

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 28, 2003

or

TRANSITION REPORT PURSUANT OF SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 0-20242

**CENTRAL GARDEN & PET COMPANY**

**Delaware**  
(State or other jurisdiction  
of incorporation or organization)

**68-0275553**  
(I.R.S. Employer  
Identification No.)

**3697 Mt. Diablo Blvd., Suite 310, Lafayette, California 94549**  
(Address of principle executive offices)

**(925) 283-4573**  
(Registrant's telephone number, including area code)

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(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

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

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

Common Stock Outstanding as of July 31, 2003	17,955,244
Class B Stock Outstanding as of July 31, 2003	1,654,462

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[Table of Contents](#)

**PART I. FINANCIAL INFORMATION**

Item 1.	<a href="#">Financial Statements</a>	3
	<a href="#">Condensed Consolidated Balance Sheets September 28, 2002 and March 29, 2003</a>	3
	<a href="#">Condensed Consolidated Statements of Operations Three and Six Months Ended March 30, 2002 and March 29, 2003</a>	4
	<a href="#">Condensed Consolidated Statements of Cash Flows Six Months Ended March 30, 2002 and March 29, 2003</a>	5
Item 2.	<a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	16
Item 3.	<a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	22
Item 4.	<a href="#">Controls and Procedures</a>	22

**PART II. OTHER INFORMATION**

Item 1.	<a href="#">Legal Proceedings</a>	22
Item 2.	<a href="#">Changes in Securities and Use of Proceeds</a>	22
Item 3.	<a href="#">Defaults Upon Senior Securities</a>	22
Item 4.	<a href="#">Submission of Matter to a Vote of Securities Holders</a>	23
Item 5.	<a href="#">Other Information</a>	23
Item 6.	<a href="#">Exhibits and Reports on Form 8-K</a>	23

**Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995.**

This quarterly report contains “forward-looking” statements based on current expectations that involve risks and uncertainties. Actual results and the timing of certain events may differ significantly from those projected in these forward-looking statements due to the factors listed below, under “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Risk Factors Relating to Forward-Looking Statements” in our Annual Report on Form 10-K for the fiscal year ended September 28, 2002, and from time to time in our filings with the Securities and Exchange Commission. These risks and uncertainties include the resolution of the litigation between the Company and The Scotts Company; the success of and the costs associated with the realignment of the Company’s lawn and garden distribution operations; any liabilities to which the Company may become subject as a result of the August 2, 2000 fire at its Phoenix distribution center; and the impact of any other outstanding or potential litigation.

## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements

**CENTRAL GARDEN & PET COMPANY**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share and per share amounts)  
(unaudited)

	September 28, 2002	June 28, 2003
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 10,884	\$ 75,594
Accounts receivable (less allowance for doubtful accounts of \$7,597 and \$7,688)	130,984	169,263
Inventories	193,159	212,233
Prepaid expenses and other assets	26,096	11,602
	<u>361,123</u>	<u>468,692</u>
Total current assets	361,123	468,692
Land, buildings, improvements and equipment—net	100,864	99,841
Goodwill	222,489	222,780
Deferred income taxes and other assets	47,481	53,664
	<u>731,957</u>	<u>844,977</u>
Total	\$ 731,957	\$ 844,977
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Notes payable	\$ 59,975	\$ —
Accounts payable	96,796	105,901
Accrued expenses	42,742	60,244
Current portion of long-term debt	7,593	12,821
	<u>207,106</u>	<u>178,966</u>
Total current liabilities	207,106	178,966
Long-term debt	145,331	249,225
Other long-term obligations	2,012	2,293
Shareholders' equity:		
Class B stock, \$.01 par value: 1,655,462 and 1,654,462 shares outstanding at September 28, 2002 and June 28, 2003	16	16
Common stock, \$.01 par value: 31,008,198 and 31,492,819 issued and 17,265,948 and 17,750,569 outstanding at September 28, 2002 and June 28, 2003	310	314
Additional paid-in capital	532,290	539,229
Retained earnings (deficit)	(10,281)	19,761
Treasury stock	(144,827)	(144,827)
	<u>377,508</u>	<u>414,493</u>
Total shareholders' equity	377,508	414,493
Total	\$ 731,957	\$ 844,977

See notes to condensed consolidated financial statements.

[Table of Contents](#)

**CENTRAL GARDEN & PET COMPANY**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(in thousands, except per share amounts)**  
**(unaudited)**

	Three Months Ended		Nine Months Ended	
	June 29, 2002	June 28, 2003	June 29, 2002	June 28, 2003
Net sales	\$ 335,609	\$ 345,115	\$ 836,961	\$ 887,560
Cost of goods sold and occupancy	234,631	242,908	583,581	625,045
Gross profit	100,978	102,207	253,380	262,515
Selling, general and administrative expenses	74,714	69,628	203,924	199,798
Income from operations	26,264	32,579	49,456	62,717
Interest expense	(3,743)	(5,495)	(11,363)	(14,679)
Interest income	33	69	74	139
Other income	4,407	1,563	4,771	1,893
Income before income tax expense and cumulative effect of accounting change	26,961	28,716	42,938	50,070
Income tax expense	8,594	11,486	15,144	20,028
Income before cumulative effect of accounting change	18,367	17,230	27,794	30,042
Cumulative effect of accounting change, net of tax (Note 7)	—	—	(112,237)	—
Net income (loss)	\$ 18,367	\$ 17,230	\$ (84,443)	\$ 30,042
Basic income (loss) per common share:				
Before cumulative effect of accounting change	\$ 0.99	\$ 0.89	\$ 1.50	\$ 1.56
Cumulative effect of accounting change	—	—	(6.06)	—
Basic income (loss) per common share	\$ 0.99	\$ 0.89	\$ (4.56)	\$ 1.56
Diluted income (loss) per common share:				
Before cumulative effect of accounting change	\$ 0.84	\$ 0.86	\$ 1.36	\$ 1.49
Cumulative effect of accounting change	—	—	(4.91)	—
Diluted income (loss) per common share	\$ 0.84	\$ 0.86	\$ (3.55)	\$ 1.49
Weighted average shares used in the computation of income (loss) per share:				
Basic	18,579	19,357	18,498	19,217
Diluted	23,200	20,137	22,847	21,794

See notes to condensed consolidated financial statements.

[Table of Contents](#)

**CENTRAL GARDEN & PET COMPANY**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(in thousands)**  
**(unaudited)**

	Nine Months Ended	
	June 29, 2002	June 28, 2003
Cash flows from operating activities:		
Net income (loss)	\$ (84,443)	\$ 30,042
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Write-off of equity method investment	2,750	—
Loss (gain) on fixed asset disposals	696	(175)
Depreciation and amortization	12,828	13,297
Cumulative effect of accounting change	146,748	—
Deferred income taxes	(34,511)	—
Change in assets and liabilities:		
Receivables	(17,492)	(38,279)
Inventories	31,468	(19,074)
Prepaid expenses and other assets	15,219	15,136
Accounts payable	(27,930)	9,105
Accrued expenses	3,382	17,502
Other long-term obligations	(23)	281
Net cash provided by operating activities	48,692	27,835
Cash flows from investing activities:		
Additions to land, buildings, improvements and equipment	(7,160)	(11,515)
Net cash used in investing activities	(7,160)	(11,515)
Cash flows from financing activities:		
Repayments of lines of credit, net	(39,190)	(59,975)
Proceeds from issuance of long-term debt	1,400	250,000
Repayments of long-term debt	(6,465)	(140,878)
Deferred financing costs	—	(7,700)
Proceeds from issuance of common stock	3,709	6,943
Net cash provided by (used in) financing activities	(40,546)	48,390
Net increase in cash and cash equivalents	986	64,710
Cash and cash equivalents at beginning of period	8,292	10,884
Cash and cash equivalents at end of period	\$ 9,278	\$ 75,594
Supplemental information:		
Cash paid for interest	\$ 10,759	\$ 9,268
Cash paid (refunds received) for income taxes—net	\$ 972	\$ (4,922)

See notes to condensed consolidated financial statements.

**CENTRAL GARDEN & PET COMPANY**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**Three and Nine Months Ended June 28, 2003**  
**(unaudited)**

**1. Basis of Presentation**

The condensed consolidated balance sheet as of June 28, 2003, the condensed consolidated statements of operations for the three and nine months ended June 29, 2002 and June 28, 2003 and the condensed consolidated statements of cash flows for the nine months ended June 29, 2002 and June 28, 2003 have been prepared by the Company, without audit. In the opinion of management, all adjustments (which include only normal recurring adjustments) considered necessary to present fairly the financial position, results of operations and cash flows of the Company for the periods mentioned above, have been made.

Due to the seasonal nature of the Company's business, the results of operations for the three and nine months ended June 28, 2003 are not indicative of the operating results that may be expected for the year ending September 27, 2003. It is suggested that these interim financial statements be read in conjunction with the annual audited financial statements, accounting policies and financial notes thereto, included in the Company's 2002 Annual Report on Form 10-K which has previously been filed with the Securities and Exchange Commission.

**2. New Accounting Pronouncements**

In May 2003, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards ("SFAS") No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity". SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). This Statement is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The Company expects that the adoption of SFAS No. 150 will have no material impact on its financial position or on its results of operations.

**3. Stock Plan Information**

The Company has various non-qualified stock-based compensation programs, which include stock options and restricted stock awards.

The Company has various stock option plans that provide for the granting of stock options to officers, key employees and directors. The Company has elected to continue to account for stock-based compensation using the intrinsic value method prescribed in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," whereby the options are granted at market price, and therefore no compensation costs are recognized. As required by SFAS No. 148, "Accounting for Stock-Based Compensation-Transition and Disclosure," the Company has provided fair value based pro-forma disclosures in its interim financial statements.

If compensation expense for the Company's various stock option plans had been determined based upon the projected fair values at the grant dates for awards under those plans in accordance with SFAS No. 123, "Accounting for Stock-Based Compensation", the Company's pro-forma net earnings, basic and diluted earnings per common share would have been as follows:

[Table of Contents](#)

	Three Months Ended		Nine Months Ended	
	June 29, 2002	June 28, 2003	June 29, 2002	June 28, 2003
	(in thousands)			
Net income (loss), as reported	\$ 18,367	\$ 17,230	\$ (84,443)	\$ 30,042
Deduct: Total stock-based employee compensation expense determined under fair value based method for awards, net of related tax effects	(654)	(448)	(1,749)	(1,354)
Pro forma net income (loss)	\$ 17,713	\$ 16,782	\$ (86,192)	\$ 28,688
Net income (loss) per common equivalent share:				
Basic – as reported	\$ 0.99	\$ 0.89	\$ (4.56)	\$ 1.56
Basic – pro forma	\$ 0.95	\$ 0.87	\$ (4.66)	\$ 1.49
Diluted – as reported	\$ 0.84	\$ 0.86	\$ (3.55)	\$ 1.49
Diluted – pro forma	\$ 0.81	\$ 0.83	\$ (3.63)	\$ 1.43

**4. Earnings Per Share**

The following is a reconciliation of the numerators and denominators of the basic and diluted per-share computations for income (loss) from continuing operations:

	Three Months Ended June 28, 2003			Nine Months Ended June 28, 2003		
	Income	Shares	Per Share	Income	Shares	Per Share
	(in thousands, except per share amounts)					
Basic EPS:						
Net income	\$ 17,230	19,357	\$ 0.89	\$ 30,042	19,217	\$ 1.56
Effect of dilutive securities:						
Options to purchase common stock		780	(0.03)		752	(0.06)
Convertible notes				2,428	1,825	(0.01)
Diluted EPS:						
Net income attributable to common shareholders	\$ 17,230	20,137	\$ 0.86	\$ 32,470	21,794	\$ 1.49

	Three Months Ended June 29, 2002			Nine Months Ended June 29, 2002		
	Income	Shares	Per Share	Income	Shares	Per Share
	(in thousands, except per share amounts)					
Basic EPS:						
Net income (loss)	\$ 18,367	18,579	\$ 0.99	\$ (84,443)	18,498	\$ (4.56)
Effect of dilutive securities:						
Options to purchase common stock		514	(0.03)		242	0.05
Convertible notes	1,084	4,107	(0.12)	3,253	4,107	0.96
Diluted EPS:						
Net income (loss) attributable to common shareholders	\$ 19,451	23,200	\$ 0.84	\$ (81,190)	22,847	\$ (3.55)

## Table of Contents

Shares of common stock from the assumed conversion of the Company's convertible securities totaling 4,107,143 were not included in the computation of diluted EPS for the three month period ended June 28, 2003, because the notes were repaid in February 2003 and were not outstanding during the period. Shares of common stock from the assumed conversion of the Company's convertible securities totaling 4,107,143 were included in the computation of diluted EPS for the nine month period ended June 28, 2003 and the three and nine-month periods ended June 29, 2002.

Options to purchase 2,531,680 and 2,875,152 shares of common stock at prices ranging from \$1.30 to \$30.00 per share were outstanding at June 28, 2003 and from \$1.30 to \$33.94 at June 29, 2002, respectively. For the three month periods ended June 28, 2003 and June 29, 2002, options to purchase 6,000 and 659,448 shares of common stock were outstanding but were not included in the computation of diluted earnings per share because the option exercise prices were greater than the average market price of the common shares and, therefore, the effect would be anti-dilutive. For the nine month periods ended June 28, 2003 and June 29, 2002, options to purchase 277,107 and 1,048,275 shares of common stock were outstanding but were not included in the computation of diluted earnings per share because the option exercise prices were greater than the average market price of the common shares and, therefore, the effect would be anti-dilutive.

### 5. Segment Information

Management has determined that the reportable segments of the Company are Garden Products and Pet Products, based on the level at which the chief operating decision making group reviews the results of operations to make decisions regarding performance assessment and resource allocation.

	Three Months Ended		Nine Months Ended	
	June 29, 2002	June 28, 2003	June 29, 2002	June 28, 2003
	(in thousands)			
Net sales:				
Garden Products	\$ 214,796	\$ 215,429	\$ 481,713	\$ 510,571
Pet Products	120,813	129,686	355,248	376,989
Total net sales	\$ 335,609	\$ 345,115	\$ 836,961	\$ 887,560
Income (loss) from operations:				
Garden Products	\$ 20,264	\$ 19,645	\$ 39,986	\$ 40,311
Pet Products	14,615	16,532	32,872	39,448
Corporate	(8,615)	(3,598)	(23,402)	(17,042)
Total income from operations	26,264	32,579	49,456	62,717
Interest expense—net	(3,710)	(5,426)	(11,289)	(14,540)
Other income	4,407	1,563	4,771	1,893
Income tax expense	(8,594)	(11,486)	(15,144)	(20,028)
Income before cumulative effect of accounting change	18,367	17,230	27,794	30,042
Cumulative effect of accounting change, net of tax	—	—	(112,237)	—
Net income (loss)	\$ 18,367	\$ 17,230	\$ (84,443)	\$ 30,042
Depreciation and amortization:				
Garden Products	\$ 1,343	\$ 1,297	\$ 4,123	\$ 3,947
Pet Products	2,797	3,048	8,280	8,970
Corporate	141	128	425	380
Total depreciation and amortization	\$ 4,281	\$ 4,473	\$ 12,828	\$ 13,297



## Table of Contents

	September 28, 2002	June 28, 2003
	(in thousands)	
<b>Assets:</b>		
Garden Products	\$ 254,903	\$ 290,486
Pet Products	201,051	213,903
Corporate	276,003	340,588
<b>Total assets</b>	<b>\$ 731,957</b>	<b>\$ 844,977</b>
<b>Goodwill (included in corporate assets):</b>		
Garden Products	\$ 105,390	\$ 105,681
Pet Products	117,099	117,099
<b>Total goodwill</b>	<b>\$ 222,489</b>	<b>\$ 222,780</b>

### **6. Consolidating Condensed Financial Information of Guarantor Subsidiaries**

Certain wholly-owned subsidiaries of the Company (as listed below, collectively the "Guarantor Subsidiaries") have guaranteed fully and unconditionally, on a joint and several basis, the obligation to pay principal and interest under the Company's \$150,000,000 9 1/8% Senior Subordinated Notes (the "Notes") issued on January 30, 2003. Certain subsidiaries and operating divisions are not guarantors of the Notes and have been included in the financial results of the Parent in the information below. Those subsidiaries that are guarantors of the Notes are as follows:

- Four Paws Products Ltd.
- Grant Laboratories, Inc.
- Kaytee Products, Incorporated
- Matthews Redwood & Nursery Supply, Inc.
- Pennington Seed, Inc. (including Phaeton Corporation (dba Unicorn Labs), Seeds West, Inc., All-Glass Aquarium Co., Inc. (including Oceanic Systems, Inc.))
- T.F.H. Publications, Inc.
- Wellmark International
- Norcal Pottery Products, Inc.
- Pennington Seed, Inc. of Nebraska
- Gro Tec, Inc.

In lieu of providing separate unaudited financial statements for the Guarantor Subsidiaries, the Company has included the accompanying unaudited consolidating condensed financial statements based on the Company's understanding of the Securities and Exchange Commission's interpretation and application of Rule 3-10 of the Securities and Exchange Commission's Regulation S-X.

[Table of Contents](#)

**CONSOLIDATING CONDENSED  
STATEMENT OF OPERATIONS  
Three Months Ended June 28, 2003  
(in thousands)**

	<u>Parent</u>	<u>Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
Net sales	\$ 112,711	\$ 252,842	\$ (20,438)	\$ 345,115
Cost of goods sold and occupancy	82,944	180,351	(20,387)	242,908
Gross profit	29,767	72,491	(51)	102,207
Selling, general and administrative expenses	24,964	44,664	—	69,628
Income (loss) from operations	4,803	27,827	(51)	32,579
Interest – net	(5,363)	(63)	—	(5,426)
Other income	1,005	558	—	1,563
Income (loss) before income taxes	445	28,322	(51)	28,716
Income taxes	(177)	(11,329)	20	(11,486)
Net income (loss)	268	16,993	(31)	17,230
Equity in undistributed income of guarantor subsidiaries	16,962	—	(16,962)	—
Net income (loss)	<u>\$ 17,230</u>	<u>\$ 16,993</u>	<u>\$ (16,993)</u>	<u>\$ 17,230</u>

**Three Months Ended June 29, 2002  
(in thousands)**

	<u>Parent</u>	<u>Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
Net sales	\$ 113,780	\$ 241,908	\$ (20,079)	\$ 335,609
Cost of goods sold and occupancy	86,381	168,403	(20,153)	234,631
Gross profit	27,399	73,505	74	100,978
Selling, general and administrative expenses	26,304	48,410	—	74,714
Income (loss) from operations	1,095	25,095	74	26,264
Interest – net	(3,243)	(467)	—	(3,710)
Other income	(2,242)	6,649	—	4,407
Income (loss) before income taxes	(4,390)	31,277	74	26,961
Income taxes	1,546	(10,111)	(29)	(8,594)
Net income (loss)	(2,844)	21,166	45	18,367
Equity in undistributed income of guarantor subsidiaries	21,211	—	(21,211)	—
Net income (loss)	<u>\$ 18,367</u>	<u>\$ 21,166</u>	<u>\$ (21,166)</u>	<u>\$ 18,367</u>

[Table of Contents](#)

**CONSOLIDATING CONDENSED  
STATEMENT OF OPERATIONS  
Nine Months Ended June 28, 2003  
(in thousands)**

	<u>Parent</u>	<u>Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
Net sales	\$ 287,168	\$ 656,577	\$ (56,185)	\$ 887,560
Cost of goods sold and occupancy	212,134	468,421	(55,510)	625,045
Gross profit	75,034	188,156	(675)	262,515
Selling, general and administrative expenses	72,814	126,984	—	199,798
Income (loss) from operations	2,220	61,172	(675)	62,717
Interest – net	(13,655)	(885)	—	(14,540)
Other income	825	1,068	—	1,893
Income (loss) before income taxes	(10,610)	61,355	(675)	50,070
Income taxes	4,245	(24,543)	270	(20,028)
Net income (loss)	(6,365)	36,812	(405)	30,042
Equity in undistributed income of guarantor subsidiaries	36,407	—	(36,407)	—
Net income (loss)	<u>\$ 30,042</u>	<u>\$ 36,812</u>	<u>\$ (36,812)</u>	<u>\$ 30,042</u>

**Nine Months Ended June 29, 2002  
(in thousands)**

	<u>Parent</u>	<u>Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
Net sales	\$ 290,295	\$ 598,811	\$ (52,145)	\$ 836,962
Cost of goods sold and occupancy	220,478	415,191	(52,088)	583,581
Gross profit	69,817	183,620	(57)	253,381
Selling, general and administrative expenses	81,391	122,533	—	203,925
Income (loss) from operations	(11,574)	61,087	(57)	49,456
Interest – net	(9,454)	(1,835)	—	(11,289)
Other income	(2,021)	6,792	—	4,771
Income (loss) before income taxes and cumulative effect of accounting change	(23,049)	66,044	(57)	42,938
Income taxes	8,851	(24,018)	23	(15,144)
Income (loss) before cumulative effect of accounting change	(14,198)	42,026	(34)	27,794
Cumulative effect of accounting change, net of tax	(112,237)	—	—	(112,237)
Net income (loss)	(126,435)	42,026	(34)	(84,443)
Equity in undistributed income of guarantor subsidiaries	41,992	—	(41,992)	—
Net income (loss)	<u>\$ (84,443)</u>	<u>\$ 42,026</u>	<u>\$ (42,026)</u>	<u>\$ (84,443)</u>

**CONSOLIDATING CONDENSED BALANCE SHEET**  
**June 28, 2003**  
(in thousands)

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
<b>ASSETS</b>				
Cash and equivalents	\$ 73,469	\$ 2,125	\$ —	\$ 75,594
Accounts receivable	48,431	129,986	(9,154)	169,263
Inventories	62,784	149,449	—	212,233
Prepays and other assets	7,815	3,787	—	11,602
<b>Total current assets</b>	<b>192,499</b>	<b>285,347</b>	<b>(9,154)</b>	<b>468,692</b>
Land, buildings, improvements and equipment, net	10,811	89,030	—	99,841
Goodwill	222,780	—	—	222,780
Investment in Guarantors	287,861	—	(287,861)	—
Deferred income taxes and other assets	39,756	13,908	—	53,664
<b>Total</b>	<b>\$ 753,707</b>	<b>\$ 388,285</b>	<b>\$ (297,015)</b>	<b>\$ 844,977</b>
<b>LIABILITIES</b>				
Notes payable	\$ —	\$ —	\$ —	\$ —
Accounts payable	56,195	58,860	(9,154)	105,901
Accrued expenses and other liabilities	32,747	27,497	—	60,244
Current portion of long-term debt	1,000	11,821	—	12,821
<b>Total current liabilities</b>	<b>89,942</b>	<b>98,178</b>	<b>(9,154)</b>	<b>178,966</b>
Long-term debt	249,200	25	—	249,225
Deferred income taxes and other long-term obligations	72	2,221	—	2,293
Equity	414,493	287,861	(287,861)	414,493
<b>Total</b>	<b>\$ 753,707</b>	<b>\$ 388,285</b>	<b>\$ (297,015)</b>	<b>\$ 844,977</b>

[Table of Contents](#)

**CONSOLIDATING CONDENSED BALANCE SHEET**  
September 28, 2002  
(in thousands)

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
<b>ASSETS</b>				
Cash and equivalents	\$ 10,080	\$ 804	\$ —	\$ 10,884
Accounts receivable	41,002	103,087	(13,105)	130,984
Inventories	52,417	140,742	—	193,159
Prepays and other assets	21,046	5,050	—	26,096
	<u>124,545</u>	<u>249,683</u>	<u>(13,105)</u>	<u>361,123</u>
Total current assets	124,545	249,683	(13,105)	361,123
Land, buildings, improvements and equipment, net	12,191	88,673	—	100,864
Goodwill	222,489	—	—	222,489
Investment in Guarantors	212,738	—	(212,738)	—
Deferred income taxes and other assets	35,070	14,347	(1,936)	47,481
	<u>607,033</u>	<u>352,703</u>	<u>(227,779)</u>	<u>731,957</u>
Total	\$ 607,033	\$ 352,703	\$ (227,779)	\$ 731,957
<b>LIABILITIES</b>				
Notes payable	\$ 33,992	\$ 25,983	\$ —	\$ 59,975
Accounts payable	52,606	57,295	(13,105)	96,796
Accrued expenses and other liabilities	22,437	27,898	—	50,335
	<u>109,035</u>	<u>111,176</u>	<u>(13,105)</u>	<u>207,106</u>
Total current liabilities	109,035	111,176	(13,105)	207,106
Long-term debt	120,387	24,944	—	145,331
Deferred income taxes and other long-term obligations	103	3,845	(1,936)	2,012
Equity	377,508	212,738	(212,738)	377,508
	<u>607,033</u>	<u>352,703</u>	<u>(227,779)</u>	<u>731,957</u>
Total	\$ 607,033	\$ 352,703	\$ (227,779)	\$ 731,957

[Table of Contents](#)

**CONSOLIDATING CONDENSED STATEMENT OF CASH FLOWS**  
**Nine Months Ended June 28, 2003**  
(in thousands)

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
Net cash provided (used) by operating activities	\$ 13,392	\$ 14,848	\$ (405)	\$ 27,835
Expenditures for land, buildings, improvements and equipment	(1,500)	(10,015)	—	(11,515)
Investment in guarantor	(38,719)	38,314	405	—
Net cash provided (used) by investing activities	(40,219)	28,299	405	(11,515)
Borrowings (repayments) under lines of credit, net	(33,992)	(25,983)	—	(59,975)
Proceeds from issuance of long-term debt	250,000	—	—	250,000
Payments on long-term debt	(125,035)	(15,843)	—	(140,878)
Deferred financing costs	(7,700)	—	—	(7,700)
Proceeds from issuance of stock	6,943	—	—	6,943
Net cash provided (used) by financing activities	90,216	(41,826)	—	48,390
Net increase in cash and cash equivalents	63,389	1,321	—	64,710
Cash and cash equivalents at beginning of period	10,080	804	—	10,884
Cash and cash equivalents at end of period	\$ 73,469	\$ 2,125	\$ —	\$ 75,594

**Nine Months Ended June 29, 2002**  
(in thousands)

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
Net cash provided (used) by operating activities	\$ (5,688)	\$ 54,540	\$ (160)	\$ 48,692
Expenditures for land, buildings, improvements and equipment	(1,322)	(5,838)	—	(7,160)
Investment in guarantor	30,856	(31,016)	160	—
Net cash provided (used) by investing activities	29,534	(36,854)	160	(7,160)
Borrowings (repayments) under lines of credit, net	(22,215)	(16,975)	—	(39,190)
Proceeds from issuance of long-term debt	—	1,400	—	1,400
Payments on long-term debt	(4,532)	(1,933)	—	(6,465)
Proceeds from issuance of stock	3,709	—	—	3,709
Net cash used by financing activities	(23,038)	(17,508)	—	(40,546)
Net increase in cash and cash equivalents	808	178	—	986
Cash and cash equivalents at beginning of period	7,153	1,139	—	8,292
Cash and cash equivalents at end of period	\$ 7,961	\$ 1,317	\$ —	\$ 9,278

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## Table of Contents

### **7. Cumulative Effect of Accounting Change – Adoption of SFAS No. 142**

During fiscal 2002, management completed its measurement of the goodwill impairment resulting from the adoption of SFAS No. 142, “Goodwill and Other Intangible Assets.” The amount of goodwill impairment upon adoption is reflected as the cumulative effect of an accounting change as of September 30, 2001 in the accompanying condensed consolidated financial statements.

Goodwill balances within the Pet Products and Garden Products segments were tested for impairment as of September 30, 2001. Based on the analysis performed, the Company recorded a non-cash charge to write down goodwill in its Pet Products segment by \$94.8 million (\$70.1 million after tax) and in its Garden Products segment by \$51.9 million (\$42.1 million after tax).

### **8. Contingencies**

*TFH Litigation.* In December 1997, Central acquired all of the stock of TFH Publications, Inc. (“TFH”). In connection with the transaction, Central made a \$10 million loan to the sellers, which was evidenced by a Promissory Note. In September 1998, the prior owners of TFH brought suit against Central and certain executives of Central for damages and relief from their obligations under the Promissory Note, alleging, among other things, that Central’s failure to properly supervise the TFH management team had jeopardized their prospects of achieving certain earnouts. Central believes that these allegations are without merit. Central counterclaimed against the prior owners for enforcement of the Promissory Note, rescission and/or damages and other relief, alleging, among other things, fraud, misrepresentation and breach of fiduciary duty by the prior owners of TFH. These actions, *Herbert R. Axelrod and Evelyn Axelrod v. Central Garden & Pet Company*; *Glenn S. Axelrod*; *Gary Hersch*; *William E. Brown*; *Robert B. Jones*; *Glen Novotny*; and *Neill Hines*, Docket No. MON-L-5100-99, and *TFH Publications, Inc. v. Herbert Axelrod et al.*, Docket No. L-2127-99 (consolidated cases), are in the New Jersey Superior Court. It is currently anticipated that this case will be tried in late 2003 or early 2004.

During the course of discovery in this action, Central has become aware of certain information which shows that prior to the acquisition of TFH by Central, certain records of TFH were prepared in an inaccurate manner which, among other things, resulted in underpayment of taxes by certain individuals. Those individuals could be liable for back taxes, interest, and penalties. In addition, even though all of the events occurred prior to the acquisition of TFH by Central, there is a possibility that TFH could be liable for penalties for events which occurred under prior management. Central believes that TFH has strong defenses available to the assertion of any penalties against TFH. Central cannot predict whether TFH will be required to pay any such penalties. In the event that TFH were required to pay penalties, Central would seek compensation from the prior owners.

Central does not believe that the outcome of the above matters will have a material adverse impact on its operations, financial position, or cash flows.

*Scotts Litigation.* On June 30, 2000, The Scotts Company filed suit against Central to collect the purchase price of certain lawn and garden products previously sold to Central. See *The Scotts Company v. Central Garden & Pet Company*, Docket No. C2 00-755 (U.S. Dist Ct. N.D. Ohio). Central filed its answer and a counter complaint asserting various claims for breaches of contracts.

In April 2002, trial occurred on the claims and counterclaims of the parties (excluding one oral contract claim made by Central recently added to the case). The net verdict was in favor of Scotts in the amount of \$10.425 million which had previously been recorded as an obligation by the Company. Scotts and Central filed post-trial motions. In a March 20, 2003 order, the district court denied Scotts’ motion for attorneys’ fees, granted Scotts’ motion to set aside \$750,000 of the jury amount awarded to Central, denied Central’s motion for a new trial, granted Central’s motion for prejudgment interest, and granted in part and denied in part Scotts’ motion for prejudgment interest. The court directed each party to re-determine the amount of their respective interest claims in light of the Court’s ruling and to submit their respective determinations. On July 11, 2003, the Court issued an order resolving the remaining prejudgment interest issues and directing the parties to submit calculations in accordance with its decision. Pursuant

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## Table of Contents

to this order, the Court will award prejudgment interest to Scotts in the net amount of \$2.827 million, which has been previously provided for by the Company. Trial on Central's remaining claim is scheduled for October 6, 2003.

On July 7, 2000, Central filed suit against Scotts and Pharmacia Corporation (formerly know as Monsanto Company) seeking damages and injunctive relief for, among other things, violations of the antitrust laws. See *Central Garden & Pet Company, v. The Scotts Company, and Pharmacia Corporation, formerly known as Monsanto Company*, Docket No. C 00 2465, (U.S. Dist Ct. N.D. Cal.). Pursuant to a settlement reached with Pharmacia, Central and Pharmacia agreed that all antitrust claims against Pharmacia and Monsanto would be resolved, and the federal action has been dismissed as to Pharmacia and Monsanto. In May 2002, Scotts filed a motion for summary judgment in the federal action based on res judicata. The court granted the res judicata motion, did not rule on the antitrust motions. Central is appealing the judgment entered pursuant to the court's order.

Central does not believe that the outcome of the above remaining matters will have a material adverse impact on its operations, financial position, or cash flows.

**Phoenix Fire.** On August 2, 2000, a fire destroyed Central's leased warehouse space in Phoenix, Arizona, and an adjoining warehouse space leased by a third party. On July 31, 2001, the adjoining warehouse tenant filed a lawsuit against Central and other parties in the Superior Court of Arizona, Maricopa County, seeking to recover \$47 million for property damage from the fire. See *Cardinal Health Inc., et al. v. Central Garden & Pet Company, et al*, Civil Case No. CV2001-013152. Local residents have also filed a purported class action lawsuit alleging claims for bodily injury and property damage as a result of the fire. The building owner and several nearby businesses have also now filed lawsuits for property damage and business interruption, which we expect to be consolidated with the tenant and local resident lawsuits. Each of these lawsuits is currently pending in the Superior Court of Arizona, Maricopa County. The Arizona Department of Environmental Quality, after monitoring the cleanup operations and asking Central, the building owner and the adjoining warehouse tenant to assess whether the fire and fire suppression efforts may have caused environmental impacts to soil, groundwater and/or surface water, has now issued a letter stating that Central need take no further action at the site with respect to environmental issues. In early 2001, the EPA requested information relating to the fire. On July 17, 2002, the EPA informed Central that it intended to file a civil administrative complaint seeking penalties of up to \$350,000 for certain alleged post-fire reporting violations. Central and the EPA have recently settled those allegations for \$65,000. The overall amount of the damages to all parties caused by the fire, and the overall amount of damages which Central may sustain as a result of the fire, have not been quantified. At the time of the fire, Central maintained property insurance covering losses to the leased premises, Central's inventory and equipment, and loss of business income. Central also maintained insurance providing \$51 million of coverage (with no deductible) against third party liability. Central believes that this insurance coverage will be available with respect to third party claims against Central if parties other than Central are not found responsible. The precise amount of the damages sustained in the fire, the ultimate determination of the parties responsible and the availability of insurance coverage are likely to depend on the outcome of complex litigation, involving numerous claimants, defendants and insurance companies.

### **9. Subsequent Event**

In July 2003 the Company acquired a 49 percent equity interest in the E. M. Matson lawn and garden business. E. M. Matson is a leading lawn and garden manufacturer in the Western U.S. which markets and sells slug & snail products, moss controls and animal repellants under the Corry's, Deadline and Moss-B-Ware brand names. Annual sales are approximately \$8 million. This investment provides the Company with additional premium brands to add to its stable of leading brands and brings in additional management talent.

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

#### **Overview**

Central Garden & Pet Company is a leading marketer and producer of quality branded products for the pet and lawn and garden supplies markets. We are one of the largest companies in the fragmented, \$5.1 billion U.S. pet supplies industry and one of the largest companies in the \$52.5 billion U.S. lawn and garden supplies industry. Our



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## **Table of Contents**

pet products include pet bird and small animal food, wild bird seed, aquarium products, flea, tick, mosquito and other insect control products, edible bones, cages, carriers, pet books, and other dog, cat, reptile and small animal products. These products are sold under a number of brand names, including Kaytee, All-Glass Aquarium, Zodiac, Nylabone, TFH and Four Paws. Our lawn and garden products include grass seed, wild bird seed, weed and insect control products, decorative outdoor patio products and ant control products. These products are sold under a number of brand names, including Pennington, Norcal Pottery, Matthews Four Seasons, AMDRO and Grant's. In fiscal 2002, our consolidated net sales were \$1.1 billion, of which our pet products segment, or Pet Products, accounted for \$471.1 million and our lawn and garden products segment, or Garden Products, accounted for \$606.7 million. Our income from operations was \$52.8 million, of which Pet Products accounted for \$43.4 million and Garden Products accounted for \$37.3 million, before corporate expenses and eliminations of \$27.9 million.

Central was incorporated in Delaware in June 1992 and is the successor to a California corporation which was incorporated in 1955. References to "we," "us," "our," or "Central" mean Central Garden & Pet Company and its subsidiaries and divisions, and their predecessor companies and subsidiaries.

### **Background**

During the past several years, we have transitioned to a leading marketer and producer of branded products from a traditional pet and lawn and garden supplies distributor. We undertook this transition because we recognized the opportunity to build a portfolio of leading brands and improve profitability by capitalizing on our knowledge of the pet and lawn and garden supplies sectors, our strong relationships with retailers and our nationwide sales and logistics network. Our goal was to diversify our business and improve operating margins by establishing a portfolio of leading brands. Since 1997, we have acquired numerous branded products companies and product lines, including Wellmark and Four Paws in fiscal 1997; Kaytee Products, TFH and Pennington Seed in fiscal 1998; Norcal Pottery in fiscal 1999; and AMDRO and All-Glass Aquarium in fiscal 2000.

While expanding our branded products business, we experienced adverse events in our distribution business. From 1995 to 1999, we were the master distributor of Round Up and Ortho products. In January 1999, The Scotts Company, one of our largest distribution suppliers at the time, acquired Ortho and became the marketing agent for Round Up. In July 2000, Scotts terminated its relationship with us. Due to these events, we significantly downsized our garden distribution operations and closed a total of 25 facilities from fiscal 1999 to fiscal 2001. We have incurred significant legal expenses associated with lawsuits with Scotts and others. In fiscal 2001, we integrated our sales and logistics networks into our pet and lawn and garden products businesses to allow us to focus resources and provide strategic sales support for our brands.

Virtually all of our sales before fiscal 1997 were from distributing other manufacturers' products. Since then, our branded product sales have grown to approximately \$800 million, or approximately 75% of total sales, in fiscal 2002. During this same period, sales of other manufacturers' products have declined to approximately \$250 million, or approximately 25% of total sales, and our gross profit margins improved from 13.6% in fiscal 1996 to 29.7% in fiscal 2002.

### **Recent Developments**

In July 2003, we acquired a 49 percent equity interest in the E. M. Matson lawn and garden business. E. M. Matson is a leading lawn and garden manufacturer in the Western U.S. which markets and sells slug & snail products, moss controls and animal repellants under the Corry's, Deadline and Moss-B-Ware brand names. Annual sales are approximately \$8 million.

In May 2003, we closed a \$200 million senior secured credit facility. The new credit facility consists of a five-year \$100 million revolving credit facility and a six-year \$100 million term loan. The new facility replaced the Company's \$175 million asset-based revolving credit facility. Net proceeds from the new facility were used to retire the outstanding debt under the asset-based revolving credit facility. The remaining net proceeds will be used to retire other existing debt as well as provide capital for general corporate purposes and acquisitions and investments.

**Three Months Ended June 28, 2003  
Compared with Three Months Ended June 29, 2002**

Results for the third quarter of fiscal 2003 continued to reflect our transition to a leading marketer and producer of branded products from a distributor of other manufacturers' products. Branded product sales continued to increase while sales of other manufacturer's products decreased. Net sales for the three months ended June 28, 2003 increased \$9.5 million, or 2.8%, to \$345.1 million from \$335.6 million for the three months ended June 29, 2002 due to increased branded product sales partially offset by decreased sales of other manufacturers' products. Net sales increased \$8.9 million, or 7.3%, in Pet Products and \$0.6 million, or 0.3%, in Garden Products. Our branded product sales increased \$6.7 million in Pet Products, due primarily to increased sales of mosquito and pest control products and aquariums, and \$6.1 million in Garden Products, due primarily to increased sales of grass seed, pottery and fire ant products.

Gross profit for the quarter ended June 28, 2003 increased \$1.2 million, or 1.2%, to \$102.2 million from \$101.0 million for the quarter ended June 29, 2002. Pet Product's gross profit increased as a result increased sales, partially offset by a slight decrease in Garden Products as a result of higher than normal grain prices. Gross profit as a percentage of net sales decreased from 30.1% for the quarter ended June 29, 2002 to 29.6% for the same quarter in 2003. Our gross margins continued to be impacted by higher than normal grain prices caused by last year's drought in the Plains states. However, we do not expect our gross margins to be impacted by the higher than normal grain prices in the fourth quarter of fiscal 2003. Wild bird feed margins are recovering as we use the higher priced grain inventories purchased earlier in the season and we have improved pricing to retailers, the last of which was implemented in mid-March.

Selling, general and administrative expenses decreased \$5.1 million, or 6.8%, from \$74.7 million for the quarter ended June 29, 2002 to \$69.6 million in the current quarter. As a percentage of net sales, selling, general and administrative expenses decreased from 22.3% for the quarter ended June 29, 2002 to 20.2% for the quarter ended June 28, 2003. The decrease in selling, general and administrative expenses as a percentage of net sales was due to decreased facility and warehouse and administrative expenses partially offset by increased selling and delivery expenses.

Selling and delivery expenses increased \$5.2 million, or 15.0%, from \$34.6 million for the quarter ended June 29, 2002 to \$39.8 million for the current quarter. Increased selling and delivery expense in Pet Products resulted from increased revenues, while increased media advertising and increased revenues led to increased expenses in Garden Products.

Facilities expense decreased by \$0.2 million, or 7.4%, from \$2.7 million for the quarter ended June 29, 2002 to \$2.5 million for the current quarter. The decrease was related to the reduction of Garden Products facilities that occurred subsequent to the June 29, 2002 quarter.

Warehouse and administrative expenses decreased \$10.1 million, or 27.0%, from \$37.4 million for the quarter ended June 29, 2002 to \$27.3 million for the quarter ended June 28, 2003. Warehouse and administrative expenses decreased \$1.1 million in Pet Products, \$4.0 million in Garden Products and \$5.0 million at Corporate. The decrease was due primarily to significantly reduced legal and litigation expenses in the current year quarter and increased purchasing, merchandise handling and storage costs included as inventory costs as a result of the increase in both sales and inventory levels. Expenses were further reduced by the consolidation of Garden Products administrative functions that occurred subsequent to June 29, 2002. In the prior year quarter, increased charges resulted from a discontinued product line as well as insurance costs.

Operating income increased \$6.3 million, or 24%, compared to the prior year quarter as a result of increased sales and lower selling, general and administrative expenses.

Net interest expense for the quarter ended June 28, 2003 increased by \$1.7 million, or 46.3%, to \$5.4 million from \$3.7 million for the quarter ended June 29, 2002. Approximately \$0.4 million was for fees and expenses in connection with the refinancing of our senior credit facility. The remainder of the increase is due to the higher interest expense primarily associated with higher rates on our \$150 million senior subordinated notes due 2013.

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## Table of Contents

Other income decreased \$2.8 million from \$4.4 million for the quarter ended June 29, 2002 to \$1.6 million for the quarter ended June 28, 2003. The decrease is due primarily to \$6 million of life insurance proceeds, partially offset by a \$2.8 million charge related to the write-down of an equity method investment, included in the quarter ended June 29, 2002. Earnings from equity method investments were \$1.6 million for the quarter ended June 28, 2003 compared to \$1.2 million for the quarter ended June 29, 2002.

The Company's effective income tax rate for the quarter ended June 28, 2003 was 40.0% compared with 31.9% for the quarter ended June 29, 2002. The lower effective tax rate in the quarter ended June 29, 2002 was primarily the result of non-taxable insurance proceeds.

### **Nine Months Ended June 28, 2003 Compared with Nine Months Ended June 29, 2002**

Net sales for the nine months ended June 28, 2003 increased by \$50.6 million, or 6.1%, to \$887.6 million from \$837.0 million for the nine months ended June 29, 2002. The increase in net sales was comprised of a \$21.7 million, or 6.1%, increase in Pet Products and a \$28.9 million, or 6.0%, increase in Garden Products. Increased sales in both segments are the result of increased sales of our branded products, primarily mosquito, fire ant and pest control products, grass and bird seed. The wet spring weather in 2003 dampened our garden sales. However, the impact has been offset by the large population of insects and pests the wet weather has brought and continued concerns over the West Nile virus.

Gross profit for the nine months ended June 28, 2003 increased \$9.1 million, or 3.6%, to \$262.5 million from \$253.4 million for the nine months ended June 29, 2002. Gross profit increased in both Garden Products and Pet Products as a result of increased sales. Gross profit as a percentage of net sales decreased from 30.3% for the nine months ended June 29, 2002 to 29.6% for the nine months ended June 28, 2003. Garden and Pet Product gross margins continued to be impacted by higher than normal grain prices caused by last year's drought in the Plains states. However, wild bird feed margins are recovering as we use the higher priced grain inventories purchased earlier in the season and from improved pricing to retailers, the last of which was implemented in mid-March.

Selling, general and administrative expenses decreased \$4.1 million, or 2.0%, from \$203.9 million for the nine months ended June 29, 2002 to \$199.8 million for the nine months ended June 28, 2003. As a percentage of net sales, selling, general and administrative expenses decreased from 24.4% for the nine months ended June 29, 2002 to 22.5% for the nine months ended June 28, 2003. The decrease in selling, general and administrative expense was due to decreased facilities and warehouse and administrative expenses partially offset by increased selling and delivery expenses.

Selling and delivery expenses increased by \$9.4 million, or 10.1%, from \$92.9 million for the nine months ended June 29, 2002 to \$102.3 million for the nine months ended June 28, 2003. The increase in revenues in both Garden Products and Pet Products and increased media advertising led to increased selling and delivery expenses.

Facilities expense decreased by \$0.8 million, or 9.3%, from \$8.5 million for the nine months ended June 29, 2002 to \$7.7 million for the nine months ended June 28, 2003. The decrease was primarily related to facility shutdown costs in Pet Products incurred in the prior year period and reduced costs in Garden Products due to facility consolidations subsequent to June 29, 2002.

Warehouse and administrative expenses decreased \$12.7 million, or 12.4%, from \$102.5 million for the nine months ended June 29, 2002 to \$89.8 million for the nine months ended June 28, 2003. Warehouse and administrative expenses decreased \$3.5 million in Garden Products, \$2.8 million in Pet Products and \$6.4 million at Corporate. The decrease was due primarily to significantly reduced legal and litigation expenses in the current fiscal year. Additionally, increased charges from a discontinued product line were incurred in the prior year. Also contributing to the decrease was increased purchasing, merchandise handling and storage costs included as inventory costs as a result of the increase in both sales and inventory. Expenses were further reduced by the consolidation of Garden Products administrative functions that occurred subsequent to June 29, 2002.

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## Table of Contents

Net interest expense for the nine months ended June 28, 2003 increased \$3.2 million, or 28.8%, to \$14.5 million from \$11.3 million for the nine months ended June 29, 2002. The increase is due to \$1.8 million of fees and expenses related to the issuance and retirement of debt in fiscal 2003 and the higher interest expense associated with the higher rates on our new capital structure, primarily the \$150 million of 9 1/8% senior subordinated notes due 2013.

Other income decreased \$2.9 million from \$4.8 million for the nine months ended June 29, 2002 to \$1.9 million for the nine months ended June 28, 2003. The decrease is due to \$6 million of life insurance proceeds, partially offset by a \$2.8 million charge related to the write-down of an equity method investment, included in the nine months ended June 29, 2002. Earnings from equity method investments increased \$0.3 million in the current fiscal year.

Our effective income tax rate before the cumulative effect of accounting change for the nine months ended June 29, 2002 was 35.3% compared with 40.0% for the nine months ended June 28, 2003. The lower effective tax rate in for the nine months ended June 29, 2002 was primarily the result of non-taxable insurance proceeds.

We recorded net income for the nine months ended June 28, 2003 of \$30.0 million compared with \$27.8 million, before the effect of adopting Statement of Financial Accounting Standards ("SFAS") No. 142, in the prior year nine month period. Improved operating results were offset partially by increased interest expense and income taxes and reduced other income. Fully diluted earnings per share improved from \$1.36, before the effect of adopting SFAS No. 142, in the prior year nine months to \$1.49 in the current year nine months. In addition to the improved net income in the current year, the fully diluted weighted average shares outstanding decreased due to the redemption of our \$115 million convertible subordinated notes in February 2003.

In the first quarter of fiscal 2002, we reported a cumulative effect of accounting change charge in the amount of \$112.2 million. In July 2001, the Financial Accounting Standards Board ("FASB") issued SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 142 changes the accounting for goodwill and intangible assets with indefinite lives from an amortization method to an impairment approach. Other intangible assets will continue to be amortized over their estimated useful lives. Amortization of goodwill, including goodwill recorded in prior business combinations, ceased upon the adoption of the standard, which we adopted for the fiscal year beginning September 30, 2001. As required by SFAS No. 142, we performed our goodwill impairment analysis and recorded a non-cash charge to write down goodwill in our Garden Products segment by \$51.9 million (\$42.1 million after tax) and in our Pet Products segment by \$94.8 million (\$70.1 million after tax) in the quarter ended December 29, 2001.

### **Liquidity and Capital Resources**

We have financed our growth through a combination of bank borrowings, supplier credit, internally generated funds and sales of equity and debt securities to the public.

Historically, our business has been seasonal and our working capital requirements and capital resources tracked closely to this seasonal pattern. During the first fiscal quarter, accounts receivable reach their lowest level while inventory, accounts payable and short-term borrowings begin to increase. During the second fiscal quarter, receivables, accounts payable and short-term borrowings begin to increase, reflecting the build-up of inventory and related payables in anticipation of the peak lawn and garden selling season. During the third fiscal quarter, inventory levels remain relatively constant while accounts receivable peak and short-term borrowings start to decline as cash collections are received during the peak selling season. During the fourth fiscal quarter, inventory levels are at their lowest, and accounts receivable and payables are substantially reduced through conversion of receivables to cash. As a result of the reduction in sales of products manufactured by other parties as a percentage of overall sales, this seasonal pattern has become somewhat less significant.

We service two broad markets: pet supplies and lawn and garden supplies. Our pet supplies businesses involve products that have a year round selling cycle with very little change quarter to quarter. As a result, it is not necessary to carry large quantities of inventory to meet peak demands. Additionally, this level sales cycle eliminates the need for manufacturers to give extended credit terms to either distributors or retailers. On the other hand, our lawn and garden businesses are highly seasonal with approximately 64% of Garden Products' aggregate sales

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## Table of Contents

occurring during the second and third fiscal quarters in fiscal year 2002. For many manufacturers of garden products, this seasonality requires them to move large quantities of their product well ahead of the peak selling periods. To encourage distributors to carry large amounts of inventory, industry practice has been for manufacturers to give extended credit terms and/or promotional discounts.

Cash provided by operating activities decreased \$19.0 million from \$48.7 million for the nine months ended June 29, 2002 to \$29.7 million for the nine months ended June 28, 2003. The decrease was primarily attributable to increased inventory and accounts receivable levels due primarily to softness in sales in the Garden segment and the build up for the expected strong summer demand for insect control products. This was partially offset by increased accounts payable, related to the increased inventory, and accrued expenses due primarily to increased accrued taxes and interest. Net cash used in investing activities increased \$4.3 million primarily as a result of capital expenditures associated with the construction of a manufacturing facility. Net cash provided by financing activities increased \$87.0 million due to the net proceeds received from the issuance of \$150 million of senior subordinated notes in January 2003, \$100 million senior term loan in May 2003 and employee stock option exercises. These proceeds were partially offset by the redemption of our \$115 million convertible subordinated notes in February 2003, the repayment of the outstanding borrowings under our credit facility in May 2003, and the repayment of two senior secured term loans.

At June 28, 2003, our total debt was \$262.0 million versus \$233.8 million at June 29, 2002. Net debt, total debt less cash and cash equivalents, was \$186.5 million at June 28, 2003 versus \$224.6 million at June 29, 2002.

In May 2003, we closed a new \$200 million senior secured credit facility consisting of a five-year \$100 million revolving credit facility and a six-year \$100 million term loan. Interest on the term loan is based on a rate equal to LIBOR plus 2.75% or the prime rate plus 1.25%, at our option. Interest on the revolving credit facility is based on a rate equal to prime plus a margin which fluctuates from 0.25% to 1.25% or LIBOR plus a margin which fluctuates from 1.75% to 2.75%, determined quarterly based on consolidated total debt to consolidated EBITDA for the most recent trailing 12-month period. This facility is secured by essentially all of the Company's assets, contains certain financial covenants requiring maintenance of minimum levels of interest coverage and tangible net worth and maximum levels of senior debt to EBITDA and total debt to EBITDA and places a ceiling on the Company's treasury stock purchases. We were in compliance with all financial covenants as of June 28, 2003. This facility also requires the lenders' prior written consent to any material investments in or acquisitions of a business. The new facility replaced our \$175 million asset-based revolving credit facility. We anticipate the new credit facility will result in slightly higher annual interest expense. A portion of the net proceeds from the \$100 million term loan were used to retire the outstanding debt under the asset-based revolving credit facility. The remaining net proceeds will be used to retire other existing debt and, along with the amounts available under the \$100 million revolving credit facility, will provide capital for general corporate purposes, acquisitions and investments. No balances were outstanding at June 29, 2003 under the \$100 million revolving credit facility.

In January 2003, we issued \$150 million of 9<sup>1</sup>/<sub>8</sub>% senior subordinated notes due 2013. The net proceeds of approximately \$144 million were used to redeem \$115 million of 6% subordinated convertible notes due November 2003. We used the balance of the net proceeds, combined with additional borrowings under our line of credit with Congress Financial Corporation (Western), to repay the outstanding borrowings under our Pennington credit facility and two senior secured term loans of All-Glass. In conjunction with these repayments, we terminated the Pennington and All-Glass credit facilities. As a result of our private placement of \$150 million of 9<sup>1</sup>/<sub>8</sub>% senior subordinated notes due 2013, we estimate that our interest expense will increase approximately \$6 million per year.

As a result of these refinancings, we have increased our financial flexibility by replacing our long-term debt, putting in place a layer of medium-term capital and increased our access to additional lenders. We believe that this increased financial flexibility will allow us to more effectively pursue growth opportunities and potential acquisitions on a prudent basis.

We believe that cash flows from operating activities, funds available under our credit facility, and arrangements with suppliers will be adequate to fund our presently anticipated working capital requirements for the foreseeable future. We anticipate that our capital expenditures will not exceed \$15.0 million for the next 12 months, including approximately \$5.0 million for the construction of a manufacturing facility scheduled for completion in the fall of 2003.

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## **Table of Contents**

As part of our growth strategy, we have engaged in acquisition discussions with a number of companies in the past, and we anticipate that we will continue to evaluate potential acquisition candidates. If one or more potential acquisition opportunities, including those that would be material, become available in the near future, we may require additional external capital. In addition, such acquisitions would subject us to the general risks associated with acquiring companies, particularly if the acquisitions are relatively large.

### **Weather and Seasonality**

Historically, the Company's sales of lawn and garden products have been influenced by weather and climate conditions in the markets it serves. Additionally, Garden Products' business has been highly seasonal. In fiscal 2002, 64% of Garden Products net sales and 58% of our total net sales occurred in the Company's second and third fiscal quarters. Substantially all of Garden Products' operating income is typically generated in this period, which has historically offset the operating loss incurred during the first fiscal quarter of the year.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

The Company believes there has been no material change in its exposure to market risk from that discussed in the Company's fiscal 2002 Annual Report filed on Form 10-K.

### **Item 4. Controls and Procedures**

(a) Our Chief Executive Officer and Chief Financial Officer have reviewed, as of the end of the period covered by this report, the "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934 Rules 13a-14(c) and 15d-14(c)) that ensure that information relating to the company required to be disclosed by us in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported in a timely and proper manner. Based upon this review, we believe that there are adequate controls and procedures in place to ensure that information relating to the company that is required to be disclosed by us in the reports that we file or submit under the Exchange Act is properly disclosed as required by the Exchange Act and related regulations.

(b) *Changes in internal controls.* There were no significant changes in our internal control over financial reporting that occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

For information on our material legal proceedings, you should read note 8 "Contingencies" to the unaudited financial statements in Part I – Item 1 of this report.

### **Item 2. Changes in Securities and Use of Proceeds**

Not applicable

### **Item 3. Defaults Upon Senior Securities**

Not applicable

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**Table of Contents**

**Item 4. Submission of Matter to a Vote of Securities Holders**

Not applicable

**Item 5. Other Information**

Not applicable

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

(a) Exhibits

- 10.7.1 Modification and Extension of Employment Agreement dated as of February 27, 1998, between Pennington Seed, Inc. and Brooks Pennington III, dated as of May 6, 2003.
- 10.9 Credit Agreement dated May 14, 2003, between Central Garden & Pet Company and Canadian Imperial Bank of Commerce et al.
- 31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350.
- 32.2 Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350.

(b) The following current report on Form 8-K was filed during the quarter ended June 28, 2003:

- a. Form 8-K filed June 9, 2003 regarding the filing of the Company's financial statements as of September 28, 2002 and September 29, 2001, and for each of the three years in the period ended September 28, 2002.

The following current report on Form 8-K was furnished during the quarter ended June 28, 2003:

- b. Form 8-K filed May 1, 2003 relating to our press release announcing our financial results for the quarter ended March 29, 2003.

**SIGNATURES**

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

CENTRAL GARDEN & PET COMPANY

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Registrant

Dated: August 8, 2003

*/s/* GLENN W. NOVOTNY

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Glenn W. Novotny  
President and Chief Executive Officer

*/s/* STUART W. BOOTH

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Stuart W. Booth  
Vice President and Chief Financial Officer



## MEMORANDUM

TO: Sonny Pennington

CONFIDENTIAL

FROM: Bill Brown

DATE: May 6, 2003

SUBJ: Modification and Extension of February 27, 1998 Employment Agreement and  
Non-Compete Agreement

Dear Sonny:

Per our recent discussions, this is to confirm that we have agreed to modify and extend your February 27, 1998 Employment Agreement ("Employment Agreement") as follows:

- 1) You will continue your employment as President & CEO of Pennington Seed, Inc., through February 27, 2006.
- 2) Effective as of February 27, 2003, your new base salary will be \$326,610 and there will be 5% increases in base salary as of February 27, 2004, and February 27, 2005.
- 3) Your target bonus will be 50% of your annual salary. The actual bonus will be at the discretion of Central's C.E.O. and the Compensation Committee of the Board.
- 4) The \$20,000 automobile expense referred to in paragraph 4 of the Employment Agreement will be increased to \$30,000 at the beginning of the amended Agreement. You will be entitled to seven (7) weeks of paid vacation each year during the term of Agreement. Your entitlement to all benefits as referred to in such paragraph 4 will be extended through February 27, 2006.
- 5) The time period for your receiving your base salary in the event of disability as set forth in paragraph 6 of the Employment Agreement will be extended to February 27, 2006. However, in the event of death, compensation will be paid with full benefits for a period of ninety (90) days after death.
- 6) The Non-Compete is amended to exclude any retail store business. The Non-Compete terminates two (2) years after the end of the later of the Employment Agreement or your employment.
- 7) This Agreement will be governed and construed in accordance with the laws of the State of Georgia.
- 8) Except as herein modified, the terms and provisions of the Employment Agreement and Non-Compete Agreement will remain in full force and effect.

The Company continues to be enormously appreciative of your leadership at Pennington Seed. We are pleased that you have agreed to continue with Pennington Seed through February 27, 2006. On a personal level, I value our relationship and our interactions very highly. Your counsel has enabled me to be more successful in my endeavors in the garden industry and to improve teamwork across our Garden Division.

Please indicate your acceptance of the Employment Agreement as herein modified and extended by signing below in the signature space provided on both original copies. You can keep one original copy for your file and return the other original to me.

Dated: \_\_\_\_\_

/s/ WILLIAM E. BROWN

\_\_\_\_\_  
William E. Brown  
CEO  
Central Garden & Pet Company

/s/ BROOKS PENNINGTON, III

\_\_\_\_\_  
Accepted by: Brooks Pennington, III  
President  
Pennington Seed, Inc.

Attachments: Employment Agreement dated February 27, 1998  
Non-Competition Agreement dated February 27, 1998

CC: Glenn W. Novotny  
John F. Seegal

CREDIT AGREEMENT

Dated as of May 14, 2003

among

CENTRAL GARDEN & PET COMPANY,  
as Borrower,

THE LENDERS LISTED HEREIN,  
as Lenders,

CANADIAN IMPERIAL BANK OF COMMERCE,  
as Administrative Agent,

and

BANK OF AMERICA, N.A. and  
SUNTRUST BANK,  
as Co-Syndication Agents

CIBC WORLD MARKETS CORP.,  
BANC OF AMERICA SECURITIES LLC and  
SUNTRUST CAPITAL MARKETS, INC.,  
Co-Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

	Page No.
	-----
Section 1. DEFINITIONS.....	2
1.1 Certain Defined Terms.....	2
1.2 Accounting Terms; Utilization of GAAP for Purposes of Calculations Under Agreement.....	29
1.3 Other Definitional Provisions and Rules of Construction.....	29
Section 2. AMOUNTS AND TERMS OF COMMITMENTS AND LOANS.....	30
2.1 Commitments; Making of Loans; Optional Notes.....	30
2.2 Interest on the Loans.....	36
2.3 Fees.....	40
2.4 Repayments, Prepayments and Reductions in Revolving Loan Commitments; General Provisions Regarding Payments; Application of Proceeds of Collateral and Payments Under Subsidiary Guaranty.....	41
2.5 Use of Proceeds.....	48
2.6 Special Provisions Governing LIBOR Loans.....	48
2.7 Increased Costs; Taxes; Capital Adequacy.....	51
2.8 Obligation of Lenders and Issuing Lenders to Mitigate.....	56
2.9 Replacement of a Lender.....	56
Section 3. LETTERS OF CREDIT.....	57
3.1 Issuance of Letters of Credit and Revolving Lenders' Purchase of Participations Therein.....	57
3.2 Letter of Credit Fees.....	59
3.3 Drawings and Reimbursement of Amounts Paid Under Letters of Credit.....	60
3.4 Obligations Absolute.....	63
3.5 Indemnification; Nature of Issuing Lenders' Duties.....	64
3.6 Increased Costs and Taxes Relating to Letters of Credit.....	65

Section 4.	CONDITIONS TO LOANS AND LETTERS OF CREDIT.....	66
4.1	Conditions to Tranche B Term Loans and Initial Revolving Loans.....	66
4.2	Conditions to All Loans.....	72
4.3	Conditions to Letters of Credit.....	73
Section 5.	BORROWER'S REPRESENTATIONS AND WARRANTIES.....	74

i

5.1	Organization, Powers, Qualification, Good Standing, Business and Subsidiaries.....	74
5.2	Authorization of Borrowing, etc.....	75
5.3	Financial Condition.....	76
5.4	No Material Adverse Change; No Restricted Junior Payments.....	76
5.5	Title to Properties; Liens; Real Property; Intellectual Property.....	76
5.6	Litigation; Adverse Facts.....	77
5.7	Payment of Taxes.....	78
5.8	Performance of Agreements; Materially Adverse Agreements; Material Contracts.....	78
5.9	Governmental Regulation; OFAC; Patriot Act; Foreign Corrupt Practices Act.....	79
5.10	Securities Activities.....	80
5.11	Employee Benefit Plans.....	80
5.12	Certain Fees.....	81
5.13	Environmental Protection.....	81
5.14	Employee Matters.....	82
5.15	Solvency.....	82
5.16	Matters Relating to Collateral.....	82
5.17	Disclosure.....	83
5.18	Subordinated Indebtedness.....	84
5.19	Mortgage Taxes, Etc.....	84
5.20	Proceeds of Loans.....	84
Section 6.	BORROWER'S AFFIRMATIVE COVENANTS.....	84
6.1	Financial Statements and Other Reports.....	84
6.2	Existence, etc.....	90
6.3	Payment of Taxes and Claims; Tax.....	90
6.4	Maintenance of Properties; Insurance; Application of Net Insurance/ Condemnation Proceeds.....	91
6.5	Inspection Rights.....	93
6.6	Compliance with Laws, etc.....	93
6.7	Environmental Matters.....	94

ii

6.8	Execution of Subsidiary Guaranty and Personal Property Collateral Documents After the Closing Date.....	96
6.9	Matters Relating to Real Property Collateral.....	97

6.10	Deposit Accounts and Cash Management Systems.....	98
6.11	Solvency.....	99
Section 7.	BORROWER'S NEGATIVE COVENANTS.....	99
7.1	Indebtedness.....	99
7.2	Liens and Related Matters.....	100
7.3	Investments; Acquisitions.....	101
7.4	Contingent Obligations.....	102
7.5	Restricted Junior Payments.....	103
7.6	Financial Covenants.....	103
7.7	Restriction on Fundamental Changes; Asset Sales.....	104
7.8	Consolidated Capital Expenditures.....	105
7.9	Sale or Discount of Receivables.....	106
7.10	Transactions with Shareholders and Affiliates.....	106
7.11	Sales and Lease-Backs.....	106
7.12	Restriction on Leases.....	106
7.13	Conduct of Business.....	107
7.14	Amendments of Documents Relating to Subordinated Indebtedness.....	107
7.15	Fiscal Year; Tax Election.....	107
7.16	Subsidiary Guarantors.....	107
Section 8.	EVENTS OF DEFAULT.....	107
8.1	Failure to Make Payments When Due.....	108
8.2	Default in Other Agreements.....	108
8.3	Breach of Certain Covenants.....	108
8.4	Breach of Warranty.....	108
8.5	Other Defaults Under Loan Documents.....	108
8.6	Involuntary Bankruptcy; Appointment of Receiver, etc. ....	109
8.7	Voluntary Bankruptcy; Appointment of Receiver, etc. ....	109
8.8	Judgments and Attachments.....	110
8.9	Dissolution.....	110
	iii	
8.10	Employee Benefit Plans.....	110
8.11	Change in Control.....	110
8.12	Invalidity of Loan Documents; Repudiation of Obligations.....	110
8.13	Uninsured Damage.....	111
8.14	Criminal or Civil Proceedings.....	111
8.15	Subordinated Indebtedness.....	111
Section 9.	ADMINISTRATIVE AGENT.....	112
9.1	Appointment.....	112
9.2	Powers and Duties; General Immunity.....	113
9.3	Representations and Warranties; No Responsibility for Appraisal of Creditworthiness.....	115
9.4	Right to Indemnity.....	115

9.5	Successor Administrative Agent.....	116
9.6	Collateral Documents and Guaranties.....	116
9.7	Administrative Agent May File Proofs of Claim.....	117
Section 10.	MISCELLANEOUS.....	118
10.1	Assignments and Participations in Loans and Letters of Credit.....	118
10.2	Expenses.....	121
10.3	Indemnity.....	122
10.4	Set-Off; Security Interest in Deposit Accounts.....	123
10.5	Ratable Sharing.....	124
10.6	Amendments and Waivers.....	124
10.7	Independence of Covenants.....	126
10.8	Notices; Effectiveness of Signatures.....	127
10.9	Survival of Representations, Warranties and Agreements.....	127
10.10	Failure or Indulgence Not Waiver; Remedies Cumulative.....	127
10.11	Marshalling; Payments Set Aside.....	128
10.12	Severability.....	128
10.13	Obligations Several; Independent Nature of Lenders' Rights.....	128
10.14	Release of Security; Guarantees.....	128
10.15	Headings.....	129
10.16	Applicable Law.....	129

iv

10.17	Successors and Assigns.....	129
10.18	Consent to Jurisdiction and Service of Process.....	130
10.19	Waiver of Jury Trial.....	130
10.20	Confidentiality.....	131
10.21	Co- Lead Arrangers and Co-Syndication Agents.....	132
10.22	Counterparts; Effectiveness.....	132
10.23	Limitation of Liability.....	133
10.24	Further Assurances.....	133
Signature pages		S-1

v

EXHIBITS

I	FORM OF NOTICE OF BORROWING
II	FORM OF NOTICE OF CONVERSION/CONTINUATION
III	FORM OF REQUEST FOR ISSUANCE
IV	FORM OF TRANCHE B TERM NOTE
V	FORM OF REVOLVING NOTE
VI	FORM OF COMPLIANCE CERTIFICATE
VII	FORM OF OPINION OF BORROWER'S COUNSEL
VIII	FORM OF ASSIGNMENT AGREEMENT
IX	FORM OF FINANCIAL CONDITION CERTIFICATE

X	FORM OF SUBSIDIARY GUARANTY
XI	FORM OF SECURITY AGREEMENT
XII	FORM OF MORTGAGE
XIII	FORM OF ENVIRONMENTAL INDEMNITY AGREEMENT
XIV	FORM OF COLLATERAL ACCESS AGREEMENT
XVI	FORM OF OFAC CERTIFICATE
XVII	FORM OF LANDLORD ESTOPPEL AND AGREEMENT

vi

#### SCHEDULES

4.1D	CORPORATE AND CAPITAL STRUCTURE; OWNERSHIP
4.1M	CLOSING DATE MORTGAGED PROPERTIES
5.1	SUBSIDIARIES OF BORROWER
5.5B	REAL PROPERTY
5.5C	INTELLECTUAL PROPERTY
5.13	ENVIRONMENTAL MATTERS
5.14	EMPLOYEE MATTERS
6.9E	ENVIRONMENTAL REPORTS
6.10	DEPOSIT ACCOUNTS
7.1	CERTAIN EXISTING INDEBTEDNESS
7.2	CERTAIN EXISTING LIENS
7.4	CERTAIN EXISTING CONTINGENT OBLIGATIONS

vii

#### CENTRAL GARDEN & PET COMPANY

##### CREDIT AGREEMENT

This CREDIT AGREEMENT is dated as of May 14, 2003 and entered into by and among CENTRAL GARDEN & PET COMPANY, a Delaware corporation ("Borrower"), THE FINANCIAL INSTITUTIONS LISTED ON THE SIGNATURE PAGES HEREOF OR PARTY FROM TIME TO TIME HERETO as lenders, CANADIAN IMPERIAL BANK OF COMMERCE, acting through one or more of its agencies, branches or affiliates ("CIBC"), as administrative agent for Lenders (in such capacity, "Administrative Agent"), and Bank of America, N.A. and SunTrust Bank as co-syndication agents (collectively, in such capacity, "Co-Syndication Agents").

##### RECITALS

WHEREAS, Lenders, at the request of Borrower, have agreed to extend certain credit facilities to Borrower in the aggregate principal amount of \$200,000,000, the proceeds of which will be used (i) to fund the refinancing of the Existing Credit Agreement (capitalized terms used in these recitals without definition have the respective meanings given to such terms in Subsection 1.1) and other existing Indebtedness of Borrower and its Subsidiaries, and (ii) to provide financing for working capital and other general corporate purposes, permitted acquisitions and investments, and payment of transaction fees and expenses of Borrower and its Subsidiaries;

WHEREAS, Borrower desires to secure all of the Obligations hereunder and under the other Loan Documents by granting to Administrative Agent, on behalf of Lenders, a First Priority Lien on substantially all of its owned real, personal and mixed property, including a pledge of all of the Capital Stock of its Domestic Subsidiaries and sixty-six percent (66%) of the voting Capital Stock and all of the non-voting Capital Stock of its Foreign Subsidiaries; and

WHEREAS, all of the Subsidiary Guarantors have agreed to guarantee the Obligations hereunder and under the other Loan Documents and to secure their guaranties by granting to Administrative Agent, on behalf of Lenders, a First Priority Lien on substantially all of their owned real, personal and mixed property, including a pledge of all of the Capital Stock of each of their Domestic Subsidiaries and sixty-six percent (66%) of the voting Capital Stock and all of the non-voting Capital Stock of their respective Foreign

Subsidiaries:

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrower, Lenders, Co-Syndication Agents and Administrative Agent agree as follows:

1

I. DEFINITIONS

A. Certain Defined Terms.  
-----

The following terms used in this Agreement shall have the following meanings:

"Accounts" means all present and future rights of Borrower and its Subsidiaries to payment for goods sold or leased or for services rendered (including any such rights evidenced by instruments or chattel paper), whether due or to become due, whether now existing or hereinafter arising and wherever arising, and whether or not they have been earned by performance.

"Additional Mortgaged Property" has the meaning assigned to that term in Subsection VI.I.

"Additional Mortgages" has the meaning assigned to that term in Subsection 6.9A.

"Adjusted LIBOR" means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBOR Loan, the rate per annum obtained by dividing (x) the rate of interest equal to (a) the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period and appearing on Moneyline Telerate Screen 3750 at or about 11:00 A.M., London time, two Business Days prior to the commencement of such Interest Period, or (b) if such a rate does not appear on Moneyline Telerate Screen 3750, the average of the rates per annum at which Dollar deposits in immediately available funds are offered to CIBC in the interbank LIBOR market as at or about 11:00 A.M. (New York City time) two (2) Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period, and for a period approximately equal to such Interest Period, by (y) a percentage equal to 100% minus the stated maximum rate (expressed as a percentage) of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves) applicable on such Interest Rate Determination Date to any member bank of the Federal Reserve System in respect of "Eurocurrency liabilities" as defined in Regulation D (or any successor category of liabilities under Regulation D).

"Administrative Agent" has the meaning assigned to that term in the introduction to this Agreement and also means any successor Administrative Agent appointed pursuant to Subsection IX.E.

"Administrative Agent's Office" means (i) the office of Administrative Agent located at CIBC, 425 Lexington Avenue, New York, NY 10017, or (ii) such other office of Administrative Agent as may from time to time hereafter be designated as such in a written notice delivered by Administrative Agent to Borrower and each Lender.

"Affected Lender" has the meaning assigned to that term in Subsection II.F.2

2

"Affected Loans" has the meaning assigned to that term in Subsection II.F.2.

"Affiliate", as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting Securities or by contract or otherwise. For purposes of this definition, a Person shall be deemed to be "controlled by" a Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the Securities having ordinary voting power for the election of directors of such Person. Notwithstanding the foregoing, neither Administrative Agent nor any Lender shall be deemed to be an Affiliate of any of the Loan Parties.

"Agents" means collectively, Administrative Agent and any syndication agent, documentation agent or other agent appointed under this Agreement.

"Aggregate Amounts Due" has the meaning assigned to that term in Subsection 10.5.

"Agreement" means this Credit Agreement dated as of May 14, 2003.

"Applicable Base Rate Margin" means, as at any date of determination, with respect to any Type of Loan that is a Base Rate Loan, a percentage per annum equal to the Applicable LIBOR Margin for such Loan less 1.50%.

"Applicable LIBOR Margin" means (a) with respect to Tranche B Term Loans that are LIBOR Loans, 2.75% per annum, and (b) with respect to Revolving Loans that are LIBOR Loans, a percentage per annum as set forth below opposite the applicable Consolidated Total Leverage Ratio:

Consolidated Total Leverage Ratio	Applicable LIBOR Margin
greater than or equal to 3.50:1.00	2.75%
less than 3.50:1.00 but greater than or equal to 3.00:1.00	2.50%
less than 3.00:1.00 but greater than or equal to 2.50:1.00	2.25%
less than 2.50:1.00 but greater than or equal to 2.00:1.00	2.00%
less than 2.00:1.00	1.75%

3

; provided that until the date that is five Business Days after the date on which the first Margin Determination Certificate is scheduled to be delivered to Administrative Agent pursuant to Subsection 2.2A, the Applicable LIBOR Margin for Revolving Loans that are LIBOR Loans shall be 2.25%.

"Applied Amount" has the meaning assigned to that in Subsection II.D.2.d(2).

"Approved Fund" means any fund that invests (in whole or in part) in commercial loans or any other fund that is managed or advised by a Lender, the same investment advisor as such Lender or by an Affiliate of such Lender or investment advisor.

"Asset Sale" means the sale (in any single transaction or series of related transactions) by Borrower or any of its Subsidiaries to any Person other than Borrower or any of its wholly-owned Domestic Subsidiaries of (i) any of the Capital Stock of any of Borrower's Subsidiaries, (ii) substantially all of the assets of any division or line of business of Borrower or any of its Subsidiaries, or (iii) any other assets (whether tangible or intangible) of Borrower or any of its Subsidiaries (other than (a) inventory sold in the ordinary course of business, (b) surplus or obsolete equipment, (c) Capital Stock of Borrower and (d) sales of assets from Borrower or any Subsidiary Guarantor to Borrower or any Subsidiary Guarantor).

"Assignment Agreement" means an Assignment Agreement in substantially the form of Exhibit VIII annexed hereto.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy."

"Base Rate" means, at any time, the higher of (i) the Reference Rate or (ii) the rate which is one-half of 1% in excess of the Federal Funds Effective Rate.

"Base Rate Loans" means Loans bearing interest at rates determined by reference to the Base Rate as provided in Subsection II.B.1.

"Borrower" has the meaning assigned to that term in the introductory paragraph to this Agreement.

"Business Day" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close, and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted LIBOR or any LIBOR Loan, any day that (a) is a Business Day described in clause (i) above, and (b) is a day for trading by and between banks in Dollar deposits in the London Interbank Market.

"Capital Lease", as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in



conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person.

4

"Capital Stock" means (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests, and (v) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Cash" means money, currency or a credit balance in a Deposit Account.

"Cash Equivalents" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, the highest rating obtainable from either S&P or Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; (v) shares of any money market mutual fund that (a) has at least ninety-five percent (95%) of its assets invested continuously in the types of investments referred to in clauses (i) and/or (ii) above, (b) has net assets of not less than \$500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's and (vi) other assets properly classified as "marketable securities" or "cash" or "cash equivalents" under GAAP, in each case maturing within one year after such date and having, at the time of the acquisition thereof, the highest rating obtainable from either S&P or Moody's.

"Change in Control" means any of the following: (i) any Person (other than a Permitted Holder) acting in concert with one or more other Persons (other than any Permitted Holder) shall have acquired beneficial ownership, directly or indirectly, of Securities of Borrower (or other Securities convertible into such Securities) representing twenty-five percent (25%) or more of the combined voting power of all Securities of Borrower entitled to vote in the election of members of the Governing Body of Borrower, other than Securities having such power only by reason of the happening of a contingency; and (ii) the occurrence of a change in the composition of the Governing Body of Borrower such that a majority of the members of such Governing Body are not Continuing Members.

"Closing Date" means the date on which the initial Loans are made.

"Closing Date Mortgaged Property" has the meaning assigned to that term in Subsection IV.A.13.

5

"Closing Date Mortgages" has the meaning assigned to that term in Subsection IV.A.13.

"Closing Date Mortgage Policies" has the meaning assigned to that term in Subsection IV.A.13.

"Co-Lead Arrangers" means, collectively, CIBC World Markets Corp., Banc of America Securities LLC and SunTrust Capital Markets, Inc., each acting in the capacity of co-lead arranger and joint bookrunner.

"Co-Syndication Agents" has the meaning assigned to that term in the introduction to this Agreement.

"Collateral" means, collectively, all of the owned real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"Collateral Access Agreement" means any agreement of any landlord, mortgagee, bailee, warehouseman, processor or similar party in possession of any Collateral, substantially in the form of Exhibit XIV annexed hereto, with such changes thereto as may be agreed to by Administrative Agent in the reasonable exercise of its discretion.

"Collateral Account" has the meaning assigned to that term in the Security Agreement.

"Collateral Documents" means the Security Agreement, the Mortgages, the Deposit Account Control Agreements and all other instruments or documents delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to Administrative Agent, on behalf of Lenders, a Lien on any owned real, personal or mixed property of that Loan Party as security for the Obligations.

"Commitment Fee Percentage" means, as of any date of determination, a percentage equal to (i) if the Consolidated Total Leverage Ratio for the most recently ended Fiscal Quarter is greater than or equal to 2.50:1.00, 0.500%, or (ii) if the Consolidated Total Leverage Ratio for the most recently ended Fiscal Quarter is less than 2.50:1.00, 0.375%.

"Commitments" means the commitments of Lenders to make Loans as set forth in Subsection 1.1A.

"Compliance Certificate" means a certificate substantially in the form of Exhibit VI annexed hereto delivered to Administrative Agent and Lenders by Borrower pursuant to Subsection VI.A.c.

"Confidential Information Memorandum" means that certain Confidential Information Memorandum dated April, 2003 relating to the credit facilities evidenced by this Agreement.

6

"Consolidated Capital Expenditures" means, for any period, the sum of the aggregate of all expenditures (whether paid in Cash or other consideration or accrued as a liability and including that portion of Capital Leases which is capitalized on the consolidated balance sheet of Borrower and its Subsidiaries) by Borrower and its Subsidiaries during that period that, in conformity with GAAP, are included in "additions to property, plant or equipment" or comparable items reflected in the consolidated statement of cash flows of Borrower and its Subsidiaries.

"Consolidated Current Assets" means, as at any date of determination, the total assets of Borrower and its Subsidiaries on a consolidated basis which may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" means, as at any date of determination, the total liabilities of Borrower and its Subsidiaries on a consolidated basis which may properly be classified as current liabilities in conformity with GAAP.

"Consolidated EBITDA" means, for any period, (i) the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, (b) Consolidated Interest Expense, (c) provisions for taxes based on income, (d) total depreciation expense, (e) total amortization expense, and (f) other non-recurring and non-cash items reducing Consolidated Net Income but not requiring the expenditure of cash (other than any such non-cash item to the extent it represents an accrual of or reserve for cash expenditures in any future period), including (1) such acquisition and transaction costs as may be approved by Administrative Agent in its sole but reasonable discretion and (2) during Fiscal Year 2002, non-recurring items consisting of approximately \$14,500,000 of legal and professional fees, \$1,600,000 of branch closing costs, and \$1,800,000 of expenses relating to termination of a master service agreement with Kal Kan, all such non-recurring items in the aggregate to total not more than \$18,000,000; provided that for Fiscal Year 2003, not more than \$5,000,000 in the aggregate of any such non-recurring and non-cash items (other than those described in clause (1) above) shall be included in this clause (f), and, for each Fiscal Year after Fiscal Year 2003, not more than \$2,000,000 in the aggregate of all such non-recurring and non-cash items (other than those described in clause (1) above) shall be included in this clause (f), less (ii) the sum, without duplication, of (a) interest income and (b) any non-recurring and non-cash items increasing Consolidated Net Income but not constituting the receipt of cash (other than any such non-cash item to the extent it will result in the receipt of cash payments in any future period; all such non-recurring and non-cash items to be determined by adding back thereto any amounts deducted in the calculation of Consolidated Net Income that were paid, incurred or accrued in violation of any of the provisions of this Agreement), all of the foregoing as determined on a consolidated basis for Borrower and its Subsidiaries in conformity with GAAP; provided that in calculating any such items for purposes of determining the Consolidated Total Leverage Ratio or Consolidated Senior Leverage Ratio for such period, any Asset Sales or other acquisitions or dispositions of assets during such period shall be deemed to have occurred on the first day of such period, and any amounts by which Consolidated EBITDA is adjusted pursuant to this proviso as a result of an acquisition shall have been calculated in accordance with GAAP.

"Consolidated Excess Cash Flow" means, for any period, an amount (if positive) equal to (i) the sum, without duplication, of the amounts for such period of (a) Consolidated EBITDA (determined by adding back thereto any amount deducted in the calculation of Consolidated Net Income that was paid, incurred or accrued in violation of any of the provisions of this Agreement) for such period and (b) the Consolidated Working Capital Adjustment for such period minus (ii) the sum, without duplication, of the amounts for such period of (a) voluntary and scheduled repayments of Consolidated Total Debt (including repayments of Revolving Loans only to the extent the Revolving Loan Commitments are permanently reduced in connection with such repayments), (b) Consolidated Capital Expenditures (net of any proceeds of any related financings with respect to such expenditures), (c) Consolidated Interest Expense, and (d) the provision for current taxes based on income of Borrower and its Subsidiaries and payable in Cash with respect to such period.

"Consolidated Interest Expense" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Borrower and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Interest Rate Agreements, but excluding, however, any amounts referred to in Subsection II.C payable to Administrative Agent, Co-Lead Arrangers and Lenders on or before the Closing Date.

"Consolidated Net Income" means, for any period, the net income (or loss) of Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, without giving effect to any non-cash losses as a result of impairment of goodwill to the extent required by Statement of Financial Accounting Standards No. 142; provided that there shall be excluded (i) the income (or loss) of any Person (other than a Subsidiary of Borrower) in which any other Person (other than Borrower or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Subsidiaries, (iii) the income of any Subsidiary of Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (v) (to the extent not included in clauses (i) through (iv) above) any net extraordinary gains or net non-cash extraordinary losses.

"Consolidated Rental Payments" means, for any period, the aggregate amount of all rents paid or payable by Borrower and its Subsidiaries on a consolidated basis during that period under all Operating Leases to which Borrower or any of its Subsidiaries is a party as lessee.

"Consolidated Senior Debt" means, as at any date of determination, Consolidated Total Debt less the aggregate principal amount of all unsecured Subordinated Indebtedness of Borrower and its Subsidiaries, determined on a consolidated basis.

"Consolidated Senior Leverage Ratio" means, as at the last day of any Fiscal Quarter, the ratio of (a) Consolidated Senior Debt as of the last day of such Fiscal Quarter, to (b) Consolidated EBITDA for the four Fiscal Quarter period then ended.

"Consolidated Tangible Net Worth" means, as at any date of determination, the sum of the Capital Stock and additional paid-in capital plus retained earnings (or minus accumulated deficits) minus intangible assets (such as goodwill, trademarks, trade names, organization expense, unamortized debt discount and premium and other like intangibles) of Borrower and its Subsidiaries on a consolidated basis, all as determined in conformity with GAAP.

"Consolidated Total Debt" means, as at any date of determination, the aggregate principal amount of all Indebtedness of Borrower and its Subsidiaries.

"Consolidated Total Leverage Ratio" means, as at the last day of any Fiscal Quarter, the ratio of (a) Consolidated Total Debt as of the last day of such Fiscal Quarter, to (b) Consolidated EBITDA for the four Fiscal Quarter period then ended.

"Consolidated Working Capital" means, as at any date of determination, the excess (or deficit) of Consolidated Current Assets over Consolidated Current

Liabilities.

"Consolidated Working Capital Adjustment" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"Contingent Obligation", as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, or (ii) under Hedge Agreements. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, including, without limitation, any credit support agreements, makewell agreements, keepwell agreements and any other agreements evidencing similar obligations, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement (other than purchase commitments and forward pay contracts in the ordinary course of business), and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (1) to purchase, repurchase or otherwise acquire such obligation or any security

9

therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (2) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (1) or (2) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if less, the amount to which such Contingent Obligation is specifically limited.

"Continuing Member" means, as of any date of determination, any member of the Governing Body of Borrower who (i) was a member of such Governing Body on the Closing Date or (ii) was nominated for election or elected to such Governing Body with the affirmative vote of a majority of the members who were either members of such Governing Body on the Closing Date or whose nomination or election was previously so approved.

"Contractual Obligation", as applied to any Person, means any provision of any Security issued by that Person or of any Material Contract to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Currency Agreement" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement to which Borrower or any of its Subsidiaries is a party.

"Defaulting Lender" means any Lender that has failed to fund its portion of any Loan which it is required to fund under this Agreement, provided that no Event of Default or Potential Event of Default has occurred and is continuing, and has continued in such failure for ten (10) days after written notice from Administrative Agent.

"Deposit Account" means a demand, time, savings, passbook, brokerage or similar account maintained with a Person or securities intermediary engaged in the business of banking, including any savings bank, savings and loan association, credit union or trust company, other than an account evidenced by a negotiable certificate of deposit.

"Deposit Account Control Agreement" means an agreement, reasonably satisfactory in form and substance to Administrative Agent and executed by the financial institution at which a Deposit Account is maintained, pursuant to which such financial institution confirms and acknowledges Administrative Agent's First Priority Lien in such Deposit Account, agrees that such financial institution will comply with instructions originated by Administrative Agent as to disposition of funds in the Deposit Account, without further consent by Borrower or any Subsidiary, and waives its right to set off with respect to amounts in the Deposit Account, with customary limited exceptions acceptable to Administrative Agent.

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

"Domestic Subsidiary" means any Subsidiary of Borrower that is incorporated or organized under the laws of the United States of America, any state thereof or the District of Columbia.

"Eligible Assignee" means (A) (i) a commercial bank organized under the laws of the United States or any state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof (provided that (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country); and (iv) any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses including insurance companies, mutual funds, lease financing companies and investment funds and any Approved Funds; (B) a Lender, an Affiliate of a Lender or an Approved Fund; or (C) any other Person (other than a natural Person) approved by (1) Administrative Agent, (2) in the case of any assignment of a Revolving Loan, each Issuing Lender, and (3) unless (x) such Person is taking delivery of an assignment in connection with physical settlement of a credit derivatives transaction, or (y) an Event of Default or Potential Event of Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed); provided that no Affiliate of Borrower shall be an Eligible Assignee; and provided further that no Person shall be an Eligible Assignee if such Person appears on the SDN List or the purchase by such Person of an assignment or the performance by Administrative Agent of its duties under the Credit Agreement with respect to such Person violates the Executive Order, the USA Patriot Act of 2001 or the United States Foreign Corrupt Practices Act of 1977. If the consent of Borrower to an assignment to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in Subsection 10.1B(i)), Borrower shall be deemed to have given its consent five (5) Business Days after the date notice thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth Business Day.

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

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Government Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (ii) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Indemnity Agreement" means the Environmental Indemnity Agreement executed and delivered by the Loan Parties on the Closing Date, substantially in the form of Exhibit XIII annexed hereto.

11

"Environmental Laws" means any and all current or future statutes, ordinances, orders, rules, regulations, guidance documents, judgments, Governmental Authorizations, or any other requirements of any Government Authority relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Borrower or any of its Subsidiaries or any Facility, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), the Oil Pollution Act (33 U.S.C. Section 2701 et seq.) and the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Section 11001 et seq.), each as amended or supplemented, any analogous present or future state or local statutes or laws, and any regulations promulgated pursuant to any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means, as applied to any Person (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member;

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

"ERISA Event" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of

12

any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates could reasonably be expected to have any liability therefor, or the receipt by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a claim in excess of \$5,000,000 (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"Event of Default" means each of the events set forth in VIII

"Exchange Act" means the Securities Exchange Act of 1934.

"Executive Order" has the meaning assigned to that term in Subsection 5.9B.

"Existing Credit Agreement" means that certain Second Amended and Restated Loan and Security Agreement dated as of December 12, 2000 between Borrower, certain of its Subsidiaries, and Congress Financial Corporation (Western), as amended prior to the Closing Date.

"Facilities" means all real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Borrower or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"Federal Funds Effective Rate" means, for any period, a fluctuating

interest rate equal for each day during such period to the weighted average of the rates on overnight Federal

13

funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by Administrative Agent.

"Financial Plan" has the meaning assigned to that term in Subsection VI.A.k.

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that (i) such Lien is perfected and has priority over any other Lien on such Collateral (other than Permitted Encumbrances which as a matter of law have priority over any other Lien irrespective of the prior perfection or filing of such other Lien, and Liens permitted pursuant to Subsections 7.2A(iii) and (iv)) and (ii) such Lien is the only Lien (other than Liens permitted pursuant to Subsection VII.B) to which such Collateral is subject.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and its Subsidiaries ending on the Saturday closest to the last day of September of each calendar year. For purposes of this Agreement, any particular Fiscal Year shall be designated by reference to the calendar year in which such Fiscal Year ends.

"Flood Hazard Property" means a Closing Date Mortgaged Property or an Additional Mortgaged Property located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"Foreign Subsidiary" means any Subsidiary of Borrower that is not a Domestic Subsidiary.

"Funding Date" means the date of the funding of a Loan.

"GAAP" means, subject to the limitations on the application thereof set forth in Subsection I.B, generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

"Governing Body" means the board of directors or other body having the power to direct or cause the direction of the management and policies of a Person that is a corporation, partnership, trust or limited liability company.

14

"Government Authority" means any governmental or regulatory body, agency, commission, central bank, board, bureau, department, office, organ or instrumentality or any court and any political subdivision or department thereof, in each case whether federal, state, local or foreign.

"Governmental Authorization" means any permit, license, registration, authorization, plan, directive, consent, order or consent decree of or from, or notice to, any Government Authority.

"Hazardous Materials" means (i) any chemical, material or substance at any time defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "biohazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substances", in any Environmental Law or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other

chemical, material or substance, exposure to which is prohibited, limited or regulated by any Government Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedge Agreement" means (i) an Interest Rate Agreement designed to hedge against fluctuations in interest rates, (ii) any Currency Agreement designed to hedge against fluctuations in currency values, and (iii) any other agreement or arrangement to which Borrower or any of its Subsidiaries is a party which hedges against or is based upon fluctuations in the value of the equity Securities of any Person, or any equity forward agreements or similar agreements or arrangements.

"Indebtedness", as applied to any Person, means (a) all indebtedness for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made without regard to any original issue discount relating thereto, (c) all obligations of such Person under conditional sale

15

or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions), (d) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (e) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (f) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (1) due more than six months from the date of incurrence of the obligation in respect thereof or (2) evidenced by a note or similar written instrument, (g) all obligations in respect of any preferred Capital Stock of such Person subject to mandatory sinking fund payments, redemption or other acceleration, (h) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person, (i) the face amount of all letters of credit or bankers' acceptances that such Person is obligated to reimburse the related letter of credit bank for, (j) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product, and (k) the Indebtedness of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer. For purposes of calculating the aggregate amount of Indebtedness of Borrower and its Subsidiaries, the aggregate amount of Indebtedness shall be equal to (i) the sum of clauses (a) through (k) above, minus, except for purposes of Subsection 7.1 and 7.4, (ii) a working capital adjustment of \$25,000,000 as of the last day of each Fiscal Quarter ending in March of each Fiscal Year, plus (iii) a working capital adjustment of \$25,000,000 as of the last day of each Fiscal Quarter ending in September of each Fiscal Year. Obligations under Interest Rate Agreements and Currency Agreements constitute (1) in the case of Hedge Agreements, Contingent Obligations, and (2) in all other cases, Investments, and in neither case constitute Indebtedness.

"Indemnitee" has the meaning assigned to that term in Subsection X.C.

"Intellectual Property" means all patents, patent rights, patent applications, licenses, inventions, trade secrets, trademarks, tradenames, service marks, copyrights, technology, software, know-how and proprietary techniques (including processes and substances) used in or necessary for the conduct of the business of Borrower and its Subsidiaries as currently conducted that are material to the financial condition, business or operations of Borrower and its Subsidiaries, taken as a whole.

"Interest Payment Date" means (i) with respect to any Base Rate Loan, the last Business Day of each March, June, September and December of each year, commencing on the first such date to occur after the Closing Date, and (ii) with respect to any LIBOR Loan, the last day of each Interest Period applicable to such Loan; provided that in the case of each Interest Period of six months, "Interest Payment Date" shall also include the date that is three months after the commencement of such Interest Period.

"Interest Period" has the meaning assigned to that term in Subsection II.B.2.

16



"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement to which Borrower or any of its Subsidiaries is a party.

"Interest Rate Determination Date," with respect to any Interest Period, means the second Business Day prior to the first day of such Interest Period.

"Internal Revenue Code" means the Internal Revenue Code of 1986.

"Investment" means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, any Securities of any other Person (including any Subsidiary of Borrower), (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Borrower from any Person other than Borrower or any of its Subsidiaries, of any equity Securities of such Subsidiary, (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Borrower or any of its Subsidiaries to any other Person (other than a wholly-owned Subsidiary of Borrower), including all Indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business, or (iv) Interest Rate Agreements or Currency Agreements not constituting Hedge Agreements; provided that Investments shall not include prepaid expenses of such Person incurred and prepaid in the ordinary course of business in an aggregate amount not to exceed \$10,000,000 outstanding at any time. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"IP Collateral" means, collectively, the Collateral consisting of rights in or to Intellectual Property under the Security Agreement.

"Issuing Lender" means, with respect to any Letter of Credit, the Lender that agrees or is otherwise obligated to issue such Letter of Credit, determined as provided in Subsection III.A.2.b.

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

"Landlord Consent and Estoppel" means, with respect to any Leasehold Property, a letter, certificate or other instrument in writing from the lessor under the related lease, in substantially the form of Exhibit XVII annexed hereto.

"LC Reimbursement Amount" has the meaning assigned to that term in Subsection III.C.1.

17

"Leasehold Property" means any leasehold interest of any Loan Party (other than a Foreign Subsidiary) as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Administrative Agent in its sole discretion as not being required to be included in the Collateral.

"Lender" and "Lenders" means the Persons identified as "Lenders" and listed on the signature pages of this Agreement, together with their successors and permitted assigns pursuant to Subsection X.A; provided that the term "Lenders", when used in the context of a particular Commitment, shall mean Lenders having that Commitment.

"Letter of Credit" or "Letters of Credit" means any standby letter of credit or similar instrument issued by Issuing Lender pursuant to Subsection 3.1 for the purpose of supporting (i) Indebtedness of Borrower or any of its Subsidiaries in respect of industrial revenue or development bonds or financings, (ii) workers' compensation liabilities of Borrower or any of its Subsidiaries, (iii) the obligations of third party insurers of Borrower or any of its Subsidiaries arising by virtue of the laws of any jurisdiction requiring third party insurers, (iv) obligations with respect to Capital Leases or Operating Leases of Borrower or any of its Subsidiaries, and (v) performance, payment, deposit or surety obligations of Borrower or any of its Subsidiaries, in any case if required by law or governmental rule or regulation or in accordance with custom and practice in the industry; provided that Letters of Credit may not be issued for the purpose of supporting (a) trade payables or (b) any Indebtedness constituting "antecedent debt" (as that term is used in Section 547 of the Bankruptcy Code).

"Letter of Credit Usage" means, as at any date of determination, the sum of (i) the maximum aggregate amount which is or at any time thereafter may become available for drawing under all Letters of Credit then outstanding plus (ii) the aggregate amount of all drawings under Letters of Credit honored by Issuing Lenders and not theretofore reimbursed by Borrower in any manner, either directly or out of the proceeds of Revolving Loans pursuant to Subsection III.C.1 or otherwise reimbursed by Borrower.

"LIBOR Loans" means Loans bearing interest at rates determined by reference to the Adjusted LIBOR as provided in Subsection II.B.1.

"Lien" means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"Loan" or "Loans" means one or more of the Tranche B Term Loans or Revolving Loans or any combination thereof.

"Loan Documents" means this Agreement, the Notes, the Letters of Credit (and any applications for, or reimbursement agreements or other documents or certificates executed by Borrower in favor of an Issuing Lender relating to, the Letters of Credit), the Subsidiary Guaranty, the Environmental Indemnity Agreement and the Collateral Documents.

18

"Loan Party" means each of Borrower and any of Borrower's Subsidiaries from time to time executing a Loan Document, and "Loan Parties" means all such Persons, collectively.

"Margin Determination Certificate" means an Officers' Certificate of Borrower delivered with respect to each Fiscal Quarter setting forth in reasonable detail the Consolidated Total Leverage Ratio for the four consecutive Fiscal Quarters ending on the last day of the fiscal period for which such Officers' Certificate is being delivered.

"Margin Stock" has the meaning assigned to that term in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Effect" means any act, omission, situation, circumstance, event or undertaking which could reasonably be expected to have, singly or in any combination with one or more other acts, omissions, situations, circumstances, events or undertakings, a materially adverse effect upon (a) the business, assets, properties, liabilities, financial condition, results of operations or prospects of Borrower and its Subsidiaries taken as a whole, (b) the value of the whole or any material part of the Collateral, or the enforceability or priority of the security interest in the whole or any material part of the Collateral, (c) the respective ability of Borrower or the Subsidiary Guarantors (taken as a whole) to perform any of its or their obligations under this Agreement or any other Loan Document to which it is a party, or (d) the legality, validity, binding effect, enforceability or admissibility into evidence of any Loan Document or the material rights or remedies of Administrative Agent or Lenders under or in connection with any Loan Document.

"Material Contract" means any contract, indenture, mortgage, deed of trust, undertaking, agreement, instrument or other arrangement, whether written or oral, to which Borrower or any of its Subsidiaries is a party (other than the Loan Documents), for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"Material Leasehold Property" means a leasehold property where annual rental payments exceed \$2,500,000 or as otherwise reasonably determined by Administrative Agent to be of material value as Collateral or of material importance to the operations of Borrower or any of its Subsidiaries.

"Material Subsidiary" means each Domestic Subsidiary of Borrower now existing or hereafter acquired or formed by Borrower which, on a consolidated basis for such Subsidiary and its Subsidiaries, (i) for the most recent Fiscal Year accounted for more than five percent (5%) of the consolidated revenues of Borrower and its Subsidiaries or (ii) as at the end of such Fiscal Year, was the owner of more than 5% of the consolidated assets of Borrower and its Subsidiaries. As of the Closing Date, the Material Subsidiaries are Four Paws Products Ltd., Kaytee Products Incorporated, Pennington Seed, Inc., All-Glass Aquarium Co., Inc., T.F.H. Publications, Inc. and Wellmark International.

19

"Minimum Amount" means, with respect to each of the following actions, the minimum amount and any multiples in excess thereof set forth opposite such action:

Type of Action	Minimum Amount	Multiples in excess thereof
Funding as or conversion into Base Rate Loans	\$ 1,000,000	\$ 1,000,000
Funding as or conversion into LIBOR Loans	\$ 1,000,000	\$ 1,000,000

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means (i) a security instrument (whether designated as a deed of trust or a mortgage or by any similar title) executed and delivered by any Loan Party, substantially in the form of Exhibit XII annexed hereto or in such other form as may be approved by Administrative Agent in its sole but reasonable discretion, in each case with such changes thereto as may be recommended by Administrative Agent's local counsel based on local laws or customary local mortgage or deed of trust practices, or (ii) at Administrative Agent's option, in the case of an Additional Mortgaged Property, an amendment to an existing Mortgage, in form reasonably satisfactory to Administrative Agent, adding such Additional Mortgaged Property to the Real Property Assets encumbered by such existing Mortgage. "Mortgages" means all such instruments, including the Closing Date Mortgages and any Additional Mortgages, collectively.

"Multiemployer Plan" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"Net Asset Sale Proceeds" means, with respect to any Asset Sale, Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received from such Asset Sale, net of any bona fide direct costs incurred in connection with such Asset Sale, including (i) income taxes reasonably estimated to be actually payable within two years of the date of such Asset Sale as a result of any gain recognized in connection with such Asset Sale, (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, and (iii) any reasonable brokerage fees, commissions and other similar expenses relating to such Asset Sale.

"Net Insurance/Condemnation Proceeds" means any Cash payments or proceeds received by Borrower or any of its Subsidiaries (i) under any business interruption or casualty insurance policy in respect of a covered loss thereunder or (ii) as a result of the taking of any assets of Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case net of any actual and reasonable

documented costs incurred by Borrower or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Borrower or such Subsidiary in respect thereof.

"Net Pension Proceeds" has the meaning assigned to that term in Subsection 2.4B(iv)(d).

"Net Proceeds Amount" has the meaning assigned to that term in Subsection II.D.2.c(7).

"Net Securities Proceeds" means the Cash proceeds (net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses) from the (i) issuance of Capital Stock of or incurrence of Indebtedness by Borrower or any of its Subsidiaries and (ii) capital contributions made by a holder of Capital Stock of Borrower.

"Non-US Lender" has the meaning assigned to that term in Subsection 2.7B(iii)(a).

"Notes" means one or more of the Tranche B Term Notes or Revolving Notes or any combination thereof.

"Notice of Borrowing" means a notice substantially in the form of Exhibit I annexed hereto delivered by Borrower to Administrative Agent pursuant to Subsection II.A.2 with respect to a proposed borrowing.

"Notice of Conversion/Continuation" means a notice substantially in the form of Exhibit II annexed hereto delivered by Borrower to Administrative Agent pursuant to Subsection II.B.4 with respect to a proposed conversion or continuation of the applicable basis for determining the interest rate with

respect to the Loans specified therein.

"Obligations" means all obligations of every nature of each Loan Party from time to time owed to Administrative Agent, Lenders or any of them under the Loan Documents, whether for principal, interest, reimbursement of amounts drawn under Letters of Credit, fees, expenses, indemnification or otherwise, whether contingent, direct or otherwise, including post-petition interest on such amounts accruing subsequent to, and interest that would have accrued but for, the commencement of a proceeding under the Bankruptcy Code (whether or not such interest is allowed as a claim in such proceeding).

"OFAC" has the meaning assigned to such term in Subsection 5.9B.

"Officer" means the president, chief executive officer, a vice president, chief financial officer, treasurer, general partner (if an individual), managing member (if an individual) or other individual appointed by the Governing Body or the Organizational Documents of a corporation, partnership, trust or limited liability company to serve in a similar capacity as the foregoing.

21

"Officer's Certificate," as applied to any Person that is a corporation, partnership, trust or limited liability company, means a certificate executed on behalf of such Person by one or more Officers of such Person or one or more Officers of a general partner or a managing member if such general partner or managing member is a corporation, partnership, trust or limited liability company; provided that every Officer's Certificate with respect to the compliance with a condition precedent to the making of any Loans hereunder shall include (i) a statement that the Officer or Officers making or giving such Officer's Certificate have read such condition and any definitions or other provisions contained in this Agreement relating thereto, (ii) a statement that, in the opinion of the signers, they have made or have caused to be made such examination or investigation as is reasonably necessary to enable them to express an informed opinion as to whether or not such condition has been complied with, and (iii) a statement as to whether, in the opinion of the signers, such condition has been complied with.

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

"Organizational Documents" means the documents (including Bylaws, if applicable) pursuant to which a Person that is a corporation, partnership, trust or limited liability company is organized.

"Participant" means a purchaser of a participation in the rights and obligations under this Agreement pursuant to Subsection X.A.3.

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

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

"Permitted Encumbrances" means the following types of Liens (excluding any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA, any such Lien relating to or imposed in connection with any Environmental Claim, and any such Lien expressly prohibited by any applicable terms of any of the Collateral Documents):

- a. Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time, required by Subsection VI.C;
- b. statutory Liens of landlords, statutory Liens and rights of set-off of banks, statutory Liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (a) for amounts not yet overdue or (b) for amounts that are overdue and that (in the case of any such amounts overdue) are being contested in good faith by appropriate proceedings in an aggregate amount not to exceed \$2,000,000, so long as (1) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested

22

amounts, and (2) in the case of a Lien with respect to any portion of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such Lien;

c. Liens incurred or deposits made in the ordinary course of business and in an aggregate amount not to exceed \$2,000,000 in connection with workers' compensation, unemployment insurance and other types of social security so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

d. any attachment or judgment Lien not constituting an Event of Default under Subsection VIII.H;

e. leases or subleases granted to third parties in accordance with any applicable terms of the Collateral Documents and not interfering in any material respect with the ordinary conduct of the business of Borrower or any of its Subsidiaries or resulting in a material diminution in the value of any Collateral as security for the Obligations;

f. easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower or any of its Subsidiaries or result in a material diminution in the value of any Collateral as security for the Obligations;

g. any (a) interest or title of a lessor or sublessor under any lease not prohibited by this Agreement, (b) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to, or (c) subordination of the interest of the lessee or sublessee under such lease to any restriction or encumbrance referred to in the preceding clause (b), so long as the holder of such restriction or encumbrance agrees to recognize the rights of such lessee or sublessee under such lease; and

h. Liens arising from filing UCC financing statements relating solely to leases not prohibited by this Agreement.

"Permitted Holders" means William E. Brown or any Permitted Transferees of William E. Brown.

"Permitted Transferees" means, with respect to any person, (i) any Affiliate of such Person, (ii) the heirs, executors, administrators, testamentary trustees, legatees or

23

beneficiaries of any such Person or (iii) a trust, the beneficiaries of which, or a corporation or partnership, the stockholders of general or limited partners of which, include only such Person or his or her spouse or lineal descendants, in each case to whom such Person has transferred the beneficial ownership of any Securities of Borrower.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments (whether federal, state or local, domestic or foreign, and including political subdivisions thereof) and agencies or other administrative or regulatory bodies thereof.

"Pledged Collateral" means the "Pledged Collateral" as defined in the Security Agreement.

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

"Proceedings" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration.

"Prohibited Persons" has the meaning assigned to that term in Subsection 5.9B.

"Pro Rata Share" means (i) with respect to all payments, computations and other matters relating to the Tranche B Term Loan Commitment or the Tranche B Term Loan of any Lender, the percentage obtained by dividing (x) the Tranche B Term Loan Exposure of that Lender by (y) the aggregate Tranche B Term Loan Exposure of all Lenders; (ii) with respect to all payments, computations and

other matters relating to the Revolving Loan Commitment or the Revolving Loans of any Lender or any Letters of Credit issued or participations therein purchased by any Lender the percentage obtained by dividing (x) the Revolving Loan Exposure of that Lender by (y) the aggregate Revolving Loan Exposure of all Lenders; and (iii) for all other purposes with respect to each Lender, the percentage obtained by dividing (x) the sum of the Tranche B Term Loan Exposure and the Revolving Loan Exposure of that Lender by (y) the sum of the aggregate Tranche B Term Loan Exposure and Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Subsection X.A.

"PTO" means the United States Patent and Trademark Office or any successor or substitute office in which filings are necessary or, in the opinion of Administrative Agent, desirable in order to create or perfect Liens on any IP Collateral.

"Real Property Asset" means, at any time of determination, any interest then owned by any Loan Party in any real property.

"Reference Rate" means the rate that CIBC announces from time to time as its prime lending rate, as in effect from time to time. The Reference Rate is a reference rate and

24

does not necessarily represent the lowest or best rate actually charged to any customer. CIBC or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Reference Rate.

"Register" has the meaning assigned to that term in Subsection II.A.4.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Reimbursement Date" has the meaning assigned to that term in Subsection III.C.1.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the movement of any Hazardous Materials through the air, soil, surface water or groundwater.

"Request for Issuance" means a request for issuance of a Letter of Credit delivered by Borrower to Administrative Agent substantially in the form of Exhibit III annexed hereto.

"Requisite Lenders" means Lenders having or holding more than 50% of the sum of the aggregate Tranche B Term Loan Exposure of all Lenders plus the aggregate Revolving Loan Exposure of all Lenders.

"Restricted Junior Payment" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class and a dividend payable by any of Borrower's Subsidiaries to Borrower or any Subsidiary Guarantor, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Borrower or any of its Subsidiaries now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any shares of any class of Capital Stock of Borrower or any of its Subsidiaries now or hereafter outstanding, and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

"Revolving Lender" means a Lender that has a Revolving Loan Commitment and/or has an outstanding Revolving Loan.

"Revolving Loan Commitment" means the commitment of a Lender to make Revolving Loans to Borrower pursuant to Subsection II.A.b, and "Revolving Loan

25

Commitments" means such commitments of all Lenders in the aggregate. The Revolving Loan Commitments shall be recorded by Administrative Agent in the Register.

"Revolving Loan Commitment Termination Date" means the earlier of May

\_\_\_, 2008 or the date on which the Term Loans have been paid in full.

"Revolving Loan Exposure" means, with respect to any Lender, as of any date of determination (i) prior to the termination of the Revolving Loan Commitments, that Lender's Revolving Loan Commitment, and (ii) after the termination of the Revolving Loan Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender plus (b) if that Lender is an Issuing Lender, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (in each case net of any participations purchased by other Lenders in such Letters of Credit or in any unreimbursed drawings thereunder) plus (c) the aggregate amount of all participations purchased by that Lender in any outstanding Letters of Credit or in any unreimbursed drawings under any Letters of Credit.

"Revolving Loans" means the Loans made by Lenders to Borrower pursuant to Subsection II.A.b.

"Revolving Notes" means (i) the promissory notes of Borrower issued pursuant to Subsection II.AE(ii) on the Closing Date and (ii) any promissory notes issued by Borrower pursuant to Subsection X.A.2.a in connection with assignments of the Revolving Loan Commitments and Revolving Loans of any Lenders, and any replacements thereof, in each case substantially in the form of Exhibit V annexed hereto, and any replacements thereof.

"S&P" means Standard & Poor's Ratings Group.

"SDN List" has the meaning assigned to that term in Subsection 5.9B.

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

"Securities Act" means the Securities Act of 1933.

"Security Agreement" means the Security Agreement executed and delivered by each of the Loan Parties on the Closing Date, substantially in the form of Exhibit XI annexed hereto.

"Senior Subordinated Note Indenture" means the Indenture dated as of January 30, 2003 by and among Borrower, certain of Borrower's Subsidiaries, and Wells Fargo Bank, National Association, as Trustee.

26

"Senior Subordinated Notes" means Borrower's 9.125% Senior Subordinated Notes due 2013 issued pursuant to the Senior Subordinated Note Indenture in an aggregate principal amount of \$150,000,000.

"Solvent" means, with respect to any Person, that as of the date of determination both (A) (i) the then fair saleable value of the property of such Person is (y) greater than the total amount of liabilities (including contingent liabilities) of such Person and (z) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person; (ii) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (iii) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (B) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Subordinated Indebtedness" means any Indebtedness of Borrower incurred from time to time and subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to Administrative Agent, including the Senior Subordinated Notes.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which 50% or more of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies

thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"Subsidiary Guarantor" means any Domestic Subsidiary of Borrower that at any time has (i) total assets of more than \$1,000,000 as reflected on such Domestic Subsidiary's most recent balance sheet as of the date of determination or (ii) Consolidated Excess Cash Flow (with respect to such Domestic Subsidiary alone) of more than \$500,000 for the most recently ended four Fiscal Quarters for which internal financial statements are available.

"Subsidiary Guaranty" means the Subsidiary Guaranty executed and delivered by each of the Subsidiary Guarantors on the Closing Date and to be executed and delivered by additional Subsidiary Guarantors of Borrower from time to time thereafter in accordance with Subsection VI.H, substantially in the form of Exhibit X annexed hereto.

"Supplemental Collateral Agent" has the meaning assigned to that term in Subsection IX.A.2.

27

"Tax" or "Taxes" means any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, including interest, penalties, additions to tax and any similar liabilities with respect thereto; except that, in the case of a Lender, there shall be excluded (1) taxes that are imposed on the overall net income or net profits (including franchise taxes imposed in lieu thereof) (i) by the United States, (ii) by any other Government Authority under the laws of which such Lender is organized or has its principal office or maintains its applicable lending office or (iii) by any jurisdiction solely as a result of a present or former connection between such Lender and such jurisdiction (other than any such connection arising solely from such Lender having executed, delivered or performed its obligations or received a payment under, or enforced any of the Loan Documents), and (2) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Lender is located.

"Term Loans" means the Tranche B Term Loans.

"Title Company" means one or more title insurance companies reasonably satisfactory to Administrative Agent.

"Total Utilization of Revolving Loan Commitments" means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans plus (ii) the Letter of Credit Usage.

"Tranche B Term Loan Commitment" means the commitment of a Lender to make a Tranche B Term Loan to Borrower pursuant to Subsection II.A.a, and "Tranche B Term Loan Commitments" means such commitments of all Lenders in the aggregate.

"Tranche B Term Loan Exposure", with respect to any Lender, means, as of any date of determination (i) prior to the funding of the Tranche B Term Loans, that Lender's Tranche B Term Loan Commitment and (ii) after the funding of the Tranche B Term Loans, the outstanding principal amount of the Tranche B Term Loan of that Lender.

"Tranche B Term Loans" means the Loans made by Lenders to Borrower pursuant to Subsection II.A.a.

"Tranche B Term Notes" means (i) the promissory notes of Borrower issued pursuant to Subsection II.A.5 to evidence the Tranche B Term Loans of any Lenders, (ii) any promissory notes issued by Borrower pursuant to Subsection X.A.2.a in connection with assignments of the Term Loan Commitments or Term Loans of any Lenders and any replacements thereof, in each case substantially in the form of Exhibit IV annexed hereto.

"Transaction Costs" means the fees, reasonable costs and reasonable expenses payable by Borrower on or before the Closing Date in connection with the transactions contemplated by the Loan Documents.

28

"Type" means, with respect to any Loan, a Term Loan or a Revolving Loan (each of which is a "Type" of Loan).

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

"USA Patriot Act of 2001" has the meaning assigned to such term in Subsection 5.9C.



B. Accounting Terms; Utilization of GAAP for Purposes of Calculations  
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Under Agreement.  
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Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to clauses (i), (ii) and (xi) of Subsection VI.A shall be prepared in accordance with GAAP (as in effect in the United States of America at the time of such preparation) other than an absence of footnotes with respect to financial statements and other information delivered pursuant to clause (i) of Subsection VI.A and delivered together with the reconciliation statements provided for in Subsection VI.A.d. Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize GAAP as in effect in the United States of America on the date of determination, applied in a manner consistent with that used in preparing the financial statements referred to in Subsection V.C. Borrower shall deliver to Administrative Agent at the same time as the delivery of any annual or quarterly financial statements given in accordance with the provisions of Subsection VI.A, (i) a description in reasonable detail of any material change in the application of accounting principles employed in the preparation of such financial statements from those applied in the most recently preceding quarterly or annual financial statements and (ii) a reasonable estimate of the effect on such financial statements on account of such changes in application. If at any time any change in such GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Borrower, Administrative Agent or Requisite Lenders shall so request Administrative Agent, Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in such GAAP (subject to the approval of Requisite Lenders), provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with such GAAP prior to such change therein and Borrower shall provide to Administrative Agent and Lenders reconciliation statements provided for in Subsection VI.A.d.

C. Other Definitional Provisions and Rules of Construction.  
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1. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.
  2. References to "Sections" and "Subsections" shall be to Sections and Subsections, respectively, of this Agreement unless otherwise specifically provided.
- 29
3. The use in any of the Loan Documents of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.
  4. Each of the parties hereto acknowledges that (i) it has been represented by counsel in the negotiation and documentation of the terms of this Agreement and other Loan Documents to be executed on or prior to the Closing Date, (ii) it has had full and fair opportunity to review and revise the terms of this Agreement and such other Loan Documents, (iii) this Agreement and such other Loan Documents have been drafted jointly by all of the parties hereto, and (iv) neither Administrative Agent nor any Lender has any fiduciary relationship with or duty to Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent and Lenders, on the one hand, and Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of another party.
  5. Any reference in this Agreement or any other Loan Document to any agreement means such agreement as it may be amended, restated, supplemented or otherwise modified from time to time; (ii) any reference in this Agreement or any other Loan Document to any law, statute, regulation, rule or other legislative action shall mean such law, statute, regulation, rule or other legislative

action as amended, supplemented, restated or otherwise modified from time to time and any successor thereto, and shall include any rule or regulation promulgated thereunder; and (iii) any reference in this Agreement or any other Loan Document to a Person shall include the successor or assignee of such Person.

## II. AMOUNTS AND TERMS OF COMMITMENTS AND LOANS

### A. Commitments; Making of Loans; Optional Notes.

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A. Commitments. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Borrower herein set forth, each Lender hereby severally agrees to make the Loans as described in Subsections II.A.a and II.A.b

- a. Tranche B Term Loans. Each Lender having a Tranche B Term Loan Commitment severally agrees to lend to Borrower on the

30

Closing Date an amount not exceeding its Pro Rata Share of the aggregate amount of the Tranche B Term Loan Commitments to be used for the purposes identified in Subsection II.E.1. Borrower shall deliver to Administrative Agent a Notice of Borrowing no later than 12:00 Noon (New York City time) at least one Business Day prior to the Closing Date, requesting a borrowing of the Tranche B Term Loans. The Notice of Borrowing shall specify (i) the proposed Funding Date (which shall be a Business Day), (ii) the amount of the borrowing, and (iii) that such Loans shall be Base Rate Loans. The aggregate amount of the Tranche B Term Loan Commitments is \$100,000,000; provided that the Tranche B Term Loan Commitments of Lenders shall be adjusted to give effect to any assignments of the Tranche B Term Loan Commitments pursuant to Subsection X.A.2 and (2) any increase in Tranche B Term Loans pursuant to Subsection II.A.c. Each Lender's Tranche B Term Loan Commitment shall expire immediately and without further action on May 31, 2003 if the Tranche B Term Loans have not been made on or before that date. Borrower may make only one borrowing under the Tranche B Term Loan Commitments. Amounts borrowed under this Subsection II.A.a and subsequently repaid or prepaid may not be reborrowed.

- b. Revolving Loans. Each Revolving Lender severally agrees, subject to the limitations set forth below with respect to the maximum amount of Revolving Loans permitted to be outstanding from time to time, to lend to Borrower from time to time during the period from the Closing Date to but excluding the Revolving Loan Commitment Termination Date an aggregate amount not exceeding its Pro Rata Share of the aggregate amount of the Revolving Loan Commitments to be used for the purposes identified in Subsection II.E.1. The aggregate original amount of the Revolving Loan Commitments is \$100,000,000; provided that the Revolving Loan Commitments of Revolving Lenders shall be adjusted to give effect to any assignments of the Revolving Loan Commitments pursuant to Subsection X.A.2 and shall be reduced from time to time by the amount of any reductions thereto made pursuant to Subsection D; and provided further that the Revolving Loan Commitments of Lenders shall be adjusted to give effect to (1) any assignments of the Revolving Loan Commitments pursuant to Subsection 10.1B, and (2) any increase in Revolving Loan Commitments pursuant to Subsection II.A.c. Each Lender's Revolving Loan Commitment shall expire immediately and without further action on the Revolving Loan Commitment Termination Date and all Revolving Loans and all other amounts

31

owed hereunder with respect to the Revolving Loans and the Revolving Loan Commitments shall be paid in full no later than that date; provided that each Revolving Lender's Revolving Loan Commitment shall expire immediately and without further action on May 31, 2003 if the Tranche B Term Loans have not been made on or before that date. Amounts borrowed under this Subsection II.A.b may be repaid and reborrowed to but excluding the Revolving Loan Commitment Termination Date.

Anything contained in this Agreement to the contrary notwithstanding, the Revolving Loans and the Revolving Loan Commitments shall be subject to the

limitation that in no event shall the Total Utilization of Revolving Loan Commitments at any time exceed the Revolving Loan Commitments then in effect.

- c. Increases of the Tranche B Term Loan or Revolving Loan Commitments. So long as no Event of Default or Potential Event of Default has occurred and is continuing, Borrower may, one time on or after the Closing Date, increase, at Borrower's request (x) the then effective aggregate principal amount of the Tranche B Term Loan and/or (y) the then effective aggregate principal amount of Revolving Loan Commitments; provided that (1) the aggregate principal amount of the increases in the Tranche B Term Loan and/or Revolving Loan Commitments pursuant to this Subsection II.A.c shall not exceed \$75,000,000, (2) Borrower shall execute and deliver such documents and instruments and take such other actions as may be reasonably requested by Administrative Agent in connection with such increases and at the time of any such proposed increase, and (3) no Potential Event of Default or Event of Default shall have occurred and be continuing or would occur after giving effect to such increase. Any request under this Subsection II.A.c shall be submitted by Borrower to Administrative Agent (which shall promptly forward copies to Lenders). Borrower may also specify any fees offered to those Lenders (the "Increasing Lenders") which agree to increase the principal amount of their applicable Tranche B Term Loan or Revolving Loan Commitments, as the case may be, which fees may be variable based upon the amount by which any such Lender is willing to increase the principal amount of its applicable Tranche B Term Loan or Revolving Loan Commitment, as the case may be. No Lender shall have any obligation, express or implied, to offer to increase the aggregate principal amount of its applicable Tranche B Term Loan or Revolving Loan Commitment, as the case may be. Only the consent of each Increasing Lender shall be required for an increase in the aggregate principal amount of the applicable Tranche B Term Loan or Revolving Loan Commitments, as the

32

case may be, pursuant to this Subsection II.A.c. No Lender which declines to increase the principal amount of its Tranche B Term Loan or Revolving Loan Commitment, as the case may be, may be replaced in respect to its existing applicable Tranche B Term Loan or Revolving Loan Commitment, as the case may be, as a result thereof without such Lender's consent.

Each Increasing Lender shall as soon as practicable specify the amount of the proposed increase that it is willing to assume. Borrower may accept some or all of the offered amounts or designate new lenders that qualify as Eligible Assignees and that are reasonably acceptable to Administrative Agent as additional Lenders hereunder in accordance with this Subsection II.A.c (each such new lender being a "New Lender"), which New Lender may assume all or a portion of the increase in the aggregate principal amount of the applicable Tranche B Term Loan or Revolving Loan Commitments, as the case may be. Borrower and Administrative Agent shall have discretion jointly to adjust the allocation of the increased aggregate principal amount of the applicable Tranche B Term Loan or Revolving Loan Commitments, as the case may be, among Increasing Lenders and New Lenders. In no event shall the "all-in" cost to Borrower on a percentage basis of the increased amount of the Tranche B Term Loan exceed the "all-in" cost to Borrower on a percentage basis of the Tranche B Term Loan as of the Closing Date, taking into account the effect of any fees or discounts.

Subject to the foregoing, any increase requested by Borrower shall be effective upon delivery to Administrative Agent of each of the following documents: (i) an originally executed copy of an instrument of joinder signed by a duly authorized officer of each New Lender, in form and substance reasonably acceptable to Administrative Agent; (ii) a notice to the Increasing Lenders and New Lenders, in form and substance reasonably acceptable to Administrative Agent, signed by a duly authorized officer of Borrower; (iii) an Officer's Certificate of Borrower, in form and substance reasonably acceptable to Administrative Agent; (iv) to the extent requested by any New Lender or Increasing Lender, executed Tranche B Term Notes and/or Revolving Notes issued by Borrower in accordance with Subsection 2.1E hereof; and (v) any other certificates or documents that Administrative Agent shall reasonably request, in form and substance reasonably satisfactory to Administrative Agent. Any such increase shall be in a principal amount equal to (A) the principal amount that Increasing Lenders are willing to assume as increases to the principal amount of their applicable Tranche B Term Loan or Revolving Loan Commitments, as the case may be, plus (B) the principal amount offered by New Lenders with respect to the Tranche B Term Loan or Revolving Loan Commitments, as the case may

be, in either case as adjusted by Borrower and Administrative Agent pursuant to this Subsection 2.1A(iii). Upon effectiveness of any such increase, the Commitments, Pro Rata Share and outstanding Revolving Loans of each Lender will be adjusted to give effect to the increase in the Tranche B Term Loan or Revolving Loan Commitments, as the case may be. To the extent that the adjustment of Pro Rata Shares results in losses or expenses to any Lender as a result of the prepayment of any LIBOR Loan on a date other than the scheduled last day of the applicable Interest

33

Period, Borrower shall be responsible for such losses or expenses pursuant to Subsection F.3.

2. Borrowing Mechanics. Revolving Loans made on any Funding Date (other than Revolving Loans made pursuant to Subsection III.C.1 for the purpose of reimbursing any Issuing Lender for the amount of a drawing under a Letter of Credit issued by it) shall be Base Rate Loans or LIBOR Loans in the applicable Minimum Amount therefor. Whenever Borrower desires that Lenders make Revolving Loans it shall deliver to Administrative Agent a Notice of Borrowing no later than 12:00 Noon (New York City time) at least three Business Days in advance of the proposed Funding Date (in the case of a LIBOR Loan) or no later than 12:00 Noon (New York City time) on the proposed Funding Date (in the case of a Base Rate Loan). The Notice of Borrowing shall specify (i) the proposed Funding Date (which shall be a Business Day), (ii) the amount and Type of Loans requested, (iii) in the case of any Loans made on the Closing Date, that such Loans shall be Base Rate Loans, (iv) in the case of Loans not made on the Closing Date, whether such Loans shall be Base Rate Loans or LIBOR Loans, (v) in the case of any Loans requested to be made as LIBOR Loans, the initial Interest Period requested therefor and (vi) information about the account of Borrower to be credited. Loans may be continued as or converted into Base Rate Loans and LIBOR Loans in the manner provided in Subsection II.B.3. In lieu of delivering the above-described Notice of Borrowing for any Loan, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing under this Subsection II.A.2; provided that such notice shall be promptly confirmed in writing by delivery of a Notice of Borrowing to Administrative Agent at Administrative Agent's Office no later than 2:00 P.M. (New York City time) on the date such notice was given.

None of Administrative Agent or any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized Officer or other Person authorized to borrow on behalf of Borrower or for otherwise acting in good faith under this Subsection II.A.2, and upon funding of Loans by Lenders in accordance with this Agreement pursuant to any such telephonic notice Borrower shall have effected a borrowing of Loans hereunder.

Borrower shall notify Administrative Agent prior to the funding of any Loans if any of the matters to which Borrower is required to certify in the applicable Notice of Borrowing is no longer true and correct as of the applicable Funding Date, and the acceptance by Borrower of the proceeds of any Loans shall constitute a re-certification by Borrower, as of the applicable Funding Date, as to the matters to which Borrower is required to certify in the applicable Notice of Borrowing.

34

Except as otherwise provided in Subsections II.F.1, II.F.2 and II.F.6, a Notice of Borrowing for LIBOR Loan (or telephonic notice in lieu thereof) shall be irrevocable once Administrative Agent receives such notice, and Borrower shall be bound to make a borrowing in accordance therewith.

3. Disbursement of Funds. All Term Loans and Revolving Loans under this Agreement shall be made by Lenders having a Commitment of that Type simultaneously and proportionately to their respective Pro Rata Shares, it being understood that neither Administrative Agent nor any Lender shall be responsible for any default by any other Lender in that other Lender's obligation to make a Loan requested hereunder nor shall the Commitment of any Lender to make the particular Type of Loan requested be increased or decreased as a result of a default by any other Lender in that other Lender's obligation to make a Loan requested hereunder. Promptly after receipt by Administrative Agent of a Notice of Borrowing pursuant to Subsection 1.1A or II.A.2 (or telephonic notice in lieu thereof), Administrative Agent shall notify each Lender for that Type of Loan, as the case may be, of the proposed borrowing. Each such Lender shall make the amount of its Loan

available to Administrative Agent at the Administrative Agent's Office not later than 12:00 Noon (New York City time) for LIBOR Loans, and not later than 2:00 P.M. (New York City time) for Base Rate Loans, on the applicable Funding Date in same day funds in Dollars. Except as provided in Subsection III.C.1 with respect to Revolving Loans used to reimburse any Issuing Lender for the amount of a drawing under a Letter of Credit issued by it, upon satisfaction or waiver of the conditions precedent specified in Subsections IV.A (in the case of Loans made on the Closing Date) and IV.B (in the case of all Loans), Administrative Agent shall make the proceeds of such Loans available to Borrower on the applicable Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be wire-transferred to an account of Borrower as specified in the applicable Notice of Borrowing.

Unless Administrative Agent shall have been notified by any Lender prior to a Funding Date for any Loans that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Funding Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Funding Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Funding Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three

35

Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the rate payable under this Agreement for Base Rate Loans for such Type of Loans. Nothing in this Subsection II.A.3 shall be deemed 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.

#### 4. The Register.

- a. Administrative Agent shall maintain, at its address referred to in Subsection X.H, a register for the recordation of the names and addresses of Lenders and the Commitments and Loans of each Lender from time to time (the "Register"). The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.
- b. Administrative Agent shall record in the Register the Tranche B Term Loan Commitment and Revolving Loan Commitment and the Tranche B Term Loans and Revolving Loans from time to time of each Lender and each repayment or prepayment in respect of the principal amount of the Tranche B Term Loans or Revolving Loans of each Lender. Any such recordation shall constitute prima facie evidence of the amounts borrowed hereunder; provided that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Borrower's Obligations in respect of any applicable Loans.
- c. Each Lender may record on its internal records (including the Notes held by such Lender) the amount of the Tranche B Term Loans and each Revolving Loan made by it and each payment in respect thereof. Any such recordation shall constitute prima facie evidence of the amounts borrowed hereunder; provided that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Borrower's Obligations in respect of any applicable Loans; and provided further that in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern (absent manifest error).
- d. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of

any such Commitment or Loan shall be effective, in each case unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been accepted by Administrative Agent and recorded in the Register as provided in Subsection X.A.2.b. Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

- e. Borrower hereby designates CIBC to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Subsection II.A.4, and Borrower hereby agrees that, to the extent CIBC serves in such capacity, CIBC and its officers, directors, employees, agents and Affiliates shall constitute Indemnitees for all purposes under Subsection X.C.
5. Optional Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date or at any time thereafter, Borrower shall execute and deliver on the Closing Date or within three Business Days after receipt of written request therefor to the requesting Lender (or to Administrative Agent for that Lender, if requested by such Lender) (i) a Tranche B Term Note substantially in the form of Exhibit IV annexed hereto to evidence that Lender's Tranche B Term Loan, in the principal amount of that Lender's Tranche B Term Loan and with other appropriate insertions, and (ii) a Revolving Note substantially in the form of Exhibit V annexed hereto to evidence that Lender's Revolving Loans, in the principal amount of that Lender's Revolving Loan Commitment and with other appropriate insertions.

Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been accepted by Administrative Agent as provided in Subsection X.A.2.b. Any request, authorization or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note (or Loan) shall be conclusive and binding on any subsequent holder, assignee or transferee of that Note (or Loan) or of any Note or Notes issued in exchange therefor.

If Borrower increases the aggregate principal amount of the Tranche B Term Loans or Revolving Loan Commitments, as the case may be, pursuant to Subsection II.A.c, Borrower shall issue replacement Tranche B Term Notes and/or Revolving Notes, as the case may be, to each Increasing Lender (or to Administrative Agent for such Increasing Lender) that

requests a Note in accordance with the terms hereof and new Tranche B Term Notes and/or Revolving Notes, as the case may be, to each New Lender (or to Administrative Agent for such New Lender) that requests a Note in accordance with the terms hereof.

B. Interest on the Loans.  
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1. Rate of Interest. Subject to the provisions of Subsections II.F and II.G, each Term Loan and each Revolving Loan shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by acceleration or otherwise) at a rate determined by reference to the Base Rate or Adjusted LIBOR. The applicable basis for determining the rate of interest with respect to any Term Loan or any Revolving Loan shall be selected by Borrower initially at the time a Notice of Borrowing is given with respect to such Loan pursuant to Subsection II.A.2, and the basis for determining the interest rate with respect to any Term Loan or any Revolving Loan may be changed from time to time pursuant to Subsection II.B.4 (subject to the last sentence of Subsection A.2). If on any day a Term Loan or Revolving Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day that Loan shall bear interest

determined by reference to the Base Rate.

Subject to the provisions of Subsections II.B.5 and II.G, the Tranche B Term Loans and the Revolving Loans shall bear interest through maturity as follows:

- a. if a Base Rate Loan, then at the sum of the Base Rate plus the Applicable Base Rate Margin for such Type of Loans; or
- b. if a LIBOR Loan, then at the sum of Adjusted LIBOR plus the Applicable LIBOR Margin for such Type of Loans.

Upon delivery of a Margin Determination Certificate by Borrower to Administrative Agent (a) with respect to each Fiscal Quarter (other than each fourth Fiscal Quarter), together with the three most recent financial statements required to be delivered pursuant to Subsection 6.1(i), and (b) with respect to each fourth Fiscal Quarter, within forty-five (45) days after the last day of such fourth Fiscal Quarter (to be included as part of the Compliance Certificate for each such Fiscal Quarter), the Applicable Base Rate Margin and Applicable LIBOR Margin shall automatically be adjusted in accordance with such Margin Determination Certificate, such adjustment to become effective on the 60th day after the end of the Fiscal Quarter to which the financial results contained in the Margin Determination Certificate relate; provided that (1) at any time a Margin Determination Certificate is not delivered within forty-five (45) days after the last day of any Fiscal Quarter, from the forty-fifth day until delivery of such Margin Determination Certificate, the Applicable Base Rate Margin shall be 1.25% for Revolving Loans, and 1.25% for Tranche B Term Loans, and the Applicable LIBOR Margin shall be 2.75% for Revolving Loans, and 2.75% for Tranche B Term Loans, and

38

(2) if a Margin Determination Certificate erroneously indicates (as determined by Administrative Agent after consultation with Borrower) an applicable margin more favorable to Borrower than should be afforded by the actual calculation of the Consolidated Total Leverage Ratio, Borrower shall promptly pay additional interest and letter of credit fees required to correct for such error.

2. Interest Periods. In connection with each LIBOR Loan, Borrower may, pursuant to the applicable Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, select an interest period (each an "Interest Period") to be applicable to such Loan, which Interest Period shall be, at Borrower's option, either a one, two, three or six month period; provided that:
  - a. the initial Interest Period for any LIBOR Loan shall commence on the Funding Date in respect of such Loan, in the case of a Loan initially made as a LIBOR Loan, or on the date specified in the applicable Notice of Conversion/Continuation, in the case of a Loan converted to a LIBOR Loan;
  - b. in the case of immediately successive Interest Periods applicable to a LIBOR Loan continued as such pursuant to a Notice of Conversion/Continuation, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires;
  - c. if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;
  - d. any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (v) of this Subsection II.B.2, end on the last Business Day of a calendar month;
  - e. no Interest Period with respect to any portion of the Tranche B Term Loans shall extend beyond May \_\_, 2009, and no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Loan Commitment Termination Date;
  - f. no Interest Period with respect to the Tranche B Term Loans shall extend beyond a date on which Borrower is required to make a

39

scheduled payment of principal of the Tranche B Term Loans, unless the sum of (a) the aggregate principal amount of the Tranche B Term Loans that are Base Rate Loans plus (b) the aggregate principal amount of the Tranche B Term Loans that are LIBOR Loans with Interest Periods expiring on or before such date equals or exceeds the principal amount required to be paid on the Tranche B Term Loans on such date;

- g. there shall be no more than ten (10) Interest Periods outstanding at any time; and
  - h. if Borrower fails to specify an Interest Period for any LIBOR Loan in the applicable Notice of Borrowing, Borrower shall be deemed to have requested a Base Rate Loan.
3. Interest Payments. Subject to the provisions of Subsection II.B.5, interest on each Loan shall be payable in arrears on and to each Interest Payment Date applicable to that Loan, upon any prepayment of that Loan (to the extent accrued on the amount being prepaid) and at maturity (including final maturity) provided that if any Revolving Loans that are Base Rate Loans are prepaid pursuant to Subsection II.D.2.a, interest accrued on such Loans through the date of such prepayment shall be payable on the next succeeding Interest Payment Date applicable to Base Rate Loans (or, if earlier, at final maturity).
4. Conversion or Continuation.
- a. Subject to the provisions of Subsection II.G, Borrower shall have the option (i) to convert at any time all or any part of its outstanding Term Loans or Revolving Loans from Loans bearing interest at a rate determined by reference to one basis to Loans bearing interest at a rate determined by reference to an alternative basis, in each case in the applicable Minimum Amount therefor, or (ii) upon the expiration of any Interest Period applicable to a LIBOR Loan, to continue all or any portion of such Loan equal to the Minimum Amount as a LIBOR Loan; provided, however, that a LIBOR Loan may only be converted into a Base Rate Loan on the expiration date of an Interest Period applicable thereto.
  - b. Borrower shall deliver a Notice of Conversion/Continuation to Administrative Agent no later than 12:00 Noon (New York City time) at least three Business Days in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBOR Loan). With respect to any LIBOR

40

Loan, if Borrower fails to deliver a Notice of Conversion/Continuation as described above or if any proposed conversion/continuation under this Subsection II.B.4 is not permitted hereunder, Borrower shall be deemed to have elected to convert such LIBOR Loan to a Base Rate Loan on the last day of the then-expiring Interest Period.

- c. A Notice of Conversion/Continuation shall specify (a) the proposed conversion/continuation date (which shall be a Business Day), (b) the amount and type of the Loan to be converted/continued, (c) the nature of the proposed conversion/continuation, (d) in the case of a conversion to, or a continuation of, a LIBOR Loan, the requested Interest Period, and (e) in the case of a conversion to, or a continuation of, a LIBOR Loan, that no Potential Event of Default or Event of Default has occurred and is continuing. In lieu of delivering the above-described Notice of Conversion/Continuation, Borrower may give Administrative Agent telephonic notice by the required time of any proposed conversion/continuation under this Subsection II.B.4, provided that Administrative Agent shall receive a Notice of Conversion/Continuation to confirm such telephonic notice no later than 2:00 P.M. (New York City time) on the day on which such telephonic notice is given. Upon receipt of written or telephonic notice of any proposed conversion/continuation under this Subsection II.B.4, Administrative Agent shall promptly transmit such notice by telefacsimile or electronic mail (or by telephone promptly confirmed by telefacsimile or electronic mail) to each



Lender.

(iv) Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized Officer or other Person authorized to act on behalf of Borrower or for otherwise acting in good faith under this Subsection II.B.4, and upon conversion or continuation of the applicable basis for determining the interest rate with respect to any Loans in accordance with this Agreement pursuant to any such telephonic notice Borrower shall have effected a conversion or continuation, as the case may be, hereunder.

(v) Except as otherwise provided in Subsections F.1, F.2 and F.6, a notice of a proposed conversion to, or continuation of, a LIBOR Loan (whether by delivery of a Notice of Conversion/Continuation or telephonic notice) shall be irrevocable once Administrative Agent receives such notice, and Borrower shall be bound to effect a conversion or continuation in accordance therewith.

5. Default Rate. Upon the occurrence and during the continuation of any Event of Default, at the election of Administrative Agent or Requisite

41

Lenders the outstanding principal amount of all Loans and, to the extent permitted by applicable law, any interest payments thereon not paid when due and any fees and other amounts then due and payable hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable upon demand at a rate that is 2.00% per annum in excess of the interest rate then in effect with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.00% per annum in excess of the interest rate otherwise payable under this Agreement for Revolving Loans that are Base Rate Loans); provided that, in the case of LIBOR Loans, upon the expiration of each Interest Period in effect at the time any such increase in interest rate is effective such LIBOR Loans shall thereupon become Base Rate Loans and shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable upon demand at a rate which is 2.00% per annum in excess of the interest rate then in effect for Revolving Loans that are Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Subsection II.B.5 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

6. Computation of Interest. Interest on the Loans and other Obligations shall be computed (i) in the case of Base Rate Loans, on the basis of a 365/366-day year (as applicable), and (ii) in the case of LIBOR Loans and other Obligations (other than Base Rate Loans), on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a LIBOR Loan, the date of conversion of such LIBOR Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a LIBOR Loan, the date of conversion of such Base Rate Loan to such LIBOR Loan, as the case may be, shall be excluded; provided that if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.
7. Maximum Rate. Notwithstanding the foregoing provisions of this Subsection B, in no event shall the rate of interest payable by Borrower with respect to any Loan exceed the maximum rate of interest permitted to be charged under applicable law.

42

C. Fees.  
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1. Revolving Loan Commitment Fees. Borrower agrees to pay to Administrative Agent, for distribution to each Lender in proportion to that Lender's Pro Rata Share of the Revolving Loan Commitments, commitment fees for the period from and including

the Closing Date to and excluding the Revolving Loan Commitment Termination Date equal to the average of the daily excess of the Revolving Loan Commitments over the Total Utilization of Revolving Loan Commitments multiplied by (i) until the date that is five Business Days after the date on which the first Margin Determination Certificate is scheduled to be delivered to Administrative Agent pursuant to Subsection 2.2A, one half of 1% per annum, and (ii), thereafter, at the applicable Commitment Fee Percentage, such commitment fees to be calculated on the basis of a 360-day year and the actual number of days elapsed and to be payable quarterly in arrears on the last Business Day of each March, June, September and December of each year commencing on the first such date to occur after the Closing Date, and on the Revolving Loan Commitment Termination Date.

2. Other Fees. Borrower agrees to pay to Co-Lead Arrangers and Administrative Agent such fees in the amounts and at the times separately agreed upon between Borrower, Co-Lead Arrangers and Administrative Agent.

D. Repayments, Prepayments and Reductions in Revolving Loan Commitments;  
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 General Provisions Regarding Payments; Application of Proceeds of  
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 Collateral and Payments Under Subsidiary Guaranty.  
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B. Scheduled Payments of Term Loans.

- a. Scheduled Payments of Tranche B Term Loans. Borrower shall make principal payments on the Tranche B Term Loans in installments on the dates and in the amounts set forth below:

Date	Scheduled Repayment
September 30, 2003	\$ 250,000
December 31, 2003	\$ 250,000
March 31, 2004	\$ 250,000
June 30, 2004	\$ 250,000
September 30, 2004	\$ 250,000
December 31, 2004	\$ 250,000
March 31, 2005	\$ 250,000
June 30, 2005	\$ 250,000
September 30, 2005	\$ 250,000
December 31, 2005	\$ 250,000
March 31, 2006	\$ 250,000
June 30, 2006	\$ 250,000
September 30, 2006	\$ 250,000
December 31, 2006	\$ 250,000
March 31, 2007	\$ 250,000
June 30, 2007	\$ 250,000
September 30, 2007	\$ 250,000
December 31, 2007	\$ 250,000
March 31, 2008	\$ 250,000
June 30, 2008	\$ 250,000
September 30, 2008	\$ 250,000
December 31, 2008	\$ 250,000

March 31, 2009	\$ 250,000
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May __, 2009	\$ 94,250,000
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; provided that the scheduled installments of principal of the Tranche B Term Loans set forth above shall be reduced in connection with any voluntary or mandatory prepayments of the Tranche B Term Loans in accordance with Subsection II.D.2.d; and provided, further that the Tranche B Term Loans and all other amounts owed hereunder with respect to the Tranche B Term Loans shall be paid in full no later than May \_\_, 2009, and the final installment payable by Borrower in respect of the Tranche B Term Loans on such date shall be in an amount, if such amount is different from that specified above, sufficient to repay all amounts owing by Borrower

44

under this Agreement with respect to the Tranche B Term Loans; and provided, further that if the aggregate principal amount of the Tranche B Term Loans is increased pursuant to Subsection 2.1A(iii), then each scheduled principal repayment to be made after such increase becomes effective shall be increased by an amount equal to (a) the aggregate principal amount of the increase in the Tranche B Term Loans pursuant to Subsection II.A.c multiplied by (b) an amount equal to (x) such scheduled repayment amount divided by (y) the aggregate principal amount of the Tranche B Term Loans to be repaid immediately prior to giving effect to the increase in the Tranche B Term Loans made pursuant to Subsection 2.1A(iii).

2. Prepayments and Unscheduled Reductions in Revolving Loan Commitments.

- a. Voluntary Prepayments. Borrower may, upon not less than one Business Day's irrevocable prior written notice, in the case of Base Rate Loans, and three Business Days' irrevocable prior written notice, in the case of LIBOR Loans, in each case given to Administrative Agent by 12:00 Noon (New York City time) on the date required (which written notice Administrative Agent will promptly transmit by telefacsimile or electronic mail to each Lender for the Loans to be prepaid), at any time and from time to time prepay any Tranche B Term Loans or Revolving Loans on any Business Day in whole or in part in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount; provided, however, that any LIBOR Loan may be prepaid on a day other than the expiration of the Interest Period applicable thereto, only if Borrower pays the amounts due pursuant to Subsection II.F.3 caused by such prepayment. Notice of prepayment having been given as aforesaid, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Subsection II.D.2.d.
- b. Voluntary Reductions of Revolving Loan Commitments. Borrower may, upon not less than five Business Days' irrevocable prior written notice to Administrative Agent (which written notice Administrative Agent will promptly transmit to each Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Loan Commitments in an amount up to the amount by which the Revolving Loan Commitments exceed the Total Utilization of Revolving Loan Commitments at the time of such proposed termination or reduction; provided that any such partial reduction of the Revolving Loan Commitments shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount. Borrower's notice to Administrative Agent shall designate the date (which shall be a

45

Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Loan Commitments shall be effective on the date specified in Borrower's notice and shall reduce the Revolving Loan Commitment of each Revolving Lender proportionately according to its Pro Rata Share.

- c. Mandatory Prepayments and Mandatory Reductions of Revolving Loan Commitments. The Loans shall be prepaid and/or the Revolving Loan Commitments shall be permanently reduced in the amounts and under the circumstances set forth below, all such prepayments and/or reductions to be applied as set

forth below or as more specifically provided in Subsection II.D.2.d:

- (1) Prepayments and Reductions From Net Asset Sale Proceeds. No later than five (5) days from the date of receipt by Borrower or any of its Subsidiaries of any Net Asset Sale Proceeds in respect of any Asset Sale (other than a sale of Capital Stock covered by Subsection 2.4B(iii)(c)), Borrower shall either (1) prepay the Loans and/or the Revolving Loan Commitments shall be permanently reduced in an aggregate amount equal to such Net Asset Sale Proceeds or (2) so long as no Potential Event of Default or Event of Default shall have occurred and be continuing and to the extent that aggregate Net Asset Sale Proceeds from the Closing Date through the date of determination do not exceed \$5,000,000, deliver to Administrative Agent an Officer's Certificate setting forth (x) that portion of such Net Asset Sale Proceeds that Borrower or such Subsidiary intends to reinvest in equipment or other productive assets of the general type used in the business of Borrower and its Subsidiaries within one hundred eighty (180) days of such date of receipt and (y) the proposed use of such portion of the Net Asset Sale Proceeds and such other information with respect to such reinvestment as Administrative Agent may reasonably request, and Borrower shall, or shall cause one or more of its Subsidiaries to, promptly and diligently apply such portion to such reinvestment purposes; provided, however, that pending such reinvestment such portion of the Net Asset Sale Proceeds shall be applied to prepay outstanding Revolving Loans (without a reduction in Revolving Loan Commitments) to the full extent thereof. In addition, Borrower shall, no later than one hundred eighty (180) days after receipt of such Net Asset Sale Proceeds that have not

46

theretofore been applied to the Loans (other than any prepayment of Revolving Loans not resulting in a corresponding reduction in the Revolving Loan Commitments) or that have not been so reinvested as provided above, make an additional prepayment of the Loans (and/or the Revolving Loan Commitments shall be permanently reduced) in the full amount of all such Net Asset Sale Proceeds.

- (2) Prepayments and Reductions from Net Insurance/Condemnation Proceeds. No later than five (5) days from the date Borrower or any of its Subsidiaries is required to prepay the Loans in accordance with the provisions of Subsection VI.D.3 with Net Insurance/Condemnation Proceeds, Borrower shall prepay the Loans and/or the Revolving Loan Commitments shall be permanently reduced in an aggregate amount equal to the amount of such Net Insurance/Condemnation Proceeds.
- (3) Prepayments and Reductions Due to Issuance of Equity Securities. No later than five (5) days from the date of receipt of the Net Securities Proceeds from the issuance of any Capital Stock of Borrower or of any Subsidiary of Borrower or from any capital contribution to Borrower by any holder of Capital Stock thereof after the Closing Date, if the Consolidated Total Leverage Ratio for the Fiscal Quarter most recently ended exceeds 3.00:1.00, Borrower shall prepay the Loans and/or the Revolving Loan Commitments shall be permanently reduced in an aggregate amount equal to the lesser of fifty percent (50%) of such Net Securities Proceeds or such amount as will bring the Consolidated Total Leverage Ratio to not more than 3.00:1.00.
- (4) Reversion of Surplus Assets of Pension Plans. To the extent permitted by applicable law, no later than five (5) days from the date of return to Borrower or any of its Subsidiaries of any surplus assets of any terminated defined benefit Pension Plan of Borrower or any of its Subsidiaries, Borrower shall prepay the Loans and/or the Revolving Loan Commitments shall be permanently reduced in an aggregate amount (such amount being the "Net Pension Proceeds") equal to one hundred percent (100%) of such returned surplus assets in

excess of \$1,000,000, net of transaction costs and expenses incurred in obtaining such

47

return, including incremental taxes payable as a result thereof.

- (5) Prepayments and Reductions Due to Issuance of Indebtedness. No later than five (5) days from the date of receipt of the Net Securities Proceeds from the issuance of Indebtedness permitted pursuant to Subsection VII.A(vii) of Borrower or any of its Subsidiaries after the Closing Date, if the Consolidated Total Leverage Ratio for the Fiscal Quarter most recently ended exceeds 3.00:1.00, Borrower shall prepay the Loans and/or the Revolving Loan Commitments shall be permanently reduced in an aggregate amount equal to the lesser of fifty percent (50%) of such Net Securities Proceeds or such amount as will bring the Consolidated Total Leverage Ratio to not more than 3.00:1.00.
- (6) Prepayments and Reductions from Consolidated Excess Cash Flow. If there is Consolidated Excess Cash Flow for any Fiscal Year (commencing with Fiscal Year 2004), and if the Consolidated Total Leverage Ratio as of the end of such Fiscal Year exceeds 3.00:1.00, Borrower shall, no later than one hundred twenty (120) days after the end of such Fiscal Year, prepay the Loans and/or the Revolving Loan Commitments shall be permanently reduced in an aggregate amount equal to the lesser of fifty percent (50%) of such Consolidated Excess Cash Flow or such amount as will bring the Consolidated Total Leverage Ratio to not more than 3.00:1.00.
- (7) Calculations of Net Proceeds Amounts; Additional Prepayments and Reductions Based on Subsequent Calculations. Concurrently with any prepayment of the Loans and/or reduction of the Revolving Loan Commitments pursuant to Subsections II.D.2.c(1)-(f), Borrower shall deliver to Administrative Agent an Officer's Certificate demonstrating the calculation of the amount (the "Net Proceeds Amount") of the applicable Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds, Net Pension Proceeds, Net Securities Proceeds, or Consolidated Excess Cash Flow, as the case may be, that gave rise to such prepayment and/or reduction. If Borrower subsequently determines that the actual Net Proceeds Amount was greater than the amount set forth in such Officer's Certificate (including if any actual taxes to be paid as a result of an Asset Sale is less than the estimated taxes to be paid as a result of such Asset Sale), Borrower

48

shall promptly make an additional prepayment of the Loans (and/or, if applicable, the Revolving Loan Commitments shall be permanently reduced) in an amount equal to the amount of such excess, and Borrower shall concurrently therewith deliver to Administrative Agent an Officer's Certificate demonstrating the derivation of the additional Net Proceeds Amount resulting in such excess.

- (8) Prepayments Due to Reductions or Restrictions of Revolving Loan Commitments. Borrower shall from time to time prepay the Revolving Loans (or, if the Revolving Loans have been prepaid in full, cash collateralize Letters of Credit) to the extent necessary so that the Total Utilization of Revolving Loan Commitments shall not at any time exceed the Revolving Loan Commitments then in effect.

d. Application of Prepayments.

- (1) Application of Voluntary Prepayments by Type of Loans and Order of Maturity. Subject to the provisions of Subsection D4, any voluntary prepayments pursuant to Subsection II.D.2.a shall be applied as specified by

Borrower in the applicable notice of prepayment; provided that if Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied first to repay outstanding Tranche B Term Loans to the full extent thereof, second to prepay outstanding Revolving Loans to the full extent thereof and permanently reduce the Revolving Loan Commitments and third to cash collateralize any outstanding Letters of Credit and to further permanently reduce the Revolving Loan Commitments by the amount of such prepayment. Any voluntary prepayments of the Tranche B Term Loans pursuant to Subsection II.D.2.a shall be applied to reduce the scheduled installments of principal of the Tranche B Term Loans set forth in Subsection 2.4A(i) in inverse chronological order of maturity.

- (2) Application of Mandatory Prepayments by Type of Loans. Subject to Subsection II.D.4, any amount (the "Applied Amount") required to be applied as a mandatory prepayment of the Loans and/or a reduction of the Revolving Loan Commitments pursuant to Subsections II.D.2.c(1)-(7) shall be applied first to prepay the Tranche B Term Loans to the full extent thereof, second, to the

49

extent of any remaining portion of such Applied Amount, to prepay the Revolving Loans to the full extent thereof and to cash collateralize any outstanding Letters of Credit and to further permanently reduce the Revolving Loan Commitments by the amount of such prepayment, and third, to the extent of any remaining portion of such Applied Amount, to further permanently reduce the Revolving Loan Commitments to the full extent thereof.

- (3) Application of Mandatory Prepayments to Tranche B Term Loans and the Scheduled Installments of Principal Thereof. Subject to Subsection II.D.4, any mandatory prepayments of the Tranche B Term Loans pursuant to Subsection II.D.2.c shall be applied to reduce the scheduled installments of principal of the Tranche B Term Loans in inverse chronological order of maturity.
- (4) Application of Prepayments to Base Rate Loans and LIBOR Loans. Considering Tranche B Term Loans and Revolving Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to LIBOR Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Subsection F.3.

### 3. General Provisions Regarding Payments.

- a. Manner and Time of Payment. All payments by Borrower of principal, interest, fees and other Obligations hereunder and under the Notes shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 1:00 P.M. (New York City time) on the date due at the Administrative Agent's Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day. Borrower hereby authorizes Administrative Agent to charge its accounts with Administrative Agent in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose).
- b. Application of Payments. Prior to any payments being applied to principal or interest under this Agreement or under the Notes, such payments shall first be applied to any outstanding and payable

50

fees, costs, expenses, indemnities or other amounts (other than principal or interest due under the Loan Documents), as

determined in the reasonable opinion of Administrative Agent. Except as provided in Subsection II.B.3, all payments in respect of the principal amount of any Loan shall include payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest before application to principal.

- c. Apportionment of Payments. Aggregate principal and interest payments in respect of Term Loans and Revolving Loans shall be apportioned among all outstanding Loans to which such payments relate, in each case proportionately according to Lenders' respective Pro Rata Shares. Administrative Agent shall promptly distribute to each Lender, at its primary address set forth in the Register or at such other address as such Lender may request, its Pro Rata Share of all such payments received by Administrative Agent and the commitment fees of such Lender, if any, when received by Administrative Agent pursuant to Subsection II.C. Notwithstanding the foregoing provisions of this Subsection II.D.3.c, if, pursuant to the provisions of Subsection F.2, any Notice of Conversion/Continuation is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any LIBOR Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.
  - d. Payments on Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder, as the case may be.
4. Application of Proceeds of Collateral and Payments after Event of Default.
- a. Upon the occurrence and during the continuation of an Event of Default, (a) all payments received on account of the Obligations, whether from Borrower, from any Subsidiary Guarantor or otherwise, shall be applied by Administrative Agent against the Obligations and (b) all proceeds received by Administrative Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral under any Collateral Document

51

may, in the discretion of Administrative Agent, be held by Administrative Agent as Collateral for, and/or (then or at any time thereafter) applied in full or in part by Administrative Agent against, the applicable Secured Obligations (as defined in such Collateral Document), in each case in the following order of priority:

- (1) To the payment of all costs and expenses of such sale, collection or other realization, including reasonable fees and expenses of Administrative Agent and its agents and counsel, and all other expenses, liabilities and advances (other than advances made by Administrative Agent on behalf of Lenders) made or incurred by Administrative Agent in connection therewith, and all amounts for which Administrative Agent is entitled to compensation (including the fees described in Subsection C), reimbursement and indemnification under any Loan Document and all advances made by Administrative Agent thereunder for the account of the applicable Loan Party (other than advances made to a Loan Party for purposes of making a payment to any Lender that would otherwise be shared pro rata pursuant to clause (b) below), and to the payment of all costs and expenses paid or incurred by Administrative Agent in connection with the Loan Documents, all in accordance with Subsections IX.D, X.B and X.C and the other terms of this Agreement and the other Loan Documents;
- (2) thereafter, to the payment of all other Secured Obligations (as defined in such Collateral Document) or Guarantied Obligations (as defined in the Subsidiary Guaranty) for the ratable benefit of the holders

thereof (subject to the provisions of Subsection D3.b);  
and

- (3) thereafter, to the payment to or upon the order of such Loan Party or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

E. Use of Proceeds.  
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1. Tranche B Term Loans and Revolving Loans. The proceeds of the Tranche B Term Loans and the Revolving Loans shall be applied by Borrower (i) to fund the refinancing of the Existing Credit Agreement and other existing Indebtedness of Borrower and its Subsidiaries, and (ii) for working capital and other general corporate purposes, acquisitions and investments made in accordance with the terms hereof, payments of

52

litigation judgments or settlement of claims, and payment of Transaction Costs.

2. Margin Regulations. No portion of the proceeds of any borrowing under this Agreement shall be used by Borrower or any of its Subsidiaries in any manner that might cause the borrowing or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of such Board or to violate the Exchange Act, in each case as in effect on the date or dates of such borrowing and such use of proceeds.

F. Special Provisions Governing LIBOR Loans.  
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Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to LIBOR Loans as to the matters covered:

C. Determination of Applicable Interest Rate. As soon as practicable after 12:00 Noon (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall constitute prima facie evidence of such matters) the interest rate that shall apply to the LIBOR Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower and each Lender.

1. Inability to Determine Applicable Interest Rate. If Administrative Agent shall have determined (which determination shall constitute prima facie evidence of such matters), on any Interest Rate Determination Date with respect to any LIBOR Loans, that by reason of circumstances affecting the interbank Eurodollar market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted LIBOR, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Loans until such time as Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such notice no longer exist and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be for a Base Rate Loan.
2. Illegality or Impracticability of LIBOR Loans. If on any date any Lender shall have determined (which determination shall constitute prima facie evidence of such matters but shall be made only after consultation with Borrower and Administrative Agent) that the making, maintaining or continuation of its LIBOR Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with

53

any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful) or (ii) has become impracticable, or would cause such Lender material hardship, as a result of contingencies occurring after the date of this



Agreement which materially and adversely affect the interbank Eurodollar market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (a) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (b) to the extent such determination by the Affected Lender relates to a LIBOR Loan then being requested by Borrower pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, the Affected Lender shall make such Loan as (or convert such Loan to, as the case may be) a Base Rate Loan, (c) the Affected Lender's obligation to maintain its outstanding LIBOR Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (d) the Affected Loans shall automatically convert into Base Rate Loans at the end of the then current Interest Period for such LIBOR Loans or when or if required by law. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Loan then being requested by Borrower pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Borrower shall have the option, subject to the provisions of Subsection F3, to rescind such Notice of Borrowing or Notice of Conversion/Continuation as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Subsection II.G.3 shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Loans in accordance with the terms of this Agreement.

3. Compensation For Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, upon written request by that Lender (which request shall set forth the basis for requesting such amounts) pursuant to Subsection H, for all reasonable losses, expenses and liabilities (including any interest paid by that Lender to lenders of funds borrowed by it to make or carry its LIBOR Loans and any loss, expense or liability sustained by that Lender in connection with the liquidation or re-

54

employment of such funds) which that Lender may sustain: (i) if for any reason (other than a default by that Lender) a borrowing of any LIBOR Loan does not occur on a date specified therefor in a Notice of Borrowing or a telephonic request for borrowing, or a conversion to or continuation of any LIBOR Loan does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephonic request for conversion or continuation, (ii) if any prepayment or other principal payment or any conversion of any of its LIBOR Loans (including any prepayment described in Subsection II.D.2.a or conversion occasioned by the circumstances described in Subsection F2) occurs on a date prior to the last day of an Interest Period applicable to that Loan, (iii) if any prepayment of any of its LIBOR Loans is not made on any date specified in a notice of prepayment given by Borrower, or (iv) as a consequence of any other default by Borrower in the repayment of its LIBOR Loans when required by the terms of this Agreement; provided, however, that Borrower shall have no obligation to make any payment to any demanding party under this Subsection on account of any such increased costs or reduced amounts unless Borrower receives notice of such increased costs or reduced amounts within one hundred eighty (180) days after such Lender is able to determine the amount of such costs or amounts, accompanied by a certificate executed by an officer of the applicable Lender setting forth in reasonable detail the basis and calculation of the amount of such costs or amounts, which certificate shall constitute prima facie evidence of such costs or amounts.

4. Booking of LIBOR Loans. Any Lender may make, carry or transfer LIBOR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of that Lender.
5. Assumptions Concerning Funding of LIBOR Loans. Calculation of all amounts payable to a Lender under this Subsection F and under

Subsection G.1 shall be made as though that Lender had actually funded each of its relevant LIBOR Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted LIBOR in an amount equal to the amount of such LIBOR Loan and having a maturity comparable to the relevant Interest Period, whether or not its LIBOR Loans had actually been funded in such manner and through the transfer of such Eurodollar deposit from an offshore office of that Lender to a domestic office of that Lender in the United States of America; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Subsection F and under Subsection G.1.

6. LIBOR Loans After Default. After the occurrence of and during the continuation of a Potential Event of Default or an Event of Default,

55

(i) Borrower may not elect to have a Loan be made or maintained as, or converted to, a LIBOR Loan after the expiration of any Interest Period then in effect for that Loan and (ii) subject to the provisions of Subsection II.F.3, any Notice of Borrowing or Notice of Conversion/Continuation given by Borrower with respect to a requested borrowing or conversion/continuation that has not yet occurred shall be deemed to be rescinded by Borrower.

G. Increased Costs; Taxes; Capital Adequacy.  
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1. Compensation for Increased Costs and Taxes. Subject to the provisions of Subsection II.G.2 (which shall be controlling with respect to the matters covered thereby), if any Lender (including any Issuing Lender) shall determine (which determination shall constitute prima facie evidence of such matters) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Government Authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other Government Authority or quasi-Government Authority (whether or not having the force of law):
  - a. subjects such Lender (or its applicable lending office) to any additional Tax with respect to this Agreement or any of its obligations hereunder (including with respect to issuing or maintaining any Letters of Credit or purchasing or maintaining any participations therein or maintaining any Commitment hereunder) or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder;
  - b. imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to LIBOR Loans that are reflected in the definition of Adjusted LIBOR); or
  - c. imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the interbank Eurodollar market;

56

and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining its Loans or Commitments or agreeing to issue, issuing or maintaining any Letter of Credit or agreeing to purchase, purchasing or maintaining any participation therein or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the proviso below, such additional amount or amounts (in the form of an increased rate of, or a

different method of calculating, interest or otherwise as such Lender in its sole but reasonable discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder; provided, however, that Borrower shall have no obligation to make any payment to any demanding party under this Subsection on account of any such increased costs unless Borrower receives notice of such increased costs within one hundred eighty (180) days after such Lender is able to determine the amount of such costs, accompanied by a certificate executed by an officer of the applicable Lender setting forth in reasonable detail the basis and calculation of the amount of such costs, which certificate shall constitute prima facie evidence of such costs.

2. Withholding of Taxes.

- a. Payments to Be Free and Clear. Unless otherwise required by applicable law, all sums payable by Borrower under this Agreement and the other Loan Documents shall be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of Borrower or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.
- b. Grossing-up of Payments. If Borrower or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Borrower to Administrative Agent or any Lender under any of the Loan Documents:
  - (1) Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it;
  - (2) Borrower shall pay any such Tax when such Tax is due, regardless of whether the liability for payment of such Tax (i) is imposed on Borrower itself, Administrative Agent or any Lender or (ii) relates to any portion of any sums paid or payable to any Lender under any of the Loan Documents

57

with respect to which such Lender does not act for its own account;

- (3) the sum payable by Borrower in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and
- (4) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (b) above to pay, Borrower shall deliver to Administrative Agent and/or other affected parties evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority;

provided that (i) no such additional amount shall be required to be paid to any Lender under clause (c) above to the extent such additional amount relates to a portion of any sums paid or payable to such Lender under any of the Loan Documents with respect to which such Lender does not act for its own account and (ii) where any change after the date such Lender became a Lender in any such requirement for a deduction, withholding or payment as is mentioned therein results in an increase in the rate of such deduction, withholding or payment from that in effect at the date on which such Lender became a Lender, the resulting additional amount to be paid to such Lender under clause (c) above shall be limited to the amount by which such increase in rate increases the amount of any such required deduction, withholding or payment.

- c. Evidence of Exemption from or Reduction of U.S. Withholding Tax.

- (1) Each Lender that is organized under the laws of any

jurisdiction other than the United States or any state or other political subdivision thereof (for purposes of this Subsection GB(iii), a "Non-US Lender") shall deliver to Administrative Agent and to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of

58

Borrower or Administrative Agent (each in the reasonable exercise of its discretion), two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms) properly completed and duly executed by such Non-US Lender, or, in the case of a Non-US Lender claiming exemption from United States federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code with respect to payments of "portfolio interest", a Form W-8BEN, and, in the case of a Non-US Lender that has certified in writing to Administrative Agent that it is not a "bank" (as defined in Section 881(c)(3)(A) of the Internal Revenue Code), a certificate (the "Certificate re: Non-Bank Status") of such Non-US Lender certifying that such Non-US Lender is not (i) a "bank" for purposes of Section 881(c) of the Internal Revenue Code, (ii) a ten-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of Borrower, or (iii) a controlled foreign corporation related to Borrower (within the meaning of Section 864(d)(4) of the Internal Revenue Code) in all such cases together with any other certificate or statement of exemption required under the Internal Revenue Code or the regulations issued thereunder to establish that such Non-US Lender is not subject to United States withholding tax with respect to any payments to such Non-US Lender of interest payable under any of the Loan Documents.

- (2) Each Non-US Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to Administrative Agent and to Borrower, on or prior to the Closing Date (in the case of each Non-US Lender listed on the signature pages hereof), on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Non-US Lender), or on such later date when such Non-US Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (1) two original copies of the forms or statements required to be provided by such Non-US Lender under Subsection 2.7B(iii)(a), properly completed and duly

59

executed by such Non-US Lender, to establish the portion of any such sums paid or payable with respect to which such Non-US Lender acts for its own account that is not subject to United States withholding tax, and (2) two original copies of Internal Revenue Service Form W-8IMY (or any successor forms) properly completed and duly executed by such Non-US Lender, together with any information, if any, such Non-US Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Internal Revenue Code or the regulations issued thereunder, to establish that such Non-US Lender is not acting for its own account with respect to a portion of any such sums payable to such Non-US Lender.

- (3) Each Non-US Lender hereby agrees, from time to time after the initial delivery by such Non-US Lender of such forms, whenever a lapse in time or change in circumstances renders such forms, certificates or other

evidence so delivered obsolete or inaccurate in any material respect or if, by virtue of a change in law or regulations, such forms are no longer valid evidence of a person's exemption from withholding tax which is reasonably satisfactory to Borrower, that such Non-US Lender shall promptly (1) deliver to Administrative Agent and to Borrower two original copies of renewals, amendments or additional or successor forms, properly completed and duly executed by such Non-US Lender, together with any other certificate or statement of exemption required in order to confirm or establish that such Non-US Lender is not subject to United States withholding tax with respect to payments to such Non-US Lender under the Loan Documents and, if applicable, that such Non-US Lender does not act for its own account with respect to any portion of any such payments, or (2) notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence.

- (4) Upon written request of Borrower stating the reasons for such request, each Non-US Lender hereby agrees to provide, with respect to any sums payable under this Agreement, such additional forms, certificates, statements of exemption or other documentation; provided that this obligation shall not apply unless Borrower establishes to the satisfaction of such Non-US Lender that (i) Borrower is

60

required by law to make a deduction or withholding on account of any Tax imposed by a jurisdiction other than the United States of America or any political subdivision in or of the United States of America, (ii) such deduction or withholding will be reduced or eliminated at no cost to such Non-US Lender if such Non-US Lender provides such form, certificate, statement of exemption or other documentation, and (iii) providing such form, certificate, statement of exemption or other documentation, will not require disclosure of any confidential information to any Person.

- (5) Borrower shall not be required to pay any additional amount to any Non-US Lender under clause (c) of Subsection GB(ii) if such Non-US Lender shall have failed to satisfy the requirements of clause (a), (b), (c)(1) or (d) of this Subsection GB(iii); provided that if such Non-US Lender shall have satisfied the requirements of Subsection GB(iii)(a) on the date such Non-US Lender became a Lender or Subsection 2.7B(iii)(d) upon Borrower's initial written request, nothing in this Subsection GB(iii)(e) shall relieve Borrower of its obligation to pay any amounts pursuant to Subsection GB(ii)(c) if, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Non-US Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Non-US Lender is not subject to or subject only to partial withholding as described in Subsections GB(iii)(a) and (d).

3. Capital Adequacy Adjustment. If any Lender shall have determined that the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Government Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Government Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Commitments or Letters of Credit or participations therein or other

61

obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction; provided, however, that Borrower shall have no obligation to make any payment to any demanding party under this Subsection on account of any such increased costs unless Borrower receives notice of such increased costs within one hundred eighty (180) days after such Lender is able to determine the amount of such costs, accompanied by a certificate executed by an officer of the applicable Lender setting forth in reasonable detail the basis and calculation of the amount of such costs, which certificate shall constitute prima facie evidence of such costs.

H. Obligation of Lenders and Issuing Lenders to Mitigate.  
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Each Lender and Issuing Lender agrees that, as promptly as practicable after the officer of such Lender or Issuing Lender responsible for administering the Loans or Letters of Credit of such Lender or Issuing Lender, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender or Issuing Lender to receive payments under Subsection II.G or Subsection III.F, it will, to the extent not inconsistent with the internal policies of such Lender or Issuing Lender and any applicable legal or regulatory restrictions, use reasonable efforts (i) to make, issue, fund or maintain the Commitments of such Lender or the affected Loans or Letters of Credit of such Lender or Issuing Lender through another lending or letter of credit office of such Lender or Issuing Lender, or (ii) take such other measures as such Lender or Issuing Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender or Issuing Lender pursuant to Subsection II.G or Subsection III.F would be materially reduced and if, as determined by such Lender or Issuing Lender in its sole but reasonable discretion, the making, issuing, funding or maintaining of such Commitments or Loans or Letters of Credit through such other lending or letter of credit office or in accordance with such other measures, as the case may be, would not otherwise be disadvantageous to such Lender or Issuing Lender or materially adversely affect such Commitments or Loans or Letters of Credit or the interests of such Lender or Issuing Lender; provided that such Lender or Issuing Lender will not be obligated to utilize such other lending or letter of credit office pursuant to this Subsection II.H unless Borrower agrees to pay all incremental expenses incurred by such Lender or Issuing Lender as a result of utilizing such other lending or letter of credit office as described in clause (i) above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this

Subsection II.H (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender or Issuing Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

I. Replacement of a Lender  
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If any Lender becomes a Defaulting Lender or an Affected Lender (any such Lender, a "Subject Lender"), so long as (i) no Potential Event of Default or Event of Default shall have occurred and be continuing and Borrower has obtained a commitment from another Lender or an Eligible Assignee to purchase at par the Subject Lender's Loans and assume the Subject Lender's Commitments and all other obligations of the Subject Lender hereunder, (ii) such Lender is not an Issuing Lender with respect to any Letters of Credit outstanding (unless all such Letters of Credit are terminated or arrangements acceptable to such Issuing Lender (such as a "back-to-back" letter of credit) are made) and (iii), if applicable, the Subject Lender is unwilling to remedy its default or withholds any request for reimbursement upon ten (10) days prior written notice to the Subject Lender and Administrative Agent, Borrower may require the Subject Lender to assign all of its Loans and Commitments to such other Lender, Lenders, Eligible Assignee or Eligible Assignees pursuant to the provisions of Subsection 10.1B; provided that, prior to or concurrently with such replacement, (1) the Subject Lender shall have received payment in full of all principal, interest, fees and other amounts (including all amounts under Subsections 2.6D, 2.7 and/or 2.8 (if applicable)) through such date of replacement and a release from its obligations under the Loan Documents, (2) the processing fee required to be paid by Subsection 10.1B(i) shall have been paid to Administrative Agent, and (3) all

of the requirements for such assignment contained in Subsection 10.1B, including, without limitation, the consent of Administrative Agent (if required) and the receipt by Administrative Agent of an executed Assignment Agreement and other supporting documents, have been fulfilled; and provided further, that if Borrower seeks to exercise such right, Borrower must do so within sixty (60) days after Borrower first knows or should have known of the occurrence of the event or events giving rise to such right.

### III. LETTERS OF CREDIT

#### A. Issuance of Letters of Credit and Revolving Lenders' Purchase of ----- Participations Therein. -----

D. Letters of Credit. In addition to Borrower requesting that Lenders make Revolving Loans pursuant to Subsection II.A.b, Borrower may request, in accordance with the provisions of this Subsection III.A, from time to time during the period from the Closing Date to but excluding the 30th day prior to the Revolving Loan Commitment Termination Date, that one or more Revolving Lenders issue Letters of Credit for the account of Borrower for the purposes specified in the definition of Letters of Credit. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Borrower herein set forth, any one or more Revolving Lenders may, but (except as provided in Subsection III.A.2.c) shall not be obligated to, issue such Letters of Credit in accordance with the provisions of this Subsection III.A; provided that Borrower shall not request that any Revolving Lender issue (and no Revolving Lender shall issue):

63

- a. any Letter of Credit if, after giving effect to such issuance, the Total Utilization of Revolving Loan Commitments would exceed the Revolving Loan Commitments then in effect;
- b. any Letter of Credit if, after giving effect to such issuance, the Letter of Credit Usage would exceed \$25,000,000;
- c. any Letter of Credit having an expiration date later than the earlier of (a) ten days prior to the Revolving Loan Commitment Termination Date and (b) the date which is one year from the date of issuance of such Letter of Credit; provided that the immediately preceding clause (b) shall not prevent any Issuing Lender (but subject to clause (a) above) from agreeing that a Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each unless such Issuing Lender elects not to extend for any such additional period; and provided, further that such Issuing Lender shall elect not to extend such Letter of Credit if it has knowledge that an Event of Default or Potential Event of Default has occurred and is continuing (and has not been waived in accordance with Subsection X.F) at the time such Issuing Lender must elect whether or not to allow such extension;
- d. any Letter of Credit denominated in a currency other than Dollars; or
- e. any Letter of Credit with a face amount of less than \$10,000; or
- f. any Letter of Credit that violates applicable law or any policy of the applicable Issuing Lender relating to the issuance of Letters of Credit.

#### 2. Mechanics of Issuance.

- a. Request for Issuance. Whenever Borrower desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent a Request for Issuance of Letter of Credit substantially in the form of Exhibit III annexed hereto no later than 1:00 P.M. (New York City time) at least three Business Days, or in each case such shorter period as may be agreed to by the applicable Issuing Lender in any particular instance, in advance of the proposed date of issuance. The Request for Issuance of Letter of Credit shall specify (a) the proposed date of issuance (which shall be a Business Day), (b) the face amount of the Letter of Credit, (c) the expiration date of the Letter of Credit, (d) the name and address of the beneficiary, and (e) either the verbatim text of the proposed Letter of Credit or the proposed terms and conditions thereof, including a precise

description of any documents to be presented by the beneficiary which, if presented by the beneficiary prior to the expiration date of the Letter of Credit, would require the Issuing Lender thereof to make payment under the Letter of Credit and in the event CIBC is the Issuing Lender, such Request for Issuance of Letter of Credit shall attach a current application form from CIBC with respect to the issuance of such Letter of Credit; provided that the Issuing Lender, in its reasonable discretion, may require changes in the text of the proposed Letter of Credit or any such documents; and provided, further that no Letter of Credit shall require payment against a conforming draft to be made thereunder on the same Business Day (under the laws of the jurisdiction in which the office of the Issuing Lender to which such draft is required to be presented is located) that such draft is presented if such presentation is made after 10:00 a.m. (in the time zone of such office of the Issuing Lender) on such Business Day.

- b. Update of Certifications. Borrower shall notify the applicable Issuing Lender (and Administrative Agent, if Administrative Agent is not such Issuing Lender) prior to the issuance of any Letter of Credit if any of the matters to which Borrower is required to certify in the applicable Request for Issuance of Letter of Credit is no longer true and correct as of the proposed date of issuance of such Letter of Credit, and upon the issuance of any Letter of Credit Borrower shall be deemed to have re-certified, as of the date of such issuance, as to the matters to which Borrower is required to certify in the applicable Request for Issuance of Letter of Credit.
- c. Determination of Issuing Lender. Upon receipt by Administrative Agent of a Request for Issuance of Letter of Credit pursuant to Subsection III.A.2.a requesting the issuance of a Letter of Credit, if Administrative Agent elects to issue such Letter of Credit, Administrative Agent shall promptly so notify Borrower, and Administrative Agent shall be the Issuing Lender with respect thereto. If Administrative Agent, in its sole but reasonable discretion, elects not to issue such Letter of Credit, Administrative Agent shall promptly so notify Borrower, whereupon Borrower may request any other Revolving Lender to issue such Letter of Credit by delivering to such Revolving Lender a copy of the applicable Request for Issuance of Letter of Credit. Any Revolving Lender so requested to issue such Letter of Credit shall promptly notify Borrower and Administrative Agent whether or not, in its sole but reasonable discretion, it has elected to issue such Letter of Credit, and any such Revolving Lender that so elects to

issue such Letter of Credit shall be the Issuing Lender with respect thereto.

- d. Issuance of Letter of Credit. Upon satisfaction or waiver (in accordance with Subsection X.F) of the conditions set forth in Subsection IV.C, the applicable Issuing Lender shall issue the requested Letter of Credit in accordance with such Issuing Lender's standard operating procedures.
  - e. Notification to Lenders. Upon the issuance of or amendment to any Letter of Credit, the applicable Issuing Lender shall promptly notify Administrative Agent of such issuance or amendment. Promptly after receipt of such notice (or, if Administrative Agent is the Issuing Lender, together with such notice), Administrative Agent shall notify each Revolving Lender of the amount of such Revolving Lender's respective participation in such Letter of Credit, determined in accordance with Subsection III.A.3.
3. Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby agrees to, have irrevocably purchased from the Issuing Lender a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Revolving Lender's Pro Rata Share of the maximum amount which is or at any time may become available to be drawn thereunder.



B. Letter of Credit Fees.  
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Borrower agrees to pay the following amounts with respect to Letters of Credit issued hereunder:

- a. with respect to each Letter of Credit, (a) a fronting fee, payable to the Administrative Agent for the account of the applicable Issuing Lender for its own account, equal to 0.25% per annum of the daily amount available to be drawn under such Letter of Credit, and (b) a letter of credit fee, payable to Administrative Agent for the account of Revolving Lenders, equal to the Applicable LIBOR Margin for Revolving Loans multiplied by the daily amount available to be drawn under such Letter of Credit, each such fronting fee or letter of credit fee to be payable in arrears on the last Business Day of each March, June, September and December of each Fiscal Year, commencing on the first such date to occur after the Closing Date, and computed on the basis of a 360-day year for the actual number of days elapsed; and

66

- b. with respect to the issuance, amendment or transfer of each Letter of Credit and each payment of a drawing made thereunder (without duplication of the fees payable under clause (i) above), documentary and processing charges payable directly to the applicable Issuing Lender for its own account in accordance with such Issuing Lender's standard schedule for such charges in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

For purposes of calculating any fees payable under clauses (i) and (ii) of this Subsection III.B, the daily amount available to be drawn under any Letter of Credit shall be determined as of the close of business on any date of determination. Promptly upon receipt by Administrative Agent of any amount described in clause (i) or (ii) of this Subsection III.B, Administrative Agent shall distribute to each Revolving Lender its Pro Rata Share of such amount.

C. Drawings and Reimbursement of Amounts Paid Under Letters of Credit.  
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E. Responsibility of Issuing Lender With Respect to Drawings. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Issuing Lender shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit.

1. Reimbursement by Borrower of Amounts Paid Under Letters of Credit. If an Issuing Lender has determined to honor a drawing under a Letter of Credit issued by it, such Issuing Lender shall immediately notify Borrower and Administrative Agent, and Borrower shall reimburse such Issuing Lender on the date on which such drawing is honored (the "Reimbursement Date") in an amount in Dollars and in same day funds equal to the amount of such honored drawing plus interest thereon as provided in Subsection C3.a for the period from the date of drawing to the date on which such Revolving Loans are made (the "LC Reimbursement Amount"); provided that, anything contained in this Agreement to the contrary notwithstanding, (i) unless Borrower shall have notified Administrative Agent and such Issuing Lender prior to 1:00 P.M. (New York City time) on the date such drawing is honored that Borrower intends to reimburse such Issuing Lender for the LC Reimbursement Amount with funds other than the proceeds of Revolving Loans, Borrower shall be deemed to have given a timely Notice of Borrowing to Administrative Agent requesting Revolving Lenders to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the LC Reimbursement Amount (and Administrative Agent shall promptly give notice thereof to each Revolving Lender) and (ii) subject to satisfaction or waiver of the conditions specified in Subsection IV.B.1, Revolving Lenders shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in an amount equal to the

67

LC Reimbursement Amount, the proceeds of which shall be applied directly by Administrative Agent to reimburse such Issuing Lender in an amount equal to the LC Reimbursement Amount; and provided,

further that if for any reason proceeds of Revolving Loans are not received by Administrative Agent on the Reimbursement Date in an amount equal to the LC Reimbursement Amount, Borrower shall reimburse Administrative Agent, on demand, in an amount in same day funds equal to the excess of (x) the LC Reimbursement Amount over (y) the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Subsection III.C.1 shall be deemed to relieve any Revolving Lender from its obligation to make Revolving Loans on the terms and conditions set forth in this Agreement, and Borrower shall retain any and all rights it may have against any Revolving Lender resulting from the failure of such Revolving Lender to make such Revolving Loans under this Subsection III.C.1. The Issuing Lender may honor or dishonor any drawing in accordance with the terms of any Letter of Credit without regard to any instruction of Borrower.

2. Payment by Revolving Lenders of Unreimbursed Amounts Paid Under Letters of Credit.
  - a. Payment by Revolving Lenders. If Borrower shall fail for any reason to reimburse any Issuing Lender (or Administrative Agent) as provided in Subsection III.C.1 in an amount equal to the amount of any drawing honored by such Issuing Lender under a Letter of Credit issued by it, Administrative Agent shall promptly notify each other Revolving Lender of the unreimbursed amount of such honored drawing and of such other Revolving Lender's respective participation therein based on such Revolving Lender's Pro Rata Share of the Revolving Loan Commitment by telefacsimile or by telephone promptly confirmed by telefacsimile. Each Revolving Lender shall make available to Administrative Agent for the account of such Issuing Lender an amount equal to its respective participation, in Dollars and in same day funds, at the Administrative Agent's Office, not later than 2:00 P.M. (New York City time) on the Business Day notified by Administrative Agent. If any Revolving Lender fails to make available to Administrative Agent for the account of such Issuing Lender on such Business Day the amount of such Revolving Lender's participation in such Letter of Credit as provided in this Subsection III.C.2, Administrative Agent and/or such Issuing Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the rate customarily used by such Issuing Lender for the correction of errors among banks for three Business Days and thereafter at the Base Rate. Nothing in this

68

Subsection III.C.2 shall be deemed to prejudice the right of any Revolving Lender to recover from any Issuing Lender any amounts made available by such Revolving Lender to such Issuing Lender pursuant to this Subsection III.C.2 if it is determined by the final non-appealable judgment of a court of competent jurisdiction that the payment with respect to a Letter of Credit by such Issuing Lender in respect of which payment was made by such Issuing Lender constituted gross negligence or willful misconduct on the part of such Issuing Lender.

- b. Distribution to Revolving Lenders of Reimbursements Received From Borrower. If Administrative Agent for the account of any Issuing Lender shall have been reimbursed by other Revolving Lenders pursuant to Subsection III.C.2.a for all or any portion of any drawing honored by such Issuing Lender under a Letter of Credit issued by it, Administrative Agent shall promptly distribute to each other Revolving Lender that has paid all amounts payable by it under Subsection III.C.2.a with respect to such honored drawing such other Revolving Lender's Pro Rata Share of the Revolving Loan Commitment of all payments subsequently received by Administrative Agent for the account of such Issuing Lender from Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Revolving Lender at its primary address set forth below its name in the Register or at such other address or such account as such Revolving Lender may request.
3. Interest on Amounts Paid Under Letters of Credit.
    - a. Payment of Interest by Borrower. Borrower agrees to pay to Administrative Agent for the account of each Issuing Lender, with respect to drawings honored under any Letters of Credit issued by it, interest on the amount paid by such Issuing

Lender in respect of each such honored drawing from the date a drawing is honored to but excluding the date such amount is reimbursed by Borrower (including any such reimbursement out of the proceeds of Revolving Loans pursuant to Subsection III.C.1) at a rate equal to (a) for the period from the date such drawing is honored to but excluding the Reimbursement Date, the rate then in effect under this Agreement with respect to Revolving Loans that are Base Rate Loans and (b) thereafter, a rate that is 2.00% per annum in excess of the rate of interest otherwise payable under this Agreement with respect to Revolving Loans that are Base Rate Loans. Interest payable pursuant to this Subsection III.C.3.a shall be computed on the basis of a 365/366-day year (as applicable), for the actual number of days elapsed in the period during which it accrues and

69

shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full.

- b. Distribution of Interest Payments by Administrative Agent. Promptly upon receipt by Administrative Agent for the account of any Issuing Lender of any payment of interest pursuant to Subsection III.C.3.a with respect to a drawing honored under a Letter of Credit issued by it, (a) Administrative Agent shall distribute to each Revolving Lender, out of the interest received by Administrative Agent in respect of the period from the date such drawing is honored to but excluding the date on which such Issuing Lender is reimbursed for the amount of such honored drawing (including any such reimbursement out of the proceeds of Revolving Loans pursuant to Subsection III.C.1), the amount that such other Revolving Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period pursuant to Subsection III.B if no drawing had been honored under such Letter of Credit, and (b) if such Issuing Lender shall have been reimbursed by Revolving Lenders pursuant to Subsection III.C.2.a for all or any portion of such honored drawing, such Issuing Lender shall pay to Administrative Agent for the account of each such Revolving Lender that has paid all amounts payable by it under Subsection III.C.2.a with respect to such honored drawing such other Revolving Lender's Pro Rata Share of the Revolving Loan Commitment of any interest received by such Issuing Lender in respect of that portion of such honored drawing so reimbursed by Revolving Lenders for the period from the date on which such Issuing Lender was so reimbursed by Revolving Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrower. Any such distribution shall be made to a Revolving Lender at its primary address set forth in the Register or at such other address as such Revolving Lender may request.

D. Obligations Absolute.

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The obligation of Borrower to reimburse each Issuing Lender (or Administrative Agent for the account of such Issuing Lender) for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Revolving Lenders pursuant to Subsection III.C.1 and the obligations of Revolving Lenders under Subsection III.C.2.a shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances including any of the following circumstances:

- a. any lack of validity or enforceability of any Letter of Credit;
- b. the existence of any claim, set-off, defense or other right which Borrower or any Revolving Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), any Issuing Lender or other Lender or any other Person or, in the case of a Lender, against Borrower, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between Borrower or any of its Subsidiaries and the beneficiary for which any Letter of

70

Credit was procured);

- c. any draft or other document presented under any 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;
- d. payment by the applicable Issuing Lender under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit;
- e. any adverse change in the business, operations, properties, assets, financial condition or prospects of Borrower or any of its Subsidiaries;
- f. any breach of this Agreement or any other Loan Document by any party thereto;
- g. any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or
- h. the fact that an Event of Default or a Potential Event of Default shall have occurred and be continuing;

provided, in each case, that payment by the applicable Issuing Lender under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of such Issuing Lender under the circumstances in question (as determined by a final non-appealable judgment of a court of competent jurisdiction).

E. Indemnification; Nature of Issuing Lenders' Duties.  
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F. Indemnification. In addition to amounts payable as provided in Subsection III.F, Borrower hereby agrees to protect, indemnify, pay and save harmless Administrative Agent, Co-Lead Arrangers, each Issuing Lender and each other Lender from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel and allocated costs of internal counsel) which such Person may incur or be subject to as a consequence, direct or indirect, of (i) the

71

issuance or honoring of any Letter of Credit by such Issuing Lender, other than as a result of (a) the gross negligence or willful misconduct of such Issuing Lender as determined by a final non-appealable judgment of a court of competent jurisdiction or (b) subject to the following clause (ii), the wrongful dishonor by such Issuing Lender of a proper demand for payment made under any Letter of Credit issued by it or (ii) the failure of such Issuing Lender to honor a drawing under any such Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Government Authority (all such acts or omissions herein called "Governmental Acts").

- 1. Nature of Issuing Lenders' Duties. As between Borrower and any Issuing Lender, Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by such Issuing Lender by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, such Issuing Lender shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of such Issuing Lender, including any Governmental Acts,

and none of the above shall affect or impair, or prevent the vesting of, any of such Issuing Lender's or any other Lender's rights or powers hereunder.

In furtherance and extension and not in limitation of the specific provisions set forth in the first paragraph of this Subsection III.E.1, any action taken or omitted by any Issuing Lender under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not put such Issuing Lender or any other Lender under any resulting liability to Borrower.

Notwithstanding anything to the contrary contained in this Subsection III.E, Borrower shall retain any and all rights it may have against any Issuing Lender for any liability to the extent arising out of the gross negligence or willful misconduct of such Issuing Lender, as determined by a final non-appealable judgment of a court of competent jurisdiction.

72

F. Increased Costs and Taxes Relating to Letters of Credit.  
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Subject to the provisions of Subsection II.G.2 (which shall be controlling with respect to the matters covered thereby), if any Issuing Lender or Revolving Lender shall determine (which determination shall constitute prima facie evidence of such matters) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Government Authority, in each case that becomes effective after the date hereof, or compliance by any Issuing Lender or Revolving Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other Government Authority or quasi-Government Authority (whether or not having the force of law):

- a. subjects such Issuing Lender or Revolving Lender (or its applicable lending or letter of credit office) to any additional Tax (other than any Tax on the overall net income of such Issuing Lender or Revolving Lender) with respect to the issuing or maintaining of any Letters of Credit or the purchasing or maintaining of any participations therein or any other obligations under this III, whether directly or by such being imposed on or suffered by any particular Issuing Lender;
- b. imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement in respect of any Letters of Credit issued by any Issuing Lender or participations therein purchased by any Revolving Lender; or
- c. imposes any other condition (other than with respect to a Tax matter) on or affecting such Issuing Lender or Revolving Lender (or its applicable lending or letter of credit office) regarding this III or any Letter of Credit or any participation therein;

and the result of any of the foregoing is to increase the cost to such Issuing Lender or Revolving Lender of agreeing to issue, issuing or maintaining any Letter of Credit or agreeing to purchase, purchasing or maintaining any participation therein or to reduce any amount received or receivable by such Issuing Lender or Revolving Lender (or its applicable lending or letter of credit office) with respect thereto; then, in any case, Borrower shall promptly pay to such Issuing Lender or Revolving Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts as may be necessary to compensate such Issuing Lender or Revolving Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Issuing Lender or Revolving Lender shall deliver to Borrower a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Issuing Lender or Revolving Lender under this Subsection III.F, which statement shall constitute prima facie evidence of such additional amounts.

73

IV. CONDITIONS TO LOANS AND LETTERS OF CREDIT

The obligations of Lenders to make Loans and an Issuing Lender to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions.

A. Conditions to Tranche B Term Loans and Initial Revolving Loans.

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The obligations of Lenders to make the Tranche B Term Loans and any Revolving Loans to be made on the Closing Date are, in addition to the conditions precedent specified in Subsection IV.B, subject to prior or concurrent satisfaction of the following conditions:

G. Loan Party Documents. On or before the Closing Date, Borrower shall, and shall cause each other Loan Party to, deliver to Administrative Agent the following with respect to Borrower or such Loan Party, as the case may be, each, unless otherwise noted, dated the Closing Date:

- a. Copies of the Organizational Documents of such Loan Party, certified by the secretary or similar Officer of the applicable Loan Party, together with a good standing certificate from the Secretary of State of its jurisdiction of organization, each dated a recent date prior to the Closing Date;
  - b. Resolutions of the Governing Body of each Loan Party approving and authorizing the execution, delivery and performance of the Loan Documents to which it is a party, certified as of the Closing Date by the secretary or similar Officer of such Person as being in full force and effect without modification or amendment;
  - c. Signature and incumbency certificates of the Officers of each Loan Party executing the Loan Documents to which it is a party;
  - d. Executed originals of the Loan Documents to which each Loan Party is a party; and
  - e. Such other documents as Administrative Agent may reasonably request.
2. No Material Adverse Effect. Since September 28, 2002, no Material Adverse Effect (in the sole opinion of Administrative Agent) shall have occurred.
3. Fees. Borrower shall have paid to Administrative Agent, for distribution (as appropriate) to Administrative Agent and Lenders, the fees payable on the Closing Date referred to in Subsection II.C.

74

4. Corporate and Capital Structure, and Ownership. The corporate organizational structure, capital structure, ownership, and jurisdiction of organization of Borrower and its Subsidiaries shall be as set forth on Schedule 4.1D annexed hereto.
5. Representations and Warranties; Performance of Agreements. Borrower shall have delivered to Administrative Agent (for delivery to Lenders) an Officer's Certificate, in form and substance reasonably satisfactory to Administrative Agent, to the effect that the representations and warranties in V hereof are true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date (or, to the extent such representations and warranties specifically relate to an earlier date, that such representations and warranties were true, correct and complete in all material respects on and as of such earlier date) and that Borrower has performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the Closing Date except as otherwise disclosed to and agreed to in writing by Administrative Agent; provided that where a representation and warranty, covenant or condition is qualified as to materiality, such materiality qualifier shall be disregarded for purposes of this condition.
6. Financial Statements. On or before the Closing Date, Lenders shall have received from Borrower audited and unaudited financial statements of Borrower and its Subsidiaries.
7. Opinions of Counsel to Loan Parties. Lenders shall have received originally executed copies of one or more favorable written opinions of Orrick, Herrington & Sutcliffe LLP, counsel for Borrower and certain Subsidiary Guarantors, in form and substance reasonably satisfactory to Administrative Agent and its counsel, dated as of the Closing Date and setting forth substantially the matters in the opinions designated in Exhibit VII annexed hereto and as to such other matters as Administrative Agent acting on

behalf of Lenders may reasonably request (this Credit Agreement constituting a written request by Borrower to such counsel to deliver such opinions to Lenders).

8. Solvency Assurances. On the Closing Date, Administrative Agent and Lenders shall have received an Officer's Certificate of Borrower dated the Closing Date, substantially in the form of Exhibit IX annexed hereto and with appropriate attachments, demonstrating that, after giving effect to the consummation of the transactions contemplated by the Loan Documents, Borrower and its Subsidiaries, taken as a whole, will be Solvent.
9. Evidence of Insurance. Administrative Agent shall have received a certificate from Borrower's insurance broker or other evidence satisfactory

75

to it that all insurance required to be maintained pursuant to Subsection VI.D is in full force and effect and that Administrative Agent on behalf of Lenders has been named as additional insured and/or loss payee thereunder to the extent required under Subsection VI.D.

10. Necessary Governmental Authorizations and Consents; Expiration of Waiting Periods, Etc. Borrower shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are reasonably necessary in connection with the transactions contemplated by the Loan Documents and the continued operation of the business conducted by Borrower and its Subsidiaries in substantially the same manner as conducted by Borrower prior to the Closing Date. Each such Governmental Authorization or consent shall be in full force and effect, except in a case where the failure to obtain or maintain a Governmental Authorization or consent, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Loan Documents. No action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable Government Authority to take action to set aside its consent on its own motion shall have expired.
11. [Reserved]
12. Security Interests in Personal and Mixed Property. To the extent not otherwise satisfied pursuant to Subsection IV.A.13, Administrative Agent shall have received evidence satisfactory to it that Borrower and Subsidiary Guarantors shall have taken or caused to be taken all such actions, executed and delivered or caused to be executed and delivered all such agreements, documents and instruments, and made or caused to be made all such filings and recordings (other than the filing or recording of items described in clauses (ii), (iii) and (iv) below) that may be reasonably necessary or, in the reasonable opinion of Administrative Agent, desirable in order to create in favor of Administrative Agent, for the benefit of Lenders, a valid and (upon such filing and recording) perfected First Priority Lien in the entire personal and mixed property Collateral, other than certain Intellectual Property. Such actions shall include the following:

- a. Schedules to Collateral Documents. Delivery to Administrative Agent of accurate and complete schedules to all of the applicable Collateral Documents;

76

- b. Stock Certificates and Instruments. Delivery to Administrative Agent of (a) certificates (which certificates shall be accompanied by irrevocable undated stock powers, duly endorsed in blank and otherwise satisfactory in form and substance to Administrative Agent) representing all Capital Stock evidenced by certificates pledged pursuant to the Security Agreement and (b) all promissory notes or other instruments (duly endorsed, where appropriate, in a manner reasonably satisfactory to Administrative Agent) evidencing any Collateral having a value in excess of \$2,000,000;

- c. Lien Searches and UCC Termination Statements. Delivery to

Administrative Agent of (a) the results of a recent search, by a Person reasonably satisfactory to Administrative Agent, of all effective UCC financing statements and fixture filings and all judgment and tax lien filings which may have been made with respect to any personal or mixed property of any Loan Party, together with copies of all such filings disclosed by such search, and (b) authorization to file UCC termination statements in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements or fixture filings disclosed in such search (other than any such financing statements or fixture filings in respect of Liens permitted to remain outstanding pursuant to the terms of this Agreement);

- d. UCC Financing Statements and Fixture Filings. Delivery to Administrative Agent of UCC financing statements and, where appropriate, fixture filings, with respect to all personal and mixed property Collateral of such Loan Party, for filing in all jurisdictions as may be reasonably necessary or, in the reasonable opinion of Administrative Agent, desirable to perfect the security interests created in such Collateral pursuant to the Collateral Documents;
- e. PTO Terminations, Cover Sheets, Etc. Delivery to Administrative Agent of (a) PTO termination statements duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective PTO filings in respect of IP Collateral (other than any such PTO filings in respect of Liens permitted to remain outstanding pursuant to the terms of this Agreement), and (b) all cover sheets or other documents or instruments required to be filed with the PTO in order to create or perfect Liens in respect of any copyrights and trademarks;
- f. Opinions of Local Counsel. Delivery to Administrative Agent of an opinion of counsel (which counsel shall be reasonably satisfactory to Administrative Agent) under the laws of each jurisdiction in which Borrower or any Material Subsidiary is

77

organized addressed to Administrative Agent and Lenders with respect to the creation and perfection of the security interests in favor of Administrative Agent in such Collateral and such other matters governed by the laws of such jurisdiction regarding such security interests as Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to Administrative Agent; and

- g. Deposit Account Control Agreement. Delivery to Administrative Agent of a Deposit Account Control Agreement sufficient to perfect the security interests created in the deposit accounts held at Banc of America Securities LLC pursuant to the Collateral Documents.
13. Closing Date Mortgages; Closing Date Mortgage Policies; Etc. Administrative Agent shall have received from Borrower and each applicable Subsidiary Guarantor:
- a. Closing Date Mortgages. Fully executed and notarized Mortgages (each a "Closing Date Mortgage" and, collectively, the "Closing Date Mortgages"), in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each Real Property Asset listed in Schedule 4.1M annexed hereto (each a "Closing Date Mortgaged Property" and, collectively, the "Closing Date Mortgaged Properties");
  - b. Opinions of Local Counsel. An opinion of counsel (which counsel shall be reasonably satisfactory to Administrative Agent) in Georgia and Wisconsin with respect to the enforceability of the form(s) of Closing Date Mortgages to be recorded in such state and such other matters as Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to Administrative Agent;
  - c. Title Insurance. (a) ALTA mortgagee title insurance policies or unconditional commitments therefor (the "Closing Date Mortgage Policies") issued by the Title Company with respect to the Closing Date Mortgaged Properties listed in Part A of Schedule 4.1M annexed hereto, in amounts not less than the respective amounts designated therein with respect to any particular Closing Date Mortgaged Properties, insuring fee



simple title to, or a valid leasehold interest in, each such Closing Date Mortgaged Property vested in such Loan Party and assuring Administrative Agent that the applicable Closing Date Mortgages create valid and enforceable First Priority mortgage Liens on the respective Closing Date Mortgaged Properties encumbered thereby, which Closing

78

Date Mortgage Policies (1) shall include the following endorsements to the extent available in the states where the Closing Date Mortgaged Properties are located: comprehensive, mechanics' lien, variable rate, street address, separate tax lot, survey, contiguity, zoning (ALTA 3.1), street access, usury, subdivision map act, revolving credit, tie-in, creditors' rights, doing business, first loss and last dollar and any other matters reasonably requested by Administrative Agent and (2) shall provide for affirmative insurance and such reinsurance as Administrative Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to Administrative Agent; and (b) evidence reasonably satisfactory to Administrative Agent that such Loan Party has (i) delivered to the Title Company all certificates and affidavits required by the Title Company in connection with the issuance of the Closing Date Mortgage Policies and (ii) paid to the Title Company or to the appropriate governmental authorities all expenses and premiums of the Title Company in connection with the issuance of the Closing Date Mortgage Policies and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Closing Date Mortgages in the appropriate real estate records;

- d. Title Reports. With respect to each Closing Date Mortgaged Property listed in Part B of Schedule 4.1M annexed hereto, a title report issued by the Title Company with respect thereto, dated not more than 30 days prior to the Closing Date and satisfactory in form and substance to Administrative Agent;
- e. Copies of Documents Relating to Title Exceptions. Copies of all recorded documents listed as exceptions to title or otherwise referred to in the Closing Date Mortgage Policies or in the title reports delivered pursuant to Subsection IV.A.13.d;
- f. Surveys. Any surveys for the Closing Date Mortgaged Properties to the extent currently in the possession of Borrower or its Subsidiaries;
- g. Matters Relating to Flood Hazard Properties. (a) Evidence, which may be in the form of a letter from an insurance broker or a municipal engineer, as to whether (1) any Closing Date Mortgaged Property is a Flood Hazard Property and (2) the community in which any such Flood Hazard Property is located is participating in the National Flood Insurance Program, (b) if there are any such Flood Hazard Properties, such Loan Party's written acknowledgement of receipt of written notification from

79

Administrative Agent (1) as to the existence of each such Flood Hazard Property and (2) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program, and (c) if any such Flood Hazard Property is located in a community that participates in the National Flood Insurance Program, evidence that Borrower has obtained flood insurance in respect of such Flood Hazard Property to the extent required under the applicable regulations of the Board of Governors of the Federal Reserve System; and

- h. Environmental Indemnity. The Environmental Indemnity Agreement, satisfactory in form and substance to Administrative Agent and its counsel, with respect to the indemnification of Administrative Agent and Lenders for any liabilities that may be imposed on or incurred by any of them as a result of any Hazardous Materials Activity.

- 14. Matters Relating to Existing Indebtedness of Borrower and its Subsidiaries.

- a. Termination of Existing Credit Agreements and Related Liens; Existing Letters of Credit. On the Closing Date, Borrower and its Subsidiaries shall have (a) repaid in full all Indebtedness outstanding under the Existing Credit Agreement (the aggregate principal amount of which Indebtedness shall not exceed \$175,000,000), (b) terminated any commitments to lend or make other extensions of credit thereunder, (c) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Indebtedness or other obligations of Borrower and its Subsidiaries thereunder, and (d) made arrangements reasonably satisfactory to Administrative Agent with respect to the cancellation of any letters of credit outstanding thereunder or the provision of cash collateral or the issuance of Letters of Credit to support the obligations of Borrower and its Subsidiaries with respect thereto.
- b. Existing Indebtedness to Remain Outstanding. Administrative Agent shall have received an Officer's Certificate of Borrower stating that, after giving effect to the transactions described in this Subsection IV.A.14, the Indebtedness of Loan Parties (other than Indebtedness under the Loan Documents) shall consist of (a) the Senior Subordinated Notes issued pursuant to the Senior Subordinated Indenture, (b) the aggregate principal amount set forth on Part I of Schedule 7.1 of outstanding Indebtedness described in Part I of Schedule 7.1 annexed hereto and (c) Indebtedness in an aggregate amount not to exceed the amount

80

set forth on Part II of Schedule 7.1 in respect of Capital Leases described in Part II of Schedule 7.1 annexed hereto. The terms and conditions of all such Indebtedness shall be in form and in substance reasonably satisfactory to Administrative Agent.

- 15. Completion of Proceedings. All corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent, acting on behalf of Lenders, and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request.
- 16. No Disruption of Financial Markets. There shall have not occurred any material adverse change in the financial markets, as determined by Administrative Agent in its sole discretion.
- 17. Minimum Consolidated EBITDA; Maximum Consolidated Total Leverage Ratio. On the Closing Date, Administrative Agent shall have received an Officers' Certificate executed by the chief financial officer of Borrower, dated the Closing Date, with appropriate attachments, demonstrating that, after giving effect to the transactions contemplated by this Agreement, (i) Consolidated EBITDA for the twelve month period ending on the Closing Date is not less than \$83,000,000, and (ii) the Consolidated Total Leverage Ratio does not exceed 3.10:1.00.
- 18. OFAC Compliance. Administrative Agent shall have received an Officer's Certificate of Borrower dated the Effective Date, substantially in the form of Exhibit XVI annexed hereto, certifying that neither the Borrower nor any of its Affiliates is on the SDN List and the performance by Administrative Agent of its duties under this Agreement or any other Loan Document with respect to Borrower or its Affiliates does not violate the Executive Order, the USA Patriot Act of 2001 or the United States Foreign Corrupt Practices Act of 1977.

B. Conditions to All Loans.

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The obligations of Lenders to make Loans on each Funding Date are subject to the following further conditions precedent:

H. Administrative Agent shall have received before that Funding Date, in accordance with the provisions of Subsection II.A.2, an originally executed Notice of Borrowing, in each case signed by a duly authorized Officer of Borrower.

## 1. As of that Funding Date:

- a. The representations and warranties contained herein and in the other Loan Documents shall be true, correct and complete in all material respects on and as of that Funding Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, correct and complete in all material respects on and as of such earlier date; provided, that where a representation and warranty is already qualified as to materiality, such materiality qualifier shall be disregarded for purposes of this condition;
- b. No event shall have occurred and be continuing or would result from the consummation of the borrowing contemplated by such Notice of Borrowing and the application of proceeds thereof that would constitute an Event of Default or a Potential Event of Default;
- c. Each Loan Party shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before that Funding Date;
- d. No order, judgment or decree of any arbitrator or Government Authority shall purport to enjoin or restrain any Lender from making the Loans to be made by it on that Funding Date;
- e. The making of the Loans requested on such Funding Date shall not violate any law including Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System;
- f. There shall not be pending or, to the knowledge of Borrower, threatened, any action, suit, proceeding, governmental investigation or arbitration against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries that has not been disclosed by Borrower in writing pursuant to Subsection V.F or VI.A.h prior to the making of the last preceding Loans (or, in the case of the initial Loans, prior to the execution of this Agreement), and there shall have occurred no development not so disclosed in any such action, suit, proceeding, governmental investigation or arbitration so disclosed, that, in either event, in the reasonable opinion of Administrative Agent or of Requisite Lenders, could reasonably be expected to have a Material Adverse Effect; and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining

order to be issued shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans hereunder; and

- g. Borrower shall have delivered such other certificates or documents that Administrative Agent shall reasonably request, in form and substance reasonably satisfactory to Administrative Agent.

## C. Conditions to Letters of Credit.

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The issuance of any Letter of Credit hereunder (whether or not the applicable Issuing Lender is obligated to issue such Letter of Credit) and the renewal of any Letter of Credit hereunder is subject to the following conditions precedent:

I. On or before the date of issuance of the initial Letter of Credit pursuant to this Agreement, the initial Loans shall have been made.

- 1. On or before the date of issuance of such Letter of Credit, Administrative Agent shall have received, in accordance with the provisions of Subsection III.A, a Request for Issuance (or a

facsimile copy thereof) in each case signed by a duly authorized Officer of Borrower, together with all other information specified in Subsection III.A and such other documents or information as the applicable Issuing Lender may reasonably require in connection with the issuance of such Letter of Credit.

2. On the date of issuance of such Letter of Credit, all conditions precedent described in Subsection IV.B.1 shall be satisfied to the same extent as if the issuance of such Letter of Credit were the making of a Loan and the date of issuance of such Letter of Credit were a Funding Date.

#### V. BORROWER'S REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make the Loans, to induce Issuing Lenders to issue Letters of Credit and to induce other Lenders to purchase participations therein, Borrower represents and warrants to each Lender, on the date of this Agreement, on each Funding Date and on the date of issuance of each Letter of Credit, and the renewal of any Letter of Credit hereunder that the following statements are true, correct and complete:

83

##### A. Organization, Powers, Qualification, Good Standing, Business and ----- Subsidiaries. -----

J. Organization and Powers. Each Loan Party is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as specified in Schedule 5.1 annexed hereto. Each Loan Party has all requisite corporate power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

1. Qualification and Good Standing. Each Loan Party is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had and could not reasonably be expected to result in a Material Adverse Effect.
2. Conduct of Business. Borrower and its Subsidiaries are engaged only in the businesses permitted to be engaged in pursuant to Subsection VII.M.
3. Subsidiaries. All of the Subsidiaries of Borrower and their jurisdictions of organization are identified in Schedule 5.1 annexed hereto, as said Schedule 5.1 may be supplemented from time to time pursuant to the provisions of Subsection VI.A.m. The Capital Stock of Borrower and each of the Subsidiaries of Borrower identified in Schedule 5.1 annexed hereto (as so supplemented) is duly authorized, validly issued, fully paid and nonassessable and none of such Capital Stock constitutes Margin Stock. Each of the Subsidiaries of Borrower identified in Schedule 5.1 annexed hereto (as so supplemented) is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization set forth therein, has all requisite power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, and is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, in each case except where failure to be so qualified or in good standing or a lack of such power and authority has not had and could not reasonably be expected to result in a Material Adverse Effect. Schedule 5.1 annexed hereto (as so supplemented) correctly sets forth the ownership interest of Borrower and each of its Subsidiaries in each of the Subsidiaries of Borrower identified therein.

84

##### B. Authorization of Borrowing, etc. -----

K. Authorization of Borrowing. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary

action on the part of each Loan Party that is a party thereto.

1. No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (i) violate any provision of the Organizational Documents of Borrower or any of its Subsidiaries, (ii) violate any provision of any law or any governmental rule or regulation applicable to Borrower or any of its Subsidiaries, or any order, judgment or decree of any court or other Government Authority binding on Borrower or any of its Subsidiaries, in each case the violation of which could reasonably be expected to have a Material Adverse Effect, (iii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Borrower or any of its Subsidiaries, in each case the violation of which could reasonably be expected to have a Material Adverse Effect, (iv) result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower or any of its Subsidiaries (other than any Liens created under any of the Loan Documents in favor of Administrative Agent on behalf of Lenders), (v) require any approval of stockholders or any approval or consent of any Person under any Contractual Obligation of Borrower or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders, (vi) other than as specifically mentioned in clauses (i) through (v) above, conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any other contractual obligation of Borrower or any of its Subsidiaries, which conflicts, breaches or defaults, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (vii) otherwise impose any liability upon Administrative Agent or any Lenders.
2. Governmental Consents. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not require registration with, consent or approval of, or notice to, or other action to, with or by, any Government Authority the failure of which to obtain could reasonably be expected to have a Material Adverse Effect.
3. Binding Obligation. Each of the Loan Documents has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable

85

against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4. Compliance with Laws. Borrower and its Subsidiaries are in compliance with all presently existing applicable statutes, laws, regulations, rules, ordinances and orders of any kind whatsoever (including, without limitation, any zoning and building laws or ordinances, subdivision laws or ordinances, any Environmental Laws or any presently existing rules, regulations or orders of any Government Authority), and with all present existing covenants and restrictions of record relating to the use and occupancy of any of their respective properties, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

C. Financial Condition.

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Borrower has heretofore delivered to Lenders, at Lenders' request, the financial statements and information required to be delivered pursuant to Subsection IV.A.6. All such statements other than pro forma financial statements were prepared in conformity with GAAP and fairly present, the financial position (on a consolidated basis) of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated basis) of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. No Loan Party has (and will not have following the funding of the initial Loans) any Contingent Obligation, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that, as of the Closing Date, is not reflected in the foregoing financial statements or the notes thereto and, as of any Funding Date subsequent to the Closing Date, is not

reflected in the most recent financial statements delivered to Lenders pursuant to Subsection VI.A or the notes thereto and that, in any such case, is material in relation to the business, operations, properties, assets, financial condition or prospects of Borrower or any of its Subsidiaries.

D. No Material Adverse Change; No Restricted Junior Payments.  
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Since September 28, 2002, no event or change has occurred that has resulted in or evidences, either in any case or in the aggregate, a Material Adverse Effect. Since September 28, 2002, neither Borrower nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted by Subsection VII.E.

E. Title to Properties; Liens; Real Property; Intellectual Property.  
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L. Title to Properties; Liens. Borrower and its Subsidiaries have (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold

86

interests in (in the case of leasehold interests in real or personal property), or (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in the financial statements referred to in Subsection V.C or in the most recent financial statements delivered pursuant to Subsection VI.A, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Subsection VII.G. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

1. Real Property. As of the Closing Date, Schedule 5.5B annexed hereto contains a true, accurate and complete list of (i) all fee interests in any Real Property Assets and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Property Asset, regardless of whether a Loan Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in Schedule 5.5B pursuant to clause (ii) of the immediately preceding sentence is in full force and effect, there is no default by any Loan Party thereunder, and Borrower does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Loan Party, enforceable against such Loan Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. If Borrower or any of its Subsidiaries acquires any additional Real Property Assets after the Closing Date, Borrower shall deliver an updated Schedule 5.5B.
2. Intellectual Property. As of the Closing Date, Borrower and its Subsidiaries own or have the right to use all Intellectual Property necessary to the conduct of their business, except where the failure to own or have such right to use, individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect. No claim has been asserted and is pending and served by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does Borrower know of any valid basis for any such claim except for such claims that individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect. The use of such Intellectual Property by Borrower and its Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All federal and state and all foreign registrations of and applications for Intellectual Property, and all unregistered Intellectual

87

Property, that are owned or licensed by Borrower or any of its Subsidiaries on the Closing Date are described on Schedule 5.5C annexed hereto.

F. Litigation; Adverse Facts.

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1. Proceedings, Investigations and Violations.

Except as set forth in Borrower's Form 10-K dated as of September 28, 2002 and Form 10-Q dated as of December 28, 2002, there are no Proceedings (whether or not purportedly on behalf of Borrower or any of its Subsidiaries) at law or in equity, or before or by any court or other Government Authority (including any Environmental Claims) that are pending or, to the knowledge of Borrower or any of its Subsidiaries, threatened against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries and that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries (i) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (ii) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or other Government Authority, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

2. Land Use Proceedings. As of the Closing Date, there are no pending condemnation, zoning or other land use Proceedings or special assessment Proceedings with respect to the Real Property Assets or the use thereof, and neither Borrower nor any of its Subsidiaries has received written notice from any Government Authority threatening any such Proceeding. After the Closing Date, there are no pending condemnation, zoning or other land use Proceedings or special assessment Proceedings with respect to the Real Property Assets or the use thereof that could reasonably be expected to result in a Material Adverse Effect, and neither Borrower nor any of its Subsidiaries has received written notice from any Government Authority threatening any such proceeding. No Loan Party has entered into any agreements or commitments with any Government Authority that will be binding on the Real Property Assets after the Closing Date and that would (i) materially affect the operations of or the entitlements applicable to such property, (ii) require the owner of such property to make improvements to such property or make dedications or off-site improvements for the benefit of adjoining properties, or (iii) make additional expenditures with respect to the operation of the Real Property Assets.

G. Payment of Taxes.  
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Except to the extent permitted by Subsection VI.C, all tax returns and reports of Borrower and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other

88

governmental charges upon Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable, except for such taxes (i) which are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor. Borrower knows of no proposed tax assessment against Borrower or any of its Subsidiaries that is not being actively contested by Borrower or such Subsidiary in good faith and by appropriate proceedings.

H. Performance of Agreements; Materially Adverse Agreements; Material  
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Contracts.  
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M. Neither Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

1. Neither Borrower nor any of its Subsidiaries is a party to or is otherwise subject to any agreements or instruments or any charter or other internal restrictions or any provision of any applicable law, rule or regulation which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

I. Governmental Regulation; OFAC; Patriot Act; Foreign Corrupt Practices

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Act.  
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1. Governmental Regulation. Neither Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable.
2. OFAC. Neither the extensions of credit to Borrower hereunder nor the use of the respective proceeds thereof, shall cause Administrative Agent or any Lender to violate the U.S. Bank Secrecy Act, as amended, and any applicable regulations thereunder or any of the sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") of the United States Department of Treasury, any regulations promulgated thereunder by OFAC or under any affiliated or successor governmental or quasi-governmental office, bureau or agency and any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither Borrower nor any of its Affiliates (a) is or will become a person whose property or interests in property are blocked

89

or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"), (b) engages or will engage in any dealings or transactions prohibited by Section 2 of the Executive Order, or be otherwise associated with any such person in any manner violative of Section 2, or (c) is or will otherwise become a person on the list of Specially Designated Nationals and Blocked Persons ("SDN List") or subject to the limitations or prohibitions under any other OFAC regulation or executive order ("Prohibited Persons").

3. Patriot Act; Foreign Corrupt Practices Act. Borrower and each of its Subsidiaries are in compliance, in all material respects, with the Uniting And Strengthening of America By Providing the Appropriate Tools Required To Intercept And Obstruct Terrorism Act of 2001 (the "USA Patriot Act of 2001"). No part of the extensions of credit hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

J. Securities Activities.  
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N. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

1. Following application of the proceeds of each Loan, not more than twenty-five percent (25%) of the value of the assets (either of Borrower only or of Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Subsection VII.B and VII.G or subject to any restriction contained in any agreement or instrument, between Borrower and any Lender or any Affiliate of any Lender, relating to Indebtedness and within the scope of Subsection VII.B, will be Margin Stock.

K. Employee Benefit Plans.  
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O. Borrower, each of its Subsidiaries and each of their respective ERISA Affiliates are in substantial compliance with all applicable provisions and requirements of ERISA and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified.

90



1. No ERISA Event has occurred or is reasonably expected to occur.
2. Except to the extent required under Section 4980B of the Internal Revenue Code and except for certain selling shareholders of Kaytee Products, Inc. who participate in Borrower's health care plans pursuant to the terms of the sale of Kaytee Products, Inc. to Borrower, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.
3. As of the most recent valuation date for any Pension Plan, the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed \$1,000,000.
4. No Borrower, Subsidiary or any of their respective ERISA Affiliates contributes to any Multiemployer Plan. As of the most recent valuation date for each Multiemployer Plan to which Borrower, its Subsidiaries or their respective ERISA Affiliates has contributed within the past five years (and for which the actuarial report is available), the potential liability of Borrower, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from all such Multiemployer Plans (within the meaning of Section 4203 of ERISA), based on information available pursuant to Section 4221(e) of ERISA, does not exceed \$1,000,000.

L. Certain Fees.

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No broker's or finder's fee or commission will be payable by any Loan Party with respect to this Agreement or any of the transactions contemplated by the Loan Documents, and Borrower hereby indemnifies Administrative Agent, Co-Lead Arrangers, Co-Syndication Agents and Lenders against, and agrees that it will hold Administrative Agent, Co-Lead Arrangers, Co-Syndication Agents and Lenders harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

M. Environmental Protection.

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Except as set forth in Schedule 5.13 annexed hereto:

- a. (x) neither Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity and (y) none of

91

Borrower's or its Subsidiaries' respective Facilities are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity arising from Borrower's or any of its Subsidiaries' activities or operations;

- b. neither Borrower nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9604) or any comparable state law;
- c. there are and, to Borrower's knowledge, have been no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries;
- d. compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect. Nothing in this Subsection M to the contrary, no event or condition has occurred or is occurring with respect to Borrower or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials

Activity, which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect;

- e. to Borrower's and each of its Subsidiary's knowledge, all Real Property Assets and all operations of Borrower and its Subsidiaries are in compliance, and have in the last five years been in compliance, with Environmental Laws; and
- f. no judicial proceeding or action by any Government Authority is pending, or to the knowledge of Borrower and each of its Subsidiaries, threatened, under any Environmental Law to which Borrower or any of its Subsidiaries is or will be named as a party.

Notwithstanding anything in this Subsection M to the contrary, no event or condition has occurred or is occurring with respect to Borrower or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity, including any matter disclosed on Schedule 5.13 annexed hereto, which individually or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to impose any liability on the Lenders, Administrative Agent or Co-Lead Arrangers.

92

N. Employee Matters.

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There are no collective bargaining agreements covering the employees of Borrower and its Subsidiaries except as set forth on Schedule 5.14. There is no strike or work stoppage in existence or threatened involving Borrower or any of its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect, and there are no strikes or walkouts in progress, pending or to Borrower's knowledge contemplated relating to any labor contracts to which Borrower or any of its Subsidiaries is a party, relating to any labor contracts being negotiated, or otherwise.

O. Solvency.

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Each Loan Party is and, upon the incurrence of any Obligations by such Loan Party on any date on which this representation is made, will be, Solvent. Borrower and its Subsidiaries taken as a whole are and, upon the incurrence of any Obligations by Borrower and its Subsidiaries taken as a whole on any date on which this representation is made, will be, Solvent.

P. Matters Relating to Collateral.

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P. Creation, Perfection and Priority of Liens. The execution and delivery of the Collateral Documents by Loan Parties, together with (i) the actions taken on or prior to the date hereof pursuant to Subsections IV.A.12, IV.A.13, VI.H and VI.I and the filing of any UCC financing statements and/or amendments and PTO filings and/or amendments delivered to Administrative Agent for filing and (ii) the delivery to Administrative Agent of any Pledged Collateral not delivered to Administrative Agent at the time of execution and delivery of the applicable Collateral Document (all of which Pledged Collateral has been so delivered) are effective to create in favor of Administrative Agent for the benefit of Lenders, as security for the respective Secured Obligations (as defined in the applicable Collateral Document in respect of any Collateral), a valid First Priority Lien on all of the Collateral, and all filings and other actions reasonably necessary or reasonably desirable to perfect and maintain the First Priority status of such Liens have been duly made or taken and remain in full force and effect, other than the filing of any UCC financing statements delivered to Administrative Agent for filing (but not yet filed) and the periodic filing of UCC continuation statements in respect of UCC financing statements filed by or on behalf of Administrative Agent.

- 1. Governmental Authorizations. No Governmental Authorization or other action by, and no notice to or filing with, any Government Authority is required for either (i) the pledge or grant by any Loan Party of the Liens purported to be created in favor of Administrative Agent for the benefit of Lenders pursuant to any of the Collateral Documents or (ii) the exercise by Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to any of the Collateral Documents or created or provided for by applicable law), except for filings or recordings contemplated by Subsection 1.1P and except as may be required, in connection with the disposition of any

93

Pledged Collateral, by laws generally affecting the offering and sale of securities.

2. Absence of Third-Party Filings. Except such as may have been filed in favor of Administrative Agent for the benefit of Lenders as contemplated by Subsection 1.1P and for Permitted Encumbrances and to evidence permitted lease obligations and other Liens permitted pursuant to Subsection VII.B, (i) no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office and (ii) no effective filing covering all or any part of the IP Collateral is on file in the PTO.
3. Margin Regulations. The pledge of the Pledged Collateral pursuant to the Collateral Documents does not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.
4. Information Regarding Collateral. All information supplied to Administrative Agent by or on behalf of any Loan Party with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects. Neither Borrower nor any of its Subsidiaries nor any other Loan Party has within the six year period immediately preceding the date of this Agreement changed its name, been the surviving entity of a merger or consolidation, or acquired all or substantially all of the assets of any Person.

Q. Disclosure.

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No representation or warranty of Borrower or any of its Subsidiaries contained in the Confidential Information Memorandum or in any Loan Document or in any other document, certificate or written statement furnished to Lenders by or on behalf of Borrower or any of its Subsidiaries for use in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact (known to Borrower, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Borrower (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

94

R. Subordinated Indebtedness.

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The Senior Subordinated Notes have been issued in accordance with the Senior Subordinated Note Indenture. The subordination provisions of the Senior Subordinated Notes and the Senior Subordinated Note Indenture are enforceable against the holders thereof. On the Closing Date, each of the representations and warranties made in the Senior Subordinated Note Indenture by Borrower is true and correct in all material respects, except for representations or warranties therein that relate to a particular date, and with regard to such representations and warranties, the same were true and correct as of such date. The Obligations constitute "Senior Debt" and "Designated Senior Debt" under the Senior Subordinated Note Indenture, and constitute senior indebtedness that is entitled to the benefits of the subordination provisions, if any, of all Indebtedness of Borrower and its Subsidiaries.

S. Mortgage Taxes, Etc.

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All mortgage, note, transfer, documentary, stamp, intangible and other similar taxes and impositions which may be required to be paid in connection with the Loans, the Mortgages and the other Loan Documents have been (or concurrently with the closing of the Loans and recording of the Mortgages, will be) paid in full by Borrower.

T. Proceeds of Loans.

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The proceeds of the Loans will be used solely by Borrower for the purposes set forth in Section 2.5.

VI. BORROWER'S AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations and the cancellation or expiration of all Letters of Credit, unless Requisite Lenders shall otherwise give prior written consent, Borrower shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this VI.

A. Financial Statements and Other Reports.  
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Borrower will maintain, and cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP. Borrower will deliver to Administrative Agent and Lenders:

- a. Quarterly Financials: as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, (a) the consolidated balance sheet of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal

95

Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail and certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments, and (b) a narrative report describing the operations of Borrower and its Subsidiaries in the form prepared for presentation to senior management for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter;

- b. Year-End Financials: as soon as available and in any event within 90 days after the end of each Fiscal Year, (a) the consolidated balance sheet of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, all in reasonable detail and certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, (b) a narrative report describing the operations of Borrower and its Subsidiaries in the form prepared for presentation to senior management for such Fiscal Year, and (c) in the case of such consolidated financial statements, a report thereon of a nationally recognized accounting firm or other independent certified public accountants of recognized national standing selected by Borrower and reasonably satisfactory to Administrative Agent, which report shall be unqualified, shall express no doubts about the ability of Borrower and its Subsidiaries to continue as a going concern, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants

96

in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

- c. Officer and Compliance Certificates: together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to subdivisions (i) and (ii) above, (a) an Officer's Certificate of Borrower stating that the signers have reviewed the terms of this Agreement and have made, or caused to be made under their supervision, a review in reasonable detail of the transactions and condition of Borrower and its Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence during or at the end of such accounting period, and that the signers do not have knowledge of the existence as at the date of such Officer's Certificate, of any condition or event that constitutes an Event of Default or Potential Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Borrower has taken, is taking and proposes to take with respect thereto; and (b) a Compliance Certificate demonstrating in reasonable detail compliance during and at the end of the applicable accounting periods with the restrictions contained in VII, in each case to the extent compliance with such restrictions is required to be tested at the end of the applicable accounting period;
- d. Reconciliation Statements: if, as a result of any change in accounting principles and policies from those used in the preparation of the audited financial statements referred to in Subsection V.C, the consolidated financial statements of Borrower and its Subsidiaries delivered pursuant to subdivisions (i), (ii) or (xi) of this Subsection VI.A will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then (a) together with the first delivery of financial statements pursuant to subdivision (i), (ii) or (xi) of this Subsection VI.A following such change, consolidated financial statements of Borrower and its Subsidiaries for (y) the current Fiscal Year to the effective date of such change and (z) the two full Fiscal Years immediately preceding the Fiscal Year in which such change is made, in each case prepared on a pro forma basis as if such change had been in effect during such periods, and (b) together with each delivery of financial statements pursuant to subdivision (i), (ii) or (xi) of this Subsection VI.A following such change, if required pursuant to Subsection I.B, a written statement of the chief accounting officer

97

or chief financial officer of Borrower setting forth the differences (including any differences that would affect any calculations relating to the financial covenants set forth in Subsection VII.F) which would have resulted if such financial statements had been prepared without giving effect to such change;

- e. Accountants' Certification: together with each delivery of consolidated financial statements of Borrower and its Subsidiaries pursuant to subdivision (ii) above, a written statement by the independent certified public accountants giving the report thereon (a) stating that their audit examination has included a review of the terms of this Agreement and the other Loan Documents as they relate to accounting matters, (b) stating whether, in connection with their audit examination, any condition or event that constitutes an Event of Default or Potential Event of Default has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof; provided that such accountants shall not be liable by reason of any failure to obtain knowledge of any such Event of Default or Potential Event of Default that would not be disclosed in the course of their audit examination, and (c) stating that based on their audit examination nothing has come to their attention that causes them to believe either or both that the information contained in the certificates delivered therewith pursuant to subdivision (iii) above is not correct or that the matters set forth in the Compliance Certificate

delivered therewith pursuant to clause (b) of subdivision (iii) above for the applicable Fiscal Year are not stated in accordance with the terms of this Agreement;

- f. Accountants' Reports: promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Borrower by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Borrower and its Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with their annual audit;
- g. SEC Filings and Press Releases: promptly upon their becoming available, copies of (a) all financial statements, reports, notices and proxy statements sent or made available generally by Borrower to its Security holders or by any Subsidiary of Borrower to its Security holders other than Borrower or another Subsidiary of Borrower, (b) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by Borrower or any of its Subsidiaries

98

with any securities exchange or with the Securities and Exchange Commission or any Government Authority or private regulatory authority, and (c) all press releases and other statements made available generally by Borrower or any of its Subsidiaries to the public concerning material developments in the business of Borrower or any of its Subsidiaries;

- h. Litigation or Other Proceedings: (a) promptly upon, but in any event within fifteen days after, any officer of Borrower obtaining knowledge of (1) the institution of, or non-frivolous threat of, any Proceeding against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries not previously disclosed in writing by Borrower to Lenders or (2) any material development in any Proceeding that, in any case:

(x) could reasonably be expected to have a Material Adverse Effect; or

(y) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

written notice thereof together with such other information as may be reasonably available to Borrower to enable Lenders and their counsel to evaluate such matters, and (b) within twenty days after the end of each Fiscal Quarter, a schedule of all Proceedings involving an uninsured alleged liability of, or claims against or affecting, Borrower or any of its Subsidiaries equal to or greater than \$5,000,000, and promptly after request by Administrative Agent such other information as may be reasonably requested by Administrative Agent to enable Administrative Agent and its counsel to evaluate any of such Proceedings;

- i. ERISA Events: promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;
- j. ERISA Notices: with reasonable promptness, copies of (a) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (b) all notices received by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning

99

an ERISA Event; and (c) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

- k. Financial Plans: as soon as practicable and in any event no later than 30 days after the beginning of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year stated on a quarterly basis and the next succeeding Fiscal Year stated on an annual basis (the "Financial Plan" for such Fiscal Years), including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Borrower and its Subsidiaries and an explanation of the assumptions on which such forecasts are based;
- l. Insurance: (a) as soon as practicable and in any event by the last day of each Fiscal Year, a report in form and substance reasonably satisfactory to Administrative Agent outlining all material insurance coverage required hereunder to be maintained as of the date of such report by Borrower and its Subsidiaries and all material insurance coverage planned to be maintained by Borrower and its Subsidiaries in the immediately succeeding Fiscal Year as required hereunder and (b) as soon as practicable after any material change in insurance coverage maintained by Borrower and its Subsidiaries notice thereof to Administrative Agent specifying the changes and reasons therefor;
- m. New Subsidiaries: promptly upon any Person becoming a Subsidiary of Borrower, a written notice setting forth with respect to such Person (a) the date on which such Person became a Subsidiary of Borrower and (b) all of the data required to be set forth in Schedule 5.1 annexed hereto with respect to all Subsidiaries of Borrower (it being understood that such written notice shall be deemed to supplement Schedule 5.1 annexed hereto for all purposes of this Agreement);
- n. Deposit Accounts: promptly upon the opening of any Deposit Account by Borrower or any of its Subsidiaries, a written notice setting forth all of the data required to be set forth in Schedule 6.10 annexed hereto with respect to such Deposit Account;
- o. Events of Default, etc.: promptly upon, and within five Business Days after, any officer of Borrower obtaining knowledge (a) of any condition or event that constitutes an Event of Default or Potential Event of Default, or becoming aware that any Lender has given any notice (other than to Administrative Agent) or taken any other action with respect to a claimed Event of Default or Potential

100

- Event of Default, (b) that any Person has given any notice to Borrower or any of its Subsidiaries or taken any other action with respect to a claimed default or event or condition of the type referred to in Subsection VIII.B, (c) of any resignation or dismissal of Borrower's independent accountant, (d) of any Change in Control or other event requiring a prepayment of principal on any Subordinated Indebtedness, (e) of any individual or series of related Asset Sales, issuances of Capital Stock or receipt of Net Insurance/Condemnation Proceeds aggregating in excess of \$5,000,000 or (f) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Potential Event of Default, default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;
- p. Corporate Matters: with reasonable promptness, written notice of (1) any amendment of the articles or certificate of incorporation or by-laws or other constituent documents of Borrower or any of its Material Subsidiaries, (2) any change in the composition of the board of directors of Borrower or any of its Material Subsidiaries, and (3) any change in the executive Officers of Borrower or any of its Subsidiaries;
- q. Revisions or Updates to Schedules: should any of the information or disclosures provided on any of the Schedules originally attached to any of the Loan Documents become outdated or incorrect in any material respect, as part of

the next quarterly Officers' Certificate required pursuant to Subsection VI.A.c, such revisions or updates to such Schedules as may be reasonably necessary to update or correct such Schedules, provided that no such revisions or updates to any Schedules shall be deemed to have amended, modified or superseded such Schedules immediately prior to the submission of such revised or updated Schedules, or to have cured any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedules to the extent such schedules were inaccurate or incomplete at the time such warranty or representation was made, unless and until the Requisite Lenders in their reasonable discretion shall have accepted in writing such revisions or updates to such Schedules; it being understood, however, that no Event of Default shall be deemed to have occurred pursuant to Subsection 8.4 if such Schedules are accurate at the time a representation or warranty is made, and that Lenders

101

shall not be obligated to make Loans or continue any Loans as LIBOR Loans until Requisite Lenders shall have accepted in writing such revisions or updates; and

- r. Other Information: with reasonable promptness, such other information and data with respect to Borrower or any of its Subsidiaries as from time to time may be reasonably requested by any Lender.

In lieu of furnishing to Administrative Agent hard copies of the quarterly Financial Statements described in clause (i) above and the annual Financial Statements and auditor's report described above and the other documents referred to in clause (vii) above, to the extent such documents are filed with the United States Securities and Exchange Commission, Borrower shall notify Administrative Agent and Lenders when such reports or other documents are so filed and may make such documents available to Lenders at its website located at [www.centralgardenandpet.com](http://www.centralgardenandpet.com) and through the United States Securities and Exchange Commission's EDGAR system ("EDGAR") or by transmitting such documents electronically to Lenders. Administrative Agent shall provide to any Lender hard copies of such documents, at Borrower's expense, upon request if such Lender does not have access to Borrower's website or EDGAR.

B. Existence, etc.  
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Borrower will at all times preserve and keep in full force and effect its existence as a corporation. Except as permitted under Subsection VII.G, Borrower will, and will cause each of the Subsidiary Guarantors to, at all times preserve and keep in full force and effect its existence in the jurisdiction of organization specified on Schedule 4.1D and all rights and franchises material to its business; provided, however that neither Borrower nor any of the Subsidiary Guarantors shall be required to preserve any such right or franchise if the Governing Body of Borrower or such other Loan Party shall determine that the preservation thereof is no longer desirable in the conduct of the business of Borrower or such other Loan Party, as the case may be, and that the loss thereof is not disadvantageous in any material respect to Borrower, such other Loan Party or Lenders.

C. Payment of Taxes and Claims; Tax.  
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Q. Borrower will, and will cause each of its Subsidiaries to, pay all Taxes and other governmental charges imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such Tax, charge or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (i) such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor and (ii) in the case of a Tax, charge or claim which has or may become a Lien

102

against any of the Collateral, such proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such charge or claim.

- 1. Borrower will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax



return with any Person (other than Borrower or any of its Subsidiaries).

D. Maintenance of Properties; Insurance; Application of Net Insurance/  
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Condemnation Proceeds.  
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R. Maintenance of Properties. (i) Borrower will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Borrower and its Subsidiaries (including all Intellectual Property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

a. Borrower and its Subsidiaries shall (a) prosecute, file and/or make (i) all applications relating to the Intellectual Property owned, held or used by Borrower or its Subsidiaries that is pending as of the date of this Agreement, (ii) all registrations of any existing or future unregistered or copyrightable works and (iii) all Trademark opposition and cancellation proceedings and renewal Trademark Registrations and Copyright Registrations and (b) do any and all acts which are reasonably necessary or reasonably desirable to preserve and maintain all rights in all Intellectual Property, except in each case under clause (a) or clause (b) where the failure to do so could not reasonably be expected to have a Material Adverse Effect. Any expenses incurred in connection therewith shall be borne solely by Borrower and its Subsidiaries.

2. Insurance. Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by corporations of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for corporations similarly situated in the industry. Without limiting the generality of the foregoing, Borrower will maintain or cause to be maintained (i) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (ii) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times reasonably satisfactory to Administrative Agent in its commercially reasonable judgment. Each such policy of insurance

103

shall (a) name Administrative Agent for the benefit of Lenders as an additional insured thereunder as its interests may appear and (b) in the case of each business interruption and casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to Administrative Agent, that names Administrative Agent for the benefit of Lenders as the loss payee thereunder for any covered loss in excess of \$1,000,000 and, to the extent obtainable through the commercially reasonable best efforts of Borrower, provides for at least 30 days prior written notice to Administrative Agent of any modification or cancellation of such policy.

3. Application of Net Insurance/Condemnation Proceeds.

a. Business Interruption Insurance. Upon receipt by Borrower or any of its Subsidiaries of any business interruption insurance proceeds, relating to Borrower or any of the Material Subsidiaries and constituting Net Insurance/Condemnation Proceeds, (a) so long as no Event of Default or no Potential Event of Default shall have occurred and be continuing, Borrower or such other Loan Party may retain and apply such Net Insurance/Condemnation Proceeds for working capital purposes, and (b) if an Event of Default or a Potential Event of Default shall have occurred and be continuing, Borrower shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in Subsection II.D.2;

b. Net Insurance/Condemnation Proceeds Received by Borrower.

Upon receipt by Borrower or any of its Subsidiaries of any Net Insurance/Condemnation Proceeds other than from business interruption insurance, subject to any conflicting obligations arising under senior Permitted Encumbrances on Real Property Assets, (a) so long as no Event of Default or Potential Event of Default shall have occurred and be continuing, if the Net Insurance/Condemnation Proceeds are less than \$20,000,000, Borrower shall, or shall cause one or more of its Subsidiaries to, promptly and diligently apply such Net Insurance/Condemnation Proceeds to pay or reimburse the costs of repairing, restoring or replacing the assets in respect of which such Net Insurance/Condemnation Proceeds were received or, to the extent not so applied, to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in Subsection II.D.2, and (b) if an Event of Default or Potential Event of Default shall have occurred and be continuing or the Net Insurance/Condemnation Proceeds are greater than or equal to \$20,000,000, Borrower shall apply an amount equal to such Net

104

Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in Subsection II.D.2. If at any time Administrative Agent reasonably determines (A) that Borrower or such Subsidiary is not proceeding diligently with such repair, restoration or replacement or (B) that such repair, restoration or replacement cannot be completed with the Net Insurance/Condemnation Proceeds received, together with funds otherwise available to Borrower for such purpose, or that such repair, restoration or replacement cannot be commenced within one hundred eighty (180) days or completed within three hundred sixty (360) days after the receipt by Borrower or such Subsidiary of such Net Insurance/Condemnation Proceeds, then Administrative Agent shall notify Borrower and Borrower shall apply such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in Subsection II.D.2.

- c. Net Insurance/Condemnation Proceeds Received by Administrative Agent. Upon receipt by Administrative Agent of any Net Insurance/Condemnation Proceeds as loss payee, subject to any conflicting obligations arising under senior Permitted Encumbrances on Real Property Assets, (a) if and to the extent Borrower would have been required to apply such Net Insurance/Condemnation Proceeds (if it had received them directly) to prepay the Loans and/or reduce the Revolving Loan Commitments, Administrative Agent shall, and Borrower hereby authorizes Administrative Agent to, apply such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in Subsection II.D.2, and (b) to the extent the foregoing clause (a) does not apply, Administrative Agent shall deliver such Net Insurance/Condemnation Proceeds to Borrower, and, if such proceeds are business interruption proceeds constituting Net Insurance/Condemnation Proceeds, Borrower or such Subsidiary may retain and apply such Net Insurance/Condemnation Proceeds for working capital purposes, or, if such Net Insurance/Condemnation Proceeds are other than from business interruption insurance, Borrower shall, or shall cause one or more of its Subsidiaries to, promptly apply such Net Insurance/Condemnation Proceeds to the costs of repairing, restoring, or replacing the assets in respect of which such Net Insurance/Condemnation Proceeds were received; provided, however that if at any time Administrative Agent reasonably determines (A) that Borrower or such Subsidiary is not proceeding diligently with such repair, restoration or replacement or (B) that

105

such repair, restoration or replacement cannot be completed with the Net Insurance/Condemnation Proceeds then held by Administrative Agent for such purpose, together with funds otherwise available to Borrower for such purpose, or that such repair, restoration or replacement cannot be commenced within one hundred eighty (180) days or completed within three hundred sixty (360) days after the receipt by Administrative Agent of such Net Insurance/Condemnation Proceeds, Administrative Agent shall, and Borrower hereby

authorizes Administrative Agent to, apply such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in Subsection II.D.2.

E. Inspection Rights.  
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Borrower shall, and shall cause each of its Subsidiaries to, permit any authorized representatives designated by Administrative Agent to visit and inspect any of the properties of Borrower or of any of its Subsidiaries, to inspect, copy and take extracts from Borrower's and its Subsidiaries' financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided that Borrower may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

F. Compliance with Laws, etc.  
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Borrower shall comply, and shall cause each of its Subsidiaries and all other Persons on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and orders of any Government Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

G. Environmental Matters.  
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S. Environmental Disclosure. Borrower will deliver to Administrative Agent and Lenders:

- a. Environmental Audits and Reports. As soon as practicable following receipt thereof by Borrower or any of its Subsidiaries, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Borrower or any of its Subsidiaries or by independent consultants, Government Authorities or any other Persons, with respect to significant environmental matters at any Facility.
- b. Notice of Certain Releases, Remedial Actions, Etc. Promptly upon the occurrence thereof, written notice describing in reasonable detail (a) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (b) any remedial action taken by Borrower or any other Person in response to (1) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, and (c) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws.
- c. Written Communications Regarding Environmental Claims, Releases, Etc. As soon as practicable following the sending or receipt thereof by Borrower or any of its Subsidiaries, a copy of any and all written communications with respect to (a) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (b) any Release required to be reported to any Government Authority, and (c) any request for information from any Government Authority that suggests such Government Authority is investigating whether Borrower or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity.
- d. Notice of Certain Proposed Actions Having Environmental Impact. Prompt written notice describing in reasonable detail (a) any proposed acquisition of stock, assets, or property by Borrower or any of its Subsidiaries that could reasonably be expected to (1) expose Borrower or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to result in, individually or

in the aggregate, a Material Adverse Effect or (2) affect the ability of Borrower or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (b) any proposed action to be taken by Borrower or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Borrower or any of its Subsidiaries to any additional obligations or requirements under any Environmental Laws.

107

2. Borrower's Actions Regarding Hazardous Materials Activities, Environmental Claims and Violations of Environmental Laws.
  - a. Remedial Actions Relating to Hazardous Materials Activities. Borrower shall, in compliance with all applicable Environmental Laws, promptly undertake, and shall cause each of its Subsidiaries promptly to undertake, any and all investigations, studies, sampling, testing, abatement, cleanup, removal, remediation or other response actions necessary to remove, remediate, clean up or abate any Hazardous Materials Activity on, under or about any Facility that is in violation of any Environmental Laws or that presents a material risk of giving rise to an Environmental Claim. If Borrower or any of its Subsidiaries undertakes any such action with respect to any Hazardous Materials, Borrower or such Subsidiary shall conduct and complete such action in compliance with all applicable Environmental Laws and in accordance with the policies, orders and directives of all Government Authorities except when, and only to the extent that, Borrower's or such Subsidiary's liability with respect to such Hazardous Materials Activity is being diligently contested in good faith and by appropriate proceedings by Borrower or such Subsidiary.

(ii) Actions with Respect to Environmental Claims and Violations of Environmental Laws. Borrower shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by Borrower or its Subsidiaries and (ii) make an appropriate response to any Environmental Claim against Borrower or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder.

(iii) Environmental Management System. Following the Closing Date, Borrower will promptly use commercially reasonable best efforts to establish and maintain an environmental management system for its and each of its Subsidiaries' operations that demonstrates a commitment to environmental compliance.

3. Environmental Investigations. Borrower agrees that Administrative Agent may, from time to time and in its reasonable discretion,
  - (i) if Administrative Agent believes there has been or is likely to be a material diminution in the value of the property or material liability to the Borrower or its Subsidiaries, retain, at Borrower's expense, an independent professional consultant (a "Consultant") to review any environmental audits, investigations, analyses and reports relating to Hazardous Materials prepared by or for Borrower and
  - (ii) if (a) Administrative Agent reasonably believes that Borrower has breached in any material respect any representation, warranty or covenant contained in Subsection V.F, 5.13, 6.6 or VI.G or that there has been a material violation of Environmental Laws at any Facility or by Borrower or any of

108

its Subsidiaries at any other location or (b) an Event of Default has occurred and is continuing, conduct its own investigation of any Facility; provided that, in the case of any Facility no longer owned, leased, operated or used by Borrower or any of its Subsidiaries, Borrower shall only be obligated to use its best efforts to obtain permission for Administrative Agent's Consultant to conduct an investigation of such Facility. For purposes of conducting such a review and/or investigation, Borrower hereby grants to Administrative Agent and its agents, employees, consultants and contractors the right to enter into or onto any Facilities currently owned, leased, operated or used by Borrower or any of its Subsidiaries and to perform such tests on such property (including taking samples of soil, groundwater and suspected asbestos-containing materials) as are reasonably necessary in connection therewith. Any such investigation of any Facility shall be conducted, unless otherwise agreed to by

Borrower and Administrative Agent, during normal business hours and, to the extent reasonably practicable, shall be conducted so as not to interfere with the ongoing operations at such Facility or to cause any damage or loss to any property at such Facility. Borrower and Administrative Agent hereby acknowledge and agree that any report of any investigation conducted at the request of Administrative Agent pursuant to this Subsection VI.G.3 will be obtained and shall be used by Administrative Agent and Lenders for the purposes of Lenders' internal credit decisions, to monitor and police the Loans and to protect Lenders' security interests, if any, created by the Loan Documents. Administrative Agent agrees to deliver a copy of any such report to Borrower with the understanding that Borrower acknowledges and agrees that (x) it will indemnify and hold harmless Administrative Agent and each Lender from any costs, losses or liabilities relating to Borrower's use of or reliance on such report, (y) neither Administrative Agent nor any Lender makes any representation or warranty with respect to such report, and (z) by delivering such report to Borrower, neither Administrative Agent nor any Lender is requiring or recommending the implementation of any suggestions or recommendations contained in such report.

H. Execution of Subsidiary Guaranty and Personal Property Collateral Documents After the Closing Date.

1. Execution of Subsidiary Guaranty and Personal Property Collateral Documents. If any Domestic Subsidiary of Borrower existing on the Closing Date that has not previously executed the Subsidiary Guaranty hereafter becomes a Subsidiary Guarantor, or any Person becomes a Subsidiary Guarantor of Borrower after the date hereof, Borrower will promptly notify Administrative Agent of that fact and cause such Subsidiary to execute and deliver to Administrative Agent a counterpart of the Subsidiary Guaranty and Security Agreement and to take all such

further actions and execute all such further documents and instruments (including actions, documents and instruments comparable to those described in Subsection IV.A.12) as may be reasonably necessary or, in the reasonable opinion of Administrative Agent, desirable to create in favor of Administrative Agent, for the benefit of Lenders, a valid and perfected First Priority Lien on all of the personal and mixed property assets of such Subsidiary described in the applicable forms of Collateral Documents.

2. Foreign Subsidiaries. If any Person becomes a Foreign Subsidiary of Borrower or any Subsidiary after the date hereof, Borrower will promptly notify Administrative Agent of that fact and, if such Subsidiary is directly or indirectly owned by Borrower or a Domestic Subsidiary, cause such Subsidiary and the owner of such Subsidiary to execute and deliver to Administrative Agent such documents and instruments and take such further actions (including actions, documents and instruments comparable to those described in Subsection IV.A.12) as may be reasonably necessary, or in the reasonable opinion of Administrative Agent, desirable to create in favor of Administrative Agent, for the benefit of Lenders, a First Priority Lien on sixty-six percent (66%) of the voting Capital Stock and all of the non-voting Capital Stock of such Foreign Subsidiary.

3. Subsidiary Organizational Documents, Legal Opinions, Etc. Borrower shall deliver to Administrative Agent, together with the Loan Documents described in Subsection 6.8B and/or 6.8C, (i) certified copies of the applicable Subsidiary's Organizational Documents, together with, if such Subsidiary is a Domestic Subsidiary, a good standing certificate from the Secretary of State of the jurisdiction of its organization and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each of such jurisdictions, each to be dated a recent date prior to their delivery to Administrative Agent, (ii) a certificate executed by the secretary or similar Officer of such Subsidiary as to (a) the fact that the attached resolutions of the Governing Body of such Subsidiary approving and authorizing the execution, delivery and performance of such Loan Documents are in full force and effect and have not been modified or amended and (b) the incumbency and signatures of the Officers of such Subsidiary executing such Loan Documents, and (iii) if such Subsidiary is or becomes a Material Subsidiary, a favorable opinion of counsel to such Subsidiary,

addressed to Administrative Agent and Lenders, in form and substance reasonably satisfactory to Administrative Agent and its counsel, as to (a) the due organization and good standing of such Subsidiary, (b) the due authorization, execution and delivery by such Subsidiary of such Loan Documents, (c) the enforceability of such Loan Documents against such Subsidiary and

110

(d) such other matters (including matters relating to the creation and perfection of Liens in any Collateral pursuant to such Loan Documents) as Administrative Agent may reasonably request, all of the foregoing to be reasonably satisfactory in form and substance to Administrative Agent and its counsel.

I. Matters Relating to Real Property Collateral.  
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T. Additional Mortgages, Etc. From and after the Closing Date, if (i) Borrower or any Subsidiary Guarantor acquires any fee interest in real property or any Material Leasehold Property or (ii) at the time any Person becomes a Subsidiary Guarantor, such Person owns or holds any fee interest in real property or any Material Leasehold Property, in either case excluding any such Real Property Asset the encumbrancing of which requires the consent of any applicable lessor or then-existing senior lienholder, where Borrower and its Subsidiaries have attempted in good faith, but are unable, to obtain such lessor's or senior lienholder's consent after use of their best efforts (any such non-excluded Real Property Asset described in the foregoing clause (i) or (ii) being an "Additional Mortgaged Property"), Borrower or such Subsidiary Guarantor shall deliver to Administrative Agent, as soon as practicable after such Person acquires such Additional Mortgaged Property or becomes a Subsidiary Guarantor, as the case may be, a fully executed and notarized Mortgage (an "Additional Mortgage") in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering the interest of such Loan Party in such Additional Mortgaged Property; and such opinions, appraisals, documents, title insurance and environmental reports that would have been delivered on the Closing Date if such Additional Mortgaged Property were a Closing Date Mortgaged Property or that may be reasonably required by Administrative Agent.

1. Real Estate Appraisals. Borrower shall, and shall cause each of its Subsidiaries to, permit an independent real estate appraiser reasonably satisfactory to Administrative Agent, upon reasonable notice, to visit and inspect any Additional Mortgaged Property for the purpose of preparing an appraisal of such Additional Mortgaged Property satisfying the requirements of any applicable laws and regulations (in each case to the extent required under such laws and regulations as determined by Administrative Agent in its discretion).
2. Landlord Consents and Estoppels. Borrower shall, and shall cause each of its Subsidiaries to, use commercially reasonable best efforts to obtain Landlord Consents and Estoppels with respect to each Leasehold Property (i) if such Leasehold Property is held by Borrower or such Subsidiary as of the Closing Date, within sixty (60) days of the Closing Date, and (ii) if such Leasehold Property is acquired after the Closing Date, as soon as practicable after such acquisition.
3. Collateral Access Agreements. Borrower shall, and shall cause each of its Subsidiaries to, use commercially reasonable best efforts obtain Collateral Access Agreements as requested by Administrative Agent with

111

respect to certain Collateral of Pennington Seed, Inc. within sixty (60) days of the Closing Date.

4. Environmental Reports. Borrower shall, and shall cause each of its Subsidiaries to, deliver reports and other information, in form, scope and substance satisfactory to Administrative Agent, regarding environmental matters relating to Borrower and its Subsidiaries and the Facilities, which reports shall include a Phase I environmental assessment for each of the Facilities listed in Schedule 6.9E annexed hereto which (a) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527, (b) was conducted no more than one (1) year prior to the Closing Date by one or more environmental consulting firms reasonably satisfactory to Administrative Agent, (c) includes an assessment of asbestos-containing materials at such Facilities, and (d) includes an estimate of the reasonable worst-case cost of investigating and remediating any Hazardous Materials Activity

identified in such Phase I environmental assessments as giving rise to an actual or potential violation of any Environmental Law or as presenting a material risk of giving rise to a material Environmental Claim.

J. Deposit Accounts and Cash Management Systems.  
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Borrower shall, and shall cause each of its Subsidiaries to, use and maintain its Deposit Accounts and cash management systems in a manner reasonably satisfactory to Administrative Agent. Information regarding these Deposit Accounts, including (a) the name and address of the financial institutions maintaining the Deposit Accounts, and (b) the Deposit Account numbers, are set forth on Schedule 6.10 annexed hereto. Borrower shall not permit any of such Deposit Accounts at any time to have a principal balance in excess of \$1,000,000 unless Borrower or such Subsidiary, as the case may be, has (i) delivered to Administrative Agent a Deposit Account Control Agreement, and (ii) taken all other steps necessary or, in the opinion of Administrative Agent, desirable to ensure that Administrative Agent will have a First Priority Lien in such Deposit Account at all times while such agreement is in effect; provided that if Borrower or such Subsidiary is unable to obtain such agreement from such financial institution Borrower shall, or shall cause such Subsidiary to, within 30 days after receiving a written request by Administrative Agent to do so, transfer all amounts in the applicable Deposit Account to a Deposit Account maintained at a financial institution from which Borrower or such Subsidiary has obtained such an agreement. Borrower shall not permit the aggregate amount on deposit in all Deposit Accounts of Borrower and of its Subsidiaries (other than Deposit Accounts maintained with Administrative Agent) or Deposit Accounts for which a Deposit Account Control Agreement described above has been executed and delivered) at any time to exceed \$1,000,000.

K. Solvency.  
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Borrower shall at all times be Solvent and Borrower shall cause Borrower and its Subsidiaries, taken as a whole, to be at all times Solvent.

112

VII. BORROWER'S NEGATIVE COVENANTS

Borrower covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations and the cancellation or expiration of all Letters of Credit, unless Requisite Lenders shall otherwise give prior written consent, Borrower shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this VII.

A. Indebtedness.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

- a. Borrower may become and remain liable with respect to the Obligations;
- b. Borrower and its Subsidiaries may become and remain liable with respect to Contingent Obligations permitted by Subsection VII.D and, upon any matured obligations actually arising pursuant thereto, the Indebtedness corresponding to the Contingent Obligations so extinguished;
- c. Borrower may become and remain liable with respect to unsecured Indebtedness to any Subsidiary Guarantor, and any Subsidiary Guarantor may become and remain liable with respect to unsecured Indebtedness to Borrower or any other Subsidiary Guarantor; provided that (a) a Lien on all such intercompany Indebtedness shall have been granted to Administrative Agent for the benefit of Lenders and (b) if such intercompany Indebtedness is evidenced by a promissory note or other instrument, such promissory note or instrument shall have been pledged to Administrative Agent pursuant to the Security Agreement;
- d. Borrower and its Subsidiaries, as applicable, may remain liable with respect to Indebtedness described in Schedule 7.1 annexed hereto;
- e. Borrower and its Subsidiaries may become and remain liable with respect to the Senior Subordinated Notes;

- f. Borrower and its Subsidiaries may become and remain liable with respect to Indebtedness incurred in connection with acquisitions permitted pursuant to Subsection 7.3(v) in an aggregate principal amount not to exceed \$75,000,000 at any time outstanding;

113

- g. Borrower and its Subsidiaries may become and remain liable with respect to any additional Subordinated Indebtedness in an aggregate principal amount not to exceed \$150,000,000 at any time outstanding; and
- h. Borrower and Subsidiary Guarantors may become and remain liable with respect to Indebtedness, other than Indebtedness described in Subsections 7.1(i) through (vii), in an aggregate principal amount for all such Indebtedness and Contingent Obligations permitted pursuant to Subsection 7.4(vii) not to exceed \$20,000,000 at any time outstanding.

B. Liens and Related Matters.  
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U. Prohibition on Liens. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom or proceeds thereof, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits or proceeds under the UCC of any State or under any similar recording or notice statute, except:

- a. Permitted Encumbrances;
  - b. Liens granted pursuant to the Collateral Documents;
  - c. Liens existing on the Closing Date and set forth on Schedule 7.2; provided that no such Lien shall at any time be extended to cover property or assets other than the property or assets subject thereto on the Closing Date;
  - d. Other Liens securing Indebtedness in an aggregate amount not to exceed \$20,000,000 at any time outstanding; and
  - e. Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by the Liens described in clause (iii) above, provided that any extension, renewal or replacement Lien (A) is limited to the property covered by the terms of the existing Lien and (B) secures Indebtedness which is no greater in amount and has material terms no less favorable to Borrower or the applicable Subsidiary and Lenders than the Indebtedness secured by the existing Lien.
2. Equitable Lien in Favor of Lenders. If Borrower or any of its Subsidiaries shall create or assume any Lien upon any of its properties or

114

assets, whether now owned or hereafter acquired, other than Liens excepted by the provisions of Subsection 1.1U, it shall make or cause to be made effective provision whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured which provision shall not cure any default that may have occurred and which provision shall be made without prejudice to any rights of Administrative Agent or Lenders with respect to such default; provided that, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not permitted by the provisions of Subsection 1.1U.

3. No Further Negative Pledges. Neither Borrower nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an Asset Sale or with respect to an



acquisition or Investment permitted by this Agreement.

4. No Restrictions on Subsidiary Distributions to Borrower or Other Subsidiaries. Borrower will not, and will not permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Borrower or any other Subsidiary of Borrower, (ii) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (iii) make loans or advances to Borrower or any other Subsidiary of Borrower, or (iv) transfer any of its property or assets to Borrower or any other Subsidiary of Borrower, except as provided in this Agreement.

C. Investments; Acquisitions.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, or acquire, by purchase or otherwise, all or substantially all the business, property or fixed assets of, or Capital Stock or other ownership interest of any Person, or any division or line of business of any Person except:

- a. Borrower and its Subsidiaries may make and own Investments in Cash Equivalents;
- b. Borrower and its Subsidiaries may continue to own the Investments owned by them as of the Closing Date in any

115

Subsidiaries of Borrower and Borrower and its wholly-owned Subsidiaries may make and own additional equity Investments in their respective wholly-owned Subsidiaries;

- c. Borrower and its Subsidiaries may make intercompany loans to the extent permitted under Subsection VII.A.c;
- d. Borrower and its Subsidiaries may make Consolidated Capital Expenditures permitted by Subsection VII.H;
- e. Borrower and its Subsidiaries may acquire assets (including Capital Stock and including Capital Stock of Subsidiaries formed in connection with any such acquisition) having a purchase price not in excess of \$75,000,000 in the aggregate and continue to own such assets after the acquisition thereof; provided that (i) no Potential Event of Default or Event of Default shall have occurred or be continuing as a result of such acquisition or after giving effect thereto, and (ii) Borrower shall, and shall cause its Subsidiaries to, comply with the requirements of Subsections VI.H and VI.I with respect to each such acquisition that results in a Person becoming a Subsidiary;
- f. Borrower and its Subsidiaries may make and own other Investments in an aggregate amount not to exceed at any time \$50,000,000, of which up to \$10,000,000 may be used by Borrower for repurchase of shares of its own Capital Stock; provided that no Potential Event of Default or Event of Default shall have occurred or be continuing at the time any such Investment is made; and

(vii) Borrower and its Subsidiaries may receive and hold promissory notes and other non-cash consideration received in connection with any Asset Sale permitted by Subsection 7.7.

D. Contingent Obligations.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or become or remain liable with respect to any Contingent Obligation, except:

- a. Subsidiaries of Borrower may become and remain liable with respect to Contingent Obligations in respect of the Subsidiary Guaranty;
- b. Borrower and its Subsidiaries may become and remain liable with respect to Contingent Obligations in respect of customary indemnification (including, without limitation, for product defect,

negligence and breach of contract claims arising in the ordinary course of business) and purchase price adjustment obligations incurred in connection with Asset Sales or other sales of assets;

- c. Borrower and its Subsidiaries may become and remain liable with respect to Contingent Obligations, including Hedge Agreements, in respect of any Indebtedness of Borrower or any of its Subsidiaries permitted by Subsection VII.A;
- d. Borrower and its Subsidiaries, as applicable, may remain liable with respect to Contingent Obligations described in Schedule 7.4 annexed hereto;
- e. Subsidiary Guarantors may become and remain liable with respect to Contingent Obligations arising under their subordinated guaranties of the Senior Subordinated Notes; and
- f. Borrower and its Subsidiaries may become and remain liable with respect to Contingent Obligations other than Contingent Obligations described in Subsections 7.4(i) through (vi); provided that the maximum aggregate liability, contingent or otherwise, of Borrower and its Subsidiaries, without duplication, in respect of all such Contingent Obligations and Indebtedness permitted pursuant to Subsection 7.1(viii) shall at no time exceed \$20,000,000.

E. Restricted Junior Payments.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment; provided that, if no Event of Default or Potential Event of Default has occurred and is continuing, Borrower may (i) make regularly scheduled payments of interest in respect of any Subordinated Indebtedness, including the Senior Subordinated Notes, in accordance with the terms of, and only to the extent required by, and subject to the subordination provisions contained in, the Senior Subordinated Note Indenture or other agreement pursuant to which such Subordinated Indebtedness was issued, as such indenture or other agreement may be amended from time to time to the extent permitted under Subsection 7.14 and (ii) make Restricted Junior Payments to repurchase shares of its own Capital Stock in an aggregate amount not to exceed \$10,000,000.

F. Financial Covenants.  
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V. Minimum Interest Coverage Ratio. Borrower shall not permit the ratio of (i) Consolidated EBITDA to (ii) Consolidated Interest Expense for any four-Fiscal Quarter period ending during any of the periods set forth below to be less than the correlative ratio indicated:

117

Period -----	Minimum Interest Coverage Ratio -----
Closing Date to March 31, 2004	2.75:1.00
April 1, 2004 to March 31, 2005	3.00:1.00
April 1, 2005 and thereafter	3.25:1.00

1. Maximum Total Leverage Ratio. Borrower shall not permit the Consolidated Total Leverage Ratio as of the last day of the most recently ended Fiscal Quarter ending during any of the periods set forth below to exceed the correlative ratio indicated:

Period -----	Maximum Total Leverage Ratio -----
Closing Date through September 30, 2004	4.25:1.00
October 1, 2004 through March 31, 2006	4.00:1.00
April 1, 2006 through March 31, 2007	3.75:1.00
April 1, 2007 and thereafter	3.50:1.00

2. Maximum Senior Leverage Ratio. Borrower shall not permit the Consolidated Senior Leverage Ratio as of the last day of the most recently ended Fiscal Quarter ending during any of the periods set forth below to exceed the correlative amount indicated:

Period -----	Maximum Senior Leverage Ratio -----
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Closing Date through September 30, 2004	3.00:1.00
October 1, 2004 through March 31, 2006	2.75:1.00
April 1, 2006 through March 31, 2007	2.50:1.00
April 1, 2007 and thereafter	2.25:1.00

3. Minimum Consolidated Tangible Net Worth. Borrower shall not permit Consolidated Tangible Net Worth as of the end of any Fiscal Quarter to be less than (i) 85% of Consolidated Tangible Net Worth as of the Closing Date plus (ii) 50% of Consolidated Net Income for each Fiscal Quarter thereafter ending on or prior to the date of determination (to the

118

extent such Consolidated Net Income for any such Fiscal Quarter is positive) plus (iii) 100% of the Net Securities Proceeds of any issuance of Capital Stock.

G. Restriction on Fundamental Changes; Asset Sales.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, alter the corporate, capital or legal structure of Borrower or any of its Subsidiaries, or enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets (including its notes or receivables and Capital Stock of a Subsidiary, whether newly issued or outstanding), whether now owned or hereafter acquired, or acquire by purchase or otherwise all or substantially all the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business of any Person (other than purchases or other acquisitions of inventory, materials and equipment in the ordinary course of Borrower's, or any of its Subsidiaries', business) except:

- a. any Subsidiary of Borrower may be merged with or into Borrower, or any wholly-owned Subsidiary of Borrower, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Borrower or any wholly-owned Subsidiary; provided that, (i) in the case of such a merger, Borrower, or a Subsidiary Guarantor or a Material Subsidiary shall be the continuing or surviving Person if any of the entities involved in the transaction was Borrower, a Subsidiary Guarantor or a Material Subsidiary and (ii) if a merger results in a Subsidiary becoming a Subsidiary Guarantor or a Material Subsidiary, such Subsidiary shall comply with the requirements of Subsection 6.8 and/or Subsection 6.9, (iii) in the case of such a liquidation, winding up or dissolution, all of the assets of such Subsidiary are transferred to Borrower, a Subsidiary Guarantor or a Material Subsidiary that is wholly owned, directly or indirectly, by Borrower or as otherwise expressly permitted under this Agreement;
- b. Borrower and its Subsidiaries may make Consolidated Capital Expenditures permitted under Subsection 7.8;
- c. Borrower and its Subsidiaries may sell or otherwise dispose of assets in transactions that do not constitute Asset Sales; provided that the consideration received for such assets shall be in an amount at least equal to the fair market value thereof;

119

- d. Borrower and its Subsidiaries may dispose of obsolete, worn out or surplus property in the ordinary course of business;
- e. Borrower and its Subsidiaries may make Asset Sales to Persons who are not Affiliates of Borrower and its Subsidiaries of assets having a fair market value not in excess of \$25,000,000 in the aggregate; provided that (a) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof; and (b) the proceeds of such Asset Sales shall be applied as required by Subsection II.D.2.c(1) or Subsection II.D.4; and
- f. Any Person may be merged with or into Borrower or any Subsidiary of Borrower if the acquisition of the Capital Stock of such Person by Borrower or such Subsidiary would

have been permitted pursuant to Subsections VII.C and H; provided that (a) in the case of Borrower, Borrower shall be the continuing or surviving Person, (b) if a Subsidiary of Borrower is not the surviving or continuing Person, the surviving Person becomes a Subsidiary of Borrower and complies with the provisions of Subsections VI.H and VI.I and (c) no Potential Event of Default or Event of Default shall have occurred or be continuing after giving effect thereto.

H. Consolidated Capital Expenditures.  
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Borrower shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures in any Fiscal Year in an aggregate amount in excess of \$20,000,000 (the "Maximum Consolidated Capital Expenditures Amount"); provided that the Maximum Consolidated Capital Expenditures Amount for any Fiscal Year shall be increased by an amount equal to the excess, if any (but in no event more than \$5,000,000), of the Maximum Consolidated Capital Expenditures Amount for the previous Fiscal Year (without giving effect to any adjustment in accordance with this proviso) over the actual amount of Consolidated Capital Expenditures for such previous Fiscal Year; provided, further that for Fiscal Year 2003, Borrower may make or incur expansion capital expenditures related to the Borrower's Kaytee product line, and all such expenditures shall be excluded from such calculations.

I. Sale or Discount of Receivables.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable.

120

J. Transactions with Shareholders and Affiliates.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of five percent (5%) or more of any class of equity Securities of Borrower or with any Affiliate of Borrower or of any such holder, on terms that are less favorable to Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not such a holder or Affiliate; provided that the foregoing restriction shall not apply to (i) any transaction between Borrower and any of its wholly-owned Domestic Subsidiaries that are Subsidiary Guarantors or between any of its wholly-owned Domestic Subsidiaries that are Subsidiary Guarantors or (ii) reasonable and customary fees paid to members of the Governing Bodies of Borrower and its Subsidiaries.

K. Sales and Lease-Backs.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) that Borrower or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Borrower or any of its Subsidiaries) or (ii) that Borrower or any of its Subsidiaries intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by Borrower or any of its Subsidiaries to any Person (other than Borrower or any of its Subsidiaries) in connection with such lease.

L. Restriction on Leases.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, become liable in any way, whether directly or by assignment or as a guarantor or other surety, for the obligations of the lessee under any lease (other than the intercompany leases between Borrower and its wholly-owned Subsidiaries), unless, immediately after giving effect to the incurrence of liability with respect to such lease, the Consolidated Rental Payments at the time in effect during the then current Fiscal Year do not exceed \$30,000,000 in the aggregate.

M. Conduct of Business.  
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From and after the Closing Date, Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by Borrower and its Subsidiaries on the Closing Date and

similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

N. Amendments of Documents Relating to Subordinated Indebtedness.  
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Borrower shall not, and shall not permit any of its Subsidiaries to, amend or otherwise change the terms of the Senior Subordinated Notes, the Senior Subordinated Note Indenture, and any other Subordinated Indebtedness, or make any payment consistent with an

121

amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on the Senior Subordinated Notes or such Subordinated Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), or change any collateral therefor (other than to release such collateral), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of the Senior Subordinated Notes or such Subordinated Indebtedness (or a trustee or other representative on their behalf) which would be adverse to Borrower or Lenders.

O. Fiscal Year; Tax Election.  
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Borrower shall not change its Fiscal Year-end from the Saturday closest to the last day of September, unless, if such change would affect the computation of any financial ratio or requirement set forth in any Loan Document, Borrower, Administrative Agent and Requisite Lenders agree to amend such ratio or requirement to preserve the original intent thereof in light of such change in Fiscal Year.

P. Subsidiary Guarantors.  
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Borrower shall not permit the aggregate consolidated revenues or aggregate consolidated assets of all of its Subsidiaries that are not Subsidiary Guarantors at any time to exceed ten percent (10%) of the total consolidated revenues or consolidated assets of Borrower and its Subsidiaries, taken as a whole.

VIII. EVENTS OF DEFAULT

If any of the following conditions or events ("Events of Default") shall occur:

A. Failure to Make Payments When Due.  
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Failure by Borrower to pay any installment of principal of any Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; failure by Borrower to pay when due any amount payable to an Issuing Lender in reimbursement of any drawing under a Letter of Credit; or failure by Borrower to pay any interest on any Loan or any fee or any other amount due under this Agreement within three Business Days after the date due; or

B. Default in Other Agreements.  
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- a. Failure of Borrower or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Subsection VIII.A) or Contingent Obligations in an

122

individual principal amount of \$5,000,000 or more or with an aggregate principal amount of \$10,000,000 or more, in each case beyond the end of any grace period provided therefor (not to exceed 30 days); or

- b. breach or default by Borrower or any of its Subsidiaries with respect to any other term of (a) one or more items of Indebtedness or Contingent Obligations in the individual or aggregate principal amounts referred to in clause (i) above

or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness or Contingent Obligation(s), if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness or Contingent Obligation(s) (or a trustee on behalf of such holder or holders) to cause, that Indebtedness or Contingent Obligation(s) to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

C. Breach of Certain Covenants.  
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Failure of Borrower to perform or comply with any term or condition contained in Subsections 2.5 or VI.B or VII of this Agreement; or

D. Breach of Warranty.  
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Any representation, warranty, certification or other statement made by Borrower or any of its Subsidiaries in any Loan Document or in any statement or certificate at any time given by Borrower or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made; or

E. Other Defaults Under Loan Documents.  
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Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other Loan Documents, other than any such term referred to in any other Subsection of this VIII, and such default shall not have been remedied or waived within 30 days after the earlier of (i) an Officer of Borrower or such other Loan Party becoming aware of such default or (ii) receipt by Borrower and such other Loan Party of notice from Administrative Agent or any Lender of such default; or

F. Involuntary Bankruptcy; Appointment of Receiver, etc.  
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- a. A court having jurisdiction in the premises shall enter a decree or order for relief in respect of Borrower or any of the Material Subsidiaries in an involuntary case under the Bankruptcy Code or

123

under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or

- b. an involuntary case shall be commenced against Borrower or any of the Material Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or any of the Material Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Borrower or any of the Material Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower or any of the Material Subsidiaries, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or

G. Voluntary Bankruptcy; Appointment of Receiver, etc.  
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- a. Borrower or any of the Material Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian

for all or a substantial part of its property; or Borrower or any of the Material Subsidiaries shall make any assignment for the benefit of creditors; or

- b. Borrower or any of the Material Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Governing Body of Borrower or any of the Loan Parties (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

124

H. Judgments and Attachments.  
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Any money judgment, writ or warrant of attachment or similar process (other than those which may issue from the Scotts litigation up to an aggregate amount not to exceed \$10,400,000) involving (i) in any individual case an amount in excess of \$5,000,000 or (ii) in the aggregate at any time an amount in excess of \$10,000,000 (in either case not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

I. Dissolution.  
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Any order, judgment or decree shall be entered against Borrower or any of the Material Subsidiaries decreeing the dissolution or split up of Borrower or such Material Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of 60 days; or

J. Employee Benefit Plans.  
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There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$5,000,000 during the term of this Agreement; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which exceeds \$5,000,000; or

K. Change in Control.  
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A Change in Control shall have occurred; or

L. Invalidity of Loan Documents; Repudiation of Obligations.  
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At any time after the execution and delivery thereof, (i) any Loan Document or any material provision thereof for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) Administrative Agent shall not have or shall cease to have a First Priority Lien in any Collateral purported to be covered by the Collateral Documents, having a fair market value, individually or in the aggregate, exceeding \$5,000,000, or (iii) any Loan Party (or any Person authorized to act on behalf of such Loan Party) shall contest the validity or enforceability of any Loan Document or any provision thereof in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document or any provision thereof to which it is a party; or

125

M. Uninsured Damage.  
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Any uninsured damage to or losses, theft or destruction of any of the assets of Borrower or any of its Subsidiaries occurs in excess of \$5,000,000 in the aggregate;

N. Criminal or Civil Proceedings.  
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The indictment or threatened indictment of Borrower or any of its Subsidiaries under any criminal statute, or commencement or threatened

commencement of criminal or civil proceedings against Borrower or any of its Subsidiaries, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of any material portion of the property of Borrower or such Subsidiary; or

O. Subordinated Indebtedness.  
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There shall occur any material default under any Subordinated Indebtedness, or there shall occur any event that requires Borrower or any of its Subsidiaries to purchase, redeem or otherwise acquire or offer to purchase, redeem or otherwise acquire all or any portion of any Subordinated Indebtedness; or Borrower or any of its Subsidiaries shall for any reason purchase, redeem or otherwise acquire or offer to purchase, redeem or otherwise acquire, or make any other payments in respect of, all or any portion of any Subordinated Indebtedness, except to the extent expressly permitted by Subsection 7.5;

THEN (i) upon the occurrence of any Event of Default described in Subsection VIII.F or VIII.G, each of (a) the unpaid principal amount of and accrued interest on the Loans, (b) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (whether or not any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letter of Credit), and (c) all other Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Borrower, and the obligation of each Lender to make any Loan, the obligation of any Issuing Lender to issue any Letter of Credit and the right of any Revolving Lender to issue any Letter of Credit hereunder shall thereupon terminate, and (ii) upon the occurrence and during the continuation of any other Event of Default, Administrative Agent shall, upon the written request or with the written consent of Requisite Lenders, by written notice to Borrower, declare all or any portion of the amounts described in clauses (a) through (c) above to be, and the same shall forthwith become, immediately due and payable, and the obligation of each Lender to make any Loan, the obligation of any Issuing Lender to issue any Letter of Credit and the right of any Revolving Lender to issue any Letter of Credit hereunder shall thereupon terminate; provided that the foregoing shall not affect in any way the obligations of Revolving Lenders under Subsection III.C.2.a.

Any amounts described in clause (b) above, when received by Administrative Agent, shall be held by Administrative Agent pursuant to the terms of the Security Agreement and shall be applied as therein provided.

126

Notwithstanding anything contained in the second preceding paragraph, if at any time within sixty (60) days after an acceleration of the Loans pursuant to clause (ii) of such paragraph Borrower shall pay all arrears of interest and all payments on account of principal which shall have become due otherwise than as a result of such acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified in this Agreement) and all Events of Default and Potential Events of Default (other than non-payment of the principal of and accrued interest on the Loans, in each case which is due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Subsection X.F, then Requisite Lenders, by written notice to Borrower, may at their option rescind and annul such acceleration and its consequences; but such action shall not affect any subsequent Event of Default or Potential Event of Default or impair any right consequent thereon and, if the Commitments of Lenders to make Loans and issue or participate in Letters of Credit have been terminated pursuant to clause (ii), such Commitments shall be reinstated only with the approval of each Lender directly affected. The provisions of this paragraph are intended merely to bind Lenders to a decision which may be made at the election of Requisite Lenders and are not intended, directly or indirectly, to benefit Borrower, and such provisions shall not at any time be construed so as to grant Borrower the right to require Lenders to rescind or annul any acceleration hereunder or to preclude Administrative Agent or Lenders from exercising any of the rights or remedies available to them under any of the Loan Documents, even if the conditions set forth in this paragraph are met.

IX. ADMINISTRATIVE AGENT

A. Appointment.  
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1. Appointment of Administrative Agent. CIBC is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Administrative Agent to act as its administrative agent in accordance with the terms of this Agreement and the other Loan Documents. Administrative Agent agrees to act upon the express conditions contained in this Agreement and the other Loan Documents, as applicable. The provisions of this IX are solely for the benefit of



Administrative Agent and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties under this Agreement, Administrative Agent shall act solely as an administrative agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries.

2. Appointment of Supplemental Collateral Agents. It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in

127

case of the enforcement of any of the Loan Documents, or in case Administrative Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, it may be necessary that Administrative Agent appoint an additional individual or institution as a separate trustee, co-trustee, collateral agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a "Supplemental Collateral Agent" and collectively as "Supplemental Collateral Agents").

If Administrative Agent appoints a Supplemental Collateral Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Collateral Agent to the extent, and only to the extent, necessary to enable such Supplemental Collateral Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Collateral Agent shall run to and be enforceable by either Administrative Agent or such Supplemental Collateral Agent, and (ii) the provisions of this IX and of Subsections X.B and X.C that refer to Administrative Agent shall inure to the benefit of such Supplemental Collateral Agent and all references therein to Administrative Agent shall be deemed to be references to Administrative Agent and/or such Supplemental Collateral Agent, as the context may require.

Should any instrument in writing from Borrower or any other Loan Party be required by any Supplemental Collateral Agent so appointed by Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by Administrative Agent. In case any Supplemental Collateral Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall vest in and be exercised by Administrative Agent until the appointment of a new Supplemental Collateral Agent.

B. Powers and Duties; General Immunity.  
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1. Powers; Duties Specified. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified in this Agreement and the other Loan Documents.

128

Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Administrative Agent shall not have, by reason of this Agreement or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing in this Agreement or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose

upon Administrative Agent any obligations in respect of this Agreement or any of the other Loan Documents except as expressly set forth herein or therein.

2. No Responsibility for Certain Matters. Administrative Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Administrative Agent to Lenders or by or on behalf of Borrower to Administrative Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of Borrower or any other Person liable for the payment of any Obligations, nor shall Administrative Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or the use of the Letters of Credit or as to the existence or possible existence of any Event of Default or Potential Event of Default. Anything contained in this Agreement to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof unless any such liability results from the gross negligence or willful misconduct of Administrative Agent.
3. Exculpatory Provisions. Neither Administrative Agent nor any of its officers, directors, employees or agents shall be liable to Lenders for any action taken or omitted by Administrative Agent under or in connection with any of the Loan Documents except to the extent caused by Administrative Agent's gross negligence or willful misconduct. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection with this Agreement or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Subsection X.F) and, upon receipt

129

of such instructions from Requisite Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or (where so instructed) refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Subsection X.F).

4. Administrative Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not performing the duties and functions delegated to it hereunder, and the term "Lender" or "Lenders" or any similar term shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, acquire equity interests in and generally engage in any kind of commercial banking, investment banking, trust, financial advisory or other business with Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and

other consideration from Borrower for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

C. Representations and Warranties; No Responsibility for Appraisal of  
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Creditworthiness.  
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Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower and its Subsidiaries in connection with the making of the Loans and the extensions of credit hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or, except as expressly provided herein, to provide any Lender with any credit or other information with

130

respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

D. Right to Indemnity.  
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Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify Administrative Agent, Co-Lead Arrangers and their officers, directors, employees, agents, attorneys, professional advisors and affiliates, to the extent that any such Person shall not have been reimbursed by Borrower, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements and fees and disbursements of any financial advisor engaged by Administrative Agent) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent or such other Persons in exercising its powers, rights and remedies or performing its duties as an Administrative Agent or Co-Lead Arranger hereunder or under the other Loan Documents or otherwise in its capacity as Administrative Agent or Co-Lead Arranger in any way relating to or arising out of this Agreement or the other Loan Documents; 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 Administrative Agent's or any Co-Lead Arranger's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to Administrative Agent or any other such Person for any purpose shall, in the opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent and/or Co-Lead Arrangers may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

E. Successor Administrative Agent.  
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Administrative Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and Borrower. Upon any such notice of resignation, Requisite Lenders shall have the right, upon twenty (20) Business Days' notice to Borrower, to appoint a successor Administrative Agent subject to Borrower's approval, which shall not be unreasonably withheld, conditioned or delayed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

F. Collateral Documents and Guaranties.  
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Each Lender hereby further authorizes Administrative Agent, on behalf of and for the benefit of Lenders, to enter into each Collateral Document as secured party and to be

131

Administrative Agent for and representative of Lenders under the Subsidiary Guaranty, and each Lender agrees to be bound by the terms of each Collateral Document and the Subsidiary Guaranty; provided that Administrative Agent shall

not (i) enter into or consent to any material amendment, modification, termination or waiver of any provision contained in any Collateral Document or the Subsidiary Guaranty or (ii) release any Collateral or Subsidiary Guarantor (except as otherwise expressly permitted or required pursuant to the terms of this Agreement or the applicable Collateral Document), in each case without the prior consent of Requisite Lenders (or, if required pursuant to Subsection X.F, all Lenders); provided further, however, that, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to (a) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted by this Agreement or to which Requisite Lenders have otherwise consented, or (b) release any Subsidiary Guarantor from the Subsidiary Guaranty if all of the Capital Stock of such Subsidiary Guarantor is sold to any Person (other than an Affiliate of Borrower) pursuant to a sale or other disposition permitted hereunder or to which Requisite Lenders have otherwise consented or (c) subordinate the Liens of Administrative Agent, on behalf of Lenders, to any Liens permitted by Subsection VII.B provided that, in the case of a sale of such item of Collateral referred to in subclause (a) or (b), the requirements of Subsection X.F are satisfied. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Administrative Agent and each Lender hereby agree that (X) no Lender shall have any right individually to realize upon any of the Collateral under any Collateral Document or to enforce the Subsidiary Guaranty, it being understood and agreed that all powers, rights and remedies under the Collateral Documents and the Subsidiary Guaranty may be exercised solely by Administrative Agent for the benefit of Lenders in accordance with the terms thereof, and (Y) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as administrative agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Administrative Agent at such sale.

G. Administrative Agent May File Proofs of Claim.  
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In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower or any of its Subsidiaries, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on 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 principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be reasonably necessary or reasonably

132

advisable in order to have the claims of Lenders, Administrative Agent and Co-Lead Arrangers (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Administrative Agent and Co-Lead Arrangers and their agents and counsel and all other amounts due Lenders, Administrative Agent and Co-Lead Arrangers under Subsections II.C and X.B) allowed in such judicial proceeding, and

- b. to collect and receive any moneys 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 to make such payments to Administrative Agent and, if Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and Co-Lead Arrangers and their agents and counsel, and any other amounts due Administrative Agent and Co-Lead Arrangers under Subsections II.C and X.B.

Nothing herein contained shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

X. MISCELLANEOUS

A. Assignments and Participations in Loans and Letters of Credit.  
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1. General. Subject to Subsections X.A.2 and X.A.3, each Lender shall have the right at any time to (i) sell, assign or transfer to any Eligible Assignee, or (ii) sell participations to any Person in, all or any part of its Commitments or any Loan or Loans made by it or its Letters of Credit (or participations in Letters of Credit) or any other interest herein or in any other Obligations owed to it; provided that no such sale, assignment, transfer or participation shall, without the consent of Borrower, require Borrower to file a registration statement with the Securities and Exchange Commission or apply to qualify such sale, assignment, transfer or participation under the securities laws of any state; provided, further, that no such sale, assignment, or transfer described in clause (i) above shall be effective unless and until an Assignment Agreement effecting such sale, assignment or transfer shall have been accepted by Administrative Agent and recorded in the Register as provided in Subsection X.A.2.b; and provided, further, that no such sale, assignment, or transfer of any Letter of Credit or any participation therein may be made separately from a sale, assignment, transfer or participation of a corresponding interest in the

133

Revolving Loan Commitment and the Revolving Loans of the Lender effecting such sale, assignment, transfer or participation. Except as otherwise provided in this Subsection X.A, no Lender shall, as between Borrower and such Lender, be relieved of any of its obligations hereunder as a result of any sale, assignment or transfer of, or any granting of participations in, all or any part of its Commitments or the Loans, or Letters of Credit or participations therein, or the other Obligations owed to such Lender, and such Lender shall remain solely responsible for the performance of such Obligations, and Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

2. Assignments.

- a. Amounts and Terms of Assignments. Each Commitment, Loan, Letter of Credit or participation therein, or other Obligation may (a) be assigned in any amount to another Lender, or to an Affiliate or Approved Fund of the assigning Lender or another Lender, with the giving of notice to Borrower and Administrative Agent or (b) be assigned in an aggregate amount of not less than \$1,000,000 (or such lesser amount as shall constitute the aggregate amount of the Commitments, Loans, Letters of Credit and participations therein, or other Obligations of the assigning Lender) to any other Eligible Assignee treating any two or more Approved Funds with the same investment advisor as a single Eligible Assignee with the consent of Borrower (unless a Potential Event of Default or an Event of Default has occurred and is continuing) and Administrative Agent (which consent of Borrower and Administrative Agent shall not be unreasonably withheld or delayed). To the extent of any such assignment in accordance with either clause (a) or (b) above, the assigning Lender shall be relieved of its obligations with respect to its Commitments, Loans, Letters of Credit and participations therein, or other Obligations or the portion thereof so assigned. The parties to each such assignment shall execute and deliver to Administrative Agent, for its acceptance and recording in the Register, an Assignment Agreement, together with a processing and recordation fee of \$3,500 (provided that (i) no such processing and recordation fee shall be payable if the assignee is an Affiliate of the assignor or a Person under common management with the assignor and (ii) only one such fee shall be required in connection with a simultaneous assignment to a group of Approved Funds with the same investment advisor) and such forms (including an administrative questionnaire if the Eligible Assignee is not a Lender), certificates or other evidence, if any, with respect to United States federal

134

income tax withholding matters as the assignee under such

Assignment Agreement may be required to deliver to Administrative Agent pursuant to Subsection II.GB(iii)(a). Upon such execution, delivery, acceptance and recordation, from and after the effective date specified in such Assignment Agreement, (y) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (z) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights (other than any rights that survive the termination of this Agreement under Subsection X.I.1) and be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto except for any rights retained as described above; provided that, anything contained in any of the Loan Documents to the contrary notwithstanding, if such Lender is the Issuing Lender with respect to any outstanding Letters of Credit such Lender shall continue to have all rights and obligations of an Issuing Lender with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder). The Commitments hereunder shall be modified to reflect the Commitment of such assignee and any remaining Commitment of such assigning Lender and, if any such assignment occurs after the issuance of any Notes hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes, if any, to Administrative Agent for cancellation, and thereupon new Notes shall, if so requested by the assignee and/or the assigning Lender in accordance with Subsection II.A.4, be issued to the assignee and/or to the assigning Lender, substantially in the form of Exhibit IV or Exhibit V annexed hereto, as the case may be, with appropriate insertions, to reflect the new Commitments and/or outstanding Revolving Loans and/or outstanding Term Loans, as the case may be, of the assignee and/or the assigning Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Subsection X.A.2 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 Subsection X.A.3.

135

- b. Acceptance by Administrative Agent; Recordation in Register. Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with the processing and recordation fee (if so required) referred to in Subsection X.A.2.a and any forms, certificates or other evidence with respect to United States federal income tax withholding matters that such assignee may be required to deliver to Administrative Agent pursuant to Subsection II.HB(iii)(a), Administrative Agent shall, if Administrative Agent (and if necessary, Borrower) has consented to the assignment evidenced thereby (in each case to the extent such consent is required pursuant to Subsection X.A.2.a), (a) accept such Assignment Agreement by executing a counterpart thereof as provided therein (which acceptance shall evidence any required consent of Administrative Agent to such assignment), (b) record the information contained therein in the Register, and (c) give prompt notice thereof to Borrower. Administrative Agent shall maintain a copy of each Assignment Agreement delivered to and accepted by it as provided in this Subsection X.A.2.b.
  - c. If the consent of Borrower to an assignment or to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in Subsection 10.1B(i)), Borrower shall be deemed to have given its consent five Business Days after the date notice thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth Business Day.
3. Participations. Any Lender may, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to one

or more banks or other entities (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 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) Borrower, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of such Participant, agree to any

136

amendment, modification or waiver that affects such Participant if such amendment, modification or waiver requires the unanimous written consent of all Lenders pursuant to Subsection X.F. Subject to Subsection X.A.4, Borrower agrees that each Participant shall be entitled to the benefits of Subsections 2.6D, 2.7, and 3.6 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to this Subsection X.A.3; provided, however, that in no event shall Borrower be obligated to make any payment with respect to such Subsections which is greater than the amount that Borrower would have paid to the Lender had no such participation been sold. To the extent permitted by law, each Participant also shall be entitled to the benefits of Subsection 10.4 as though it were a Lender, provided such Participant agrees to be subject to Subsection 10.5 as though it were a Lender if any amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

4. No Greater Payments to Participants. A Participant shall not be entitled to receive any greater payment under Subsections 2.6D, 2.7, and 3.6 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 Borrower's prior written consent. A Participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Subsection 2.7 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Subsection 2.7B(iii) as though it were a Lender.
5. Assignments to Secured Parties and Trustees.
  - a. In addition to the assignments and participations permitted under the foregoing provisions of this Subsection X.A, (1) any Lender may assign and pledge all or any portion of its Loans, the other Obligations owed to such Lender and its Notes to any creditor, including any Federal Reserve Bank, as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided that (i) no Lender shall, as between Borrower and such Lender, be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and (ii) in no event shall such creditor be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder and (2) any Lender which is an Approved Fund may

137

pledge its Loans and/or Notes to its trustee for the benefit of its investors without consent by or notice to Borrower or Administrative Agent.

6. Information. Each Lender may furnish any information concerning Borrower and its Subsidiaries in the possession of that Lender from time to time to assignees and participants (including

prospective assignees and participants), subject to Subsection X.T.

7. Representations of Lenders. Each Lender listed on the signature pages hereof hereby represents and warrants (i) that it is an Eligible Assignee described in clause (A) of the definition thereof; (ii) that it has experience and expertise in the making of loans such as the Loans; and (iii) that it will make its Loans for its own account in the ordinary course of its business and without a present view to distribution of such Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Subsection X.A, the disposition of such Loans or any interests therein shall at all times remain within its exclusive control). Each Lender that becomes a party hereto pursuant to an Assignment Agreement shall be deemed to agree that the representations and warranties of such Lender contained in such Assignment Agreement are incorporated herein by this reference.

B. Expenses.

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Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to pay promptly (i) all the actual and reasonable out-of-pocket costs and expenses of preparation of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (ii) all the costs of furnishing all opinions by counsel for Borrower (including any opinions requested by Lenders as to any legal matters arising hereunder) and of Borrower's performance of and compliance with all agreements and conditions on its part to be performed or complied with under this Agreement and the other Loan Documents including with respect to confirming compliance with environmental, insurance and solvency requirements; (iii) the reasonable fees, expenses and disbursements of counsel to Administrative Agent in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (iv) all the actual costs and reasonable expenses of creating and perfecting Liens in favor of Administrative Agent on behalf of Lenders pursuant to any Collateral Document, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums, and reasonable fees, expenses and disbursements of counsel to Administrative Agent and of counsel providing any opinions that Administrative Agent or Requisite Lenders may request in respect of the Collateral Documents or the Liens created pursuant thereto; (v) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any auditors, accountants or appraisers and any environmental or other consultants, advisors and agents employed or retained by

138

Administrative Agent or its counsel) of obtaining and reviewing any environmental audits or reports provided for as a result of its due diligence and any audits or reports provided for under Subsection VI.I.4 or 6.7 with respect to any Collateral; (vi) the custody or preservation of any of the Collateral; (vii) all other actual and reasonable costs and expenses incurred by Administrative Agent in connection with the syndication of the Commitments and the negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (viii) after the occurrence of an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and fees, costs and expenses of accountants, advisors and consultants, incurred by Administrative Agent and its counsel relating to efforts to (a) evaluate or assess any Loan Party, its business or financial condition and (b) protect, evaluate, assess or dispose of any of the Collateral; and (ix) all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel), fees, costs and expenses of accountants, advisors and consultants and costs of settlement, incurred by Administrative Agent and each Lender in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents by reason of such Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Subsidiary Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings.

C. Indemnity.

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In addition to the payment of expenses pursuant to Subsection X.B, whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless Administrative Agent and Lenders, and the officers, directors, employees, counsel, agents, representatives, trustees,



advisors and affiliates of Administrative Agent and Lenders (collectively called the "Indemnitees"), from and against any and all Indemnified Liabilities (as hereinafter defined); provided that Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction.

As used herein, "Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims (including Environmental Claims and Releases), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and

139

Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including Lenders' agreement to make the Loans hereunder or the use or intended use of the proceeds thereof or the issuance of Letters of Credit hereunder or the use or intended use of any thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Subsidiary Guaranty), (ii) the statements contained in the commitment letter delivered by any Lender to Borrower or Administrative Agent with respect thereto, or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Borrower or any of its Subsidiaries.

To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Subsection X.C may be unenforceable in whole or in part because they are violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

D. Set-Off; Security Interest in Deposit Accounts.  
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In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by Borrower at any time or from time to time, without notice to Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits or other amounts held by any Lender (or any Affiliate of such Lender) for the credit or account of Borrower (general or special, time or demand, provisional or final, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by that Lender (or any Affiliate of such Lender) to or for the credit or the account of Borrower and each other Loan Party against and on account of the Obligations of Borrower and each other Loan Party to that Lender (or any Affiliate of such Lender) or to any other Lender (or any Affiliate of any other Lender) under this Agreement, the Letters of Credit and participations therein and the other Loan Documents, including all claims of any nature or description arising out of or connected with this Agreement, the Letters of Credit and participations therein or any other Loan Document, irrespective of whether or not (i) that Lender shall have made any demand hereunder or (ii) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder or under any of the other Loan Documents shall have become due and payable pursuant to VIII and although said obligations and liabilities, or any of them, may be contingent or unmatured. Borrower hereby further grants to Administrative Agent and each Lender a security interest in all deposits and accounts maintained with Administrative Agent or such Lender as security for the Obligations.

140

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

F. Amendments and Waivers.  
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No amendment, modification, termination or waiver of any provision of this Agreement or of the Notes or of any of the other Loan Documents, and no consent to any departure by Borrower herefrom or therefrom, shall in any event be effective without the written concurrence of Requisite Lenders; unless otherwise provided elsewhere in this Agreement; provided that in addition:

(a) any such amendment, modification, termination, waiver or consent which:

(i) postpones the date or reduces the amount of any scheduled payment of principal of any of the Loans;

(ii) postpones the date on which any interest or any fees are payable or reduces the amount of any interest or any fees payable hereunder (other than any waiver of any increase in the interest rate applicable to any of the Loans pursuant to Subsection 2.2E);

141

(iii) amends, modifies, terminates or waives any provision of Subsection II.B which decreases the interest rate borne by Loans (other than any waiver of any increase in the interest rate applicable to such Loans pursuant to Subsection 2.2) or the percentages set forth in the definitions of "Applicable Base Rate Margin" and "Applicable LIBOR Margin";

(iv) changes in any manner the definition of "Pro Rata Share" or the definition of "Requisite Lenders"

(v) changes the provisions of Subsections 2.4C(iii), 2.4D or 10.5 to provide that Lenders will not share pro rata in payments, proceeds of Collateral or Aggregate Amounts Due;

(vi) changes in any manner any provision of this Agreement which, by its terms, expressly requires the approval or concurrence of all Lenders;

(vii) releases any Lien granted in favor of Administrative Agent with respect to all or substantially all of the Collateral;

(viii) releases all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty, in each case other than in accordance with the terms of the Loan Documents;

(ix) changes in any manner the provisions contained in Subsection VIII.A or this Subsection X.F; or

(x) increases the amount of any Lender's Term Loan Commitments

or Revolving Loan Commitments over the amount thereof then in effect (it being understood that amendments, modifications or waivers of conditions precedent, representations and warranties, covenants or Events of Default or of a mandatory reduction in the Commitments shall not constitute an increase of the Commitments, and that an increase in the available portion of any Commitments shall not constitute an increase in the Commitments);

shall be effective only if evidenced by the written concurrence of all Lenders affected thereby.

In addition,

(a) no amendment, modification, termination or waiver of any provision of any Note shall be effective without the written concurrence of the Lender that is the holder of that Note;

(b) no amendment, modification, termination or waiver of any provision of Subsection 2.1A(i)-(ii) or of any other provision of this Agreement relating to the Tranche B Term Loan Commitments or the Revolving Loan Commitments shall increase the Commitments of any Lender over the amount thereof then in effect without the

142

consent of Requisite Lenders and such Lender (it being understood that amendments, modifications or waivers of conditions precedent, representations and warranties, covenants or Events of Default or of a mandatory reduction in the Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase in the Commitment of such Lender); and

(c) no amendment, modification, termination or waiver of any provision of IX or of any other provision of this Agreement that, by its terms, expressly requires the approval or concurrence of Administrative Agent shall be effective without the written concurrence of Administrative Agent.

Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of that Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Subsection X.F shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Borrower, on Borrower. Notwithstanding anything contained herein to the contrary, as among Lenders and Administrative Agent in connection with the exercise of remedies under any of Loan Documents, the written concurrence of Requisite Lenders shall be required for Administrative Agent to exercise proxy rights in the election of the Governing Body of any Loan Party owning real property or to acquire any ownership interest in real property of any Loan Party.

G. Independence of Covenants.  
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All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of an Event of Default or Potential Event of Default if such action is taken or condition exists.

H. Notices; Effectiveness of Signatures.  
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Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices delivered by United States mail to Administrative Agent or any Loan Party shall not be effective until received. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or (i) as to Borrower and Administrative Agent, such other address as shall be designated by such Person in a written notice delivered to the other parties hereto and (ii) as to each other

143

party, such other address as shall be designated by such party in a written notice delivered to Administrative Agent. Electronic mail may be used to distribute routine communications, such as financial statements and other information; provided, however, that no signature with respect to any notice, request, agreement, waiver, amendment or other document or any notice that is intended to have binding effect may be sent by electronic mail.

Loan Documents and notices under the Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as an original copy with manual signatures and shall be binding on all Loan Parties, Agents and Lenders. Administrative Agent may also require that any such documents and signature be confirmed by a manually-signed copy thereof; provided, however, that the failure to request or deliver any such manually-signed copy shall not affect the effectiveness of any facsimile document or signature.

I. Survival of Representations, Warranties and Agreements.  
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W. All representations, warranties and agreements made herein shall survive the execution and delivery of this Agreement and the making of the Loans and the issuance of the Letters of Credit hereunder.

1. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Borrower set forth in Subsections 2.6D, 2.7, 1.1F, X.B, X.C, X.D, X.R and X.S and the agreements of Lenders set forth in Subsections IX.B.3, IX.D, X.E and X.S shall survive, for the applicable limitations period, the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination of this Agreement.

J. Failure or Indulgence Not Waiver; Remedies Cumulative.  
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No failure or delay on the part of Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

K. Marshalling; Payments Set Aside.  
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Neither Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other party or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent for the benefit of Lenders), or Administrative Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are

144

subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause (whether by litigation, demand, settlement or otherwise), then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

L. Severability.  
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In case any provision in or obligation under this Agreement or the Notes shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

M. Obligations Several; Independent Nature of Lenders' Rights.  
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The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by

Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders, or Lenders and Borrower, as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

N. Release of Security; Guarantees.  
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Upon the proposed sale or other disposition of any Collateral that is permitted by this Agreement or to which Requisite Lenders (or, if required pursuant to Subsection 10.6, all Lenders) have otherwise consented, or the sale or other disposition of all of the Capital Stock of a Subsidiary Guarantor to any Person (other than to a Subsidiary Guarantor) permitted by this Agreement or to which Requisite Lenders (or, if required pursuant to Subsection 10.6, all Lenders) have otherwise consented, for which a Loan Party desires to obtain a security interest release or a release of the Subsidiary Guaranty from Administrative Agent, such Loan Party shall deliver an Officer's Certificate (i) stating that the Collateral or the Capital Stock subject to such disposition is being sold or otherwise disposed of in compliance with the terms hereof and (ii) specifying the Collateral or Capital Stock being sold or otherwise disposed of in the proposed transaction. Upon the receipt of such Officer's Certificate, Administrative Agent shall, at such Loan Party's expense, so long as Administrative Agent (a) has no reason to believe that the facts stated in such Officer's Certificate are not true and correct, and (b) if the sale or other disposition of such item of Collateral or Capital Stock constitutes an Asset Sale, shall have received evidence satisfactory to it that arrangements satisfactory to it have been made for delivery of the Net Asset Sale Proceeds if and as required by Subsection 2.4, execute and deliver such releases of its security interest in such Collateral or such Subsidiary Guaranty, as may be reasonably

145

requested by such Loan Party. Upon the payment in full of all Obligations, the cancellation or termination of the Commitments and the cancellation or expiration of all outstanding Letters of Credit (or the cash collateralization thereof), each Subsidiary Guaranty and the security interests granted pursuant to the Loan Documents (other than with respect to any cash collateral in respect of Letters of Credit) shall terminate and all rights to the Collateral shall revert to the applicable grantor Loan Parties. Upon any such termination Administrative Agent will, at such Loan Party's expense, execute and deliver to such Loan Party such documents as such Loan Party shall reasonably request to evidence such termination.

O. Headings.  
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Section and Subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

P. Applicable Law.  
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THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

Q. Successors and Assigns.  
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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 Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by Borrower without such consent 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 and, to the extent expressly contemplated hereby, Affiliates of Administrative Agent and Affiliates of Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

R. Consent to Jurisdiction and Service of Process.  
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ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS HEREUNDER OR THEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF

(I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND ANY OBJECTION TO VENUE;

(III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO BORROWER AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SUBSECTION X.H;

(IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER BORROWER IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT;

(V) AGREES THAT LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION; AND

(VI) AGREES THAT THE PROVISIONS OF THIS SUBSECTION X.R RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1402 OR OTHERWISE.

S. Waiver of Jury Trial.

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EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SUBSECTION X.S AND EXECUTED BY EACH OF THE PARTIES

HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

T. Confidentiality.

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Each Lender shall hold all non-public information obtained pursuant to the requirements of this Agreement that has been identified in writing as confidential by Borrower in accordance with such Lender's customary procedures for handling confidential information of this nature and in accordance with safe and sound banking practices, it being understood and agreed by Borrower that in any event a Lender may make disclosures (a) to its Affiliates and to directors, officers, employees and agents of such Lender and its Affiliates, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to the extent requested by any Government Authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Subsection X.T, to (i) any Eligible Assignee of or Participant in,

or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of Borrower, (g) with the consent of Borrower, (h) to the extent such information (i) becomes publicly available other than as a result of a breach of this Subsection X.T, or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower, or (i) to the National Association of Insurance Commissioners or any other similar organization or any nationally recognized rating agency that requires access to information about a Lender's or its Affiliates' investment portfolio in connection with ratings issued with respect to such Lender or its Affiliates and that no written or oral communications from counsel to an Agent and no information that is or is designated as privileged or as attorney work product may be disclosed to any Person unless such Person is a Lender or a participant hereunder; provided that, unless specifically prohibited by applicable law or court order, each Lender shall notify Borrower of any request by any Government Authority or representative thereof (other than any such request in connection with any examination of the financial condition of such Lender by such Government Authority) for disclosure of any such non-public information prior to disclosure of such information; and provided, further, that in no event shall any Lender be obligated or required to return any materials furnished by Borrower or any of its Subsidiaries. Notwithstanding anything contained herein to the contrary, Borrower understands and agrees that Administrative Agent and each of the institutions identified as "Co-Lead Arranger" or "Co-Syndication Agent" on the title page to this Agreement may make customary disclosures for advertising and "league table" purposes.

148

Notwithstanding anything to contrary herein, Borrower and Administrative Agent hereby agree that Borrower (and each of its employees, representatives and agents) is permitted to disclose to any Person, the structure and tax aspects of the transactions contemplated by the Loan Documents, and all materials of any kind (including opinions and other tax analyses) that are provided to Borrower related to such structure and tax aspects. In this regard, Borrower acknowledges and agrees that Borrower's disclosure of the structure or tax aspects of such transactions is not limited in any way by an express or implied understanding or agreement, oral or written (whether or not such agreement or understanding is legally binding). Furthermore, Borrower acknowledges and agrees that it does not know or have reason to know that its use or disclosure of information relating to the structure or tax aspects of the transactions contemplated by the Loan Documents is limited in any other manner for the benefit of any other Person.

U. Co- Lead Arrangers and Co-Syndication Agents.  
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None of the institutions identified as "Co-Lead Arrangers" or "Co-Syndication Agents" on the title page to this Agreement shall have any obligations, liabilities or duties under this Agreement other than those applicable to a Lender (but only if such institution is a Lender) as such, and no such institution shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any such institution in deciding to enter into this Agreement or in taking or not taking any action hereunder.

V. Counterparts; Effectiveness.  
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This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

W. Limitation of Liability.  
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Neither Administrative Agent nor any Lender shall be responsible or liable to any other party or any other person for consequential or punitive damages that may be alleged as a result of this Agreement or any other Loan Document.

X. Further Assurances.  
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Each Loan Party agrees that from time to time, it shall, at its

expense, promptly execute and deliver, or cause to be executed and delivered, all further agreements, documents and instruments, and do or cause to be done all further acts as may be reasonably necessary or reasonably desirable, or that Administrative Agent may reasonably request, in order to evidence,

149

perfect, maintain and enforce any security interest granted or purported to be granted by, or to otherwise effectuate the provisions or purposes of, this Agreement or any of the other Loan Documents and to enable Administrative Agent, on behalf of the Lenders, to exercise and enforce its rights and remedies under this Agreement or any of the other Loan Documents.

[Remainder of page intentionally left blank]

150

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

BORROWER:

CENTRAL GARDEN & PET COMPANY,  
a Delaware corporation

By: /s/ Stuart W. Booth

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Stuart W. Booth  
Vice President,  
Chief Financial Officer

Notice Address:

3697 Mt. Diablo Boulevard  
Suite 310  
Lafayette, California 94549  
Attn: Stuart W. Booth  
Facsimile No.: (925) 283-4984

S-1

ADMINISTRATIVE AGENT:

CANADIAN IMPERIAL BANK OF COMMERCE,  
as Administrative Agent

By: /s/ Dean Decker

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Dean Decker  
Title: Managing Director  
CIBC World Markets Corp., AS  
AGENT

Notice Address:

CANADIAN IMPERIAL BANK OF COMMERCE  
425 Lexington Avenue  
New York, New York 10017  
Attn.: Agency Services Dept.  
Facsimile No.: (212) 856-3763

With a Copy to:

CIBC WORLD MARKETS CORP.  
10880 Wilshire Boulevard  
Suite 1700  
Los Angeles, California 90024  
Facsimile No.: (310) 446-3610

S-2

LENDERS:

CIBC INC., as Lender

By: /s/ Dean Decker



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Dean Decker  
Title: Managing Director  
CIBC World Markets Corp., AS  
AGENT

Notice Address:

CIBC INC.  
425 Lexington Avenue  
New York, New York 10017  
Attn.: Agency Services Dept.  
Facsimile No.: (212) 856-3763

With a Copy to:

CIBC WORLD MARKETS CORP.  
10880 Wilshire Boulevard  
Suite 1700  
Los Angeles, California 90024  
Facsimile No.: (310) 446-3610

S-3

-----,  
as Lender

By: -----  
[Name]  
[Title]

Notice Address:  
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-----  
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Facsimile: -----

S-4

I, Glenn W. Novotny, certify that:

1. I have reviewed this report on Form 10-Q of Central Garden & Pet Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2003

/s/ GLENN W. NOVOTNY

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Glenn W. Novotny  
President and Chief Executive Officer  
*(Principal Executive Officer)*

I, Stuart W. Booth, certify that:

1. I have reviewed this report on Form 10-Q of Central Garden & Pet Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2003

/s/ STUART W. BOOTH

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Stuart W. Booth  
Chief Financial Officer  
*(Principal Financial Officer)*

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with the accompanying quarterly report on Form 10-Q of Central Garden & Pet Company for the quarter ended June 28, 2003 (the "Report"), I, Glenn W. Novotny, President and Chief Executive Officer of Central Garden & Pet Company, hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) such Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in such Report presents, in all material respects, the financial condition and results of operations of Central Garden & Pet Company.

This written statement is being furnished to the Securities and Exchange Commission as an exhibit to such Form 10-Q.

August 8, 2003

/s/ GLENN W. NOVOTNY

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Glenn W. Novotny  
Chief Executive Officer

A signed original of this written statement required by § 906 has been provided to Central Garden & Pet Company and will be retained by Central Garden & Pet Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with the accompanying quarterly report on Form 10-Q of Central Garden & Pet Company for the quarter ended June 29, 2003 (the "Report"), I, Stuart W. Booth, Chief Financial Officer of Central Garden & Pet Company, hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) such Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in such Report presents, in all material respects, the financial condition and results of operations of Central Garden & Pet Company.

This written statement is being furnished to the Securities and Exchange Commission as an exhibit to such Form 10-Q.

August 8, 2003

/s/ STUART W. BOOTH

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Stuart W. Booth  
Chief Financial Officer

A signed original of this written statement required by § 906 has been provided to Central Garden & Pet Company and will be retained by Central Garden & Pet Company and furnished to the Securities and Exchange Commission or its staff upon request.