non-owned autos using in the Borrower's business (where the Commercial General Liability Coverage does not apply)
 - b. at least \$1,000,000 any one accident
 - c. Canadian and United States (federal and state) statutory coverage forms, as applicable

 - 4. Workers Compensation / Employer's Liability
 - a. statutory workers compensation benefits coverage
 - b. employer's liability limit of at least \$1,000,000 (part of general liability policy in Canada)
 - c. USL&H and Jones Act cover to the extent exposure exists
 - d. other forms as required by law

 - 5. Umbrella / Excess Liability
 - a. Excess of commercial general liability, automobile liability, employers liability
 - b. Occurrence policy form or AEGIS claims made policy form
 - c. Limit of at least \$10,000,000 per occurrence

 - 6. Pollution Liability
 - a. at least \$3,000,000 per occurrence
 - b. discovery and notification of at least 7 days and 45 days respectively
 - c. can be included under combination of primary general liability policy and an excess (umbrella) liability policy

 - 7. Property All Risk Insurance
 - a. all risk property and machinery breakdown insurance, including business interruption on at least industry standard policy form
 - b. if machinery breakdown and all risk property written on separate policies, joint loss agreement on each policy
 - c. perils to include but not be limited to earthquake, flood and windstorm
 - d. policy to insure all property and equipment and machinery that are part of the project and property of others for which insured may be liable (such as rail cars which may be included here or on a separate policy)
 - e. transit insurance, as required, with a limit sufficient to cover the full value of property in transit
-

- f. losses adjusted on a repair or replacement cost basis
- g. all risk limit equivalent to full replacement cost of all insurable property, however the following extensions and perils may be sublimited:
 - Property at Unscheduled Locations
 - Expediting Expense
 - Newly Acquired Property
 - Rented / Leased Equipment
 - Pollutant Cleanup and Removal
 - Demolition / Incidental Course of Construction
 - Windstorm — at least 25% of full replacement cost of facility
 - Earthquake — at least 25% of full replacement cost of facility
 - Flood — at least 25% of full replacement cost of facility
 - Debris removal
 - Escalation clause
- h. coinsurance clause permitted with compliance
- i. blanket waiver of subrogation as required by contract
- j. deductibles not to exceed \$25,000 for physical damage except \$50,000 for machinery breakdown and 30 days for business interruption (time element)
- k. loss payee as required under the Financing Agreement as their interests may appear. Standard mortgage clause approved by the Insurance Bureau of Canada and separately for the US coverages

8. Inland Marine Insurance

- a. coverage for all mobile equipment and truck mounted equipment of the owner or such equipment for which owner has responsibility for damage or loss
 - b. perils to include but not be limited to earthquake, flood and windstorm
 - c. losses adjusted on a repair or replacement cost basis up to market value of the equipment involved
 - d. coinsurance clause permitted with compliance
 - e. blanket waiver of subrogation as required by contract
 - f. deductibles not to exceed \$25,000
 - g. loss payee as required under the Financing Agreement as their interests may appear.
-

Disclosure Schedule 4.1

EVEREADY ENERGY SERVICES CORP.

Type of Entity; Jurisdiction of Organization

(see attached)

Credit Party April 24, 2008	Credit Party December 30, 2008	Credit Party December 31, 2008	Credit Party January 1, 2008	Entity Type	Jurisdiction of Incorporation
		Eveready Inc.	Eveready Inc.	Corporation	Alberta
Eveready Income Fund	Eveready Income Fund	Eveready Income Fund	Eveready Income Fund	Trust	Alberta
Eveready Income Trust	Eveready Income Trust	Eveready Income Trust	Eveready Income Trust	Trust	Alberta
Eveready Holdings Limited Partnership	Eveready Holdings Limited Partnership	Eveready Holdings Limited Partnership	Eveready Holdings Limited Partnership	Limited Partnership	Alberta
Eveready Holdings GP Ltd.	Eveready Holdings GP Ltd.	Eveready Holdings GP Ltd.	Eveready Holdings GP Ltd.	Corporation	Alberta
River Valley Operating Limited Partnership	River Valley Operating Limited Partnership	River Valley Operating Limited Partnership	River Valley Operating Limited Partnership	Limited Partnership	Alberta
River Valley Energy Services Ltd.	River Valley Energy Services Ltd.	River Valley Energy Services Ltd.	River Valley Energy Services Ltd.	Corporation	Alberta
Winterhawk Operating Limited Partnership	Winterhawk Operating Limited Partnership	Winterhawk Operating Limited Partnership	Winterhawk Operating Limited Partnership	Limited Partnership	Alberta
Winterhawk Enterprises (Provost) Ltd.	Winterhawk Enterprises (Provost) Ltd.	Winterhawk Enterprises (Provost) Ltd.	Winterhawk Enterprises (Provost) Ltd.	Corporation	Alberta
Eveready Operating Limited Partnership	Eveready Operating Limited Partnership	Eveready Operating Limited Partnership	Eveready Operating Limited Partnership	Limited Partnership	Alberta
JL Filtration Operating Limited Partnership	JL Filtration Operating Limited Partnership	JL Filtration Operating Limited Partnership	JL Filtration Operating Limited Partnership	Limited Partnership	Alberta
JL Filtration Inc.	JL Filtration Inc.	JL Filtration Inc.	JL Filtration Inc.	Corporation	Alberta
Eveready Industrial Western Ltd.	Eveready Industrial Western Ltd.	Eveready Industrial Western Ltd.	Eveready Industrial Western Ltd.	Corporation	Alberta
Mobile Industrial Health Services Ltd.	Mobile Industrial Health Services Ltd.	Mobile Industrial Health Services Ltd.	Mobile Industrial Health Services Ltd.	Corporation	Alberta

Tri-Vax Enterprises Ltd. Acquisition Limited Partnership	Tri-Vax Enterprises Ltd. Acquisition Limited Partnership	Tri-Vax Enterprises Ltd. Acquisition Limited Partnership	Tri-Vax Enterprises Ltd.	Corporation Limited Partnership	Alberta Alberta
Canada-Wide Oilfield Services Ltd.	Canada-Wide Oilfield Services Ltd.	Canada-Wide Oilfield Services Ltd.		Corporation	Alberta
Canada-Wide Operating Limited Partnership	Canada-Wide Operating Limited Partnership	Canada-Wide Operating Limited Partnership		Limited Partnership	Alberta
Eveready Directional Boring Ltd.	Eveready Directional Boring Ltd.	Eveready Directional Boring Ltd.	Eveready Directional Boring Ltd.	Corporation	Alberta
1225979 Alberta Ltd.	1225979 Alberta Ltd.	1225979 Alberta Ltd.		Corporation	Alberta
1202867 Alberta Ltd.	1202867 Alberta Ltd.	1202867 Alberta Ltd.		Corporation	Alberta
1240609 Alberta Ltd.	1240609 Alberta Ltd.	1240609 Alberta Ltd.		Corporation	Alberta
1206894 Alberta Ltd.	1206894 Alberta Ltd.	1206894 Alberta Ltd.		Corporation	Alberta
1233460 Alberta Ltd.	1233460 Alberta Ltd.	1233460 Alberta Ltd.		Corporation	Alberta
Eveready Directional Boring LP	Eveready Directional Boring LP	Eveready Directional Boring LP	Eveready Directional Boring LP	Limited Partnership	Alberta
Astec Safety Services Ltd. 1257427 Alberta Ltd.	Astec Safety Services Ltd. 1257427 Alberta Ltd.	Astec Safety Services Ltd. 1257427 Alberta Ltd.	Astec Safety Services Ltd.	Corporation	Alberta
Cat Tech Operating Limited Partnership	Cat Tech Operating Limited Partnership	Cat Tech Operating Limited Partnership	Cat Tech Operating Limited Partnership	Limited Partnership	Alberta
Diversified Pressure Services Ltd.	Diversified Pressure Services Ltd.	Diversified Pressure Services Ltd.		Corporation	Alberta [NTD: continued to Alberta Dec 15 th]
Cat Tech Canada Ltd.	Cat Tech Canada Ltd.	Cat Tech Canada Ltd.	Cat Tech Canada Ltd.	Corporation	Nova Scotia
Bullseye Boring Ltd.	Bullseye Boring Ltd.	Bullseye Boring Ltd.		Corporation	Alberta

Airborne Imaging Inc.	Airborne Imaging Inc.	Airborne Imaging Inc.	Airborne Imaging Inc.	Corporation	Alberta
Rodrigue's Directional Drilling Projects Inc.	Rodrigue's Directional Drilling Projects Inc.	Rodrigue's Directional Drilling Projects Inc.		Corporation	Alberta
Eveready Industrial Services Inc.	Eveready Energy Services Inc. (name change)	Eveready Energy Services Inc.	Eveready Energy Services Inc.	Corporation	Nevada
Eveready Holdings (USA) Inc.	Eveready Holdings (USA) Inc.	Eveready Holdings (USA) Inc.	Eveready Holdings (USA) Inc.	Corporation	Nevada
Safety Watch, LLC	Safety Watch, LLC	Safety Watch, LLC	Safety Watch, LLC	Corporation	Texas
Cat-Tech LLC	Cat-Tech LLC	Cat-Tech LLC	Cat-Tech LLC	Corporation	Texas
Breathing Systems International, LLC	Breathing Systems International, LLC	Breathing Systems International, LLC	Breathing Systems International, LLC	Corporation	Texas
Great Lakes Carbon Treatment, Inc.	Great Lakes Carbon Treatment, Inc.	Great Lakes Carbon Treatment, Inc.	Great Lakes Carbon Treatment, Inc.	Corporation	Michigan
River Valley Energy Services Inc.	River Valley Energy Services Inc.	River Valley Energy Services Inc.	River Valley Energy Services Inc.	Corporation	Nevada
Eveready Industrial Services Corp.	Eveready Energy Services Corp. (name change)	Eveready Energy Services Corp.	Eveready Energy Services Corp.	Corporation	Alberta
Denman Industrial Trailers Ltd.	Denman Industrial Trailers Ltd.	Denman Industrial Trailers Ltd.	Denman Industrial Trailers Ltd.	Corporation	Alberta
Denman Industrial Operating LP	Denman Industrial Operating LP	Denman Industrial Operating LP	Denman Industrial Operating LP	Limited Partnership	Alberta

Disclosure Schedule 4.2

EVEREADY ENERGY SERVICES CORP.

Executive Offices, Collateral Locations

(see attached)

Company Name	Address (** indicates Key Location)
Airborne Imaging Inc.	#130, 885 - 42nd Avenue SE, Calgary, AB T2G 1Y8
Astec Safety	4902 - 51 Avenue Bonnyville, AB T9N 2H4 Canada
Astec Safety	215A MacKay Crescent Fort McMurray, AB T9H 4T5 Canada
Astec Safety	2602-50 Avenue Lloydminster AB T9V 2S3 Canada
Astec Safety	5308 - 49th Avenue Provost, AB T0B 3S0 Canada
Astec Safety	Millenium, Box 417, Oyen, AB T0T 2S0 Canada
Breathing Systems	3500 S Ritchie Street Suite 100Houston, TX 77017 USA
Cat Tech Canada Company	4403 - 84th Ave Edmonton, AB T6B 2S6 Canada
Cat Tech Canada Company	282 Tecumseh Street Samia, ON N7T 2K9 Canada
Cat Tech Canada Company	145, Cowley Bay, Ft McMurray, AB, T9K 1G5 Canada
Cat Tech Europe	1 South Park Road Scunthorpe, N Lincolnshire DN172BY United Kingdom
Cat Tech Inc	15200 Middlebrook Drive Suite G Houston, TX 77058 USA
Cat Tech Inc	9856 Steelman Street Houston, TX 77017 USA
Cat Tech Inc	2040 Cherry Industrial Circle, Long Beach, CA 90805, USA
Cat Tech Inc	1905 Jasmine DR., Bldg E, Pasadena, Texas 77503, Canada
Cat Tech Inc	1861 Williamson Court, Louisville, KY 40223 USA
Cat Tech Inc	6378 FM 105, Orange, Texas 77630, USA
Cat Tech Inc	9236 Ashland Road, Gonzales, LA 70737
Cat Tech Inc	PO Box 158, Harmony Road, and 1-295 Mickleton, NJ 08056 USA
Denman Industrial Trailers	14907 - 111 Avenue Edmonton AB T5M 2P6 Canada
Eveready Directional Boring	40 Industrial Drive, Sylvan Lake, AB T4S 1P4 Canada
Eveready Directional Boring	256, 28042 HWY 11, Red Deer County, AB T4S 2L4, Canada***
Eveready Directional Boring	1203 - 6 Street, Nisku, AB T9E 7P1 Canada
Eveready Directional Boring	8003 - 110 Street Grande Prairie, AB T8W 6T2 Canada
Eveready Energy Services	15817 - 121A Avenue Edmonton, AB T5V 1B1 Canada
Eveready Energy Services	4501 Industrial Park Road Macklin, SK S0L 2C0 Canada
Eveready Energy Services	525E Dewdney Avenue Regina SK S4N 4E9 Canada
Eveready Energy Services	PO Box 2925, Stn Main 1902 - 15 Avenue Wainwright, AB T9W 1S8 Canada
Eveready Energy Services	Bag 2 Altario, AB T0C 0E0 Canada
Eveready Energy Services	6215 - 52 Ave Bonnyville, AB T9N 2L7 Canada
Eveready Energy Services	PO Box 5330 Site: 26339 Hwy 39 Devon, AB T9G 1Y1 Canada
Eveready Energy Services	P.O. Box 356 Dryden, ON P8N 2Z1 Canada
Eveready Energy Services	2nd flr, 901 - 77 Avenue Edmonton, AB T6P 1M8 Canada
Eveready Energy Services	100, 14920 - 114 Avenue Edmonton, AB T5M 4G4Canada
Eveready Energy Services	127-Lot 229 26229 TWP Rd 531A Acheson, AB T7X 5C4 Canada
Eveready Energy Services	230A Mackay Crescent Fort McMurray, AB T9H 5C6 Canada***
Eveready Energy Services	PO Box 28 Hwy 63 & Grassland Drive Grassland, AB T0A 1V0 Canada
Eveready Energy Services	PO Box 213 4603 - 48 Avenue Fort Nelson, BC V0C 1R0 Canada
Eveready Energy Services	6708 - 87A Avenue Fort St John, BC V1J 0B4 Canada
Eveready Energy Services	1 Collins Road Dawson Creek, BC Canada
Eveready Energy Services	10493 - 92 Avenue High Level, AB T0H 1Z0 Canada
Eveready Energy Services	PO Box 5159 High River, AB T1V 1M4 Canada
Eveready Energy Services	174 Felaber Road Hinton, AB T7V 1Z8 Canada
Eveready Energy Services	1115 - 11 Ave West Kindersley, SK S0L 1S0 Canada
Eveready Energy Services	PO Box 11279 Lloydminster, AB T9V 3B5
Eveready Energy Services	PO Box 517 Macklin, SK S0L 2C0 Canada
Eveready Energy Services	#1 - 5765 Turner Road, Suite 111 Nanaimo, BC V9T 6M4 Canada
Eveready Energy Services	PO Box 310 Neilburg SK S0M 2C0 Canada
Eveready Energy Services	PO Box 7170 Peace River, AB T8S 1M6 Canada
Eveready Energy Services	#1, 405 McAloney Road Prince George, BC V2K 4L2 Canada
Eveready Energy Services	3603 - 57 Avenue, Provost, AB, T0B 3S0 Canada
Eveready Energy Services	2nd floor, 15830 - 121A Avenue Edmonton AB T5V 1B1 Canada
Eveready Energy Services	1650 - 70 Avenue, Edmonton AB, T6P 1P5, Canada
Eveready Energy Services	Av. Conselheiro Rodrigues Alves, 58 12620-000 Piquiet, SP - Brazil

Eveready Energy Services	11212 - 87 Avenue, Ft. Saskatchewan, AB T8L 2S4, Canada
Eveready Energy Services	1233 Highridge Drive, Kamloops, BC V2C 5G5, Canada
Eveready Energy Services	8002E 101 Avenue, peace River, AB T8S 1S8, Canada
Eveready Energy Services	P.O. Box 385, Rainbow Lake, AB, T0H 2Y0, Canada
Eveready Energy Services	8118 - 49 Avenue Close, Red Deer, AB T4P 2V5, Canada
Eveready Energy Services	7750 Edgar Industrial Drive, Red Deer, AB T4P 3R2, Canada
Eveready Energy Services	P.O. Box 2977, Samia, On, N7t 7W2, Canada
Eveready Energy Services	Unit# 1404, 7 Bishop Avenue, Toronto, ON, M2M 4J4
Eveready Energy Services	9856 Steelman Street, Houston Texas, 77017 USA
Eveready Energy Services	PO Box 838, Evansburg, AB T0E 0T0 Canada
Eveready Energy Services	Box 9, GRP 582, R.R.#5, 290 Transport Rd, Winnipeg, MB R2C 2Z2, Canada
Eveready Energy Services	4301 - 66 Street Stettler, AB, T0C 2L1, Canada
Eveready Energy Services	3475 - 35 Street, Whitecourt, AB T7S 1P8, Canada
Eveready Energy Services	PO Box 8, Colleville, SK, S0I 0K0, Canada
Eveready Energy Services	PO Box 11279, Lloydminster, AB T9V 3B5
Eveready Income Fund	14904 - 121A Avenue Edmonton, AB T5V 1A3 Canada
Eveready Energy Services	Site 4, Box 28, RR1, Sexsmith, AB, T0H 3C0, Canada
Eveready Energy Services	1102 - 6 Street, Nisku, AB, T9E 7N7, Canada
Findit Inc	PO Box 174, Okotoks, AB T1S 1A9 Canada
Great Lakes Carbon Treatments	3300 US 131 North, Kalkaska, MI 49646 USA
J.L Filtration Inc	1102 - 6Street, Nisku, AB T9E 7N7
J.L Filtration Inc	Box 791, Slave Lake, AB, T0G 2A0, Canada
J.L Filtration Inc	#6, 11456 - 96 Avenue, Grande Prairie, AB, T8V 5M4
Mercedes Surveys	Site: 49014 - RR 52, PO Box 30, Camwood, AB, Canada
Mercedes Surveys	16, 2810 Pegasus Way NE, Calgary, AB T2E 8M5
Mobile Industrial Health Services	225E Mackay Crescent, Fort Mc Murray, Ab T9H 4T5, Canada
Mobile Industrial Health Services	10143 - 100 Street, Fort St. John, BC V1J 3Y6
Mobile Industrial Health Services	#205, 10126 - 97 Avenue, Grande Prairie, AB T8V 7X6, Canada
Mobile Industrial Health Services	207, 11044 - 51 Avenue, Edmonton, AB T6H 5B4
River Valley Energy Services Ltd	PO Box 1038, Grimshaw, AB T0h 1w0***
Safety Watch	208 W. San Augustine Deer Park, TX 77536 USA

Disclosure Schedule 4.4(a)

EVEREADY ENERGY SERVICES CORP.

Financial Statements

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.4(b)

EVEREADY ENERGY SERVICES CORP.

Projections

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.7

EVEREADY ENERGY SERVICES CORP.

Labour Matters

Collective Bargaining Agreements

1. Collective Agreement dated May 24, 2002 among Eveready Industrial Western Ltd. and International Union of Operating Engineers, Local 115. Revised agreement dated June 1, 2008 to May 31, 2011.
2. The Hydraulic Dredging Agreement dated September 20, 2001 among Fraser River Pile & Dredge Ltd. and International Union of Operating Engineers, Local 115 and revised through Ceda Reactor May 1, 2006 to April 30, 2009.
3. Collective Agreement dated July 7, 2003 among Alberta Roadbuilders Association and International Union of Operating Engineers, Local 955.
4. Provincial Operating Engineers Collective Agreement for General Construction Sector dated July 29, 2004 among Construction Labor Relations (an Alberta Association) Operating Engineers (Provincial) Trade Division and International Union of Operating Engineers, Local 955. Revised agreement dated May 27, 2007 to April 30, 2011.
5. Collective Agreement dated December 1, 2006 among Eveready Industrial Services Corp. and International Union of Operating Engineers, Local 793. Revised agreement Dated December 1, 2008 through to November 30, 2010.
6. Collective Agreement Dated June 1, 2004 to May 31, 2007 with Eveready Industrial Services Corp and the International Union of Operating Engineers Local 865 (Dryden ON) (to be revised).
7. Collective Agreement dated November 20, 2007 among Tri-Vax Enterprised Ltd. and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local Lodge 146.

Management Agreements

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2 (3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Consulting Agreements

1. Consulting Agreement dated December 31, 2005 among Eveready Industrial Services Corp., Baimar Holdings Ltd. and Rodney F. Marlin.

Bonus Plans

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Stock Option Plans/Stock Purchase Plans/Option Agreements/Similar Agreements

1. The Amended and Restated Eveready Employee Unit Plan dated June 30, 2006 between Eveready Income Fund and its subsidiaries and Dennis L. Nerland.
2. Employee Savings Plan Trust and Agent Services Agreement dated October 16, 2006 among Eveready Industrial Services Corp., Canadian Western Trust Company and Solium Capital Inc.
3. Various Employee Unit Option Agreements among Eveready Income Fund and various employees (to be replaced by the Eveready Share Option Plan effective December 31, 2008 pursuant to shareholder approval on December 11, 2008 and disclosed in the Management Information Circular dated November 7, 2008).
4. The Eveready Inc. Shareholder Rights Plan among Eveready Inc. and Computer Share Trust Company of Canada (approved by shareholders on December 11, 2008 and disclosed in the Management Information Circular dated November 7, 2008).
5. The Eveready Income Fund Deferred Unit Plan (to be replaced by the Deferred Share Plan effective December 31, 2008 pursuant to shareholder approval on December 11, 2008 and disclosed in the Management Information Circular dated November 7, 2008).

The schedules attached to Disclosure Schedule 4.7 have been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.8

EVEREADY ENERGY SERVICES CORP.

Ventures, Subsidiaries and Affiliates; Outstanding Stock

Joint Venture Agreements

1. Joint Venture Agreement dated July 23, 2004 among Innovative Coke Expulsion Inc. (now Eveready Industrial Services Inc.) and Inovaserv Tecnologia e Servicos Ltda.

Subsidiaries and Affiliates; Outstanding Stock

(see attached)

Issuer	Certificate Number	Number of Securities	Class of Securities	Pledgor
Eveready Income Fund		85,478,063	Trust Units	Eveready Inc.
Eveready Income Trust	1	1	Class A Trust Units	Eveready Income Fund
	3	7,626,127	Class A Trust Units	Eveready Income Fund
	5	4,384,706	Class A Trust Units	Eveready Income Fund
	6	2,599,179	Class A Trust Units	Eveready Income Fund
	7	454,996	Class A Trust Units	Eveready Income Fund
	8	236,686	Class A Trust Units	Eveready Income Fund
	9	1,416,122	Class A Trust Units	Eveready Income Fund
	10	1,806,007	Class A Trust Units	Eveready Income Fund
	11	755,738	Class A Trust Units	Eveready Income Fund
	12	260,606	Class A Trust Units	Eveready Income Fund
	13	144,092	Class A Trust Units	Eveready Income Fund
	14	343,879	Class A Trust Units	Eveready Income Fund
	15	1,241,287	Class A Trust Units	Eveready Income Fund
	16	736,772	Class A Trust Units	Eveready Income Fund
	17	236,686	Class A Trust Units	Eveready Income Fund
	18	262,106	Class A Trust Units	Eveready Income Fund
	19	324,283	Class A Trust Units	Eveready Income Fund
	20	100,000	Class A Trust Units	Eveready Income Fund
	21	1,085,046	Class A Trust Units	Eveready Income Fund
	22	24,153	Class A Trust Units	Eveready Income Fund
	23	24,153	Class A Trust Units	Eveready Income Fund
	24	21,705	Class A Trust Units	Eveready Income Fund
	25	21,705	Class A Trust Units	Eveready Income Fund
Eveready Holdings Limited Partnership	1	1	Class A Limited Partnership Units	Eveready Income Trust
	2	7,626,127	Class A Limited Partnership Units	Eveready Income Trust
	3	4,384,706	Class A Limited Partnership Units	Eveready Income Trust
	4	2,599,179	Class A Limited Partnership Units	Eveready Income Trust
	5	454,996	Class A Limited Partnership Units	Eveready Income Trust
	6	236,686	Class A Limited Partnership Units	Eveready Income Trust
	7	1,416,122	Class A Limited Partnership Units	Eveready Income Trust
	8	1,806,007	Class A Limited Partnership Units	Eveready Income Trust
	9	755,738	Class A Limited Partnership Units	Eveready Income Trust
	10	260,606	Class A Limited Partnership Units	Eveready Income Trust
	11	144,092	Class A Limited Partnership Units	Eveready Income Trust
	12	343,879	Class A Limited Partnership Units	Eveready Income Trust
	13	1,241,287	Class A Limited Partnership Units	Eveready Income Trust

	14	1,246,343	Class A Limited Partnership Units	Eveready Income Trust
	15	736,772	Class A Limited Partnership Units	Eveready Income Trust
	16	236,686	Class A Limited Partnership Units	Eveready Income Trust
	17	262,106	Class A Limited Partnership Units	Eveready Income Trust
	18	324,283	Class A Limited Partnership Units	Eveready Income Trust
	19	100,000	Class A Limited Partnership Units	Eveready Income Trust
	20	1,085,046	Class A Limited Partnership Units	Eveready Income Trust
	21	24,153	Class A Limited Partnership Units	Eveready Income Trust
	22	24,153	Class A Limited Partnership Units	Eveready Income Trust
	23	21,705	Class A Limited Partnership Units	Eveready Income Trust
	24	21,705	Class A Limited Partnership Units	Eveready Income Trust
	B-157	3,573,821	Class B Limited Partnership Units	Eveready Inc.
	C1-001	1,641,455	Class C Limited Partnership Units	Eveready Inc.
	C2-001	663,096	Class C Limited Partnership Units	Eveready Inc.
	C3-001	421,254	Class C Limited Partnership Units	Eveready Inc.
Eveready Holdings GP Ltd.	2	10	Common Shares	Eveready Income Fund
River Valley Energy Services Ltd.	2	100	Common Shares	Eveready Holdings Limited Partnership
River Valley Operating Limited Partnership	1	1	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	2	500,000	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	3	755,738	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	4	236,686	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-002	10,524,055	Class B Limited Partnership Units	River Valley Energy Services Ltd.
	D1-002	1,606,323.24	Class D Series 1 Limited Partnership Units	1225979 Alberta Ltd.
	D2-002	4,790,000.00	Class D Series 2 Limited Partnership Units	Airborne Imaging Inc.
Eveready Energy Services Corp.	1	144,092	Common Shares	Eveready Holdings Limited Partnership

Eveready Operating Limited Partnership	2	1,080,000	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	3	2,599,179	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	4	324,283	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	5	100,000	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-1	16,172,500	Class B Limited Partnership Units	Eveready Energy Services Corp.
JL Filtration Inc.	2	10	Common Shares	Eveready Energy Services Corp.
JL Filtration Operating Limited Partnership	2	45,000	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-1	673,856	Class B Limited Partnership Units	Eveready Energy Services Corp.
Winterhawk Enterprises (Provost) Ltd.	2	10	Common Shares	Eveready Energy Services Corp.
Winterhawk Operating Limited Partnership	2	375,000	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	3	454,996	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	4	343,879	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-1	5,615,469	Class B Limited Partnership Units	Eveready Industrial Services Corp.
	C-1-002	10,121,826	Class C Series 1 Limited Partnership Units	1257427 Alberta Ltd.
	C-001	7,650,000	Class C Series 2 Limited Partnership Units	Diversified Pressure Services Ltd.
Canada-Wide Oilfield Services Ltd.	2	100	Common Shares	Eveready Holdings Limited Partnership
Canada-Wife Operating Limited Partnership	1	1	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-2	7,790	Class B Limited Partnership Units	1206894 Alberta Ltd.
	B-4	5,993,027	Class B Limited Partnership Units	1233460 Alberta Ltd.
Eveready Directional Boring Ltd.	1	100	Common Shares	Eveready Holdings Limited Partnership
Eveready Directional Boring LP	1	1	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-001	800,000	Class B Series 1 Limited Partnership Units	Acquisition Limited Partnership
	B-2-002	299,235	Class B Series 2 Limited Partnership Units	Acquisition Limited Partnership

	B-3-002	221,862	Class B Series 3 Limited Partnership Units	Acquisition Limited Partnership
	C-002	30,370,796	Class C Series 1 Limited Partnership Units	1240609 Alberta Ltd.
	C-2-003	11,360,000	Class C Series 2 Limited Partnership Units	Bullseye Boring Ltd.
	C-3-002	8,422,672	Class C Series 3 Limited Partnership Units	Rodrigue's Directional Drilling Projects Inc.
Cat Tech Canada Ltd.				
	1	100	Common Shares	Eveready Holdings Limited Partnership
Cat Tech Operating Limited Partnership				
	A-1	1	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	A-2	650,000	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	B-1	15,315,912	Class B Limited Partnership Units	Cat Tech Canada Ltd.
1202867 Alberta Ltd.				
	1	100	Common Shares	Eveready Holdings Limited Partnership
Acquisition Limited Partnership				
	1	1	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	2	1,241,287	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	3	736,772	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	4	1,085,046	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	5	24,153	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	6	24,153	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	7	21,705	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	8	21,705	Class A Limited Partnership Units	Eveready Holdings Limited Partnership
	C-1-001	1,641,455	Class C Limited Partnership Units	Eveready Holdings Limited Partnership
	C-2-014	663,096	Class C Limited Partnership Units	Eveready Holdings Limited Partnership
	C-3-013	421,254	Class C Limited Partnership Units	Eveready Holdings Limited Partnership
1225979 Alberta Ltd.				
	1	100	Common Shares	Eveready Holdings Limited Partnership
Eveready Holdings (USA) Inc.				
	3	100	Common Shares	Eveready Operating Limited Partnership
	4	1	Common Shares	Eveready Operating Limited Partnership
	5	1,000	Common Shares	Eveready Operating Limited Partnership
Mobile Industrial Health Services Ltd.				
	A-9	50	Class A Common Shares	Eveready Operating Limited Partnership

	F-6	50	Class F Common Shares	Eveready Operating Limited Partnership
Eveready Industrial Western Ltd.	3A	100	Class A Common Shares	Eveready Operating Limited Partnership
Tri-vax Enterprises Ltd.	8	200	Class A Common Shares	Eveready Operating Limited Partnership
Eveready Energy Services Inc.	4	100	Common Shares	Eveready Holdings (USA) Inc.
Safety Watch, LLC	1	100%	Membership Interest	Eveready Holdings (USA) Inc.
Cat Tech, LLC	1	100%	Membership Interest	Eveready Holdings (USA) Inc.
1257427 Alberta Ltd.	1	100	Class A Common Shares	Eveready Holdings Limited Partnership.
1206894 Alberta Ltd.	1	100	Common Shares	Eveready Holdings Limited Partnership.
1240609 Alberta Ltd.	1	100	Common Shares	Eveready Holdings Limited Partnership.
	2	14,185,402	Common Shares	Acquisition Limited Partnership
1233460 Alberta Ltd.	1	100	Class A Common	Eveready Holdings Limited Partnership.
Astec Safety Services Ltd.	E1	100	Class E Common Shares	Eveready Energy Services Corp.
Bullseye Boring Ltd.	1	100	Class A Common Shares	Eveready Holdings Limited Partnership.
	2	5,430,000	Class A Common Shares	Acquisition Limited Partnership
Diversified Pressure Services Inc.	1	100	Class A Common Shares	Eveready Holdings Limited Partnership.
	2	2,551,572	Class A Common Shares	Acquisition Limited Partnership
Airborne Imaging Inc.	1	100	Common Shares	Eveready Holdings Limited Partnership
Great Lakes Carbon Treatment, Inc.	7	50,000	Common Shares	Eveready Holdings (USA) Inc.
Breathing Systems International, LLC	1	100%	Membership Interest	Eveready Holdings (USA) Inc.
Rodrigue's Directional Drilling Projects Inc.	1	100	Class A Common Shares	Eveready Holdings Limited Partnership.
River Valley Energy Services Inc.	1	10	Common Shares	Eveready Holdings (USA) Inc.

Denman Industrial Operating Limited Partnership	1	1	Limited Partnership Unit	Eveready Holdings Limited Partnership
	B-1-002	1,000,000	Class B Series 1 Limited Partnership Units	Denman Industrial Trailers Ltd.
Denman Industrial Trailers Ltd.	1	100	Class A Common Shares	Eveready Holdings Limited Partnership

Disclosure Schedule 4.10

EVEREADY ENERGY SERVICES CORP.

Tax Matters

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.11

EVEREADY ENERGY SERVICES CORP.

Litigation

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.12

EVEREADY ENERGY SERVICES CORP.

Pension and Benefit Plans

(see attached)

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Eveready Income Fund
Health Insurance Coverage

<u>Eveready Division</u>	<u>Insurance Company</u>	<u>Policy Name</u>	<u>Policy #</u>
Eveready Canadian divisions (except Cat-Tech Canada)	Great West Life	Eveready Income Fund	[Deleted]
Eveready Industrial Services Corp. - ICE US division			
Hospitalization	Aetna (could be changing for Jan)	Eveready Industrial Services Inc	[Deleted]
Vision	Compbenefits	Eveready Industrial Services Inc	[Deleted]
Dental, STD, LTD, Life	Assurant Employee Benefits	Eveready Industrial Services Inc	[Deleted]
River Valley Energy Services			
Health & Dental	Canwest Group Benefits	River Valley Energy Services	[Deleted]
STD, LTD, Life	Great West Life	Eveready Income Fund	[Deleted]
Cat-Tech Canada	Alberta Blue Cross	Cat Tech Canada Company	[Deleted]
Cat-Tech US			
Medical, Dental, Flexible Spending Account	Cigna HealthCare (could be changing in Jan)	Cat Tech US	[Deleted]
Vision	Cigna HealthCare	Cat Tech US	[Deleted]
Life, STD, LTD	Mutual of Omaha	Cat Tech US	[Deleted]
Supplemental insurance (paid by employees)	Worksite Solutions	Cat Tech US	[Deleted]
Cat-Tech UK & Singapore			
Government coverage			

Disclosure Schedule 4.13

EVEREADY ENERGY SERVICES CORP.

Brokers

Nil.

Disclosure Schedule 4.14

EVEREADY ENERGY SERVICES CORP.

Intellectual Property

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.16

EVEREADY ENERGY SERVICES CORP.

Hazardous Materials

Nil.

Disclosure Schedule 4.17

EVEREADY ENERGY SERVICES CORP.

Insurance

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.18

EVEREADY ENERGY SERVICES CORP.

Deposit and Disbursement Accounts

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 4.19

EVEREADY ENERGY SERVICES CORP.

Government Contracts

Nil.

Disclosure Schedule 4.21

EVEREADY ENERGY SERVICES CORP.

Bonds; patent, Trademark, Industrial Design Licenses

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 6.1

Trade Names

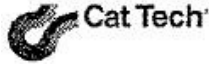
(see attached)



Airborne Imaging



Astec Safety Services



Cat Tech



Denman Industrial Trailer



Eveready Directional Boring



Eveready Energy Services



Great Lakes Carbon Treatment



JL Filtration



Mercedes Surveys



Mobile Industrial Health Services



Pembina Area Landfill



River Valley Energy Services



Safety Watch



Trivax

Disclosure Schedule 7.4

EVEREADY ENERGY SERVICES CORP.

Indebtedness

- 1) The operating leases and capital leases of the Credit Parties (See Attached list for summary current to September 30, 2008);
- 2) Current and Future Taxes Payable;
- 3) Unitholder Distributions;
- 4) Asset Retirement Obligations;
- 5) Convertible Debentures- Debt Feature;
- 6) Minority Interests.

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 7.5(a)

EVEREADY ENERGY SERVICES CORP.

Transactions with Affiliates

Except as listed below, there are no transactions with Affiliates other than the existing loans and advances incurred in the ordinary course of business:

- a) During the three and nine months ended September 30, 2008, Eveready incurred professional fees of \$67 and \$227 (2007 - \$22 and \$409), respectively, from a partnership of which an Eveready officer is a partner;
- b) During the three and nine months ended September 30, 2008, Eveready incurred professional fees of \$44 and \$160 (2007 - \$23 and \$92), respectively, from a partnership of which an Eveready trustee is a partner;
- c) Included in general and administrative expenses for the three and nine months ended September 30, 2008 are occupancy costs of \$711 and \$1,616 (2007 - \$411 and \$1,145), respectively, paid to companies controlled or influenced by certain officers and/or trustees of Eveready;
- d) During the three and nine months ended September 30, 2008, Eveready incurred equipment rental and repair costs of \$218 and \$343 (2007 - \$16 and \$121), respectively, from companies controlled or influenced by certain officers and/or trustees of Eveready;
- e) During the three and nine months ended September 30, 2008, Eveready acquired service equipment of \$nil and \$1,745 (2007 - \$1,424 and \$2,496), respectively, from companies controlled or influenced by certain officers and/or trustees of Eveready;
- f) During the three and nine months ended September 30, 2008, Eveready earned service revenue of \$1,357 and \$2,577 (2007 - \$888 and \$888), respectively, from companies controlled or influenced by certain officers and/or trustees of Eveready; and
- g) During the nine months ended September 30, 2008, Eveready disposed of property, plant and equipment for proceeds of \$233 (2007 - \$nil), to a company influenced by an Eveready trustee.

As at September 30, 2008, outstanding amounts collectible from or owing to related parties included accounts receivable of \$2,321 (December 31, 2007 - \$2,004) and accounts payable and accrued liabilities of \$373 (December 31, 2007 - \$108). Except for item 'g' above, all transactions occurred in the normal course of operations and were measured at their exchange amounts, which were established and agreed to as

consideration by the related parties. The proceeds received on disposal of property, plant and equipment were measured at the disposed asset's carrying amount, which also equalled its exchange amount.

Disclosure Schedule 7.5(b)

EVEREADY ENERGY SERVICES CORP.

Transactions with Employees

Nil.

Disclosure Schedule 7.7

EVEREADY ENERGY SERVICES CORP.

Guaranteed Indebtedness

(see attached)

- a) The Fund has provided certain guarantees to financial institutions regarding financing that they have provided to certain contractors. The loans were provided for the purchase of specific service and automotive equipment used by the contractors in providing services to the Fund. The loans are collateralized by the specific equipment. The total balance of the loans guaranteed by the Fund as at September 30, 2008 was \$1,577,000. See Attached.
- b) As at September 30, 2008 the Fund had issued letters of credit up to a maximum amount of CDN \$2,225,226. The letters of credit are drawn on the same credit facility as the Fund's bank indebtedness.
- c) Matching Units held within our Employee Unit Plan Trust have been provided as collateral against bank loans owing by certain employees that were issued in connection with their participation in the Employee Unit Plan. These units could be drawn upon by the bank if a participant were to default on the debt obligation and the participant's units were not sufficient to cover the outstanding loan balance. At of September 30, 2008, the Employee Unit Plan Trust held 1.4 million units with a fair value of \$3.2 million as collateral over such bank loans;
- d) In the normal course of business, the Fund enters into agreements that include indemnities in favour of third parties. These include engagement letters with advisors and consultants, and service agreements. The Fund has also agreed to indemnify its trustees, directors, officers, and employees in accordance with the Fund's constating documents and bylaws. Certain agreements do not contain any limits on the Fund's liability and therefore it is not possible to estimate the Fund's potential liability under these indemnities. In certain cases, the Fund has recourse against third parties with respect to these indemnities. In addition, the Fund maintains insurance policies that may provide coverage against certain claims under these indemnities.

Certain information has been intentionally deleted from the SEDAR version of this Agreement in accordance with section 12.2(3) of National Instrument 51-102. The disclosure of this information to the general public would be seriously prejudicial to the interests of Eveready Inc. or would violate confidentiality provisions. Such information is not essential in order to understand the material terms of this Agreement.

Disclosure Schedule 7.8

EVEREADY ENERGY SERVICES CORP.

Existing Liens

1. ALBERTA

(a) Eveready Inc. - NIL

(b) Borrower ("Eveready Energy Services Corp." formerly "Eveready Industrial Services Corp." All registrations in this section are registered against Eveready Industrial Services Corp.)

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration # 07042335138, 07042335179, 07042335211, 07042335286, 07042335344, 07042335450, 07042335526, 07042335641, 07042335724, 07042335799, 07042335898, 07042335948, 07042336045, 07042336102, 07042336177, 07042336235, 07042336326, 07042336417, 07042336466, 07042336557, 07042336672, 07042336748, 07042336789, 07042336839, 07042334883, 07042336904, 07042334800, 07042334750)

(ii) BRANDT TRACTOR LTD. (Note: Garage Keeper's Lien of \$2,415.07 as Alberta PPR Registration #08121916501)

(iii) GLOVER INTERNATIONAL TRUCKS LTD. (Note: Garage Keeper's Lien of \$3,510.33 as Alberta PPR Registration #08111322119)

(iv) GREAT WEST KENWORTH LTD. (Note: Garage Keeper's Lien of \$3,184.03 as Alberta PPR Registration # 08111101361)

(v) WESTERN STERLING TRUCKS LTD. (Note: Garage Keeper's Lien of \$1,267.33 as Alberta PPR Registration # 08111005953)

(vi) FORT GARRY INDUSTRIES LTD. (Note: Alberta PPR Registration #08070213496)

(vii) WESTERN STERLING TRUCKS LTD. (Note: Garage Keeper's Lien of \$2,026.69 as Alberta PPR Registration # 08062533510)

(viii) WILLIAMS SCOTSMAN OF CANADA, INC. (Note: Alberta PPR Registration #08012920955)

(ix) Dell Financial Services Canada Limited. (Note: Alberta PPR Registration #05080535890, Saskatchewan PPR Registration #300103782)

- (x) Edmonton Kenworth Ltd. (Note: Alberta PPR Registration #04012332021, 04012332807, 04012332922, 04032931992, 04032932107, 05012412549)
 - (xi) First Truck Centre (Note: Garage Keeper's Lien of \$2,695.13 as Alberta PPR Registration #08102042314)
 - (xii) Inland Kenworth (Note: Garage Keeper's Lien of \$1,954.87 as Alberta PPR Registration # 08080823231, British Columbia PPR Registration #509993D)
 - (xiii) Shaw GMC Pontiac Buick Hummer Ltd. (Note: Alberta PPR Registration #06121909607)
 - (xiv) Transportaction Lease Systems Inc. (Note: Alberta PPR Registration #02091202966)
 - (c) **Eveready Income Fund**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ii) Transportaction Lease Systems Inc. (Note: Alberta PPR Registration #02091202966, 05053025317)
 - (iii) HSBC Bank Canada (Note: Alberta PPR Registration #05080809097, 07080205102)
 - (d) **Eveready Income Trust**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334800, 07042334750)
 - (e) **Eveready Holdings Limited Partnership**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334800, 07042334750)
 - (f) **Eveready Holdings GP Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (g) **River Valley Operating Limited Partnership**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042336961, 07042337001, 07042337068, 07042337555, 07042337118, 07042337191, 07042337241, 07042337308, 07042337357, 07042337399, 07042337431, 07042337514, 07042334800, 07042334750)
-

- (h) **River Valley Energy Services Ltd.**
- (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042336961, 07042337001, 07042337068, 07042337555, 07042337118, 07042337191, 07042337241, 07042337308, 07042337357, 07042337399, 07042337431, 07042337514, 07042338538, 07042334800, 07042334750)
 - (ii) Finning International Inc. (Note: Alberta PPR Registration #08072306227, 08073124700)
 - (iii) Paccar Financial Services Ltd., Paccar Financial Ltd. (Note: Alberta PPR Registration #04083026734)
 - (iv) Transportation Lease Systems Inc. (Note: Alberta PPR Registration #02091202966)
 - (v) Union Tractor Limited (Note: Garage Keeper's Lien of \$11,686.33 as Alberta PPR Registration #08120419588, 08120420215)
- (i) **Winterhawk Operating Limited Partnership**
- (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042337613, 07042337670, 07042337738, 07042337969, 07042338033, 07042338181, 07042338124, 07042334883, 07042334800, 07042334750)
- (j) **Winterhawk Enterprises (Provost) Ltd.**
- (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042337613, 07042337670, 07042337738, 07042337969, 07042338033, 07042338181, 07042338124, 07042334883, 07042334800, 07042334750)
 - (ii) BMO Bank of Montreal (Note: Land Charge as Alberta PPR Registration #05032333535)
 - (iii) Transportation Lease Systems Inc. (Note: Alberta PPR Registration #02091202966)
- (k) **Eveready Operating Limited Partnership**
- (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042335138, 07042335179, 07042335211, 07042335286, 07042335344, 07042335450, 07042335526, 07042335641, 07042335724, 07042335799, 07042335898, 07042335948, 07042336045, 07042336102, 07042336177, 07042336235, 07042336326, 07042336417, 07042336466,
-

07042336557, 07042336672, 07042336748, 07042336789, 07042336839, 07042334883, 07042336904, 07042334800, 07042334750)

(l) **JL Filtration Operating Limited Partnership**

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042338231, 07042334800, 07042334750)

(m) **JL Filtration Inc.**

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042338231, 07042334800, 07042334750)

(ii) Transportation Lease Systems Inc. (Note: Alberta PPR Registration #02091202966)

(iii) Registered under the debtor name, "JL Filtration Ltd." (Note: Alberta PPR Registration #05092732469)

(n) **Eveready Industrial Western Ltd.**

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042338298, 07042334800, 07042334750)

(o) **Mobile Industrial Health Services Ltd.**

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042338348, 07042334800, 07042334750)

(ii) Transportation Lease Systems Inc. (Note: Alberta PPR Registration #02091202966)

(p) **Tri-Vax Enterprises Ltd.**

GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042338413, 07042334800, 07042334750)

(q) **Acquisition Limited Partnership**

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)

(r) **Canada-Wide Oilfield Services Ltd.**

(i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750, 07042338462)

- (s) **Canada-Wide Operating Limited Partnership**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ii) BMO Bank of Montreal (Note: Land Charge - Alberta PPR Registration #06011810451)
 - (t) **Eveready Directional Boring Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ii) Brandt Tractor Ltd. (Note: Garage Keeper's Lien in the amount of \$1,525.05 as Alberta PPR Registration #08102234524)
 - (u) **1225979 Alberta Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (v) **1202867 Alberta Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (w) **1240609 Alberta Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (x) **1206894 Alberta Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (y) **1233460 Alberta Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (z) **Eveready Directional Boring LP**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (aa) **Astec Safety Services Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
-

- (ii) CIT Financial Ltd. (Note: Alberta PPR Registration #06060221741)
 - (iii) Kralon Holdings Ltd.; Heritage Inn (Note: Alberta PPR Registration #07102633505. Writ of Enforcement in current amount of \$1,783.46)
 - (bb) **1257427 Alberta Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (cc) **Cat Tech Operating Limited Partnership**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (dd) **Diversified Pressure Services Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ee) **Cat Tech Canada Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ff) **Bullseye Boring Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (gg) **Airborne Imaging Inc.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (hh) **Rodrigue's Directional Drilling Projects Inc.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ii) BMO Bank of Montreal (Note: Land Charge -Alberta PPR Registration #07030720291; Alberta PPR Registration #07030720242)
 - (iii) Transportation Lease Systems Inc. (Note: Alberta PPR Registration #05072027856)
-

- (ii) **Eveready Energy Services Inc. (formerly “Eveready Industrial Services Inc.”)**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ii) Registered under the debtor name, “Eveready Energy Services” (Note: Garage Keeper’s Lien Alberta PPR Registration #08120135125)
 - (iii) Registered under the debtor name, “Eveready Industrial Services Inc.”, and creditor name BMO Bank of Montreal (Note: ALLPAAP as Alberta PPR Registration #07030720242)
 - (iv) Registered under the debtor name, “Eveready Industrial Services Inc.”, and creditor name BMO Bank of Montreal (Note: Land Charge as Alberta PPR Registration #07030720291)
 - (jj) **Eveready Holdings (USA) Inc.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (kk) **Safety Watch, LLC**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (ll) **Cat-Tech LLC**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (mm) **Breathing Systems International, LLC**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (nn) **Great Lakes Carbon Treatment, Inc.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (oo) **River Valley Energy Services Inc.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
 - (pp) **Denman Industrial Trailers Ltd.**
 - (i) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)
-

- (ii) HSBC Bank Canada (Note: Alberta PPR Registration #05080809063, 05080809097, 05111443197, 05111600739, 06022724311, 06022724352, 06050420634, 06050421111, 06091416716, 06091502820, 07020825761, 07020825886, 07020913252, 07020913260, 07041201802, 07041201810, 07121228234, 07121228243, 08010935261, 08030613438, 08030627017, 08091204592, 08091514736)
- (iii) Komatsu International (Canada) Inc. (Note: Alberta PPR Registration #08092514920, 08092515226, 08092515377, 08092515833)
- (iv) Alta-Fab Structures Ltd. (Note: Alberta PPR Registration # 08091527344, 08100231424, 08100234862, 08100711428, 08100711632, 08100711719, 08100711875, 08100712192, 08100714139, 08100714989, 08100715471, 08100715857, 08100716729, 08100718237, 08100718574, 08100719318, 08100724540)
- (v) De Lage Landen Financial Services Canada Inc. (Note: Alberta PPR Registration #08103132225, 08111032398)
- (vi) De Lage Landen Financial Services Canada (CAD) (Note: Alberta PPR Registration #08111331033)
- (vii) Registered under the debtor name, "Denman Industrial Trailer Ltd." (Note: Alberta PPR Registration #08100715161)
- (viii) Registered under the debtor name, "Denman Industrial Trailers" (Note: Alberta PPR Registration # 08061312702, 08091834477)
- (qq) **Denman Industrial Operating Limited Partnership**
 - (i) HSBC Bank of Canada (Note: Alberta PPR Registration #05080809063, 05080809097, 05111443197, 05111600739, 06022724311, 06022724352, 06050420634, 06050421111, 06091416716, 06091502820, 07020825761, 07020825886, 07020913252, 07020913260, 07041201802, 07041201810, 07121228234, 07121228243, 08010935261, 08030613438, 08030627017, 08091204592, 0809120459)
 - (ii) GE Canada Asset Financing Holding Company (Note: Alberta PPR Registration #07042334750)

2. ONTARIO

(a) **Eveready Energy Services Corp.**

- (i) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #619284447 includes other Credit Parties as additional debtors)
-

(b) **Eveready Operating Limited Partnership**

- (i) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #619284447 includes other Credit Parties as additional debtors)
- (ii) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #613697409 includes other Credit Parties as additional debtors)

(c) **Cat Tech Operating Limited Partnership**

- (i) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #619284447 includes other Credit Parties as additional debtors)

(d) **Cat Tech Canada Ltd.**

- (i) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #619284447 includes other Credit Parties as additional debtors)
- (ii) Citicorp Vendor Finance, Ltd. — (Note: Ontario File #604427463 secures a registration against a 2004 Caterpillar GP40, VIN AT13F00180)

(e) **Eveready Industrial Services Corp.**

- (i) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #619284447 includes other Credit Parties as additional debtors)
- (ii) GE Canada Equipment Financing G.P. (Note: Ontario PPR File #613697409 includes other Credit Parties as additional debtors)

3. SASKATCHEWAN

(a) **Eveready Energy Services Corp.**

- (i) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #122611454)

(b) **Winterhawk Operating Limited Partnership**

- (i) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #121873079)
- (ii) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #122611454)

(c) **Winterhawk Enterprises (Provost) Ltd.**

- (i) GE Equipment Financing G.P. (Note: Saskatchewan PPR Registration #120134278)
-

- (ii) Common Wealth Credit Union Limited Note: Saskatchewan PPR Registration #121562521 registering an interest in the following:

2004 Kenworth T800B
2004 Ford F150
2004 Ford F150

(d) **Eveready Operating Limited Partnership**

- (i) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #121873079)
- (ii) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #122611454)

(e) **Diversified Pressure Services Ltd.**

- (i) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #122611454)

(f) **Eveready Industrial Services Corp.**

- (i) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #121873079)
- (ii) GE Canada Asset Financing Holding Company (Note: Saskatchewan PPR Registration #122611454)
- (iii) Dell Financial Services Canada Limited (Note: Saskatchewan PPR Registration #300103782 registering an interest in all Dell and non-Dell computer equipment leased to the debtor by the secured party)
- (vi) Warner Truck Industries Ltd. (Note: Saskatchewan PPR Registration #300360391 registering a commercial lien against a 2001 Freightliner N112064S)

4. BRITISH COLUMBIA

(a) **Eveready Operating Limited Partnership**

- (i) GE Equipment Financing G.P. (Note: BC PPR Base Registration #259771C)
 - (ii) GE Equipment Financing G.P. (Note: BC PPR Base Registration #604567C)
-

(b) **JL Filtration Operating Limited Partnership**

- (i) GE Equipment Financing G.P. (Note: BC PPR Base Registration #259771C)
- (ii) GE Equipment Financing G.P. (Note: BC PPR Base Registration #604567C)

(c) **JL Filtration Inc.**

- (i) GE Equipment Financing G.P. (Note: BC PPR Base Registration #259771C)
- (ii) GE Equipment Financing G.P. (Note: BC PPR Base Registration #604567C)

(d) **Eveready Industrial Western Ltd.**

- (i) GE Equipment Financing G.P. (Note: BC PPR Base Registration #259771C)
- (ii) GE Equipment Financing G.P. (Note: BC PPR Base Registration #604567C)

(e) **Mobile Industrial Health Services Ltd.**

- (i) GE Equipment Financing G.P. (Note: BC PPR Base Registration #259771C)
- (ii) GE Equipment Financing G.P. (Note: BC PPR Base Registration #604567C)

(f) **Eveready Industrial Services Corp.**

- (i) GE Equipment Financing G.P. (Note: BC PPR Base Registration #259771C)
 - (ii) GE Equipment Financing G.P. (Note: BC PPR Base Registration #604567C)
 - (iii) Inland Kenworth (Fort St. John) (Note BC PPR Base Registration #524964E registering a lien against a 2004 Kenworth T800B in the amount of \$1,954.87)
 - (vi) James Western Star (Fort St. John) (Note BC PPR Base Registration #648202E registering a lien against a 2006 Peterbilt 378 in the amount of \$5,872.23)
-

5. MANITOBA

(a) **Eveready Operating Limited Partnership**

- (i) GE Canada Asset Financing Holding Company (Note: Manitoba PPR Registration #200517563101)
- (ii) GE Canada Asset Financing Holding Company (Note: Manitoba PPR Registration #200504923109)

(c) **Eveready Industrial Services Corp.**

- (i) GE Canada Asset Financing Holding Company (Note: Manitoba PPR Registration #200517563101)
- (ii) GE Canada Asset Financing Holding Company (Note: Manitoba PPR Registration #200504923109)

6. USA

(a) **Eveready Energy Services, Inc. (formerly “Eveready Industrial Services, Inc.”)**

- (i) Nil

(b) **Eveready Industrial Services, Inc.**

- (i) Nil.

(c) **Eveready Holdings (USA) Inc.**

- (i) BMO Bank of Montreal — Original Filing Number 2007002094-5
- (ii) GE Canada Asset Financing Holding Company — Original Filing Number 2006041622-1.

(d) **Safety Watch LLC**

- (i) Bank of America, N.A. — Original Filing Number 40074572838
- (ii) Bank of America, N.A. — Original Filing Number 20003971688
- (iii) Bank of America, N.A. — Original Filing Number 9900128892

(e) **Cat-Tech LLC**

- (i) Dell Financial Services L.L.C. — Original Filing Number 80025813263
-

- (ii) Dell Financial Services L.L.C. — Original Filing Number 80023180274
 - (iii) Dell Financial Services L.L.C. — Original Filing Number 80012952219
 - (iv) Dell Financial Services L.P.. — Original Filing Number 80009736063
 - (v) Dell Financial Services L.P. — Original Filing Number 80002874786
 - (vi) Dell Financial Services L.P. — Original Filing Number 80000609538
 - (vii) Dell Financial Services L.P. — Original Filing Number 70043824773
 - (viii) Dell Financial Services L.P. — Original Filing Number 70042575828
 - (ix) Dell Financial Services L.P. — Original Filing Number 70042575939
 - (x) Dell Financial Services L.P. — Original Filing Number 70041945868
 - (xi) Dell Financial Services L.P. — Original Filing Number 70031610634
 - (xii) BMO Bank of Montreal — Original Filing Number 70000788505
 - (xiii) GE Canada Asset Financing Holding Company — Original Filing Number 60041168218
 - (xiv) Financial Federal Credit Inc. — Original Filing Number 50034517116 (debtor is listed as Cat Tech Inc.)
 - (xv) Financial Federal Credit Inc. — Original Filing Number 50034517338 (debtor is listed as Cat Tech Inc.)
 - (xvi) Greater Bay Bank N. A.. — Original Filing Number 60032466329 (debtor is listed as Cat Tech Inc.)
 - (xvii) Wells Fargo Equipment Finance, Inc. — Original Filing Number 40048335108 (debtor is listed as Cat Tech Inc.)
 - (xviii) US Bancorp Equipment Finance, Inc. — Original Filing Number 40047149140 (debtor is listed as Cat Tech Inc.)
 - (xix) US Bancorp Equipment Finance, Inc. — Original Filing Number 40047149362 (debtor is listed as Cat Tech Inc.)
 - (xx) Citicorp Del Lease, Inc.. — Original Filing Number 30016491004 (debtor is listed as Cat Tech Inc.)
 - (xxi) Catalyst Technology, Inc. — Original Filing Number 20032900319 (debtor is listed as Cat Tech Inc.)
-

(xxii) Bank Of America N.A. — Original Filing Number 20029901275 (debtor is listed as Cat Tech Inc.)

(xxiii) Bank Of America N.A. — Original Filing Number 50039157787 (debtor is listed as Cat Tech Inc.)

(f) **Breathing Systems International, LLC**

(i) BMO Bank of Montreal — Original Filing Number 70000788505

(ii) GE Canada Asset Financing Holding Company — Original Filing Number 60041168218.

(g) **Great Lakes Carbon Treatment, Inc.**

(i) BMO Bank of Montreal — Original Filing Number 2007006974-5

(ii) GE Canada Asset Financing Holding Company — Original Filing Number 2006210148-0

(h) **River Valley Energy Services Inc.**

(i) Nil

**FIRST AMENDING AGREEMENT
TO THE AMENDED AND RESTATED CREDIT AGREEMENT
DATED AS OF DECEMBER 31, 2008**

among

EVEREADY ENERGY SERVICES CORP.,
as Borrower,

THE OTHER CREDIT PARTIES SIGNATORY HERETO,
as Credit Parties,

-and-

**GE CANADA ASSET FINANCING HOLDING COMPANY and
CANADIAN IMPERIAL BANK OF COMMERCE,**
as Co-Agents and Lenders,

-and-

THE LENDERS SIGNATORY HERETO FROM TIME TO TIME,
as Lenders,

-and-

GE CAPITAL MARKETS, INC. and GE CAPITAL MARKETS (CANADA) LTD.,
as Lead Arrangers,

-and-

BANK OF MONTREAL AND CANADIAN IMPERIAL BANK OF COMMERCE,
as Co-Syndication Agents

-and-

BANK OF NOVA SCOTIA,
as Documentation Agent

April 24, 2009

**FIRST AMENDING AGREEMENT
TO THE AMENDED AND RESTATED
CREDIT AGREEMENT DATED DECEMBER 31, 2008**

THIS AMENDING AGREEMENT is made effective as of April 24, 2009 (the "Amendment Date"),

BETWEEN:

EVEREADY ENERGY SERVICES CORP.,
as Borrower

- and -

THE OTHER CREDIT PARTIES SIGNATORY HERETO,
as Credit Parties,

- and -

**GE CANADA ASSET FINANCING HOLDING COMPANY and
CANADIAN IMPERIAL BANK OF COMMERCE,**
as Co-Agents and Lenders,

-and-

THE LENDERS SIGNATORY HERETO FROM TIME TO TIME,
as Lenders

PREAMBLE:

- A. Pursuant to the Amended and Restated Credit Agreement dated as of December 31, 2008 between Eveready Energy Services Corp., as Borrower (the "**Borrower**"), the other Credit Parties signatory thereto, GE Canada Asset Financing Holding Company, as Agent and Lender, and the persons signatory thereto from time to time as the Lenders and individually as a Lender (as amended, the "**Credit Agreement**"), the Lenders agreed, *inter alia*, to provide to Borrower the Loans.
- B. The Revolving Lenders have agreed to extend the Commitment Termination Date for a further 364 days pursuant to Section 1.2(c) of the Credit Agreement.
- C. The parties wish to amend the Credit Agreement on the terms and conditions provided in this Amending Agreement (the "**Amending Agreement**").

AGREEMENT:

In consideration of the premises, the covenants and the agreements herein contained, the receipt and sufficiency of which is hereby acknowledged between the parties, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this Amending Agreement will, unless otherwise defined herein, have the meaning attributed to such terms in the Credit Agreement, as amended by this Amending Agreement. Commencing the date hereof, the Credit Parties and Lenders acknowledge that for the purposes of the Credit Agreement, this Amending Agreement shall be deemed a "Loan Document".
2. **No Waiver.** Except as specifically set out herein, this Agreement shall not constitute an agreement, waiver or consent to any event, circumstance, matter or thing and is without prejudice to any of the rights or remedies of the Lenders under the Credit Agreement or any Loan Documents with respect thereto, and shall not extend to any other matter, provision or breach of, or Default or Event of Default under, the Credit Agreement.
3. **Amendment.** Effective as of the Amendment Date, the Credit Agreement is amended as follows:
 - (a) Section 1.2(e)(ii)(B) of the Credit Agreement is hereby amended by: (i) replacing "24" with "12"; and (ii) replacing "4 1/6%" with "8 1/3%".
 - (b) The following is hereby added after Section 1.2(e)(ii) of the Credit Agreement as Section 1.2(e)(iii):

“(iii) **Term Period upon Extension.** Upon any extension of the Commitment Termination Date done on or about April 23, 2010 for a further 364 days in accordance with Section 1.2(c), Section 1.2.(e)(ii) will cease to apply and:

 - (A) during the Term Period as applicable to any Term Loan, subject to the terms of this Agreement, only interest shall be payable; and
 - (B) on the Maturity Date, Borrower shall pay the Lenders the remaining unpaid principal amount of the applicable Term Loan (if any), together with all accrued and unpaid interest thereon and all other amounts payable hereunder.”
 - (c) The first paragraph of Section 1.7(a)(iii) of the Credit Agreement is hereby deleted in its entirety and replaced with:

“on the Term Loan B: (A) for the rateable benefit of the applicable BA Term Loan B Lenders in arrears on each Interest Payment Date, interest based on the BA Rate plus the applicable margin based on the table below; and (B) for the rateable benefit of the applicable CDOR Term Loan B Lenders in arrears on each Interest Payment Date, interest based on the CDOR Rate plus the applicable margin based on the table below:”

- (d) Section 1.7(a) of the Credit Agreement is hereby amended by replacing the table set forth therein with the following table:

Level	(Funded Debt less Subordinated Debt) To EBITDA for prior rolling 4 quarters	Financing Rate and Credit Spread	
		Canadian Prime Loan	BA/CDOR Margin
1	≤1.50:1	2.50%	3.75%
2	>1.50:1 but ≤2.0:1	3.00%	4.25%
3	>2.0:1 but ≤2.50:1	3.50%	4.75%

- (e) Section 1.8(b) of the Credit Agreement is hereby amended by replacing “0.25%” with “0.50%”.

- (f) Section 6.4(e) of the Credit Agreement is hereby deleted in its entirety and replaced with:

“The deductible applicable to contractor’s equipment insurance as currently provided by AIG Commercial Insurance Company of Canada exceeds \$25,000 and has a \$1,000,000 aggregate policy limit per year. The parties agree that this (including any replacement policy therefore) shall not constitute a breach of the covenant in Section 6.4(a) and Disclosure Schedule 6.4(a).”

- (g) The definition of “**GE Fee Letter**” in Annex A of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

““**GE Fee Letter**” means that certain letter, dated on or about April 15, 2009 between the Lender and Borrower with respect to certain Fees to be paid from time to time by Borrower to GE Canada.”

- (h) The definition of “**Term Period**” in Annex A of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

““**Term Period**” means, with respect to the Term Loan, the period commencing at 5:01 p.m. (Toronto time) on the Commitment Termination Date and expiring on April 24, 2012.”

- (i) The following definitions are hereby added to Schedule A to the Credit Agreement in the appropriate alphabetical order:

“**BA Term Loan B Lender**” means: (a) a Term Loan B Lender who has not, prior to April 24, 2009, elected to use the CDOR Rate as the reference rate for Term Loan B Advances made by it; or (b) a Lender who has become a Term Loan B Lender by way of an assignment made under this Agreement and who has elected to use the BA Rate as the reference rate for the Term Loan B assigned to it.

“**CDOR Term Loan B Lender**” means: (a) a Term Loan B Lender who, prior to April 24, 2009, has elected to use the CDOR Rate as the reference rate for Term Loan B Advances made by it; or (b) a Lender who has become a Term Loan B

Lender by way of an assignment made under this Agreement and who has elected to use the CDOR Rate as the reference rate for the Term Loan B assigned to it.

4. **Non-Extended Commitment.**

One of the Revolving Lenders has agreed to extend \$7,500,000 of its \$12,500,000 Commitment. Accordingly, the \$5,000,000 not extended is a "Non-Agreeing Lender Commitment Amount" for the purposes of Section 1.2(c)(ii)(D) of the Credit Agreement. As no Revolving Lender has elected to purchase the Non-Agreeing Lender Commitment Amount, such amount will be cancelled upon extension of the Commitment Termination Date in accordance with the terms of this Agreement, and the Revolving Loan Commitment will be reduced to \$95,000,000. Annex "D" to the Credit Agreement is hereby replaced with Schedule "1" hereto to reflect the new Commitment levels.

5. **Deliveries by Borrower.** Borrower shall deliver, or cause to be delivered, to the Agent, on behalf of the Lenders, and this Amending Agreement is only effective upon the receipt thereof by the Agent on behalf of the Lenders:

- (a) an executed copy of this Amending Agreement;
- (b) a recent certificate of status from the Registrar for the Province of Alberta in respect of Borrower and each of the corporate Credit Parties;
- (c) an officer's certificate from Borrower, in respect of itself and each of the Credit Parties, in form satisfactory to the Lenders, acting reasonably;
- (d) an opinion of Borrower's Counsel in respect of Borrower and each of the Credit Parties, in form satisfactory to the Lenders, in form and substance reasonably satisfactory to Agent and its counsel and each accompanied by a letter addressed to such counsel from the Credit Parties, authorizing and directing such counsel to address its opinion to the Lenders or to include in such opinion an express statement to the effect that the Lenders are authorized to rely on such opinion as though they were addressees;
- (e) for each Credit Party, such Person's constating documents and all amendments thereto, to the extent that such have been amended since December 31, 2008;
- (f) for each Credit Party, (a) such Person's bylaws, together with all amendments thereto, to the extent that such have been amended since December 31, 2008, and (b) resolutions of such Person's board of directors, approving and authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and the transactions to be consummated in connection therewith, each certified by an officer of such Person as being in full force and effect without any modification or amendment; and
- (g) such other certificates, documents and agreements respecting any Credit Party as Agent may reasonably request.

6. **Eveready Income Fund.** The parties hereto acknowledge that the trustees of Eveready Income Fund are entering into this Amending Agreement solely in their capacity as

trustees on behalf of Eveready Income Fund and the obligations of Eveready Income Fund hereunder shall not be personally binding upon the trustees of Eveready Income Fund and that any recourse against Eveready Income Fund or the trustees of Eveready Income Fund in any manner in respect of any indebtedness, obligation or liability of Eveready Income Fund arising hereunder or arising in connection herewith or from the matters to which the Amending Agreement relates, if any, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the assets of Eveready Income Fund.

7. **Eveready Income Trust.** The parties hereto acknowledge that the trustees of Eveready Income Trust are entering into this Amending Agreement solely in their capacity as trustees on behalf of Eveready Income Trust and the obligations of Eveready Income Trust hereunder shall not be personally binding upon the trustees of Eveready Income Trust and that any recourse against Eveready Income Trust or the trustees of Eveready Income Trust in any manner in respect of any indebtedness, obligation or liability of Eveready Income Trust arising hereunder or arising in connection herewith or from the matters to which this Amending Agreement relates, if any, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the assets of Eveready Income Trust.
8. **Limited Partnerships.** It is hereby acknowledged by all parties hereto that all of the parties to this Amending Agreement that are limited partnerships are limited partnerships formed under the *Partnership Act* (Alberta), a limited partner (if not a general partner) of which is only liable for any of its liabilities or any of its losses to the extent of the amount that he or she has contributed or agreed to contribute to its capital and his or her pro rata share of any undistributed income.
9. **Representations and Warranties.** As of the date hereof, each Credit Party represents and warrants that after giving effect to the amendments contained herein:
 - (a) Borrower agrees with and confirms to the Agent and the Lenders that as of the Amendment Date (and after giving effect to this Amending Agreement and the amendments set forth herein) each of the representations and warranties listed in Section 4 of the Credit Agreement, as amended by this Amending Agreement, is true and accurate in all material respects; and
 - (b) there is no Default or Event of Default which has occurred and is continuing.
10. **Continuing Effect.** Each of the Parties acknowledges and agrees that the Credit Agreement, as amended by this Amending Agreement, and all other Loan Documents, will be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder will not be affected or prejudiced in any manner except as specifically provided herein.
11. **Further Assurance.** Borrower will from time to time forthwith at the Agent's request and at Borrower's own cost and expense, make, execute and deliver, or cause to be done, made, executed and delivered, all such further documents, financing statements, assignments, acts, matters and things which may be reasonably required by the Agent and

as are consistent with the intention of the parties as evidence herein, with respect to all matters arising under this Amending Agreement.

12. **Expenses.** Borrower will be liable for all expenses of the Agent and the Lenders, including, without limitation, reasonable legal fees (on a solicitor and his own client basis) and other out-of-pocket expenses in connection with the negotiation, preparation, establishment, operation or enforcement of the Credit Facilities, the Credit Agreement and this Amending Agreement (whether or not consummated) by the Lenders.
13. **Counterparts.** This Amending Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original, but all of which when taken together constitutes one and the same instrument. Any party may execute this Amending Agreement by signing any counterpart.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Amending Agreement to be duly executed by their respective authorized officers as of the Amendment Date.

**EVEREADY ENERGY SERVICES
CORP., as Borrower**

By: "Jason Vandenberg"

Name: Jason Vandenberg

Title: Chief Financial Officer

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**GE CANADA ASSET FINANCING
HOLDING COMPANY, as Agent**

By: "Ron Tratch"
Name: Ron Tratch
Title: Senior Vice President Risk, Canada

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**GE CANADA ASSET FINANCING
HOLDING COMPANY, as Lender**

By: "Ron Tratch"
Name: Ron Tratch
Title: Senior Vice President Risk, Canada

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

ABN AMRO BANK, N.V., as Lender

By: “David R. Wingfelder”
Name: David R. Wingfelder
Title: Managing Director

ABN AMRO BANK, N.V., as Lender

By: “Michael D. Quinn”
Name: Michael D. Quinn
Title: Vice President

This is a counterpart signature page to the Amending Agreement dated April 24, 2009

BANK OF MONTREAL, as Lender

By: "Brent Rombough"

Name: Brent Rombough

Title: Senior Account Manager

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

THE BANK OF NOVA SCOTIA, as Lender

By: *John Cherian*
Name: John Cherian
Title: Deputy, Alberta Credit Solutions

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

CANADIAN WESTERN BANK, as Lender

By: “Blair Zahara”
Name: Blair Zahara
Title: Manager, Commercial Banking

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Lender**

By: “John Steeves”

Name: John Steeves

Title: Authorized Signatory

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

THE TORONTO-DOMINION BANK, as Lender

By: "Joe Seidel"
Name: Joe Seidel
Title: Associate Vice President,
Commercial National Accounts

THE TORONTO-DOMINION BANK, as Lender

By: "Timothy Eaton"
Name: Timothy Eaton
Title: Analyst, Commercial National
Accounts

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**WELLS FARGO FINANCIAL
CORPORATION CANADA, as Lender**

By: "Paul D. Young"

Name: Paul D. Young

Title: Vice President

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**EVEREADY INCOME FUND, by its
Administrator, EVEREADY HOLDINGS
GP LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**EVEREADY INCOME TRUST by its
Trustees**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**JL FILTRATION OPERATING
LIMITED PARTNERSHIP, by its
General Partner, JL FILTRATION INC.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**RIVER VALLEY OPERATING
LIMITED PARTNERSHIP, by its
General Partner, RIVER VALLEY
ENERGY SERVICES LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**RIVER VALLEY ENERGY SERVICES
LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**EVEREADY HOLDINGS LIMITED
PARTNERSHIP, by its General Partner,
EVEREADY HOLDINGS GP LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**EVEREADY OPERATING LIMITED
PARTNERSHIP, by its General Partner
EVEREADY ENERGY SERVICES
CORP.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

EVEREADY ENERGY WESTERN LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

MOBILE INDUSTRIAL HEALTH SERVICES LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

JL FILTRATION INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

TRI-VAX ENTERPRISES LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY ENERGY SERVICES, INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

WINTERHAWK ENTERPRISES (PROVOST) LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY ENERGY SERVICES CORP.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY DIRECTIONAL BORING LP, by its General Partner, EVEREADY DIRECTIONAL BORING LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

ASTECS SAFETY SERVICES LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

SAFETY WATCH, LLC

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**CAT-TECH OPERATING LIMITED
PARTNERSHIP, by its General Partner,
CAT TECH CANADA LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT TECH, LLC

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT TECH CANADA LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS GP LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**GREAT LAKES CARBON
TREATMENT, INC.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

AIRBORNE IMAGING INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS (USA) INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

BREATHING SYSTEMS INTERNATIONAL, LLC

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY DIRECTIONAL BORING LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**DENMAN INDUSTRIAL OPERATING LIMITED
PARTNERSHIP, by its general partner DENMAN
INDUSTRIAL TRAILERS LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY ENERGY SERVICES INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

DENMAN INDUSTRIAL TRAILERS LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

This is a counterpart signature page to the Amending Agreement dated April 24, 2009.

**SCHEDULE 1
TO FIRST AMENDING AGREEMENT
EVEREADY ENERGY SERVICES CORP.**

Commitments as of Closing Date

[Redacted due to sensitive business information]

**SECOND AMENDING AGREEMENT
TO THE AMENDED AND RESTATED CREDIT AGREEMENT
DATED AS OF DECEMBER 31, 2008**

among

EVEREADY ENERGY SERVICES CORP.,
as Borrower,

THE OTHER CREDIT PARTIES SIGNATORY HERETO,
as Credit Parties,

-and-

GE CANADA ASSET FINANCING HOLDING COMPANY,
as Agent and Lender,

-and-

CANADIAN IMPERIAL BANK OF COMMERCE,
as Agent nominee and Lender,

-and-

THE LENDERS SIGNATORY HERETO FROM TIME TO TIME,
as Lenders,

-and-

BANK OF MONTREAL AND CANADIAN IMPERIAL BANK OF COMMERCE,
as Co-Syndication Agents

-and-

BANK OF NOVA SCOTIA,
as Documentation Agent

July 27, 2009

**SECOND AMENDING AGREEMENT
TO THE AMENDED AND RESTATED
CREDIT AGREEMENT DATED DECEMBER 31, 2008**

THIS AMENDING AGREEMENT is made effective as of July 27, 2009 (the “**Second Amendment Date**”),

BETWEEN:

EVEREADY ENERGY SERVICES CORP.,
as Borrower

- and -

THE OTHER CREDIT PARTIES SIGNATORY HERETO,
as Credit Parties,

- and -

GE CANADA ASSET FINANCING HOLDING COMPANY,
as Agent and Lender,

-and-

CANADIAN IMPERIAL BANK OF COMMERCE,
as Agent nominee and Lender,

-and-

THE LENDERS SIGNATORY HERETO FROM TIME TO TIME,
as Lenders

PREAMBLE:

- A. Pursuant to the Amended and Restated Credit Agreement dated as of December 31, 2008 between Eveready Energy Services Corp., as Borrower (the “**Borrower**”), the other Credit Parties signatory thereto, GE Canada Asset Financing Holding Company, as Agent and Lender, and the persons signatory thereto from time to time as the Lenders and individually as a Lender, as amended by a first amending agreement dated April 24, 2009 (as amended, the “**Credit Agreement**”), the Lenders agreed, *inter alia*, to provide to Borrower the Loans.
 - B. Effective July 31, 2009 GE Canada resigns in its capacity as Agent under the Credit Agreement and GE Canada has, on behalf of the Lenders, appointed CIBC as the successor Agent.
 - C. The parties wish to amend the Credit Agreement on the terms and conditions provided in this Second Amending Agreement (the “**Second Amending Agreement**”).
-

AGREEMENT:

In consideration of the premises, the covenants and the agreements herein contained, the receipt and sufficiency of which is hereby acknowledged between the parties, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this Second Amending Agreement will, unless otherwise defined herein, have the meaning attributed to such terms in the Credit Agreement, as amended by this Second Amending Agreement. Commencing the date hereof, the Credit Parties and Lenders acknowledge that for the purposes of the Credit Agreement, this Second Amending Agreement shall be deemed a "Loan Document".
2. **No Waiver.** Except as specifically set out herein, this Agreement shall not constitute an agreement, waiver or consent to any event, circumstance, matter or thing and is without prejudice to any of the rights or remedies of the Lenders under the Credit Agreement or any Loan Documents with respect thereto, and shall not extend to any other matter, provision or breach of, or Default or Event of Default under, the Credit Agreement.
3. **Consent:** The Lenders hereby consent to the following:
 - (a) the Change of Control triggered by the Clean Harbors Acquisition;
 - (b) the amalgamation of the Corporation and a direct or an indirect subsidiary of Clean Harbors immediately following the acquisition by such subsidiary of all of the outstanding common shares of the Corporation; and
 - (c) the repayment of the Debentures using the proceeds of the Debenture Repurchase Facility subject to the following conditions:
 - (i) the proceeds of the Debenture Repurchase Facility shall be used by the Borrower (and, to the extent distributed to them by the Borrower each other Credit Party) solely to fund the repayment of the Debentures;
 - (ii) interest payable on the Debenture Repurchase Facility shall be solely "paid in kind" by being added to the principal amount of the Debenture Repurchase Facility; and
 - (iii) the receipt by the Agent of an executed copy of a subordination and postponement agreement between the Agent and Clean Harbors by which Clean Harbors subordinates all indebtedness, liabilities and obligations to the Agent and the Lenders.

The Lenders hereby waive any Default or Event of Default under Sections 7.1, 10.1(b) or 10.1(l) that may have occurred pursuant to the Loan Documents solely due to the Clean Harbors Acquisition or the Debenture Repurchase Facility.

4. **Expiration of Consent.** Unless otherwise agreed upon by all the Lenders in their sole discretion, the foregoing consent shall expire on November 30, 2009, at which point if an Event of Default has occurred, such Event of Default can only be waived by all the Lenders in their sole discretion.

5. **Agency Amendments.** Effective as of July 31, 2009, the Credit Agreement is amended as follows:

(a) The preamble on Page 1 of the Credit Agreement is hereby deleted in its entirety and replaced with:

“This Amended and Restated Credit Agreement (this “**Agreement**”), dated as of December 31, 2008, among **EVEREADY ENERGY SERVICES CORP.**, a corporation incorporated under the laws of Alberta (“**Borrower**”), the other Credit Parties signatory hereto, and **CANADIAN IMPERIAL BANK OF COMMERCE** (“**CIBC**” or “**Agent**”), for itself as Lender and Agent, Bank of Montreal, Canadian Western Bank, GE Canada Asset Financing Holding Company, ABN Amro Bank N.V., The Toronto Dominion Bank, The Bank of Nova Scotia, Wells Fargo Financial Corporation Canada and AIB Debt Management, Limited, as Lenders, and the other Lenders signatory hereto from time to time.”

(b) Sections 11.2 and 11.4 of the Credit Agreement are hereby amended by deleting each reference to “GE Canada” and replacing same with “CIBC”.

6. **Acquisition Amendments.** Immediately upon the occurrence of the Clean Harbors Acquisition if consented to under Section 3 hereof, the Credit Agreement is amended as follows:

(a) Section 1.4(c) of the Credit Agreement is hereby deleted in its entirety and replaced with:

“**Repayment.** The Borrower promises to repay the Term Loan B on the first day of each calendar month commencing May 1, 2007 and ending November 30, 2009 in equal monthly principal payments of \$125,000 (based on amortization of 1% per annum), and commencing December 1, 2009 and ending May 1, 2012 in equal monthly principal payments of \$2,400,000 (based on amortization of 20% per annum and a balloon payment at maturity) and on the Term Loan B Period Maturity Date all amounts outstanding under the Term Loan B, together with interest thereon as prescribed in Section 1.7.”

(b) Section 7.1 is hereby deleted in its entirety and replaced with the following:

“Except as otherwise provided in Section 7.2, no Consolidated Party shall directly or indirectly, by operation of law or otherwise, (a) form or acquire any Subsidiary, or (b) amalgamate or merge with, consolidate with, acquire all or substantially all of the assets or Stock of, or otherwise combine with or acquire, any Person. Notwithstanding the foregoing, any Consolidated Party may enter into a Permitted Acquisition to acquire all or substantially all of the assets or Stock of any Person (the “**Target**”) subject to the consent of all the Lenders in their sole discretion.”

(c) The following is hereby added after Section 7.2(c) of the Credit Agreement as Section 7.2(d):

“all of the Lenders is their sole discretion consent to such amalgamation, merger, consolidation or transfer.”

- (d) The following is hereby added after Section 7.3(c) of the Credit Agreement as Section 7.3(d):
- “such Person is a Consolidated Party.”
- (e) Section 7.5(a) of the Credit Agreement is hereby amended by adding the phrase “Without the consent of all of the Lenders in their sole discretion,” to the beginning of such section.
- (f) Section 7.13 of the Credit Agreement is hereby amended by deleting part (d) thereof.
- (g) The following is hereby added after Section 10.1(n) of the Credit Agreement as Section 10.1(o):
- “(o) **Cross Default; Clean Harbors.** If as a result of any circumstance or event, including the completion of the Clean Harbors Acquisition, Clean Harbors or any of its Subsidiaries defaults (which includes the occurrence of an event or circumstance which with the passage of time or giving of notice, or both, would constitute a default) in any of its obligations under or with respect to any material agreement to which Clean Harbors or any of its Subsidiaries is a party, including under Clean Harbors Outstanding Indebtedness, and in respect of which any Person is entitled to exercise any rights or remedies against Clean Harbors (including any of its or its Subsidiaries’ property) and which such Person is exercising, including the acceleration of the Indebtedness under Clean Harbors Outstanding Indebtedness, provided that the value of such rights or remedies exceeds, in the aggregate, \$25,000,000.”
- (h) The definition “**Change of Control**” in Annex “A” of the Credit Agreement is hereby deleted in its entirety and replaced with the following:
- ““**Change of Control**” means if, after the Closing Date, any Person, (a) other than another Credit Party, acquires, directly or indirectly, any capital stock of a Credit Party, or (b) acquires, directly or indirectly, any trust units of a trust of a Credit Party.”
- (i) The definition “**Employee Unit Plan Guarantees**” in Annex “A” of the Credit Agreement is hereby amended by adding the phrase “before July 31, 2009” after the phrase “in respect of loan obligations incurred”.
- (j) The definition “**Interest Payment Date**” in Annex “A” of the Credit Agreement is hereby amended by deleting the phrase “(i) for interest calculated based on Canadian Prime Rate, the last day of each Fiscal Month” and replacing same with “(i) for interest calculated based on Canadian Prime Rate, the first day of each Fiscal Month”.
- (k) The definition “**Permitted Distribution**” in Annex “A” of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

“**Permitted Distribution**” means (a) any distribution or payment which the Borrower is permitted to make pursuant to the terms of the Agreement, and (b) any interest “paid in kind” through additional principal amounts being added to the indebtedness on the Debenture Repurchase Facility.”

- (l) The definition “**Subordinated Debt**” in Annex “A” of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

“**Subordinated Debt**” means (i) such Indebtedness of any Credit Party that is subordinated to the Loan pursuant to a subordination and postponement agreement or otherwise on terms acceptable to Agent in its sole discretion; and (ii) Indebtedness of any Credit Party pursuant to the Debenture Repurchase Facility; and (iii) except for purposes of determining “Net Worth” and “Unfinanced Capital Expenditures”, the Employee Unit Plan Guarantees.”

- (m) The following definitions are hereby added to Annex “A” of the Credit Agreement in the appropriate alphabetical order:

“**Clean Harbors**” means Clean Harbors, Inc., a corporation existing under the laws of the State of Massachusetts and its Subsidiaries (except the Consolidated Parties).

“**Clean Harbors Acquisition**” means the acquisition by a direct or an indirect subsidiary of Clean Harbors of all of the issued and outstanding common shares of the Corporation; all by way of an arrangement under Section 193 of the *Business Corporation Act* (Alberta) as described in the Corporation’s Notice of Annual and Special Meeting and Management Information Circular dated June 15, 2009 and the subsequent amalgamation of the Corporation with such direct or indirect subsidiary provided that immediately prior to such amalgamation such direct or indirect subsidiary has no material assets or liabilities except for the Debenture Repayment Facility and shares of the Corporation.

“**Clean Harbors Outstanding Indebtedness**” means all outstanding indebtedness of Clean Harbors, including: (i) the U.S. \$23,032,000 principal amount of 11.25% senior secured notes due July 15, 2012; (ii) the U.S. \$70,000,000 revolving credit facility; (iii) the U.S. \$50,000,000 synthetic letter of credit facility; and (iv) the U.S. \$30,000,000 term loan due December 1, 2010.

“**Debentures**” means the 7.00% convertible unsecured subordinated debentures due June 30, 2011 originally issued by Eveready Income Fund and assumed by the Corporation.

“**Debenture Repurchase Facility**” means the loan facility made available to the Borrower by Clean Harbors to retire the existing Indebtedness under the Debentures and to redeem and cancel the Deferred Shares.

“**Deferred Shares**” means the Corporation’s outstanding deferred shares.

- (n) The following definitions are hereby deleted from Annex “A” of the Credit Agreement:

“**Acquisition Pro Forma**” has the meaning ascribed to it in Section 7.1(a)(ix)(A).

“**Acquisition Projections**” has the meaning ascribed to it in Section 7.1(a)(ix)(B).

7. **Deliveries by Borrower.** Borrower shall deliver, or cause to be delivered, to the Agent, on behalf of the Lenders, and this Second Amending Agreement is only effective upon the receipt thereof by the Agent on behalf of the Lenders:
- (a) an executed copy of this Second Amending Agreement;
 - (b) an executed copy of the assignment agreement dated the date hereof between the Agent and the CIBC with respect to any security granted by a Credit Party to the Agent;
 - (c) a recent certificate of status from the Registrar for the Province of Alberta in respect of Borrower and each of the corporate Credit Parties;
 - (d) an officer’s certificate from Borrower, in respect of itself and each of the Credit Parties, in form satisfactory to the Lenders, acting reasonably;
 - (e) an opinion of Borrower’s Counsel in respect of Borrower and each of the Credit Parties, in form satisfactory to the Lenders, in form and substance reasonably satisfactory to Agent and its counsel and each accompanied by a letter addressed to such counsel from the Credit Parties, authorizing and directing such counsel to address its opinion to the Lenders or to include in such opinion an express statement to the effect that the Lenders are authorized to rely on such opinion as though they were addressees;
 - (f) for each Credit Party, such Person’s constating documents and all amendments thereto, to the extent that such have been amended since December 31, 2008;
 - (g) for each Credit Party, (a) such Person’s bylaws, together with all amendments thereto, to the extent that such have been amended since December 31, 2008, and (b) resolutions of such Person’s board of directors, approving and authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and the transactions to be consummated in connection therewith, each certified by an officer of such Person as being in full force and effect without any modification or amendment;
 - (h) such other certificates, documents and agreements respecting any Credit Party as Agent may reasonably request; and
 - (i) the payment of all fees and expenses which are payable by the Borrower to the Agent, on its own behalf and on behalf of the Lenders, including a work fee of \$20,000 to each Lender (except any Non-Consenting Lenders).
8. **Representations and Warranties.** As of the date hereof, each Credit Party represents and warrants that after giving effect to the amendments contained herein:
- (a) Borrower agrees with and confirms to the Agent and the Lenders that as of the Second Amendment Date (and after giving effect to this Second Amending

Agreement and the amendments set forth herein) each of the representations and warranties listed in Section 4 of the Credit Agreement, as amended by this Second Amending Agreement, is true and accurate in all material respects; and

(b) there is no Default or Event of Default which has occurred and is continuing.

9. **Eveready Income Fund.** The parties hereto acknowledge that the trustees of Eveready Income Fund are entering into this Second Amending Agreement solely in their capacity as trustees on behalf of Eveready Income Fund and the obligations of Eveready Income Fund hereunder shall not be personally binding upon the trustees of Eveready Income Fund and that any recourse against Eveready Income Fund or the trustees of Eveready Income Fund in any manner in respect of any indebtedness, obligation or liability of Eveready Income Fund arising hereunder or arising in connection herewith or from the matters to which the Second Amending Agreement relates, if any, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the assets of Eveready Income Fund.
10. **Eveready Income Trust.** The parties hereto acknowledge that the trustees of Eveready Income Trust are entering into this Second Amending Agreement solely in their capacity as trustees on behalf of Eveready Income Trust and the obligations of Eveready Income Trust hereunder shall not be personally binding upon the trustees of Eveready Income Trust and that any recourse against Eveready Income Trust or the trustees of Eveready Income Trust in any manner in respect of any indebtedness, obligation or liability of Eveready Income Trust arising hereunder or arising in connection herewith or from the matters to which this Second Amending Agreement relates, if any, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the assets of Eveready Income Trust.
11. **Limited Partnerships.** It is hereby acknowledged by all parties hereto that all of the parties to this Second Amending Agreement that are limited partnerships are limited partnerships formed under the *Partnership Act* (Alberta), a limited partner (if not a general partner) of which is only liable for any of its liabilities or any of its losses to the extent of the amount that he or she has contributed or agreed to contribute to its capital and his or her pro rata share of any undistributed income.
12. **Continuing Effect.** Each of the Parties acknowledges and agrees that the Credit Agreement, as amended by this Second Amending Agreement, and all other Loan Documents, will be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder will not be affected or prejudiced in any manner except as specifically provided herein.
13. **Further Assurance.** Borrower will from time to time forthwith at the Agent's request and at Borrower's own cost and expense, make, execute and deliver, or cause to be done, made, executed and delivered, all such further documents, financing statements, assignments, acts, matters and things which may be reasonably required by the Agent and as are consistent with the intention of the parties as evidence herein, with respect to all matters arising under this Second Amending Agreement.
14. **Expenses.** Borrower will be liable for all expenses of the Agent and the Lenders, including, without limitation, reasonable legal fees (on a solicitor and his own client

basis) and other out-of-pocket expenses in connection with the negotiation, preparation, establishment, operation or enforcement of the Credit Facilities, the Credit Agreement and this Second Amending Agreement (whether or not consummated) by the Lenders.

15. **Counterparts.** This Second Amending Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original, but all of which when taken together constitutes one and the same instrument. Any party may execute this Second Amending Agreement by signing any counterpart.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Second Amending Agreement to be duly executed by their respective authorized officers as of the Second Amendment Date.

EVEREADY ENERGY SERVICES CORP., as Borrower

By: “Jason Vandenberg”

Name: Jason Vandenberg

Title: Chief Financial Officer

BANK OF MONTREAL, as Lender

By: "Curtis McKenzie"
Name: Curtis McKenzie
Title: Director

BANK OF MONTREAL, as Lender

By: "Brent Rombough"
Name: Brent Rombough
Title: Senior Account Manager

THE BANK OF NOVA SCOTIA, as Lender

By: “*Dave Forbes*”
Name: Dave Forbes
Title: Director, Credit Solutions

CANADIAN WESTERN BANK, as Lender

By: “Blair Zahara”
Name: Blair Zahara
Title: Assistant Vice President, Commercial Banking

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

By: "Brent Agerbak"
Name: Brent Agerbak
Title: Authorized Signatory

THE TORONTO-DOMINION BANK, as Lender

By: “Joe Seidel”
Name: Joe Seidel
Title: Associate Vice President,
Commercial National Accounts

THE TORONTO-DOMINION BANK, as Lender

By: “Timothy Eaton”
Name: Timothy Eaton
Title: Analyst, Commercial National Accounts

WELLS FARGO FINANCIAL CORPORATION CANADA, as Lender

By: “Paul D. Young”
Name: Paul D. Young
Title: Vice President

EVEREADY INCOME FUND, by its Administrator, EVEREADY HOLDINGS GP LTD.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY INCOME TRUST by its Trustees

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

JL FILTRATION OPERATING LIMITED PARTNERSHIP, by its General Partner, JL FILTRATION INC.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY OPERATING LIMITED PARTNERSHIP, by its General Partner, RIVER VALLEY ENERGY SERVICES LTD.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY ENERGY SERVICES LTD.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS LIMITED PARTNERSHIP, by its General Partner, EVEREADY HOLDINGS GP LTD.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY OPERATING LIMITED PARTNERSHIP, by its General Partner EVEREADY ENERGY SERVICES CORP.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY INC.

By: “Jason Vandenberg”
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY ENERGY WESTERN LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

MOBILE INDUSTRIAL HEALTH SERVICES LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

JL FILTRATION INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

TRI-VAX ENTERPRISES LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY ENERGY SERVICES, INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

WINTERHAWK ENTERPRISES (PROVOST) LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY ENERGY SERVICES CORP.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**EVEREADY DIRECTIONAL BORING LP, by its General Partner,
EVEREADY DIRECTIONAL BORING LTD.**

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

ASTECS SAFETY SERVICES LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

SAFETY WATCH, LLC

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT-TECH OPERATING LIMITED PARTNERSHIP, by its General Partner, CAT TECH CANADA LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

GREAT LAKES CARBON TREATMENT, INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT TECH, LLC

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

AIRBORNE IMAGING INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

CAT TECH CANADA LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS (USA) INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY HOLDINGS GP LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

EVEREADY DIRECTIONAL BORING LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

BREATHING SYSTEMS INTERNATIONAL, LLC

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

RIVER VALLEY ENERGY SERVICES INC.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

**DENMAN INDUSTRIAL OPERATING LIMITED PARTNERSHIP, by its
general partner DENMAN INDUSTRIAL TRAILERS LTD.**

DENMAN INDUSTRIAL TRAILERS LTD.

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

By: "Jason Vandenberg"
Name: Jason Vandenberg
Title: Chief Financial Officer

Press Release

Clean Harbors Announces Closing of Eveready Acquisition and Second Quarter Financial Results

- *Company Updates 2009 Guidance and Announces Plans for New Segment Reporting*
- *Eveready CEO Rod Marlin Joins Clean Harbors' Board of Directors*

Norwell, MA – August 3, 2009 – Clean Harbors, Inc. (NYSE: CLH), the leading provider of environmental and hazardous waste management services throughout North America, today announced that on July 31, 2009, it completed its previously announced acquisition of Eveready Inc. (TSX: EIS), a Canadian-based company that provides industrial maintenance and production, lodging, and exploration services to the oil and gas, chemical, pulp and paper, manufacturing and power generation industries. Clean Harbors also announced its financial results for the second quarter ended June 30, 2009.

Clean Harbors acquired 100% of Eveready's outstanding common shares in exchange for USD \$56 million of available cash, USD \$118 million in Clean Harbors' common stock consisting of 2.4 million shares, and the assumption of approximately USD \$235 million of Eveready debt. Excluding all one-time fees and acquisition-related expenses, Clean Harbors expects the acquisition will be accretive in the first full quarter of combined operations.

"This transaction sets a strong foundation for our growth in the years ahead," said Alan S. McKim, Chairman and Chief Executive Officer. "Eveready brings to Clean Harbors an outstanding combination of talented people and valuable assets that substantially extends our capabilities in both the environmental and industrial services marketplace. We anticipate considerable cross-selling opportunities for our combined organization as we greatly expand the range of services we can now offer customers of both companies. The acquisition also significantly broadens our geographic footprint and increases our presence throughout Canada."

"Culturally, we believe our two organizations are a great match," McKim said. "Our ability to complete the acquisition on schedule is a testament to the hard work of both teams, who have worked tirelessly since this past Spring to rapidly bring this deal to a close. Based on our experience with prior acquisitions, we anticipate quickly integrating Eveready's portfolio of assets and beginning to capture the significant upside potential we envision from the combined company."

"Our integration team has already begun identifying where we believe we can reduce costs, optimize utilization of our combined assets and streamline our back-office and administrative functions by bringing Eveready's disparate systems onto our unified platforms," McKim said. "Through some reductions in redundant headcount, economies of scale in procurement and the implementation of our industry-leading processes, we expect to realize approximately \$15 million in synergies in 2010 and an additional \$5 million in synergies in 2011."



42 Longwater Drive • P.O. Box 9149 • Norwell, Massachusetts 02061-9149 • 781.792.5000 • www.cleanharbors.com

Board of Directors Appointment

Clean Harbors also announced today the appointment of Rod Marlin, Eveready's President and Chief Executive Officer, to Clean Harbors' Board of Directors, which now has ten members including Mr. Marlin. Mr. Marlin has been actively involved with Eveready since 1995 and was the company's President and Chief Executive Officer since 2002. "Rod's deep understanding of the Canadian environmental and industrial services marketplace will be invaluable to Clean Harbors as we embark on this next phase of our growth," McKim said. "We are strengthening our Board with this appointment, and we look forward to benefiting from Rod's counsel."

Second-Quarter Financial Results

For the second quarter of 2009, Clean Harbors reported revenue of \$215.3 million compared with \$265.3 million in the second quarter of 2008. Income from operations was \$16.4 million compared with \$29.8 million in the second quarter of 2008. Second quarter 2009 net income was \$8.6 million, or \$0.36 per diluted share, compared with \$16.0 million, or \$0.70 per diluted share, in the second quarter of 2008. Second quarter 2009 income from operations was reduced by approximately \$3.3 million in expenses related to the Company's acquisition of Eveready. Weighted average diluted shares outstanding used to calculate the net income per share in the second quarter of 2009 were 23.9 million, versus 22.9 million in the second quarter of fiscal 2008.

EBITDA (see description below), which also was reduced by the \$3.3 million in acquisition-related expenses, was \$31.3 million compared with \$43.4 million in the second quarter of 2008.

"While we experienced a sequential increase in revenue from the first quarter, our second-quarter performance fell short of our expectations as the challenging economic conditions continued to weigh heavily on several areas of our business," said McKim. "Specifically, our results were affected by a number of factors including project delays by customers; ongoing weakness within our chemical, manufacturing and utilities verticals; and limited emergency response work."

"Within our Technical Services segment, our results for the quarter were mixed," McKim said. "Utilization during the quarter at our incineration facilities, which includes most of the 50,000 tons of capacity added in the past year, was 88%, consistent with the prior year level. Landfill volumes were up 10% year-over-year, although down from first-quarter volumes as a result of the significant reduction of project work. Our TSDf locations and general labor and transport business saw an overall decline as a result of the ongoing slowdown in certain industry verticals. A bright spot within Technical Services during the second quarter was our solvent recovery business, which continues to be a steady contributor. We made some enhancements to our Ohio facilities during the quarter to further capitalize on our momentum in this area. In addition, we remain

on track with the second phase of our solvent recovery plant expansion at our El Dorado location, which we anticipate will be completed by the first quarter of 2010.”

“Within Site Services, we experienced a steep drop-off in projects, particularly from our petrochemical, specialty chemical, manufacturing and utilities clients, which are continuing to conserve their capital,” said McKim. “The silver lining to this shortfall is that the vast majority of these projects have been delayed rather than cancelled, and we are beginning to see a pick up in activity this quarter.”

“Despite the revenue shortfall, our ongoing cost control initiatives enabled us to generate relatively healthy EBITDA margins of 14.5%. If we exclude acquisition-related costs, our EBITDA margin would have exceeded 16%. In light of the challenging near-term environment, we continued to right-size our organization, and have reduced our non-billable headcount to its lowest level in several years,” McKim said. “We also continued to maintain a healthy balance sheet and strong capital position. We closed the second quarter with cash and equivalents of more than \$255 million.”

Non-GAAP Second-Quarter Results

Clean Harbors reports EBITDA results, which are non-GAAP financial measures, as a complement to results provided in accordance with accounting principles generally accepted in the United States (GAAP) and believes that such information provides additional useful information to investors since the Company’s loan covenants are based upon levels of EBITDA achieved. The Company defines EBITDA in accordance with its existing credit agreement, as described in the following reconciliation showing the differences between reported net income and EBITDA for the second quarter and first six months of 2009 and 2008 (in thousands):

	For the three months ended:		For the six months ended:	
	June 30, 2009	June 30, 2008	June 30, 2009	June 30, 2008
Net income	\$ 8,624	\$ 15,987	\$ 13,579	\$ 24,909
Accretion of environmental liabilities	2,634	2,726	5,284	5,396
Depreciation and amortization	12,241	10,806	24,302	21,281
Interest expense, net	1,609	2,515	2,989	5,900
Provision for income taxes	6,208	11,404	10,619	18,993
Other (income) expense	(11)	(59)	(44)	45
EBITDA	\$ 31,305	\$ 43,379	\$ 56,729	\$ 76,524

Segment Reporting

In connection with the closing of the Eveready acquisition, the Company will be re-aligning and expanding its operating reporting segments. This new structure reflects the way management will make operating decisions and manage the growth and profitability of the business. Under the new structure, the Company intends to report its business in four operating segments, including:

- Technical Services – provide a broad range of hazardous material management services including the packaging, collection, transportation, treatment and disposal of hazardous and non-hazardous waste at company owned incineration, landfill, wastewater, and other treatment facilities.
- Field Services – provide a wide variety of environmental cleanup services on customer sites or other locations on a scheduled or emergency response basis including tank cleaning, decontamination, remediation, and spill cleanup.
- Industrial Services – provide industrial and specialty services, such as high-pressure and chemical cleaning, catalyst handling, decoking, material processing and industrial lodging services to refineries, chemical plants, pulp and paper mills, and other industrial facilities.
- Exploration Services – provide exploration and directional boring services to the energy sector serving oil and gas exploration, production, and power generation.

Recent Financing Developments

On July 24, 2009, Clean Harbors repaid its \$30.0 million term loan, which was due in 2010. On July 31, 2009, Clean Harbors discharged its \$23.0 million of remaining outstanding senior secured notes by calling such notes for redemption on August 31, 2009 and depositing with the trustee the redemption price of \$23.7 million and accrued interest of \$0.3 million through the redemption date. On July 31, 2009, Clean Harbors also replaced its previous revolving credit and synthetic letter of credit facilities with a new revolving credit facility which will allow the Company to borrow or obtain letters of credit for up to \$120.0 million (with a \$110.0 million sub-limit for letters of credit).

Business and Financial Outlook

Based on the Company's first-half performance and current market conditions, exclusive of the Eveready acquisition and related costs, Clean Harbors expects full-year 2009 revenues in the range of \$925 million to \$950 million, and EBITDA in the range of \$143 million to \$150 million. Previously, the Company had projected 2009 revenue growth to be flat to slightly down, compared with \$1.03 billion in 2008, and 2009

EBITDA in the range of \$163 million to \$167 million.

Although Eveready's financial statements for the first half of 2009 are not yet available, Eveready estimates that for the first half of 2009 it generated revenue of \$232 million compared with \$325 million in the first half of 2008, and EBITDA for the first half of 2009 of between \$29 million and \$30 million compared with approximately \$55 million in the first half of 2008. The average exchange rate used to calculate revenue and EBITDA for 2009: CAN \$1 equals approximately USD \$0.83. The average exchange rate used to calculate revenue and EBITDA for 2008: CAN \$1 equals approximately USD \$0.99.

Based on the closing of the Eveready acquisition, financial results for the first half of 2009, and current market conditions, Clean Harbors expects full-year 2009 revenue for the combined company in the range of \$1.13 billion to \$1.16 billion, and full-year 2009 EBITDA in the range of \$173 million to \$180 million, inclusive of a five-month contribution from Eveready.

Assuming that the Eveready acquisition had been consummated on January 1, 2009, but without giving effect to any synergies, Clean Harbors estimates full-year 2009 revenue for the combined company would have been in the range of \$1.41 billion to \$1.44 billion, and pro forma full-year 2009 EBITDA would have been in the range of \$211 million to \$218 million.

In connection with its acquisition of Eveready, Clean Harbors has agreed to dispose of its interest in Eveready's Pembina Area Landfill, located near Drayton Valley, Alberta, due to its proximity to Clean Harbors' existing landfill in the region. The Pembina landfill represented less than two percent of Eveready's revenue in 2008 and less than four percent of Eveready's EBITDA for the year.

"We expect the Eveready acquisition to greatly benefit Clean Harbors in 2010 and beyond," said McKim. "We expect to see a rebound in many of our end markets in the coming year and an improvement in our project business, which will ultimately drive volumes to our network of disposal facilities. We anticipate demand for industrial maintenance and production, lodging, and exploration services to increase in 2010 from 2009 levels. We are targeting approximately \$15 million in cost synergies in 2010 through reductions in redundant headcount, economies of scale in procurement and the implementation of our back-office systems and processes."

"We believe that the Eveready acquisition will be a long-term growth engine for Clean Harbors," McKim said. "Not only does this transaction expand our footprint, but it provides us with valuable new resources in some of our end-markets. With the closing now behind us, we look forward to completing the integration process, introducing our world-class brand to new customers and driving top- and bottom-line improvements at the newly expanded Clean Harbors in the quarters ahead."

Conference Call Information

Clean Harbors will conduct a conference call for investors to discuss the information contained in this press release today, Monday, August 3, 2009 at 9:00 a.m. (ET). On the call, Chairman, President and Chief Executive Officer Alan S. McKim and Executive Vice President and Chief Financial Officer James M. Rutledge will discuss the closing of the Eveready acquisition and Clean Harbors' financial results, business outlook and growth strategy.

Investors who wish to listen to the webcast should log onto www.cleanharbors.com/investor_relations. The live call also can be accessed by dialing 877.407.5790 or 201.689.8328 prior to the start of the call. If you are unable to listen to the live call, the webcast will be archived on the Company's website.

About Clean Harbors

Clean Harbors is North America's leading provider of environmental, energy and industrial services serving over 50,000 customers, including a majority of the Fortune 500 companies, thousands of smaller private entities and numerous federal, state and local governmental agencies.

Within Clean Harbors Environmental Services, the Company offers Technical Services and Field Services. Technical Services provide a broad range of hazardous material management and disposal services including the collection, packaging, recycling, treatment and disposal of hazardous and non-hazardous waste. Field Services provide a wide variety of environmental cleanup services on customer sites or other locations on a scheduled or emergency response basis.

Within Clean Harbors Energy and Industrial Services, the Company offers Industrial Services and Exploration Services. Industrial Services provide industrial and specialty services, such as high-pressure and chemical cleaning, catalyst handling, decoking, material processing and industrial lodging services to refineries, chemical plants, pulp and paper mills, and other industrial facilities. Exploration Services provide exploration and directional boring services to the energy sector serving oil and gas exploration, production, and power generation.

Headquartered in Norwell, Massachusetts, Clean Harbors has more than 175 locations, including over 50 waste management facilities, throughout North America in 37 U.S. states, seven Canadian provinces, Mexico and Puerto Rico. The Company also operates international locations in Bulgaria, China, Sweden, Singapore, Thailand and the United Kingdom. For more information, visit www.cleanharbors.com.

Safe Harbor Statement

Any statements contained herein that are not historical facts are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, and involve risks and uncertainties. These forward-looking statements 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. Such statements may include, but are not limited to, statements about the benefits of the acquisition of Eveready, including future financial and operating results, the combined company's plans, objectives, expectations and intentions and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of Clean Harbors' management and are subject to significant risks and uncertainties. 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 other than through its various filings with the Securities and Exchange Commission. A variety of

factors may affect the Company's performance, including, but not limited to:

- The Company's ability to successfully integrate Eveready's operations and assets into the Company's existing operations and assets;
- The Company's ability to manage the significant environmental liabilities that it assumed in connection with prior acquisitions;
- The availability and costs of liability insurance and financial assurance required by governmental entities related to the Company's facilities;
- General conditions in the oil and gas industries, particularly in the Alberta oil sands and other parts of Western Canada;
- The possibility that the expected synergies from the acquisition of Eveready will not be realized at the time they are projected to or at all;
- The extent to which the Company's and Eveready's major customers commit to and schedule major projects;
- The Company's future cash flow and earnings;
- The Company's ability to meet its debt obligations;
- The Company's ability to increase its and Eveready's market shares;
- The Company's ability to retain its and Eveready's significant customers;
- The effects of general economic conditions in the United States, Canada and other territories and countries where the Company does business;
- The effect of economic forces and competition in specific marketplaces where the Company competes;
- The possible impact of new regulations or laws pertaining to all activities of the Company's operations;
- The outcome of litigation or threatened litigation or regulatory actions;
- The effect of commodity pricing on overall revenues and profitability;
- Possible fluctuations in quarterly or annual results or adverse impacts on the Company's results caused by the adoption of new accounting standards or interpretations or regulatory rules and regulations;
- The effect of weather conditions or other aspects of the forces of nature on field or facility operations;
- The effects of industry trends in the environmental services, waste handling and industrial services marketplaces; and
- The effects of conditions in the financial services industry on the availability of capital and financing.

Any of the above factors and numerous others not listed nor foreseen may adversely impact the Company's financial performance. Additional information on the potential factors that could affect the Company's actual results of operations is included in its filings with the Securities and Exchange Commission, which may be viewed on www.cleanharbors.com/investor_relations.

Contact:

James M. Rutledge
Executive Vice President and Chief Financial Officer
Clean Harbors, Inc.
781.792.5100
InvestorRelations@cleanharbors.com

Bill Geary
Corporate Counsel for Public Affairs
Clean Harbors, Inc.
781.792.5130

Jim Buckley
Executive Vice President
Sharon Merrill Associates, Inc.
617.542.5300
clh@investorrelations.com

CLEAN HARBORS, INC. AND SUBSIDIARIES
UNAUDITED CONSOLIDATED STATEMENTS OF INCOME
(in thousands except per share amounts)

	For the three months ended:		For the six months ended:	
	June 30, 2009	June 30, 2008	June 30, 2009	June 30, 2008
Revenues	\$ 215,337	\$ 265,259	\$ 421,643	\$ 507,768
Cost of revenues (exclusive of items shown separately below)	146,254	178,384	289,767	348,578
Selling, general and administrative expenses	37,778	43,496	75,147	82,666
Accretion of environmental liabilities	2,634	2,726	5,284	5,396
Depreciation and amortization	12,241	10,806	24,302	21,281
Income from operations	16,430	29,847	27,143	49,847
Other income (expense)	11	59	44	(45)
Interest (expense), net	(1,609)	(2,515)	(2,989)	(5,900)
Income before provision for income taxes	14,832	27,391	24,198	43,902
Provision for income taxes	6,208	11,404	10,619	18,993
Net income	8,624	15,987	13,579	24,909
Earnings per share:				
Basic	\$ 0.36	\$ 0.71	\$ 0.57	\$ 1.16
Diluted	\$ 0.36	\$ 0.70	\$ 0.57	\$ 1.14
Weighted average common shares outstanding	23,777	22,437	23,763	21,392
Weighted average common shares outstanding plus potentially dilutive common shares	23,889	22,936	23,876	21,907

CLEAN HARBORS, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
ASSETS
(in thousands)

	June 30, 2009	December 31, 2008
Current assets:		
Cash and cash equivalents	\$ 255,407	\$ 249,524
Marketable securities	484	175
Accounts receivable, net	148,610	174,990
Unbilled accounts receivable	6,381	5,545
Deferred costs	5,691	5,877
Prepaid expenses and other current assets	10,402	13,472
Supplies inventories	27,938	26,905
Deferred tax assets	12,324	12,564
Total current assets	467,237	489,052
Property, plant and equipment, net	312,637	295,461
Other assets:		
Long-term investments	6,483	6,237
Deferred financing costs	2,308	3,044
Goodwill	30,580	24,578
Permits and other intangibles, net	71,056	71,754
Deferred tax assets	5,726	5,454
Other	2,553	2,756
Total other assets	118,706	113,823
Total assets	\$ 898,580	\$ 898,336

CLEAN HARBORS, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
LIABILITIES AND STOCKHOLDERS' EQUITY
(in thousands)

	June 30, 2009	December 31, 2008
Current liabilities:		
Uncashed checks	\$ 5,019	\$ 7,733
Current portion of long-term debt	52,889	—
Current portion of capital lease obligations	176	400
Accounts payable	54,939	63,885
Deferred revenue	23,566	24,190
Accrued expenses	55,911	67,901
Current portion of closure, post-closure and remedial liabilities	22,400	17,264
Total current liabilities	214,900	181,373
Other liabilities:		
Closure and post-closure liabilities, less current portion	24,982	26,254
Remedial liabilities, less current portion	133,456	135,007
Long-term obligations	—	52,870
Capital lease obligations, less current portion	259	360
Unrecognized tax benefits and other long-term liabilities	76,792	73,427
Total other liabilities	235,489	287,918
Total stockholders' equity, net	448,191	429,045
Total liabilities and stockholders' equity	\$ 898,580	\$ 898,336