

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

FORM 8-K

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

Date of Report (Date of earliest event reported): March 27, 2003

CONSTELLATION BRANDS, INC.

-----  
(Exact name of registrant as specified in its charter)

----- Delaware ----- (State or other jurisdiction of incorporation)	001-08495 ----- (Commission File Number)	16-0716709 ----- (IRS Employer Identification No.)
300 Willowbrook Office Park, Fairport, New York ----- (Address of Principal Executive Offices)		14450 ----- (Zip Code)

(585) 218-3600

-----  
Registrant's telephone number, including area code

Not Applicable

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

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Item 2. Acquisition or Disposition of Assets

On January 17, 2003, Constellation Brands, Inc. ("Constellation") and BRL Hardy Limited, an Australian corporation ("BRL Hardy"), entered into an agreement to effect an acquisition of all of the outstanding shares of BRL Hardy by Constellation Australia Pty Limited, an Australian corporation that is a wholly-owned, indirect subsidiary of Constellation ("Constellation Australia"). On March 27, 2003, Constellation acquired control of BRL Hardy's Board of Directors pursuant to the terms of the agreement. On April 9, 2003, the acquisition was implemented by all of the outstanding shares of BRL Hardy being transferred to Constellation Australia and the BRL Hardy options held by employees of BRL Hardy and its affiliates being cancelled.

In consideration for the transfer of the BRL Hardy shares, Constellation Australia is obligated to pay the holders of such shares aggregate cash consideration of A\$1.74 billion (equivalent to approximately US\$1.04 billion) and Constellation issued to certain electing holders of BRL Hardy shares (or to a depository issuing depository interests to such holders) 3,288,913 shares of class A common stock, par value \$0.01 per share, of Constellation (attributed a value of US\$76.4 million for purposes of the transaction). In addition, Constellation Australia loaned A\$32.1 million (equivalent to approximately US\$19.3 million) to BRL Hardy to enable BRL Hardy to effect the cancellation of all of the outstanding stock options of BRL Hardy. Constellation Australia also loaned approximately A\$570 million (equivalent to approximately US\$341 million) to BRL Hardy to permit BRL Hardy to satisfy its outstanding bank debt. The consideration for the BRL Hardy shares and options was determined on an arms-length basis following negotiations between the Board of Directors of each of BRL Hardy and Constellation and their respective advisors.

The cash used to pay the cash portion of the consideration and to make loans to BRL Hardy is being funded with proceeds from loans under (i) an Amended and Restated Credit Agreement, dated as of March 19, 2003 (the "Credit Agreement"), among Constellation and certain of its subsidiaries, the lenders named therein, JPMorgan Chase Bank, as Administrative Agent, and JPMorgan Europe Limited, as London Agent, and (ii) an Amended and Restated Bridge Loan Agreement, dated as of January 16 2003 and amended and restated on March 26, 2003 (the "Bridge Loan Agreement"), among Constellation and certain of its subsidiaries, the lenders named therein, and JPMorgan Chase Bank, as Administrative Agent. The Credit Agreement provides for revolving credit loans and term loans in an original aggregate principal amount of up to US\$1.6 billion (which amount, under certain circumstances, may be increased to up to US\$1.9 billion), and the Bridge Loan Agreement provides for bridge loans in an original aggregate principal amount of up to \$450 million. Constellation utilized US\$1.0 billion of term loans under the Credit Agreement and approximately US\$400 million under the Bridge Loan Agreement to consummate the transactions.

BRL Hardy is a leading Australian producer and exporter of wine, with products sourced from Australia, New Zealand and France. BRL Hardy's wines are

distributed worldwide through a network of sales and marketing operations, with the majority of sales generated in Australia, the United Kingdom and the United States. Major export brands include: Hardys Stamp of Australia, Hardys Nottage Hill, Hardys VR and Banrock Station. Other domestic and international brands include: Houghton, Nobilo, Leasingham, Moondah Brook, Yarra Burn,

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Stonehaven, Stanley and Renmano. Constellation intends to continue to operate the business of BRL Hardy.

Prior to the transactions described above, there was no material relationship between the officers, directors or shareholders of BRL Hardy and Constellation or any of its affiliates, any director or officer of Constellation or any associate of any such director or officer, except that BRL Hardy and Constellation were equal owners of Pacific Wine Partners, LLC, a joint venture established to produce, market and sell a global portfolio of premium wines in the US, including a range of Australian imports provided by BRL Hardy.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits

(a) Financial Statements of Business Acquired. At the time of the filing of this Report, it is impracticable to provide the financial statements required by Regulation S-X. The required financial statements will be filed by Constellation on Form 8-K/A as soon as practicable, but not later than June 9, 2003.

(b) Pro Forma Financial Information. At the time of the filing of this Report, it is impracticable to provide the pro forma financial information required by Regulation S-X. The required pro forma financial information will be filed by Constellation on Form 8-K/A, as soon as practicable, but not later than June 9, 2003.

(c) Exhibits. See Index to Exhibits.

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SIGNATURES

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

Dated: April 9, 2003

CONSTELLATION BRANDS, INC.

By: /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Executive Vice President and Chief  
Financial Officer

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<TABLE>  
<CAPTION>

INDEX TO EXHIBITS

Exhibit Number	Exhibit Name	Location
<S> 99.1	<C> Implementation Deed dated 17 January 2003 between Constellation and BRL Hardy	<C> Incorporated by reference to Exhibit to Constellation's Form 8-K filed Securities and Exchange Commission January 21, 2003 (the "1/21/03 8-K")
with the		
on		
2.2	Transaction Compensation Agreement dated 17 January 2003 between Constellation and BRL Hardy	Incorporated by reference to Exhibit 99.2 to the 1/21/03 8-K
2.3	No Solicitation Agreement dated 13 January 2003 between Constellation and BRL Hardy	Incorporated by reference to Exhibit 99.3 to the 1/21/03 8-K
2.4	Backstop Fee Agreement dated 13 January 2003 between Constellation and BRL Hardy	Incorporated by reference to Exhibit 99.4 to the 1/21/03 8-K
2.5	Letter Agreement dated 6 February 2003 between Constellation and BRL Hardy	Filed herewith
4.1	Amended and Restated Credit Agreement, dated as of March 19, 2003, among Constellation and certain of its subsidiaries, the lenders named therein,	Filed herewith

JPMorgan Chase Bank, as Administrative Agent, and  
JPMorgan Europe Limited, as London Agent

4.2

Amended and Restated Bridge Loan Agreement, dated as of January 16, 2003 and amended and restated as of March 26, 2003, among Constellation and certain of its subsidiaries, the lenders named therein, and JPMorgan Chase Bank, as Administrative Agent

Filed herewith

</TABLE>

Constellation Brands, Inc.  
300 WillowBrook Office Park  
Fairport NY 14450

6 February 2003

The Directors  
BRL Hardy Limited  
Reynell Road  
Reynella  
South Australia 5161

STRICTLY PRIVATE & CONFIDENTIAL

Gentlemen

We refer to the implementation deed dated 17 January 2003 between BRL Hardy Limited ("BRL Hardy") and Constellation Brands, Inc. ("Constellation") (the "Implementation Deed").

1. Each of BRL Hardy and Constellation agrees that:
  - (a) the scheme of arrangement to be proposed by BRL Hardy under clause 5.1 of the Implementation Deed will be in the form set out in annexure 1 to this letter and not in the form set out in schedule 3 to the Implementation Deed;
  - (b) the scheme of arrangement to be proposed by BRL Hardy under clause 6.1 of the Implementation Deed will be in the form set out in annexure 2 to this letter and not in the form set out in schedule 4 to the Implementation Deed; and
  - (c) the deed poll to be executed by Constellation under clause 8.2(i) of the Implementation Deed will be in the form set out in annexure 3 to this letter and not in the form set out in schedule 5 to the Implementation Deed;
  - (d) the election form referred to in clause 5.3 of the Implementation Deed shall be in the form set out in annexure 4 to this letter, subject to completion of facsimile numbers by BRL Hardy.
2. This letter may be executed in one or more counterparts, all of which taken together shall constitute one and the same agreement. Either party may enter into the agreement set forth in this letter by signing any such counterpart.
3. This letter shall be governed by the laws of the State of South Australia, without regard to conflicts of laws principles. The parties consent to the jurisdiction and venue of the South Australian Supreme Court for any action arising under or in connection with this letter.

Please confirm that this letter is in accordance with BRL Hardy's understanding of our agreement by signing this letter as indicated below.

Very truly yours

CONSTELLATION BRANDS, INC.

By: /s/ Richard Sands

Name: Richard Sands

Accepted and agreed to as of the date first set forth above

BRL HARDY LIMITED.

By: /s/

Name: Name not available when filed

Annexure 1

CLAYTON UTZ

BRL Hardy Limited (ACN 008 273 907)  
BRL Hardy

The holders of ordinary shares in the capital of BRL Hardy  
Shareholders

Scheme of Arrangement

CLAYTON UTZ  
Lawyers

Levels 22-35 No. 1 O'Connell Street Sydney NSW 2000 Australia  
PO Box H3 Australia Square Sydney NSW 1215  
www.claytonutz.com  
Tel + 61 2 9353 4000 Fax + 61 2 8220 6700  
Our ref - 126/618/21723614 Contact - Jonathan Swain

Sydney o Melbourne o Brisbane o Perth o Canberra o Darwin

Liability limited by the Solicitors Scheme, approved under the  
Professional Standards Act 1994 (NSW)

Scheme of Arrangement

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Parties BRL Hardy Limited, ACN 008 273 907 of Reynell Road,  
Reynella, 5161, Australia ("BRL Hardy")

The holders of ordinary shares in the capital of BRL Hardy, other than persons holding ordinary shares on behalf of or for the benefit of Constellation or its Subsidiaries ("Shareholders").

Recitals

- A. BRL Hardy is a public company incorporated in the State of South Australia.
- B. BRL Hardy and Constellation Brands, Inc. ("Constellation") have entered into the Implementation Deed pursuant to which BRL Hardy has agreed to propose this Scheme to the Shareholders and each of BRL Hardy and Constellation have agreed to execute all documents and do all things necessary or desirable to be executed or done by BRL Hardy or Constellation, and Constellation has agreed to procure that Constellation Australia Pty Limited, ACN 103 362 232 ("Constellation Australia") execute all documents and do all things necessary or desirable to be executed or done by Constellation Australia, to give effect to this Scheme.
- C. If this Scheme becomes Effective then all of the Scheme Shares will be transferred to Constellation Australia and Constellation Australia will pay the Share Scheme Consideration to the Scheme Shareholders.
- D. Constellation has entered into the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under this Scheme and the Implementation Deed and to procure that Constellation Australia perform the obligations of Constellation Australia under this Scheme.

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1. Definitions and interpretations

1.1 Definitions

In this Scheme, unless the context otherwise requires:

"ASIC" means the Australian Securities and Investments Commission.

"ASX" means Australian Stock Exchange Limited.

"Australia" means Australia and all of its external territories.

"Australian Listing Condition" means the Condition Precedent in clause 4.1(f) (ii) of the Implementation Deed.

"Business Day" has the meaning given in the Listing Rules.

"Cash Consideration" has the meaning given in clause 5.1.

"CDIs" has the meaning given in the Listing Rules.

"CHESS" means the Clearing House Electronic Sub-register System for the transfer and registration of securities as operated by the Securities Clearing House authorised to do so by the Corporations Act.

"Conditions Precedent" means the conditions precedent set out in clause 2.1.

"Corporations Act" means the Corporations Act 2001 (Commonwealth).

"Court" means the Supreme Court of South Australia.

"Court Hearing Time" means the commencement of the hearing by the Court of the application for approval of the Scheme pursuant to section 411(4)(b) of the Corporations Act or, if the application is adjourned for any reason, means the commencement of the hearing of the adjourned application.

"Constellation CDIs" means CDIs representing Constellation Shares.

"Constellation Shares" means shares of Class A common stock, par value US\$0.01 per share, of Constellation.

"Constellation Share Price" means the volume weighted average share price of Constellation Shares in US\$ traded on the New York Stock Exchange during the Price Setting Period.

"Deed Poll" means the deed poll dated [XXX] executed by Constellation in which, among other things, Constellation has covenanted in favour of the Scheme Shareholders to perform its obligations under the Scheme and to procure that Constellation Australia performs the obligations of Constellation Australia under the Scheme including the obligation to pay and issue the Scheme Consideration.

"Depositary" means CHESS Depositary Nominees Pty Limited, a subsidiary of ASX, or such other depositary as the parties may agree in writing.

"Election" means a valid election made by a Scheme Shareholder as to the form of Scheme Consideration which that Scheme Shareholder wishes to receive in accordance with the form of election included with the Scheme Booklet.

"Eligible Scheme Shareholder" means a Scheme Shareholder other than a Foreign Scheme Shareholder or a US Scheme Shareholder.

"Effective Date" means the date on which an office copy of the Scheme Order is lodged with ASIC pursuant to section 411(10) of the Corporations Act or, if an earlier date is specified in the Scheme Order for the coming into effect of the Scheme, that earlier date.

"Excluded Holder" means a person registered as the holder of Excluded Shares.

"Excluded Shares" means any Shares held by any person on behalf of or for the benefit of Constellation or its Subsidiaries.

"Explanatory Statement" means the explanatory statement of BRL Hardy in relation to the Scheme issued pursuant to section 412 of the Corporations Act which has been registered with ASIC.

"Foreign Scheme Shareholder" means a Scheme Shareholder whose address in the Register as at the Record Date is a place outside Australia, New Zealand, Hong Kong, Singapore, the United Kingdom or the United States.

"Implementation Deed" means the Implementation Deed dated 17 January 2003 between Constellation and BRL Hardy.

"Implementation Date" means the date which is 3 Business Days after the Record Date.

"Listing Rules" means the official listing rules of ASX.

"New Constellation Shares" means the Constellation Shares to be issued to Scheme

Shareholders and to the Depositary under clause 5.5 as the Scrip Consideration.

"Person" means any natural person, corporation, limited liability

company, trust, joint venture, association, company, partnership, governmental authority or other entity.

"Price Setting Period" means the last 10 full trading days of Constellation Shares on the New York Stock Exchange prior to the time which is 24 hours before the Court Hearing Time.

"Record Date" means the date which is 5 Business Days after the Effective Date.

"Register" means the register of members of BRL Hardy maintained in accordance with the Corporations Act.

"Scheme" means this scheme of arrangement subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act.

"Scheme Booklet" means the information to be dispatched to the Shareholders including the Explanatory Statement, a report by the Independent Expert, a copy of the Scheme, the Deed Poll and the Implementation Deed and notices convening the Scheme Meeting (together with proxy forms) in such form as the parties may agree in writing.

"Scheme Consideration" means the consideration to be paid to Scheme Shareholders for the transfer to Constellation Australia of each Scheme Share, ascertained in accordance with clause 5.

"Scheme Meeting" means the meeting of Shareholders to be convened by the Court pursuant to section 411(1) of the Corporations Act in respect of the Scheme.

"Scheme Order" means the orders of the Court approving the Scheme pursuant to section 411(4) of the Corporations Act.

"Scheme Shareholder" means each person who is registered in the Register as the holder of Scheme Shares at 10.00 pm on the Record Date.

"Scheme Shares" means the Shares on issue as at the Effective Date other than the Excluded Shares.

"Scrip Consideration" has the meaning given in clause 5.1.

"Scrip Consideration Cap" means 15,000,000 New Constellation Shares.

"Scrip Election" has the meaning given in clause 5.5(a).

"Shares" means fully paid ordinary shares in the capital of BRL Hardy.

"United States" means the United States of America.

"US Scheme Shareholder" means a Scheme Shareholder whose address on the Register as at the Record Date is within the United States.

"US Listing Conditions" means the Conditions Precedent in clauses 4.1(e) and 4.1(f)(ii) of the Implementation Deed.

1.2

## Interpretation

In this Scheme:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) a reference to any document (including this Scheme) is to that document as amended, varied, novated, ratified or replaced from time to time;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued or promulgated under it;
- (d) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (e) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules,



exhibits and annexures to or of this Scheme, and a reference to this Scheme includes any schedule, exhibit or annexure to this Scheme;

- (f) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) the word "includes" in any form is not a word of limitation;
- (h) a reference to "\$" or "dollar" is to Australian currency unless it is preceded by "US", in which case such reference is to United States currency; and
- (i) references to a particular time are to South Australian time.

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2. Conditions Precedent

2.1 Conditions Precedent

The Scheme is conditional on each of the following conditions precedent:

- (a) as at the Court Hearing Time all of the conditions precedent set out in clause 4.1 of the Implementation Deed have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at the Court Hearing Time, the Implementation Deed has not been terminated;
- (c) the Scheme has been approved in accordance with section 411(4) of the Corporations Act at the Scheme Meeting; and
- (d) the Court has approved the Scheme pursuant to section 411(4) of the Corporations Act with or without modification,

and the provisions of clauses 3, 4, 5 and 6 will be of no effect unless and until the Conditions Precedent are satisfied.

2.2 Certificate

At the hearing by the Court of the application for the Scheme Order, Constellation and BRL Hardy will each provide to the Court a certificate confirming whether or not all of the conditions precedent in the Implementation Deed have been satisfied or waived or have ceased to have effect in accordance with the Implementation Deed.

2.3 Termination of Implementation Deed

In the event that the Implementation Deed is terminated, each of BRL Hardy, Constellation and Constellation Australia are released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

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3. Lodgement

BRL Hardy must lodge with ASIC the Scheme Order by 5.00 pm on the Business Day following the date on which the Court approves the Scheme.

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4. Implementation

4.1 Transfer of Scheme Shares

On the Implementation Date, all of the Scheme Shares will be transferred to Constellation Australia without the need for any further act by any Scheme Shareholder by BRL procuring the delivery of a transfer or transfers in respect of all of the Scheme Shares to the ASX Settlement and Transfer Corporation Pty Limited by a broker nominated in writing by Constellation Australia to effect a valid transfer of the Scheme Shares to Constellation Australia under section 1074D of the Corporations Act, or, if such procedure is not available for any reason, by:

- (a) BRL Hardy delivering to Constellation Australia a duly completed and executed share transfer form or forms to transfer all of the Scheme Shares to Constellation Australia;

- (b) Constellation Australia executing and delivering the share transfer form or forms to BRL Hardy; and
- (c) BRL Hardy entering the name of Constellation Australia in the Register as the holder of all of the Scheme Shares.

4.2 Payment of Scheme Consideration

Subject to clause 5.1(b), in consideration for the transfer to Constellation Australia of each Scheme Share on the Implementation Date, Constellation Australia will, within 5 Business Days after the Implementation Date:

- (a) pay to each Scheme Shareholder such amount of cash as is due to that Scheme Shareholder under clause 5 as Cash Consideration;
- (b) cause to be issued to each US Scheme Shareholder such number of New Constellation Shares as are due to that US Scheme Shareholder under clause 5 as Scrip Consideration; and
- (c) cause to be issued in accordance with clause 5.5 such number of New Constellation Shares as are due to the Eligible Scheme Shareholders under clause 5 as Scrip Consideration; and
- (d) cause to be issued in accordance with clause 5.6 such number of New Constellation Shares as are due to the Foreign Scheme Shareholders under clause 5 as Scrip Consideration.

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5. Scheme Consideration

5.1 Forms of Scheme Consideration

- (a) Subject to clause 5.1(b), the Scheme Consideration in respect of each Scheme Share is either:

- (i) a cash amount of A\$10.50 (the "Cash Consideration"); or
- (ii) the number of New Constellation Shares calculated in accordance with clause 5.2 (the "Scrip Consideration").

Each Scheme Shareholder is entitled to receive either Cash Consideration or Scrip Consideration in respect of each Scheme Share held by that Scheme Shareholder. The allocation of each Scheme Shareholder's entitlement to Scheme Consideration as between Cash Consideration and Scrip Consideration will be determined in accordance with clause 5.3.

- (b) If the US Listing Conditions are not satisfied by the date which is 5 Business Days before the Scheme Meeting or the Australian Listing Condition is not satisfied by 8.00 am on the Second Court Date then, in accordance with the terms of the Share Scheme, all Scheme Shareholders will receive Cash Consideration whether or not they have elected to receive Scrip Consideration.

5.2 Calculation of Scrip Consideration

Subject to clause 5.5 the Scrip Consideration is the number of New Constellation Shares for each Scheme Share given by the following formula:

$$N = \frac{C \times 10.50}{P} \quad \text{where:}$$

N is the number of New Constellation Shares to be issued as consideration for each Scheme Share;

P is the Constellation Share Price in US\$ provided that:

- (a) if the Constellation Share Price is below US\$22.50, P is 22.50; and
- (b) if the Constellation Share Price is above US\$27.50, P is 27.50;

C is the average of the closing US\$/A\$ exchange rate (in units of US\$ per A\$1.00) as quoted by Bloomberg (based on the New York market close at 5.30 pm (New York time)) for each day in the Price Setting Period.

5.3 Form of Scheme Consideration

Subject to clause 5.1(b) the, form of Scheme Consideration to be paid to Scheme Shareholders will be determined in accordance with the following provisions of this clause 5.3:

- (a) each Scheme Shareholder who does not make an Election will receive Cash Consideration in respect of all of that Scheme Shareholder's Scheme Shares;
- (b) each Scheme Shareholder who makes an Election to receive all or part of the Scheme Consideration in the form of Cash Consideration will receive that part of the Scheme Consideration in the form of Cash Consideration;
- (c) subject to clause 5.6, each Scheme Shareholder who makes an Election to receive all or part of the Scheme Consideration in the form of Scrip Consideration will receive:
  - (i) such part of the Scheme Consideration to which that Scheme Shareholder is entitled as is ascertained in accordance with clause 5.4 in the form of Scrip Consideration; and
  - (ii) the balance of the Scheme Consideration to which that Scheme Shareholder is entitled in the form of Cash Consideration.

#### 5.4 Allocation of Scrip Consideration

- (a) If the aggregate number of New Constellation Shares which would be issued by Constellation pursuant to Elections to receive Scheme Consideration in the form of Scrip Consideration (a "Scrip Election") if all Scrip Elections were satisfied in full is less than or equal to the Scrip Consideration Cap then each Scheme Shareholder who has made a Scrip Election in respect of some or all of that Scheme Shareholder's Scheme Shares will receive Scrip Consideration in respect of all of the Scheme Shares in respect of which the Scrip Election is made.
- (b) If the aggregate number of New Constellation Shares which would be issued by Constellation pursuant to Scrip Elections if all Scrip Elections were satisfied in full exceeds the Scrip Consideration Cap then each Scheme Shareholder who has made a Scrip Election will receive Scrip Consideration in respect of such number of the Scheme Shares in respect of which the Scrip Election is made as is given by the following formula

$$S = \frac{C \times E}{A}$$

where:

- S is the number of Scheme Shares in respect of which Scrip Consideration will be received by the Scheme Shareholder.
- C is the number of New Constellation Shares comprising the Scrip Consideration Cap.
- E is the number of Scheme Shares in respect of which a Scrip Election was made by the Scheme Shareholder.
- A is the aggregate number of New Constellation Shares which would be issued by Constellation to Scheme Shareholders if all Scrip Elections were satisfied in full.

#### 5.5 Constellation CDIs

Where an Eligible Scheme Shareholder is entitled to Scrip Consideration in accordance with clause 5.3:

- (a) the number of New Constellation Shares which would otherwise be required to be issued to the Eligible Scheme Shareholder will not be issued to the Eligible Scheme Shareholder and will instead be issued to the Depository to hold on trust for the Eligible Scheme Shareholder; and
- (b) Constellation Australia will cause to be issued to the Eligible Scheme Shareholder

10 Constellation CDIs for each New Constellation Share to which the Eligible Scheme Shareholder would be entitled under clause 5.2.

#### 5.6 Foreign Scheme Shareholders

If a Foreign Scheme Shareholder makes an Election to receive all or part of the Scheme Consideration in the form of Scrip Consideration then:

- (a) the New Constellation Shares which would otherwise be required to be issued to the Foreign Scheme Shareholder will not be issued to the Foreign Scheme Shareholder and will instead be issued to a nominee appointed by Constellation;
- (b) Constellation will cause the nominee to offer for sale on the open market within 5 Business Days after the Implementation Date all of the New Constellation Shares issued to the nominee under this clause 5.6 in such manner, at such price and on such other terms as the nominee shall determine and to remit to Constellation the proceeds of sale (after deducting brokerage, taxes and other costs of sale) (the "Proceeds") ; and
- (c) Constellation will pay to each Foreign Shareholder such fraction of the Proceeds as is equal to the number of New Constellation Shares which would have been issued to the Foreign Shareholder but for the application of this clause 5.6 divided by the total number of New Constellation Shares issued to the nominee under this clause 5.6.

#### 5.7 Fractional entitlements

If a fractional entitlement to a New Constellation Share arises from the calculation of the Scheme Consideration in respect of a Scheme Shareholder, then any such fractional entitlement to a New Constellation Share shall be rounded down to the nearest whole number of New Constellation Shares, as the case may be, and all fractional entitlements will be paid in the form of Cash Consideration. Any Cash Consideration payable under this clause 5.7 will be calculated by multiplying the fractional entitlement to a New Constellation Share by the Constellation Share Price converted into Australian dollars using the exchange rate referred to in clause 5.2.

#### 5.8 Currency of Cash Consideration

All Cash Consideration payable to Scheme Shareholders other than any payments made pursuant to clause 5.6 must be paid by cheque drawn in Australian dollars.

#### 5.9 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders shall be payable to the joint holders and be forwarded to the holder whose name appears first in the Register on the Record Date; and
- (b) any stock certificates and uncertificated holding statements for Constellation Shares or Constellation CDIs to be issued to Scheme Shareholders shall be issued in the names of the joint holders and forwarded to the holder whose name appears first in the Register as at the Record Date.

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#### 6. Issue and trading

##### 6.1 Issue

- (a) The New Constellation Shares will be duly and validly issued in accordance with the Delaware General Corporation Law and Constellation's Restated Certificate of Incorporation and By-Laws, will be fully paid and non-assessable and will rank pari passu in all respects with all other Constellation Shares then issued and outstanding.
- (b) The obligation of Constellation Australia to cause to be issued New Constellation Shares to US Scheme Shareholders shall be satisfied by Constellation Australia:
  - (i) on the Implementation Date causing the name of each US Scheme Shareholder entitled to receive New Constellation Shares to be entered on the stock ledger of

Constellation as the holder of the New Constellation Shares issued to that US Scheme Shareholder; and

- (ii) within 5 Business Days after the Implementation Date procuring the dispatch to each US Scheme Shareholder by ordinary mail to the address of that US Scheme Shareholder recorded in the Register as at the Record Date a stock certificate in the name of that US Scheme Shareholder representing the number of New Constellation Shares issued to that US Scheme Shareholder.
- (c) The obligation of Constellation Australia to cause to be issued New Constellation Shares to Eligible Scheme Shareholders shall be satisfied by Constellation Australia:
- (i) on the Implementation Date causing the name of the Depository to be entered on the stock ledger of Constellation as the holder of the New Constellation Shares issued to the Depository to hold on trust for Eligible Scheme Shareholders entitled to New Constellation Shares; and
  - (ii) on the Implementation Date procuring the dispatch to the Depository by express delivery a stock certificate in the name of the Depository representing the New Constellation Shares issued to the Depository;
  - (iii) within 5 Business Days after the Implementation Date causing the name of each Eligible Scheme Shareholder to be entered on the records maintained by the Depository as the holder of the Constellation CDIs issued to that Eligible Scheme Shareholder; and
  - (iv) within 5 Business Days after the Implementation Date procuring the dispatch to each Eligible Scheme Shareholder by ordinary mail to the address of that Eligible Scheme Shareholder recorded in the Register as at the Record Date an uncertificated holding statement in the name of that Eligible Scheme Shareholder representing the number of Constellation CDIs issued to that Eligible Scheme Shareholder.
- (d) The Scheme Shareholders who elect to receive Scrip Consideration agree to be bound by the Restated Certificate of Incorporation and By-Laws of Constellation.
- (e) Each Scheme Shareholder shall be deemed to have irrevocably appointed Constellation Australia and each of its directors and officers (jointly and severally) as its attorneys for the purpose of executing any form of application required for the New Constellation Shares or the Constellation CDIs.

## 6.2 Trading

Constellation will use its best endeavours to procure that:

- (a) the New Constellation Shares to be listed on the New York Stock Exchange will be listed for quotation with effect from the Implementation Date; and
- (b) the Constellation CDIs to be listed on ASX will be listed for quotation with effect from the Business Day following the Record Date, initially on a deferred settlement basis and thereafter on an ordinary settlement basis.

---

## 7. Dealings in Shares

### 7.1 Dealings on or prior to Record Date

- (a) For the purpose of establishing who are Scheme Shareholders, dealings in Shares will be recognised provided that:
  - (i) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as a holder of the relevant Shares by 10.00 pm on the Record Date; and
  - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at or before 10.00 pm on the Record Date at the place where the Register is kept.
- (b) BRL Hardy must register transfers or transmission applications of the type referred to in clause 7.1(a) (ii) by 10.00 pm on the Record Date. BRL Hardy will not accept for registration or

recognise for any purpose any transmission application or transfer in respect of Shares received after 10.00 pm on the Record Date (other than the transfer referred to in clause 4.1).

## 7.2 Dealings after Record Date

- (a) For the purpose of determining entitlements to the Scheme Consideration, BRL Hardy will, until the Scheme Consideration has been paid and issued in accordance with this Scheme, maintain the Register in accordance with the provisions of this clause 7 and the Register in this form will solely determine entitlements to the Scheme Consideration. As from 10.00 pm on the Record Date, each entry current on the Register relating to Scheme Shares will cease to be of any effect other than as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (b) All certificates and statements of holding for Scheme Shares shall from 10.00 pm on the Record Date cease to have any effect as documents of title in respect of such Scheme Shares other than for the purpose of registering dealings in the Shares in accordance with clause 7.1.

## 7.3 Provision of Information

BRL Hardy must give to Constellation, no less than one Business Day prior to the Implementation Date, details of the names, registered addresses and holdings of Scheme Shares of every Scheme Shareholder as shown in the Share Register at 10.00 pm on the Record Date, such details to be provided in such form as Constellation may reasonably require.

---

## 8. General Scheme Provisions

- (a) If the Court proposes to approve the Scheme subject to any alterations or conditions, BRL Hardy may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Constellation has previously consented in writing.
- (b) BRL Hardy must use its best endeavours to enforce the Implementation Deed.
- (c) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to BRL Hardy, it shall not be deemed to be received in the ordinary course of post on a date other than the date (if any) on which it is actually received at BRL Hardy's registered office.
- (d) Each Scheme Shareholder is deemed to have warranted to Constellation and to Constellation Australia that all such Scheme Shareholders' Scheme Shares transferred to Constellation Australia under the Scheme will as at the date of the transfer be fully paid and free from all mortgages, charges, liens, encumbrances pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, that will bind Constellation Australia and that such Scheme Shareholder has full power and capacity to sell and to transfer such Scheme Shareholder's Scheme Shares to Constellation Australia under the Scheme.
- (e) The Scheme Shares transferred to Constellation Australia under the Scheme will be transferred to Constellation Australia free from all mortgages, charges, liens, encumbrances pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, that will bind Constellation Australia but together with an entitlement to all dividends and other distributions declared or paid on the Scheme Shares after the Effective Date.
- (f) Pending registration of the transfer by BRL Hardy of Constellation Australia in the Register as the holder of the Scheme Shares:
  - (i) Constellation Australia will be beneficially entitled to the Scheme Shares to be transferred to it under clause 4.1; and
  - (ii) each Scheme Shareholder is deemed to have appointed Constellation Australia as its sole proxy, and, where appropriate, its corporate representative, to attend shareholders' meetings, exercise the votes attached to

the Scheme Shares registered in such Scheme Shareholder's name and sign any shareholders' resolution and no Scheme Shareholder may itself attend or vote at any such meetings or sign any resolutions, whether in person or by proxy or corporate representative.

- (g) The Scheme Shareholders consent to BRL Hardy doing all things necessary or incidental to the implementation of the Scheme and the Scheme binds BRL Hardy and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting or vote at the Scheme Meeting).
- (h) BRL Hardy will execute all documents and do all acts and things necessary for the implementation and performance of its obligations under the Scheme.
- (i) Each Scheme Shareholder, without the need for any further act, irrevocably appoints BRL Hardy and all of its directors and officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary to give effect to the Scheme (including, but without limitation, a proper instrument of transfer of its Scheme Shares for the purposes of section 1091 of the Corporations Act (which may be a master transfer of all the Scheme Shares, executed for and on behalf of each Scheme Shareholder in relation to its Scheme Shares)).
- (j) Constellation Australia will pay:
  - (i) all stamp duties in relation to this Scheme, the implementation of the Scheme, the transfer of the Scheme Shares and the issuance of New Constellation Shares and Constellation CDIs except to the extent of any stamp duties which are or become payable as a result of BRL Hardy's failure to comply with its obligations under clause 8.1(q) of the Implementation Deed which stamp duties must be paid by BRL Hardy; and
  - (ii) all filing, application or similar fees due in relation to this Scheme.
- (k) The governing law of the Scheme is the law of the State of South Australia provided that the law governing the New Constellation Shares and their issuance will be the law of the State of Delaware.

Dated 2003

Annexure 2

CLAYTON UTZ

-----

BRL Hardy Limited (ACN 008 273 907)  
BRL Hardy

The holders of certain options to subscribe for shares in the capital of BRL Hardy  
Employee Option Holders

Sydney o Melbourne o Brisbane o Perth o Canberra o Darwin

Liability limited by the Solicitors Scheme, approved under the  
Professional Standards Act 1994 (NSW)

Scheme of Arrangement

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Parties                   BRL Hardy Limited, ACN 008 273 907 of Reynell Road,  
Reynella, 5161, Australia ("BRL Hardy")

The holders of options to subscribe for ordinary shares  
in the capital of BRL Hardy under the Employee Option  
Plan ("Employee Option Holders").

Recitals

- A.           BRL Hardy is a public company incorporated in the State of South  
Australia.
- B.           BRL Hardy and Constellation Brands, Inc. ("Constellation") have  
entered into the Implementation Deed pursuant to which BRL Hardy has  
agreed to propose this Scheme to the Employee Option Holders and  
each of BRL Hardy and Constellation have agreed to execute all  
documents and do all things necessary or desirable to be executed or  
done by BRL Hardy or Constellation, and Constellation has agreed to  
procure that Constellation Australia Pty Limited, ACN 103 362 232  
("Constellation Australia") execute all documents and do all things  
necessary or desirable to be executed or done by Constellation  
Australia, to give effect to this Scheme.
- C.           If this Scheme becomes Effective then all of the Employee Options  
will be cancelled and BRL Hardy will pay the Option Scheme  
Consideration to the Scheme Option Holders.

-----  
1.           Definitions and interpretations

1.1          Definitions

In this Scheme, unless the context otherwise requires:



"ASIC" means the Australian Securities and Investments Commission.

"ASX" means Australian Stock Exchange Limited.

"Business Day" has the meaning given in the Listing Rules.

"Conditions Precedent" means the conditions precedent set out in clause 2.1.

"Corporations Act" means the Corporations Act 2001 (Commonwealth).

"Court" means the Supreme Court of South Australia.

"Court Hearing Time" means the commencement of the hearing by the Court of the application for approval of the Scheme pursuant to section 411(4)(b) of the Corporations Act or, if the application is adjourned for any reason, means the commencement of the hearing of the adjourned application.

"Effective Date" means the date on which an office copy of the Scheme Order is lodged with ASIC pursuant to section 411(10) of the Corporations Act or, if an earlier date is specified in the Scheme Order for the coming into effect of the Scheme, that earlier date.

"Employee Options" means options to subscribe for ordinary shares in the capital of BRL Hardy granted pursuant to the Employee Option Plan.

"Employee Option Plan" means the BRL Hardy Employee Option Plan.

"Exercise Price" means, in relation to any Employee Option, the price payable on exercise of

that Employee Option under the terms of grant of that Employee Option.

"Explanatory Statement" means the explanatory statement of BRL Hardy in relation to the Scheme issued pursuant to section 412 of the Corporations Act which has been registered with ASIC.

"Implementation Deed" means the Implementation Deed dated 17 January 2003 between Constellation and BRL Hardy.

"Implementation Date" means the date which is 3 Business Days after the Record Date.

"Listing Rules" means the official listing rules of ASX.

"Record Date" means the date which is 5 Business Days after the Effective Date.

"Register" means the BRL Hardy register of Employee Option Holders.

"Resolution" means a resolution of the Shareholders under section 260B(1) of the Corporations Act approving the payments to be made by BRL Hardy under the Option Scheme.

"Scheme" means this scheme of arrangement subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act.

"Scheme Consideration" means the consideration to be paid to Scheme Option Holders for the cancellation of each Scheme Option, calculated in accordance with clause 5.

"Scheme Meeting" means the meeting of Employee Option Holders to be convened by the Court pursuant to section 411(1) of the Corporations Act in respect of the Scheme.

"Scheme Options" means the Employee Options on issue as at the Effective Date.

"Scheme Option Holder" means each person who is registered in the Register as the holder of Scheme Options as at 10.00 pm on the Record Date.

"Scheme Order" means the orders of the Court approving the Scheme pursuant to section 411(4) of the Corporations Act.

"Shareholder Meeting" means the meeting of Shareholders to be convened immediately after the Scheme Meeting to consider the Resolution.

"Shareholders" means the holders of ordinary shares in the capital

of BRL Hardy.

"Share Scheme" means the scheme of arrangement under part 5.1 of the Corporations Act between BRL Hardy and the Shareholders as at the Record Date (other than persons holding such shares on behalf of or for the benefit of Constellation or its Subsidiaries).

## 1.2 Interpretation

In this Scheme:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) a reference to any document (including this Scheme) is to that document as amended, varied, novated, ratified or replaced from time to time;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued or promulgated under it;
- (d) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (e) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Scheme, and a reference to this Scheme includes any schedule, exhibit or annexure to this Scheme;
- (f) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) the word "includes" in any form is not a word of limitation;
- (h) a reference to "\$" or "dollar" is to Australian currency; and
- (i) references to a particular time are to South Australian time.

---

## 2. Conditions Precedent

### 2.1 Conditions Precedent

The Scheme is conditional on each of the following conditions precedent:

- (a) as at the Court Hearing Time all of the conditions precedent set out in clause 4.1 of the Implementation Deed have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at the Court Hearing Time, the Implementation Deed has not been terminated;
- (c) the Scheme has been approved in accordance with section 411(4) of the Corporations Act at the Scheme Meeting;
- (d) the Resolution has been passed at the Shareholder Meeting;
- (e) the Court has approved the Share Scheme pursuant to section 411(1) of the Corporations Act with or without modification; and
- (f) the Court has approved the Scheme pursuant to section 411(4) of the Corporations Act with or without modification,

and the provisions of clauses 3, 4 and 5 will be of no effect unless and until the Conditions Precedent are satisfied.

### 2.2 Certificate

At the hearing by the Court of the application for the Scheme Order, Constellation and BRL Hardy will each provide to the Court a certificate confirming whether or not all of the conditions precedent in the Implementation Deed have been satisfied or waived

in accordance with the Implementation Deed.

### 2.3 Termination of Implementation Deed

In the event that the Implementation Deed is terminated, each of BRL Hardy, Constellation

and Constellation Australia are released from:

- (a) any further obligation to take steps to implement the Scheme;  
and
- (b) any liability with respect to the Scheme.

---

### 3. Lodgement

- (a) BRL Hardy must lodge with ASIC on the date on which the Resolution is passed the Resolution together with a notice in the form required by section 260B(6) of the Corporations Act.
- (b) BRL Hardy must lodge with ASIC the Scheme Order by 5.00 p.m on the Business Day following the date on which the Court approves the Scheme.

---

### 4. Implementation

#### 4.1 Cancellation of Scheme Options

On the Implementation Date, all of the Scheme Options and all rights and entitlements attaching to the Scheme Options will be cancelled without the need for any further act by any Scheme Option Holder.

#### 4.2 Payment of Scheme Consideration

In consideration for the cancellation of the Scheme Options BRL Hardy will pay to each Scheme Option Holder the Scheme Consideration within 5 Business Days after the later of the Implementation Date and the date which is 14 days after the Resolution is lodged with ASIC.

---

### 5. Consideration

#### 5.1 Calculation of Scheme Consideration

The Scheme Consideration in respect of each Scheme Option is:

- (a) the cash amount of \$10.50 less the Exercise Price for that Scheme Option; and
- (b) in the case of any Scheme Option which was on issue as at 19 September 2001, an additional cash amount of \$0.12.

#### 5.2 Currency of Payment

All Scheme Consideration payable to Scheme Option Holders must be paid by cheque drawn in Australian dollars.

---

### 6. General Scheme Provisions

- (a) If the Court proposes to approve the Scheme subject to any alterations or conditions, BRL Hardy may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Constellation has previously consented in writing.
- (b) BRL Hardy must use its best endeavours to enforce the Implementation Deed.
- (c) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to BRL Hardy, it shall not

be deemed to be received in the ordinary course of post on a date other than the date (if any) on which it is actually received at BRL Hardy's registered office.

- (d) The Scheme Option Holders consent to BRL Hardy doing all things necessary or incidental to the implementation of the Scheme and the Scheme binds BRL Hardy and all of the Scheme Option Holders (including those who do not attend the Scheme Meeting or vote at the Scheme Meeting).

- (e) BRL Hardy will execute all documents and do all acts and things necessary for the implementation and performance of its obligations under the Scheme.
- (f) Each Scheme Option Holder, without the need for any further act, irrevocably appoints BRL Hardy and all of its directors and officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary to give effect to the Scheme.
- (g) BRL Hardy shall pay all stamp duties and filing, application or similar fees due in relation to this Scheme, the implementation of the Scheme and the cancellation of the Scheme Options.
- (h) The governing law of the Scheme is the law of the State of South Australia.

Dated 2003

Annexure 3

CLAYTON UTZ

Constellation Brands, Inc.  
Constellation

The Scheme Shareholders  
As defined in the Implementation Deed referred to in this Deed Poll

Deed Poll

CLAYTON UTZ  
Lawyers  
Levels 22-35 No. 1 O'Connell Street Sydney NSW 2000 Australia  
PO Box H3 Australia Square Sydney NSW 1215  
www.claytonutz.com  
Tel + 61 2 9353 4000 Fax + 61 2 8220 6700  
Our ref - 126/618/21723613 Contact - Jonathan Swain

Sydney o Melbourne o Brisbane o Perth o Canberra o Darwin

Liability limited by the Solicitors Scheme, approved under the Professional Standards Act 1994 (NSW)

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i.

Deed Poll made on 6 February 2003

By Constellation Brands, Inc. of 300 Willow Brook Office  
Park, Fairport, NY 14450, United States ("Constellation")

In favour of: The Scheme Shareholders as defined in the Implementation  
Deed

Recitals

- A. BRL Hardy Limited, ACN 008 273 907 ("BRL Hardy") and Constellation have entered into an Implementation Deed dated 17 January 2003 (the "Implementation Deed").
- B. In the Implementation Deed, Constellation agreed to execute all documents and do all things necessary or desirable to be executed or done by Constellation to give effect to the Share Scheme and the Scheme Orders and to procure that Constellation Australia Pty Limited, ACN 103 362 232 ("Constellation Australia") execute all documents and do all things necessary or desirable to be executed or done by Constellation Australia to give effect to the Share Scheme and the Scheme Orders and in particular agreed, subject to the satisfaction of certain conditions, to procure that Constellation Australia pay the Share Scheme Consideration to the Scheme Shareholders.
- C. Constellation is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed.

This deed poll provides

-----  
1. Definitions and interpretation

1.1 Definitions

Terms defined in the Implementation Deed or the Share Scheme have the same meaning when used in this Deed Poll.

1.2 Interpretation

In this Deed Poll:

- (a) headings are for convenience only and do not affect

interpretation;

and unless the context indicates a contrary intention:

- (b) a reference to any document (including this Deed Poll) is to that document as amended, varied, novated, ratified or replaced from time to time;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued or promulgated under it;
- (d) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (e) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed Poll, and a reference to this Deed Poll includes any schedule, exhibit or annexure to this Deed Poll;
- (f) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) the word "includes" in any form is not a word of limitation;
- (h) a reference to "\$" or "dollar" is to Australian currency, unless it is preceded by "US", in which case such reference is to United States currency.

1

---

2. Nature of Deed Poll

Constellation acknowledges that this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it.

---

3. Conditions precedent

3.1 Conditions precedent

Constellation's obligations under clause 4 are subject to the Share Scheme coming into effect pursuant to section 411(10) of the Corporations Act.

3.2 Termination

The obligations of Constellation under this Deed Poll to Scheme Shareholders will automatically terminate and the terms of this Deed Poll will be of no further force or effect if the Implementation Deed is terminated in accordance with its terms prior to the occurrence of the Effective Date for the Share Scheme.

3.3 Consequences of termination

If this Deed Poll is terminated under this clause 3 then in addition and without prejudice to any other rights, powers or remedies available to them, Constellation is released from its obligations to further perform this Deed except the obligations contained in clause 7 and any other obligations which by their nature survive termination.

---

4. Payment of Share Scheme Consideration

4.1 Payment obligations

Subject to clause 3, Constellation must procure that in consideration of the transfer of the Scheme Shares to Constellation Australia, Constellation Australia will, within 5 Business Days after the Implementation Date:

- (a) pay to each Scheme Shareholder such amount of cash as is due to that Scheme Shareholder under the terms of the Share Scheme as Cash Consideration;
- (b) cause to be issued to each US Scheme Shareholder such number of New Constellation Shares as are due to that Scheme Shareholder under the terms of the Share Scheme as Scrip Consideration; and

- (c) cause to be issued in accordance with the terms of the Share Scheme such number of New Constellation Shares as are due to the Eligible Scheme Shareholders under the terms of the Share Scheme as Scrip Consideration.

2

#### 4.2 Satisfaction of Cash Consideration

Constellation must procure that:

- (a) the obligations of Constellation Australia to pay the Cash Consideration to each Scheme Shareholder entitled to Cash Consideration are satisfied within 5 Business Days after the Implementation Date by Constellation Australia dispatching or procuring the dispatch to that Scheme Shareholder by ordinary mail to the address of the Scheme Shareholder recorded in the Register at the Record Date a cheque for the Cash Consideration due to that Scheme Shareholder under the terms of the Share Scheme; and
- (b) all cheques payable to Scheme Shareholders are drawn in Australian dollars.

#### 4.3 Satisfaction of Scrip Consideration

Constellation must procure that the obligations of Constellation Australia to pay the Scrip Consideration to each Scheme Shareholder entitled to Scrip Consideration are satisfied by Constellation Australia:

- (a) on the Implementation Date:
  - (i) causing the name of each US Scheme Shareholder so entitled to be entered on the stock ledger of Constellation as the holder of the New Constellation Shares issued to that US Scheme Shareholder;
  - (ii) causing the name of the Depositary to be entered on the stock ledger of Constellation as the holder of the New Constellation Shares issued to the Depositary to hold on trust for Eligible Scheme Shareholders entitled to New Constellation Shares; and
  - (iii) procuring the dispatch to the Depositary by express delivery a stock certificate in the name of the Depositary representing the New Constellation Shares issued to the Depositary; and
- (b) within 5 Business Days after the Implementation Date:
  - (i) procuring the dispatch to each US Scheme Shareholder so entitled by ordinary mail to the address of that US Scheme Shareholder recorded in the Register as at the Record Date a stock certificate in the name of that US Scheme Shareholder representing the number of new Constellation Shares issued and allotted to that US Scheme Shareholder;
  - (ii) causing the name of each Eligible Scheme Shareholder to be entered on the records maintained by the Depositary as the holder of the Constellation CDIs issued to that Eligible Scheme Shareholder; and
  - (iii) procuring the dispatch to each Eligible Scheme Shareholder so entitled by ordinary mail to the address of that Eligible Scheme Shareholder recorded in the Register as at the Record Date an uncertificated holding statement in the name of that Eligible Scheme Shareholder representing the number of Constellation CDIs to be issued to that Eligible Scheme Shareholder.

#### 4.4 Joint holders

In the case of Scheme Shares held in joint names:

3

- (a) any cheque required to be paid to Scheme Shareholders shall be payable to the joint holders and be forwarded to the holder whose name appears first in the Register on the Record Date; and
- (b) any stock certificates and uncertificated holding statements for Constellation Shares or Constellation CDIs to be issued to Scheme Shareholders shall be issued in the names of the joint

holders and forwarded to the holder whose name appears first in the Register as at the Record Date.

5. Warranties

Constellation represents and warrants that:

- (a) Constellation is a corporation validly existing under the laws of the State of Delaware;
- (b) Constellation Australia is a corporation validly existing under the laws of Australia and is an indirect wholly owned Subsidiary of Constellation;
- (c) Constellation has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll to be carried out by Constellation;
- (d) Constellation Australia has the corporate power to carry out the transactions contemplated by this Deed Poll to be carried out by Constellation Australia;
- (e) Constellation has taken or will take all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll by Constellation and to carry out the transactions contemplated by this Deed Poll to be carried out by Constellation; and
- (f) Constellation Australia has taken or will take all necessary corporate action to carry out the transactions contemplated by this Deed Poll to be carried out by Constellation Australia; and
- (g) this Deed Poll has been duly and validly executed and delivered by Constellation and is a valid and binding obligation of Constellation.

6. Continuing obligations

This Deed Poll is irrevocable and subject to clause 3 remains in full force and effect until the earlier of Constellation having completely performed its obligations under this Deed Poll or the termination of this Deed Poll under clause 3.

7. Stamp duty

Constellation must pay all stamp duty imposed on this Deed Poll.

8. Notices

8.1 Notice details

A notice, consent, request or any other communication to Constellation under this Deed Poll must be in writing and must be left at the address of Constellation, as the case may be, or sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of Constellation as the case may be, or sent by facsimile to the facsimile number of Constellation,

4

as the case may be, specified below or any other address or facsimile number the addressee requests in writing.

Constellation Brands, Inc.  
Attention: Thomas J. Mullin, General Counsel  
Address: 300 WillowBrook Office Park, Fairport, NY 14450, United States  
Facsimile: +1 585 212 6225

8.2 Delivery

A notice, consent, request or any other communication is taken to be received:

- (a) if by delivery, when it is delivered unless it is delivered on a day other than a Business Day in which case it is taken to be received by 9.00 am on the next Business Day;
- (b) if a letter, three days after posting (seven, if posted to or from a place outside Australia); and
- (c) if a facsimile, at the time of dispatch if the sender receives



a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

9. General

9.1 Cumulative rights

The rights, powers and remedies of Constellation and, the Scheme Shareholders under this Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Deed Poll.

9.2 Waiver and variation

- (a) A provision or a right under this Deed Poll may not be waived except in writing signed by the Person granting the waiver.
- (b) A provision of this Deed Poll may not be amended or varied unless the amendment or variation is agreed to by BRL Hardy in which event Constellation will enter into a further Deed Poll in favour of the Scheme Shareholders giving effect to such amendment or variation.

10. Assignment

The rights and obligations of a Person under this Deed Poll are personal. They may not be assigned, charged or otherwise dealt with, and no Person shall attempt or purport to do so.

11. Governing law and jurisdiction

- (a) This Deed Poll is governed by the laws of the state of South Australia provided that the law governing the New Constellation Shares and their issuance will be the law of the State of Delaware.
- (b) Constellation irrevocably submits to the non-exclusive jurisdiction of the courts of South Australia.

Executed as a deed poll.

Executed by Constellation Brands, Inc. in the presence of:

/s/H. Elaine Farry

/s/Richard Sands

Signature of Witness

Signature of Officer

H. Elaine Farry

Richard Sands

Name of Witness in full

Name of Officer in full

Chief Executive Officer

Title of Officer

Annexure 4

The Registrant has omitted from this filing the Annexure 4--Election Form. The Registrant will furnish supplementally to the Commission, upon request, a copy of such Annexure.

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

March 19, 2003

between

CONSTELLATION BRANDS, INC.,

The SUBSIDIARY GUARANTORS Party Hereto,

The LENDERS Party Hereto

JPMORGAN CHASE BANK,  
as Administrative Agent

and

J.P. MORGAN EUROPE LIMITED, as  
London Agent

J.P. MORGAN SECURITIES INC. and  
SALOMON SMITH BARNEY INC.,  
as Joint Bookrunners

J.P. MORGAN SECURITIES INC.,  
SALOMON SMITH BARNEY INC. and  
UBS WARBURG LLC,  
as Joint Lead Arrangers

CITICORP NORTH AMERICA, INC.  
as Syndication Agent

UBS WARBURG LLC  
SUNTRUST BANK and  
THE BANK OF NOVA SCOTIA  
as Documentation Agents

U.S.\$1,600,000,000

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AMENDED AND RESTATED CREDIT AGREEMENT dated as of March 19, 2003, between CONSTELLATION BRANDS, INC., the SUBSIDIARY GUARANTORS party hereto, the LENDERS party hereto, JPMORGAN CHASE BANK, as Administrative Agent and J.P. MORGAN EUROPE LIMITED, as London Agent.

The Borrower (as hereinafter defined), certain Subsidiaries (as hereinafter defined) of the Borrower, the Existing Lenders (as hereinafter defined), certain other parties and JPMorgan Chase Bank, as administrative agent, are party to a Credit Agreement dated as of January 16, 2003 (said Credit Agreement, as in effect on the date hereof immediately before giving effect to the amendment and restatement contemplated hereby, being herein called the "Existing Credit Agreement"). Pursuant to the Existing Credit Agreement, the Existing Lenders committed to make revolving credit and term loans to the Borrower in an original aggregate principal or face amount not exceeding \$1,600,000,000 at any one time outstanding (subject to increase as therein provided to \$1,900,000,000), to provide working capital for the Borrower and its Subsidiaries, to refinance certain existing indebtedness of the Borrower, to finance the Target Acquisition (as hereinafter defined), to repay the Target Credit Facilities (as hereinafter defined) and for other general corporate purposes of the Borrower and its Subsidiaries.

The parties hereto wish to amend the Existing Credit Agreement in certain respects to provide for, among other things, additional lenders to become parties thereto and, as so amended, to restate the Existing Credit Agreement in its entirety. Accordingly, the parties hereto hereby agree that the Existing Credit Agreement shall, with effect as of the date hereof, but subject to the execution and delivery of this Agreement by each of the intended parties hereto and the execution and delivery of Lender Addenda (as hereinafter defined) by each of such additional lenders, be amended and restated to read in its entirety as follows:

#### ARTICLE I

##### DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acceleration Date" has the meaning assigned to such term in the penultimate paragraph of Article VIII.

"Acquisition" means an acquisition by the Borrower or any of its Subsidiaries of a business of any Person or a business line or division of any Person (whether by way of purchase of assets or stock, including any tender for outstanding shares of stock, by merger or

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consolidation, by acceptance of a contribution of capital from another Person, or otherwise). For purposes hereof, the term "Acquisition" shall include the Target Acquisition.

"Additional Security Agreement" means a security agreement, pledge agreement, mortgage of shares or similar agreement in form and substance reasonably satisfactory to the Administrative Agent, executed and delivered pursuant to Section 6.10 by the Borrower or any Subsidiary Guarantor in favor of the Administrative Agent creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the Collateral required to be pledged by the Borrower under said Section 6.10.

"Adjusted Cash Flow" means, for any period (the "calculation period"), the sum, for the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP), of the following: (a) Operating Cash Flow for the calculation period minus (b) Capital Expenditures made during the calculation period (excluding

Capital Expenditures made from the proceeds of Indebtedness other than Indebtedness hereunder).

"Adjusted LIBO Rate" means, for the Interest Period for any Eurocurrency Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate for such Interest Period.

"Adjustment Amount" means, for any period, (i) the amount for such period specified on Schedule V hereto and (ii) in connection with any Acquisition or Disposition after the date hereof the sum of (x) all non-cash non-recurring charges for such period (which charges are reasonably acceptable to the Administrative Agent) and (y) all non-recurring cash charges associated with cost savings acceptable under Regulation SX of the Securities Act of 1933, as amended, in each case against net operating income of the Borrower, any Subsidiary or the Person subject to an Acquisition.

"Administrative Agent" means JPMorgan Chase, in its capacity as administrative agent for the Lenders hereunder, together with its successors and assigns.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified (provided that no Subsidiary will be deemed to be an Affiliate of the Borrower or of any other Subsidiary).

"Alternate Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

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"Alternative Currency" means any currency (other than U.S. Dollars) so long as at such time, (a) such currency is dealt with in the London interbank deposit market, (b) such currency is freely transferable and convertible into U.S. Dollars in the London foreign exchange market and (c) no central bank or other governmental authorization in the country of issue of such currency is required to permit use of such currency by any Issuing Lender for issuance, renewal, extension or amendment of any Alternate Currency Letter of Credit or funding or making drawings thereunder and/or to permit the Borrower to pay the reimbursement obligation of any drawing thereunder and to pay the interest thereon, unless such authorization has been obtained and is in full force and effect.

"Alternative Currency Equivalent" shall mean, with respect to any amount in U.S. Dollars, the amount of the relevant Alternative Currency that could be purchased with such amount of U.S. Dollars using the foreign exchange rate(s) specified in the definition of "U.S. Dollar Equivalent" below, as determined by the relevant Issuing Lender.

"Alternate Currency LC Exposure" means, at any time, the sum of (a) the U.S. Dollar Equivalent of the aggregate undrawn amount of all outstanding Alternate Currency Letters of Credit at such time plus (b) the U.S. Dollar Equivalent of the aggregate amount of all LC Disbursements under Alternate Currency Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time.

"Alternate Currency Letter of Credit" means a Letter of Credit issued by an Issuing Lender in an Alternative Currency pursuant to Section 2.05(c).

"Alternate Currency Letter of Credit Report" has the meaning assigned to such term in Section 2.05(c)(ii).

"Applicable Agent" mean (a) with respect to any Loan, Borrowing or Letter of Credit denominated in U.S. Dollars, the Administrative Agent and (b) with respect to any Loan, Borrowing or Letter of Credit denominated in Australian Dollars or any Alternate Currency, the London Agent.

"Applicable Percentage" means (a) with respect to any U.S. Dollar Revolving Lender for purposes of Sections 2.04 or 2.05 or Article VIII, the percentage of the total U.S. Dollar Revolving Commitments represented by such U.S. Dollar Revolving Lender's U.S. Dollar Revolving Commitment, (b) with respect to any Australian Dollar Revolving Lender for purposes of Article VIII, the percentage of the total Australian Dollar Revolving Commitments represented by such Australian Dollar Revolving Lender's Australian Dollar Revolving Commitment, (c) with respect to any U.S. Dollar Revolving Lender in respect of

any indemnity claim under Section 10.03(c) arising out of an action or omission of the Administrative Agent, the Swingline Lender or any Issuing Lender under this Agreement relating to Swingline Loans or Letters of Credit, the percentage of the total U.S. Dollar Revolving Commitments represented by such U.S. Dollar Revolving Lender's U.S. Dollar Revolving Commitment and (d) with respect to any Lender in respect of any indemnity claim under Section 10.03(c) arising out of an action or omission of the Administrative Agent under this Agreement (other than one relating to Swingline Loans or Letters of Credit), the percentage of the total Commitments or Loans of all Classes hereunder represented by the aggregate amount of such Lender's Commitments or Loans of all

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Classes hereunder. If the Revolving Commitments of any Class have terminated or expired, the Applicable Percentages for such Class of Revolving Commitments shall be determined based upon the Revolving Commitments of such Class most recently in effect (and giving effect to any assignments).

"Applicable Rate" means, for any day, with respect to any ABR Borrowing (including any Swingline ABR Borrowing), Eurocurrency Borrowing or Swingline FFBR Borrowing, or with respect to the commitment fees payable hereunder, as the case may be, (x) 1.75% in the case of any Tranche B Term Loan ABR Borrowing, and 2.75% per annum in the case of any Tranche B Term Loan Eurocurrency Borrowing, in each case applicable when the Debt Ratio as of the most recent determination date is greater than 3.50 to 1, (y) 1.50% in the case of any Tranche B Term Loan ABR Borrowing, and 2.50% per annum in the case of any Tranche B Term Loan Eurocurrency Borrowing, in each case applicable when the Debt Ratio as of the most recent determination date is less than or equal to 3.50 to 1 and (z) for each other Borrowing, the rate per annum set forth in the schedule below, as applicable, based upon the Debt Ratio as of the most recent determination date:

<TABLE>  
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Commitment Debt Ratio: Rate	U.S. Dollar Revolving, and Swingline Loan: ABR Rate and Swingline FFBR	U.S. Dollar Revolving and Australian Dollar Revolving: Eurodollar Rate	Tranche A Term Loan: ABR Rate	Tranche A Term Loan: Eurodollar Rate	Fee
Category 1 <S> = 4.50x	<C> 1.50	<C> 2.50	<C> 1.50	<C> 2.50	<C> 0.50
Category 2 < 4.50x and = 4.00x	1.25	2.25	1.25	2.25	0.50
Category 3 < 4.00x and = 3.50x	1.00	2.00	1.00	2.00	0.50
Category 4 < 3.50x 0.375 and = 3.00x	0.75	1.75	0.75	1.75	
Category 5 < 3.00x 0.375	0.50	1.50	0.50	1.50	

</TABLE>

For purposes of the foregoing, (i) the Debt Ratio shall be determined as of the end of each fiscal quarter of the Borrower's fiscal year based upon the Borrower's consolidated financial statements delivered pursuant to Section 4.04(a)(i)(y) or Section 6.01(a) or (b) and (ii) subject to the foregoing provisions of this definition, each change in the Applicable Rate

resulting from a change in the Debt Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent of such consolidated financial statements indicating such change and ending on the date immediately preceding the effective

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date of the next such change; provided that (A) subject to clauses (B) and (C) below, if the Debt Ratio would be in Category 1 at any time prior to the second delivery after the date hereof of financial statements pursuant to Section 6.01(a) or (b), the Debt Ratio shall be deemed to be in Category 2 during such time, (B) the Debt Ratio shall be deemed to be in Category 1 at any time that an Event of Default has occurred and is continuing and (C) the Debt Ratio shall be deemed to be in Category 1 if the Borrower fails to deliver the consolidated financial statements required to be delivered by it pursuant to Section 6.01(a) or (b), during the period from the expiration of the time for delivery thereof until such consolidated financial statements are delivered.

Notwithstanding the foregoing, the "Applicable Rate" for any Incremental Term Loan of any Series shall be the respective rates specified in the Incremental Term Loan Agreement for such Series; provided that, if the interest rate for either Type of any Series of Incremental Term Loans shall be greater than 0.25% above the interest rate for the corresponding Type of Tranche B Term Loans (including any original issue discount ("OID") in respect of such Incremental Term Loans in calculation of such interest, with such OID being equated to such increased interest rate in a manner determined by the Administrative Agent and consistent with GAAP based on an assumed four-year life to maturity), the Applicable Rate for such Type of Tranche B Term Loans shall be automatically adjusted upwards on the date upon which the Incremental Term Loan Commitments of such Series are established pursuant to Section 2.01(f) so that the interest rate for such Type of such Series of Incremental Term Loans is 0.25% above such interest rate for such Type of Tranche B Term Loans.

"Approval Date" means the day of the meeting of shareholders of the Target in respect of the Target Acquisition.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"ASX" means the Australian Stock Exchange Limited ACN 008 624 691.

"ASX Listing Rules" means the listing rules of the ASX in force from time to time.

"Australia" means the Commonwealth of Australia.

"Australian Acquisition Company 1" means CBI Australia Holdings Pty Limited ACN 103 359 299 an unlisted proprietary company incorporated in the Australian Capital Territory and a Wholly-Owned Subsidiary of the Borrower.

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"Australian Acquisition Company 2" means Constellation Australia Pty Limited ACN 103 362 232, an unlisted proprietary company incorporated in the Australian Capital Territory and a Wholly-Owned Subsidiary of the Australian Acquisition Company 1.

"Australian Acquisition Entities" means each of Constellation International Holdings, FinCo, Australian Acquisition Company 1 and Australian Acquisition Company 2.

"Australian Dollar Equivalent" shall mean, with respect to any amount in U.S. Dollars, the amount of Australian Dollars that could be purchased with such amount of U.S. Dollars using the foreign exchange rate(s) specified in the definition of "U.S. Dollar Equivalent" below, as determined by the Administrative Agent.

"Australian Dollar Revolving Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Australian Dollar Revolving Commitment Termination Date and the date of termination of the Australian Dollar Revolving Commitments.

"Australian Dollar Revolving Commitment" means, with respect to each Australian Dollar Revolving Lender, the commitment, if any, of such Australian Dollar Revolving Lender to make Australian Dollar Revolving Loans in



Australian Dollars, expressed as an amount in U.S. Dollars representing the maximum aggregate amount of such Australian Dollar Revolving Lender's Australian Dollar Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or 2.10 and (b) reduced or increased from time to time pursuant to assignments by or to such Australian Dollar Revolving Lender pursuant to Section 10.04. The initial amount of each Australian Dollar Revolving Lender's Australian Dollar Revolving Commitment is set forth opposite the name of such Lender on its Lender Addendum under the caption "Australian Dollar Revolving Commitment", or in the Assignment and Acceptance pursuant to which such Australian Dollar Revolving Lender shall have assumed its Australian Dollar Revolving Commitment, as applicable. The initial aggregate amount of the Australian Dollar Revolving Lenders' Australian Dollar Revolving Commitments is U.S.\$10,000,000.

"Australian Dollar Revolving Commitment Termination Date" means February 29, 2008 (provided that if such day is not a Business Day, the Australian Dollar Revolving Commitment Termination Date shall be the immediately preceding Business Day).

"Australian Dollar Revolving Exposure" means, with respect to any Australian Dollar Revolving Lender at any time, the sum of the outstanding principal amount of such Australian Dollar Revolving Lender's Australian Dollar Revolving Loans at such time.

"Australian Dollar Revolving Lender" means (a) initially, a Lender that has an "Australian Dollar Revolving Commitment" set forth opposite the name of such Lender on its Lender Addendum and (b) thereafter, a Lender from time to time holding an Australian Dollar Revolving Commitment or a Lender from time to time with an Australian Dollar Revolving Exposure.

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"Australian Dollar Revolving Loan" means a Loan made pursuant to Section 2.01(b) which is a Eurocurrency Loan.

"Australian Dollars" or "AUD\$" means the lawful currency of Australia.

"Australian Equity Pledge Agreement" means each Mortgage of Shares, substantially in the form of Exhibit B-3, executed and delivered by (a) Constellation International Holdings in favor of the Administrative Agent, creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the shares of Australian Acquisition Company 1, (b) Australian Acquisition Company 1 in favor of the Administrative Agent, creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the shares of Australian Acquisition Company 2 and (c) Australian Acquisition Company 2 in favor of the Administrative Agent, creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the shares of the Target (in the case of clauses (a), (b) and (c), up to but not exceeding such portion thereof as does not represent more than 65% of the aggregate outstanding voting stock issued by the relevant Australian Acquisition Entity or the Target as the case may be).

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means Constellation Brands, Inc., a Delaware corporation.

"Borrower CDIs" means the securities of the Borrower in the form of CHESS Depository Interests to be listed on the Australian Stock Exchange.

"Borrower Security Agreement" means a security agreement, pledge agreement, mortgage of shares or similar agreement in form and substance reasonably satisfactory to the Administrative Agent, executed and delivered pursuant to Sections 6.09 and 6.10 by the Borrower in favor of the Administrative Agent creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the Collateral required to be pledged by the Borrower under said Sections 6.09 and 6.10.

"Borrower Shares" means the Class A common stock in the capital of the Borrower to be listed on the New York Stock Exchange.

"Borrowing" means (a) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect or (b) a Swingline Loan. For all purposes of this Agreement, the date of a Borrowing initially shall be the date on which the Borrowing is made and, in the case of a Eurocurrency Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"Bridge Credit Agreement" means the Credit Agreement dated as of January 16, 2003 among the Borrower, the lenders party thereto and JPMorgan Chase, as Administrative Agent, as amended.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that (i) if such day relates to a borrowing or continuation of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurocurrency Borrowing denominated in U.S. Dollars or a notice by the Borrower with respect to any such Borrowing, continuation, payment, prepayment or Interest Period, that is also a day on which dealings in deposits denominated in U.S. Dollars are carried out in the London interbank market, (ii) if such day relates to a borrowing or continuation of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurocurrency Borrowing denominated in Australian Dollars or a notice by the Borrower with respect to any such Borrowing, continuation, payment, prepayment or Interest Period, that is also a day on which dealings in the spot market for the purchase of U.S. Dollars with Australian Dollars are carried out in the London foreign exchange market and (iii) if such day relates to an Alternative Currency Letter of Credit Report in respect to any Alternative Currency Letter of Credit, such day shall also be a day on which dealings in the spot market for the purchase of U.S. Dollars with the relevant Alternative Currency are carried out in the London foreign exchange market.

"Canandaigua B.V." means Canandaigua B.V., a company organized under the laws of The Netherlands and a Wholly-Owned Subsidiary of the Borrower.

"Canandaigua Limited" means Canandaigua Limited, a company organized under the laws of England and Wales and a Wholly-Owned Subsidiary of the Borrower.

"Capital Expenditures" means, for any period, expenditures (including the aggregate amount of Capital Lease Obligations incurred during such period) made by the Borrower or any of its Consolidated Subsidiaries to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs) during such period computed in accordance with GAAP. Notwithstanding the foregoing, no Acquisition permitted pursuant to Section 7.05(b) or 7.05(c) shall be treated as a Capital Expenditure.

"Capital Lease" of any Person means any lease of (or other arrangement conveying the right to use) real or personal Property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any Capital Lease, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateral Pledge Agreement" means a Cash Collateral Pledge Agreement substantially in the form of Exhibit I between the Borrower and the Administrative Agent.

"Cash Consideration" has the meaning given to such term in the Implementation Deed.

"Casualty Event" means, with respect to any Property of any Person, any loss of or damage to, or any condemnation or other taking of, such Property for which such Person or any of its Subsidiaries receives insurance proceeds, or proceeds of a condemnation award or other compensation.

"Change in Control" means (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof (the "Exchange Act")), other than Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 25% of the voting power of the total outstanding Voting Stock of the Borrower voting as one class (provided that the Permitted Holders "beneficially own" (as so defined) a percentage of Voting Stock having a lesser percentage of the voting power than such other Person and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of the Borrower), (ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Borrower (together with any new directors whose election to such Board of Directors or whose nomination for election by the shareholders of the Borrower was approved by a vote of 66 2/3% of the directors then still in office who were either directors at the beginning

of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of Directors then in office, or (iii) any event that requires the Borrower, pursuant to the provisions of any instrument evidencing or governing any Senior Unsecured Indebtedness or any Subordinated Indebtedness, to redeem, or make an offer to redeem or repurchase, all or any portion of such Senior Unsecured Indebtedness or Subordinated Indebtedness, as the case may be, as a result of a change of control (however defined).

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or any Issuing Lender (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender's or such Issuing Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are U.S. Dollar Revolving Loans, Australian Dollar Revolving Loans, Tranche A Term Loans, Tranche B Term Loans, Incremental Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a U.S. Dollar Revolving Commitment, Australian Dollar Revolving Commitment, Tranche A Term Loan Commitment, Tranche B Term Loan Commitment or Incremental Term Loan Commitment.

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"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means, collectively, the "Collateral" specified in the U.S. Pledge Agreement and all collateral pledged pursuant to the Foreign Equity Pledge Agreements or a Borrower Security Agreement or an Additional Security Agreement.

"Collateral Account" has the meaning assigned to such term in Section 4.01 of the U.S. Pledge Agreement.

"Committed LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Committed Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements under Committed Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The Committed LC Exposure of any U.S. Dollar Revolving Lender at any time shall be its Applicable Percentage of the total Committed LC Exposure in respect of all Committed Letters of Credit that constitute utilizations of such U.S. Dollar Revolving Lender's U.S. Dollar Revolving Commitments.

"Committed Letter of Credit" means a Letter of Credit issued by an Issuing Lender in U.S. Dollars pursuant to Section 2.05(a).

"Commitment" means a U.S. Dollar Revolving Commitment, Australian Dollar Revolving Commitment, Tranche A Term Loan Commitment, Tranche B Term Loan Commitment or Incremental Term Loan Commitment, or any combination thereof (as the context requires).

"Companies Act" means the Companies Act of 1985 of England and Wales, as amended from time to time.

"Compushare" has the meaning assigned to such term in Section 5.03(b)(v).

"Consolidated Subsidiary" means, for any Person, each Subsidiary of such Person (whether now existing or hereafter created or acquired) the financial statements of which would be consolidated with the financial statements of such Person in accordance with GAAP. For purposes hereof, upon the Implementation Date, the Target and its Subsidiaries shall be deemed to be "Consolidated Subsidiaries".

"Consolidated Tangible Assets" means, as at any date, the total assets of the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP) that would be shown as tangible assets on a consolidated balance sheet of the Borrower and its Consolidated Subsidiaries after eliminating all amounts properly attributable to minority interests, if any, in the stock and surplus of Subsidiaries. For purposes hereof, "tangible assets" means all assets of the Borrower and its Consolidated Subsidiaries other than assets that should be classified as intangibles including goodwill, minority interests, research and development costs, trademarks, trade names, copyrights, patents and franchises, unamortized debt discount and expense, all reserves and any write-up in the book value of assets.

"Constellation International Holdings" means Constellation International Holdings Limited, a New York corporation (f/k/a Canandaigua Europe Limited) and a Wholly-Owned Subsidiary of the Borrower.

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

"Corporations Act" means the Corporations Act 2001 (Australia), as amended from time to time.

"Covered Taxes" means any and all present or future withholding taxes, including levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Debt Incurrence" means a Foreign Subsidiary Debt Incurrence, a Senior Debt Incurrence or a Subordinated Debt Incurrence, as applicable.

"Debt Ratio" means, as at the last day of any fiscal quarter of the Borrower (the "day of determination"), the ratio of (a) the average of the aggregate amounts of Indebtedness of the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis, without duplication, in accordance with GAAP) as at such day and as at the last days of each of the three immediately preceding fiscal quarters to (b) Operating Cash Flow for the period of four consecutive fiscal quarters ending on such day of determination (provided that Indebtedness as at the last day of each fiscal quarter included in the determination of average Indebtedness pursuant to clause (a) above shall be determined under the assumption that any prepayment of Term Loans hereunder or of any Indebtedness under the Bridge Credit Agreement from the proceeds of any Equity Issuance at any time during any such fiscal quarter included in the calculation thereof shall have been made in the first such fiscal quarter).

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

"Designated Revolving Borrowing" means a Borrowing of Revolving Loans (a) for which the related Borrowing Request certifies that the proceeds thereof will be applied to finance one or more Acquisitions in compliance with Section 7.05 and (b) that is prepaid with the Net Available Proceeds of a Senior Debt Incurrence or a Subordinated Debt Incurrence within 180 days of the making of such Borrowing.

"Disclosed Matters" means the actions, suits proceedings and the environmental matters disclosed in Schedule II.

"Disposition" means any sale, assignment, transfer or other disposition of any Property (whether now owned or hereafter acquired) by the Borrower or any of its Subsidiaries to any other Person including, without limitation, any sale of Receivable Assets as part of a

Permitted Receivable Financing but excluding (a) any sale, assignment, transfer or other disposition of any Property sold or disposed of in the ordinary course of business and on ordinary business terms and (b) any Sale and Leaseback Transaction.

"Disqualified Stock" means any capital stock or other ownership interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, at any time prior to the date six months after the final maturity of the Loans hereunder, (b) is secured by any assets of the Borrower or any Subsidiary or is Guaranteed by any Subsidiary or (c) is exchangeable or convertible at the option of the holder into Indebtedness of the Borrower or any Subsidiary.

Notwithstanding the preceding sentence, any capital stock or other ownership interest that would constitute Disqualified Stock solely because the holders thereof have the right to require the respective issuer thereof to repurchase such capital stock or other ownership interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock if the terms of such capital stock or other ownership interest provide that such issuer may not repurchase or redeem any such capital stock or other ownership interest pursuant to such provisions unless such repurchase or redemption complies with the provisions of Section 7.07.

"Effective Date" means the date on which the conditions specified in Section 5.01 are satisfied (or waived in accordance with Section 10.02).

"Environmental Claim" means, with respect to any Person, (a) any written notice, claim, demand or other written communication (collectively, a "claim") by any other Person alleging or asserting such Person's liability for investigatory costs, cleanup costs, governmental response costs, damages to natural resources or other Property, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, or Release into the environment, of any Hazardous Material at any location, whether or not owned by such Person, or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law. The term "Environmental Claim" shall include, without limitation, any written claim by any governmental authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence of Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of

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the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Issuance" means (a) any issuance or sale by the Borrower or any of its Subsidiaries after the Effective Date of (i) any of its capital stock, (ii) any warrants or options exercisable in respect of its capital stock or (iii) any other security or instrument representing an equity interest (or the right to obtain any equity interest) in the Borrower or any of its Subsidiaries (excluding any such security or instrument the issuance of which constitutes a Debt Incurrence) or (b) the receipt by the Borrower or any of its Subsidiaries after the Effective Date of any capital contribution (whether or not evidenced by any equity security issued by the recipient of such contribution); provided that Equity Issuance shall not include (w) any such issuance or sale by any Subsidiary of the Borrower to the Borrower, any Wholly-Owned Subsidiary thereof or any Joint Venture Entity, (x) any capital contribution by any Person other than the Borrower or any Subsidiary thereof to any Joint Venture Entity, (y) any capital contribution by the Borrower, any Wholly-Owned Subsidiary thereof or any Joint Venture Entity to any Subsidiary of the Borrower or any Joint Venture Entity or (z) any issuance of capital stock of the Borrower as "Scrip Consideration" under (and as defined in) the Target Acquisition Documents.

"Equity Rights" means, with respect to any Person, any subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including any shareholders' or voting trust agreements) to which such Person is a party for the issuance, sale, registration or voting of, or securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, such Person.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to

terminate any Plan or Plans or to appoint a trustee to administer any

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Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Eurocurrency", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Article VIII.

"Excess Cash Flow" means, for any fiscal year, the sum of (a) Adjusted Cash Flow for such fiscal year (determined without regard to the Adjustment Amount) minus (b) Fixed Charges for such fiscal year minus (c) increases in working capital of the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP) for such fiscal year plus (d) decreases in working capital of the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP) for such fiscal year.

"Exchange Rate" means, on any day, with respect to any Alternative Currency, the rate at which such Alternative Currency may be exchanged into U.S. Dollars based upon the spot selling rate at which the London Agent offers to sell such Alternative Currency in the London foreign exchange market at approximately 11:00 a.m. (London time) for delivery two Business Days later.

"Excluded Entities" means, collectively, Inactive Subsidiaries, Joint Venture Entities and Foreign Subsidiaries and, for so long as it shall conduct no business other than holding Indebtedness of Canandaigua Limited and having Indebtedness outstanding to Constellation International Holdings, Canandaigua B.V.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, any Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.18(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or is attributable to such Foreign Lender's failure or inability to comply with Section 2.16(e), except to the extent that such Foreign Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.16(a).

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"Existing Credit Agreement" has the meaning assigned to such term in the recitals hereof.

"Existing Lenders" means Lenders that are parties to the Existing Credit Agreement on the date hereof immediately before giving effect to the amendment and restatement of the Existing Credit Agreement contemplated by this Agreement.

"FFBR", when used in reference to any Swingline Loan, refers to whether such Loan bears interest at a rate determined by reference to the Federal Funds Base Rate.

"Federal Funds Base Rate" means, for any Interest Period for any Swingline Loan, the rate per annum (rounded upwards, if necessary to the nearest 1/100 of 1%) determined by the Swingline Lender to be equal to the rate charged to the Swingline Lender on Federal funds transactions for such Interest Period with members of the Federal Reserve System arranged by Federal funds brokers on such day.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the

rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on such day for the immediately preceding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for such preceding Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of the Borrower.

"FinCo" means CB International Finance S.a.r.l., a company organized under the laws of Luxembourg and a Wholly-Owned Subsidiary of the Borrower.

"Fixed Charges" means, for any period, the sum, for the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP), of the following: (a) all payments of principal of Indebtedness scheduled to be made during such period plus (b) all Interest Expense for such period plus (c) the aggregate amount of federal, state and foreign taxes paid during such period to the extent that net operating income for such period pursuant to clause (a) of the definition of "Operating Cash Flow" in this Section has been calculated before giving effect to such taxes plus (d) the aggregate amount of cash dividends made by the Borrower pursuant to Section 7.07 during such period.

"Fixed Charges Ratio" means, as at any date, the ratio of (a) Adjusted Cash Flow for the period of four consecutive fiscal quarters ending on or most recently ended prior to such date to (b) Fixed Charges for such period (it being understood that, as specified in the definitions of "Interest Expense" and "Operating Cash Flow", neither Adjusted Cash Flow nor Fixed Charges will be adjusted on a pro forma basis with respect to any Acquisition or Disposition).

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"Foreign Equity Pledge Agreement" means (i) with respect to the capital stock of Canandaigua Limited and Matthew Clark, a U.K. Equity Pledge Agreement in substantially the form of Exhibit B-2, (ii) with respect to the capital stock of Australian Acquisition Company 1, Australian Acquisition Company 2 and the Target, an Australian Equity Pledge Agreement in substantially the form of Exhibit B-3, (iii) with respect to the capital stock of FinCo, a Luxembourg Equity Pledge Agreement in substantially the form of Exhibit B-4 and (iv) with respect to the capital stock of any other applicable Subsidiary of the Borrower organized under the laws of any country other than the United States of America or a State thereof, a pledge agreement, mortgage of shares or similar agreement in form and substance reasonably satisfactory to the Administrative Agent, executed and delivered by the Borrower or any other Subsidiary (to the extent required under Section 6.09) in favor of the Administrative Agent creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the shares of stock of other equity interests of such first Subsidiary.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiaries" means any Subsidiary organized under the laws of any country other than the United States of America, or a State thereof, which (if such Subsidiary were to become a Subsidiary Guarantor hereunder) the Borrower and the Administrative Agent have determined would either result in adverse tax consequences under Section 956 of the Code or would contravene any applicable law, rule or regulation. For purposes hereof, it is agreed that as of the date hereof each of the Subsidiaries specified on Schedule VI hereto is a "Foreign Subsidiary".

"Foreign Subsidiary Debt Incurrence" means the incurrence by any Subsidiary after the Effective Date of any Foreign Subsidiary Indebtedness.

"Foreign Subsidiary Indebtedness" means Indebtedness incurred in compliance with Section 7.01(g).

"Funding Percentage" means, as of the Acceleration Date, (a) in the case of the U.S. Dollar Revolving Lenders, a percentage derived by dividing (i) the total U.S. Dollar Revolving Exposures as of such Acceleration Date by (ii) the total U.S. Dollar Revolving Commitments in effect immediately prior to such Acceleration Date and (b) in the case of the Australian Dollar Revolving Lenders, a percentage derived by dividing (i) the total Australian Dollar Revolving Exposures as of such Acceleration Date by (ii) the total Australian Dollar Revolving Commitments in effect immediately prior to such Acceleration Date.

"GAAP" means generally accepted accounting principles in the

United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising

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executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease Property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Guarantee Assumption Agreement" means a Guarantee Assumption Agreement substantially in the form of Exhibit C by an entity that, pursuant to Section 6.09(b) is required to become a "Subsidiary Guarantor" hereunder in favor of the Administrative Agent.

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

"Hedging Agreement" means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement (and, for avoidance of doubt, excluding any type of hedging arrangement other than in respect of interest rate protection, foreign currency exchange or commodity price protection).

"Holding Lock" has the meaning given in the SCH Business Rules.

"Implementation Deed" means the Implementation Deed dated January 16, 2003 between the Target and the Borrower.

"Implementation Date" has the meaning given to such term in the Implementation Deed.

"Inactive Subsidiary" means, as at any date, any Subsidiary of the Borrower that as at the end of and for the fiscal quarter ending on or most recently ended prior to such date, shall have assets with a fair market value of less than U.S.\$1,000,000 and gross revenues of less than U.S.\$100,000, as so certified in the certificate of a Financial Officer of the Borrower delivered with respect to such fiscal quarter pursuant to Section 6.01(c). For purposes hereof, the

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fair market value of any trade name, trademark, service mark, logo, trade dress, trademark or service mark registration, or application for trademark or service mark registration (including any rights relating thereto) held by any Subsidiary shall be determined without giving effect to any licenses or user agreements granted by such Subsidiary to any other Person. The only Inactive Subsidiaries on the date hereof which are organized under the laws of the United States of America are the entities identified as such on Schedule III.

"Incremental Principal Payment Dates" means, for any Series of Incremental Term Loans, the dates specified in the Incremental Term Loan Agreement for such Series as the dates upon which payments of principal in respect of the Incremental Term Loans of such Series are to be made.

"Incremental Term Loan" means a "Incremental Term Loan" provided for by Section 2.01(f), which may be an ABR Loan and/or a Eurocurrency Loan and is denominated in U.S. Dollars.

"Incremental Term Loan Agreement" means, with respect to any



Series of Incremental Term Loans, an agreement between the Borrower and one or more Lenders pursuant to which each such Lenders agrees to become obligated in respect of a Incremental Term Loan Commitment of such Series hereunder.

"Incremental Term Loan Availability Date" means, the day one year prior to the Tranche B Term Loan Maturity Date or, if such day is not a Business Day, the next preceding Business Day.

"Incremental Term Loan Availability Period" means the period from and including the Effective Date to and including the Incremental Term Loan Availability Date.

"Incremental Term Loan Commitment" of any Series means, with respect to each Lender, the commitment, if any, of such Lender to make one or more Incremental Term Loans of such Series, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or 2.10 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Incremental Term Loan Commitment of any Series will be specified in the Incremental Term Loan Agreement for such Series, or will be set forth in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Incremental Term Loan Commitment of such Series, as applicable.

"Incremental Term Loan Lender" means, in respect of any Series of Incremental Term Loans, a Lender with a Incremental Term Loan Commitment of such Series or, if the Incremental Term Loan Commitments of such Series have terminated or expired, a Lender with outstanding Incremental Term Loans of such Series.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other

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title retention agreements relating to Property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of Property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on Property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances and (k) the Maximum Receivable Exposure under all Permitted Receivable Financings entered into by such Person. For purposes of this Agreement, the Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means Covered Taxes other than Excluded Taxes.

"Initial Funding Date" means a Business Day on or after the Business Day next succeeding the Second Court Date and on or prior to the Implementation Date.

"Intercompany Note" means a promissory note of a Foreign Subsidiary in substantially the form of Exhibit F.

"Interest Coverage Ratio" means, as at any date of determination thereof, the ratio of (a) Operating Cash Flow for the period of four fiscal quarters ending on or most recently ended prior to such date to (b) Interest Expense for such period.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07.

"Interest Expense" means, for any period, the sum, for the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP), of the following: (a) all interest in respect of Indebtedness (including the interest component of any payments in respect of Capital Lease Obligations) accrued or capitalized during such period (whether or not actually paid during such period) plus (b) the net amounts payable (or minus the net amounts receivable) under Interest Rate Protection Agreements accrued during such period (whether or not actually paid or received during such period) minus (c) all interest income during such period.

Notwithstanding the foregoing, if during any period for which Interest Expense is being determined the Borrower shall have consummated any Acquisition or Disposition for aggregate consideration of U.S.\$10,000,000 or more then, for all purposes of this Agreement (other than for purposes of the definition of Fixed Charges), Interest Expense shall be determined on a pro forma basis as if such Acquisition or Disposition (and any Indebtedness incurred by the Borrower or any of its Subsidiaries in connection with such Acquisition or repaid as a result of such Disposition) had been made or consummated (and such Indebtedness incurred or repaid) on

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the first day of such period (and interest on any such Indebtedness shall be deemed to be calculated for such period at a rate per annum equal to the actual rate of interest in effect in respect of Indebtedness under this Agreement outstanding during such period).

"Interest Payment Date" means (a) with respect to any ABR Borrowing, each Quarterly Date, (b) with respect to any Eurocurrency Borrowing, the last day of the Interest Period applicable to such Borrowing and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

"Interest Period" means (a) with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three, six or (with the consent of each Lender directly affected thereby) nine months thereafter, as the Borrower may elect and (b) with respect to any Swingline FFBR Borrowing, the period commencing on the date of such Borrowing and ending on the date that is two weeks after such Swingline Loan is made, as the Borrower may elect; provided, that

(i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurocurrency Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day; and

(ii) any Interest Period pertaining to a Eurocurrency Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

"Interest Rate Protection Agreement" means any Hedging Agreement that consists of an interest rate protection agreement or other interest rate hedging arrangement providing for the transfer or mitigation of interest risks either generally or under specific contingencies.

"Investment" means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding 120 days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of

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any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement.

"Issuing Lender" means each of (i) JPMorgan Chase and (ii) each other Lender added hereto as an "Issuing Lender" as contemplated by Section 2.05(k).

"Joint Venture Entity" means any corporation, limited liability company, partnership, association or other entity less than 100% of the ownership interests of which are owned by the Borrower or any Wholly-Owned Subsidiary thereof.

"JPMorgan Chase" means JPMorgan Chase Bank.

"LC Disbursement" means a payment made by an Issuing Lender pursuant to a Letter of Credit.

"LC Exposure" means, with respect to any U.S. Dollar Revolving Lender, the Committed LC Exposure and the Alternative Currency LC Exposure of such U.S. Dollar Revolving Lender.

"Legal and Compliance Report" has the meaning given in the Implementation Deed.

"Lender Addendum" means, with respect to any Lender party hereto on the Effective Date, a Lender Addendum, substantially in the form of Exhibit K, to be executed and delivered by such Lender on or before the Effective Date as provided in Section 10.16.

"Lenders" means each Lender that has executed a Lender Addendum, and any other Person that shall have become a party hereto pursuant to an Assignment and Acceptance, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Acceptance. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"Letter of Credit" means any Committed Letter of Credit or Alternate Currency Letter of Credit.

"Letter of Credit Documents" means, with respect to any Letter of Credit, collectively, any application therefor and any other agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations.

"LIBO Rate" means, for the Interest Period for any Eurocurrency Borrowing in any Loan Currency, the applicable rate appearing on the Screen at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for the offering of deposits in such Loan Currency with a maturity comparable to such Interest Period

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In the event that such rate is not available at such time for any reason, then the LIBO Rate with respect to such Eurocurrency Borrowing for such Interest Period shall be the rate (rounded upwards, if necessary, to the next 1/16 of 1%) at which deposits in such Loan Currency in the amount of U.S.\$5,000,000 (or the Australian Dollar Equivalent as applicable) and for a maturity comparable to such Interest Period are offered by the principal London office of the Applicable Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, Capital Lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Collateral Account" has the meaning given to such term in the Cash Collateral Pledge Agreement.

"Loan Currency" means U.S. Dollars or Australian Dollars.

"Loan Documents" means, collectively, this Agreement, the Letter of Credit Documents, the Security Documents, the Syndication Letter and the fee letters referred to therein and the Incremental Term Loan Agreement.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"London Agent" means J.P. Morgan Europe Limited, together with its successors and assigns.

"Luxembourg Equity Pledge Agreement" means a Pledge Agreement, substantially in the form of Exhibit B-4, executed and delivered by the Borrower in favor of the Administrative Agent, creating in favor of the Administrative Agent, for the benefit of the Lenders, a security interest in the shares of FinCo up to but not exceeding such portion thereof as does not represent more than 65% of the aggregate outstanding voting stock issued by FinCo.

"Margin Stock" means "margin stock" within the meaning of Regulations T, U and X of the Board.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole, (b) the legal ability of any Obligor, or the financial capacity of all of the Obligors collectively, to perform any of its or their obligations under this Agreement or any of the other applicable Loan Documents or (c) the rights of or benefits available to the Lenders under this Agreement or any of the other Loan Documents.

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"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$20,000,000 (or any lower principal amount that would, were the Borrower or such Subsidiary to default in the payment of such Indebtedness or in the observance of any covenant in respect thereof, cause an "event of default" (as so defined) under the Bridge Credit Agreement, the 1999 Indenture or either Senior Subordinated Notes Indenture (whether or not any such "event of default" is cured or waived thereunder). For purposes of determining Material Indebtedness, the "principal amount" of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time.

"Material Lender Provision Amendment" means any modification, supplement or waiver (whether direct or indirect) to the Implementation Deed which does or may reasonably be expected to do any of the following:

- (x) increase the amount of the consideration under the Schemes; or
- (y) have a Material Adverse Effect; or
- (z) has the effect of changing any of the conditions precedent in Section 4.1 of the Implementation Deed (except with respect to a waiver of any such conditions in accordance with Section 5.01(a)(ix)).

"Matthew Clark" means Matthew Clark plc, a company organized under the laws of England and Wales and a Wholly-Owned Subsidiary of the Borrower.

"Maximum Receivable Exposure" means, for any Permitted Receivable Financing, the maximum aggregate amount (expressed in U.S. Dollars) of Receivable Assets that all Receivable Financiers in respect thereof are required to purchase, fund or otherwise finance.

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

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Available Proceeds" means:

- (i) in the case of any Disposition, the amount of Net Cash Payments received in connection with such Disposition;
- (ii) in the case of any Casualty Event, the aggregate amount of proceeds of insurance, condemnation awards and other compensation received by the Borrower and its Subsidiaries in respect of such Casualty Event net of (A) expenses incurred by the Borrower and its Subsidiaries in connection therewith and (B) contractually required repayments of Indebtedness (other than Indebtedness to the Lenders hereunder) to the

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extent secured by a Lien on such Property and any income and transfer taxes payable by the Borrower or any of its Subsidiaries in respect of such Casualty Event;

(iii) in the case of any Equity Issuance, the aggregate amount of all cash received by the Borrower and its Subsidiaries in respect of such Equity Issuance (net of (x) expenses incurred by the Borrower and its Subsidiaries in connection therewith and (y) cash proceeds so received and applied to refinance Subordinated Indebtedness as contemplated by Section 7.11); and

(iv) in the case of any Debt Incurrence, the aggregate amount of all cash received by the Borrower and its Subsidiaries in respect thereof (net of expenses incurred by the Borrower and its Subsidiaries in connection therewith).

"Net Cash Payments" means, with respect to any Disposition, the aggregate amount of all cash payments received by the Borrower and its

Subsidiaries directly or indirectly in connection with such Disposition; provided that (a) Net Cash Payments shall be net of (i) the amount of any legal, title and recording tax expenses, commissions and other fees and expenses paid by the Borrower and its Subsidiaries in connection with such Disposition and (ii) any Federal, state, local and foreign income or other taxes estimated to be payable by the Borrower and its Subsidiaries as a result of such Disposition (but only to the extent that such estimated taxes are in fact paid to the relevant Federal, state, local or foreign governmental authority within three months of the date of such Disposition) and (b) Net Cash Payments shall be net of any repayments by the Borrower or any of its Subsidiaries of Indebtedness to the extent that (i) such Indebtedness is secured by a Lien on the Property that is the subject of such Disposition and (ii) the transferee of (or holder of a Lien on) such Property requires that such Indebtedness be repaid as a condition to the purchase of such Property.

"1999 Credit Agreement" means the Credit Agreement dated as of October 6, 1999 between the Borrower, the Subsidiary Guarantors party thereto, the Lenders party thereto, and JPMorgan Chase, as Administrative Agent, as amended and in effect on the date hereof.

"1999 Indenture" means the Indenture dated as of February 25, 1999 between the Borrower, certain Subsidiaries and BNY Midwest Trust Company (successor Trustee to Harris Trust and Savings Bank), as trustee.

"Obligor" means the Borrower and each Subsidiary Guarantor.

"Operating Cash Flow" means, for any period, the sum, for the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP), of the following: (a) net operating income (calculated before income taxes, interest income, Interest Expense, extraordinary and unusual items and income or loss attributable to equity in Affiliates) for such period plus (b) depreciation and amortization (to the extent deducted in determining net operating income) for such period plus (c) the Adjustment Amount for such period.

Notwithstanding the foregoing, if during any period for which Operating Cash Flow is being determined the Borrower or any of its Subsidiaries shall have consummated any

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Acquisition or Disposition for aggregate consideration of U.S.\$10,000,000 or more then, for all purposes of this Agreement (other than for purposes of the definition of Adjusted Cash Flow), Operating Cash Flow shall be determined on a pro forma basis as if such Acquisition or Disposition had been made or consummated on the first day of such period.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, but excluding all United States Federal taxes other than withholding taxes.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 90 days or are being contested in compliance with Section 6.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) cash deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance or indemnity bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VIII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real Property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected Property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary thereof; and

(g) liens arising under (i) standard custodial, bailee or depositary arrangements (including deposit accounts with banks and other financial institutions) and (ii) standard customer agreements in respect of accounts for the purchase and sale of securities and other Property with brokerage firms or other types of financial institutions,

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, and "Permitted Encumbrances" of the type described in the foregoing clause (g)

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shall not secure any obligations (including obligations under Hedging Agreements), other than obligations incidental to the respective custodial, bailee or depositary arrangements or customer agreements referred to in said clause (g).

"Permitted Holders" means (i) the Estate of Marvin Sands, Marilyn Sands, her children, her children's spouses, her grandchildren, or the estate of any of the foregoing individuals, or the Mac and Sally Sands Foundation, Incorporated, (ii) trusts which are for the benefit of Marilyn Sands, her children, her children's spouses, or her grandchildren or Andrew Stern, or any trust for the benefit of any such trust which trusts are under the control of Marilyn Sands, her children, her children's spouses, or her grandchildren or Andrew Stern or any trustee of such trusts or (iii) partnerships which are controlled by the Estate of Marvin Sands, Marilyn Sands, her children, her children's spouses, her grandchildren, Andrew Stern, the estate of any of the foregoing individuals, by a trust referred to in the foregoing clause (ii) or by a partnership that satisfies the conditions of this clause (iii).

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from Standard & Poor's or from Moody's;

(c) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any office of (x) any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than U.S.\$500,000,000 or (y) any Lender hereunder;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) of this definition and entered into with a financial institution satisfying the criteria described in clause (c) of this definition; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by Standard and Poor's and Aaa by Moody's, (iii) have portfolio assets of at least \$5,000,000,000 and (iv) invest in investments of the types referenced in clause (a), (b) and (c) of this definition.

"Permitted Receivable Financing" means any transaction involving one or more sales, contributions or other conveyances by the Borrower or any Subsidiary of any Receivable Assets to a special purpose entity (which may be a Subsidiary or Affiliate of the Borrower), which special purpose entity finances such sales, contributions or other conveyances by in turn

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conveying an interest in such Receivable Assets to one or more Receivable Financiers; provided that (a) such transaction shall not involve any recourse to the Borrower or any Subsidiary (other than such special purpose entity) for any reason other than (i) repurchases of non-eligible Receivable Assets, (ii) indemnification for losses (including any adjustments for dilutions), other than credit losses related to the Receivable Assets conveyed in such transaction, and (iii) payment of costs, fees, expenses and indemnities relating to such transaction, (b) the terms of such transaction, including the discount at which Receivable Assets are conveyed to any such Receivable Financier and any termination events, shall be reasonably consistent with those prevailing in the market for similarly structured transactions involving Receivable Assets and originators of similar credit quality and a pool Receivable Assets of similar characteristics and (c) the terms of such transaction shall provide for a

specified Maximum Receivable Exposure for such Receivable Financiers.

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

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledge Agreements" means, collectively, the U.S. Pledge Agreement and the Foreign Equity Pledge Agreements.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Principal Payment Date" means with respect to any Term Loan, each date on which principal of such Term Loan is payable pursuant to Sections 2.09(a)(ii), (iv) and (vi), and, with respect to each Series of Incremental Term Loans, each Incremental Principal Payment Date.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Quarterly Dates" means the 1st day of March, June, September and December in each year, the first of which shall be the first such day after the date hereof; provided that if any such day is not a Business Day, then such Quarterly Date shall be the next succeeding Business Day.

"Receivable Assets" means, collectively, any accounts receivable and property relating thereto (including the rights to any collections in respect thereof).

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"Receivable Financier" means any Person (other than a Subsidiary or Affiliate of the Borrower) that finances the acquisition by a special purpose entity of Receivable Assets from the Borrower or any Subsidiary.

"Register" has the meaning set forth in Section 10.04.

"Related Parties" means, with respect to any specified Person, such specified Person's Affiliates and the respective directors, officers, employees, agents and advisors of such specified Person and such specified Person's Affiliates.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

"Required Lenders" means, at any time, subject to the last paragraph of Section 10.02(b), Lenders having Revolving Exposures, outstanding Term Loans and unused Commitments representing at least 51% of the sum of the total Revolving Exposures, outstanding Term Loans and unused Commitments at such time. The "Required Lenders" of a particular Class of Loans means Lenders having Revolving Exposures, outstanding Term Loans and unused Commitments of such Class representing at least 51% of the total Revolving Exposures, outstanding Term Loans and unused Commitments of such Class at such time.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other Property) with respect to any shares of any class of capital stock of the Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other Property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of the Borrower or such Subsidiary or any option, warrant or other right to acquire any such shares of capital stock of the Borrower or such Subsidiary.

"Revolving Commitment Termination Dates" means, collectively, the U.S. Dollar Revolving Commitment Termination Date and the Australian Dollar Revolving Commitment Termination Date.

"Revolving Exposures" means, collectively, the U.S. Dollar Revolving Exposure and the Australian Dollar Revolving Exposure.

"Revolving Lenders" means, collectively, the U.S. Dollar

Revolving Lenders and the Australian Dollar Revolving Lenders.

"Revolving Loans" means, collectively, the U.S. Dollar Revolving Loans and the Australian Dollar Revolving Loans.

"Revolving Loan Commitments" means, collectively, the U.S. Dollar Revolving Loan Commitments and the Australian Dollar Revolving Loan Commitments.

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"Sale and Leaseback Transaction" means a transaction or series of transactions pursuant to which the Borrower or any Subsidiary thereof shall sell or transfer to any Person (other than the Borrower or a Subsidiary thereof) any Property, whether now owned or hereafter acquired, and, as part of the same transaction or series of transactions, the Borrower or any Subsidiary thereof shall rent or lease as lessee, or similarly acquire the right to possession or use of, such Property or one or more Properties which it intends to use for the same purpose or purposes as such Property, and in circumstances that give rise to a Capital Lease Obligation of the Borrower or one or more of its Subsidiaries.

"SCH Business Rules" means the business rules of the ASX Settlement and Transfer Corporation Pty Ltd.

"Schemes" has the meaning given to such term in the Implementation Deed.

"Screen" means, in the case of U.S. Dollars, Page 3750 of the Telerate Service of Bridge Information Services (or any successor thereto or substitute therefor, the "Service") and in the case of Australian Dollars, the relevant display page for LIBOR for Australian Dollars (as determined by the London Agent) of the Service; provided that if the Applicable Agent determines that there is no such relevant display page for LIBOR for such Loan Currency, "Screen" shall mean the relevant display page for LIBOR for such Loan Currency (as determined by the Applicable Agent) of the Reuter Monitor Money Rates Service (or any successor thereto or substitute therefor).

"Second Court Date" has the meaning given to such term in the Implementation Deed.

"Security Documents" means, collectively, the Pledge Agreements, the Cash Collateral Pledge Agreement, any Borrower Security Agreement, any Uniform Commercial Code financing statements required by the U.S. Pledge Agreement and any Additional Security Agreement executed and delivered pursuant to Sections 6.10.

"Senior Debt Incurrence" means the incurrence by the Borrower or any of its Subsidiaries after the Effective Date of any Senior Unsecured Indebtedness.

"Senior Debt Ratio" means, as at the last day of any fiscal quarter of the Borrower (the "day of determination"), the ratio of (a) the average of the aggregate amounts of Indebtedness (other than any Subordinated Indebtedness) of the Borrower and its Consolidated Subsidiaries (determined on a consolidated basis, without duplication, in accordance with GAAP) as at such day and as at the last days of each of the three immediately preceding fiscal quarters to (b) Operating Cash Flow for the period of four consecutive fiscal quarters ending on such day of determination (provided that Indebtedness as at the last day of each fiscal quarter included in the determination of average Indebtedness pursuant to clause (a) above shall be determined under the assumption that any prepayment of Term Loans hereunder or Indebtedness incurred under the Bridge Loan from the proceeds of any Equity Issuance or Debt Incurrence at any time during any such fiscal quarter included in the calculation thereof shall have been made in the first such fiscal quarter).

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"Senior Subordinated Notes" means Senior Subordinated Notes issued pursuant to the Senior Subordinated Note Indentures.

"Senior Subordinated Note Indentures" means, collectively, (i) Supplemental Indenture No. 1, dated as of February 25, 1999, to the 1999 Indenture among the Borrower, as issuer, certain Subsidiaries, as guarantors, and BNY Midwest Trust Company (as successor to Harris Trust and Savings Bank), as trustee, with respect to the 8.50% Senior Subordinated Notes due 2009 in an original aggregate principal amount of U.S. \$200,000,000 and (ii) Supplemental Indenture No. 7, dated as of January 23, 2002, to the 1999 Indenture among the Borrower, as issuer, certain Subsidiaries, as guarantors, and BNY Midwest Trust Company, as trustee, with respect to the 8 1/8% Senior Subordinated Notes due 2012 in an original aggregate principal amount of U.S. \$250,000,000.

"Senior Unsecured Indebtedness" means Indebtedness outstanding in respect of the Senior Unsecured Notes, Indebtedness outstanding under the



Bridge Credit Agreement and other Indebtedness of the Borrower incurred in compliance with Section 7.01(c)(ii).

"Senior Unsecured Notes" means the Borrower's Senior Unsecured Notes issued pursuant to the indentures on the attached Schedule VII.

"Series" has the meaning set forth in Section 2.01(f).

"Solvent" means, with respect to any Person at any time, that (a) the fair value of the Property of such Person is greater than the total amount of liabilities (including without limitation contingent liabilities) of such Person, (b) the present fair saleable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (d) such Person is not engaged in a business and is not about to engage in a business for which such Person's property would constitute an unreasonably small capital.

"Standard & Poor's" means Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurocurrency Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

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"Stock Based Plans" means, collectively, (i) the stock option and other stock purchase plans specified on Schedule IV hereto and (ii) all other stock option, stock-based incentive compensation and stock purchase plans and other stock-based plans of the Borrower or any of its Subsidiaries adopted from time to time hereafter in the ordinary course of business.

"Subordinated Debt Incurrence" means the incurrence by the Borrower or any of its Subsidiaries after the Effective Date of any Subordinated Indebtedness.

"Subordinated Indebtedness" means, collectively, (a) Indebtedness of the Borrower in respect of the Senior Subordinated Notes and (b) other Indebtedness incurred in accordance with the provisions of Section 7.11.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, "Subsidiary" means a Subsidiary of the Borrower.

"Subsidiary Guarantor" means each of the Subsidiaries of the Borrower identified under the caption "SUBSIDIARY GUARANTORS" on the signature pages hereto and each Subsidiary of the Borrower that becomes a "Subsidiary Guarantor" after the date hereof pursuant to Section 6.09(b).

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any U.S. Dollar Revolving Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means JPMorgan Chase, in its capacity as lender of Swingline Loans hereunder, or such other Lender as the Borrower may from time to time select as the Swingline Lender hereunder pursuant to Section 2.04(e).

"Swingline Loan" means a Loan made pursuant to Section 2.04.

"Syndication Letter" means the Syndication Letter dated

January 16, 2003 between the Borrower, JPMorgan Chase, Citicorp North America, Inc., UBS AG, Stamford Branch, J.P. Morgan Securities Inc., Salomon Smith Barney Inc. and UBS Warburg LLC.

"Target" means BRL Hardy Limited ACN 008 273 907, a company organized under the laws of Australia.

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"Target Acquisition" means the schemes of arrangement proposed between the Target and the holders of ordinary shares in the Target and the holders of options to subscribe for ordinary shares in the Target, by which Australian Acquisition Company 2 will acquire beneficially and legally all of the issued capital of the Target in accordance with the approvals granted by the Supreme Court of South Australia.

"Target Acquisition Documents" means, collectively:

(a) the Implementation Deed;

(b) the document described as "Scheme of Arrangement" proposed to be made between the Target and the holders of ordinary shares in the Target, to be dated upon approval of the scheme of arrangement described in the document;

(c) the document described as "Scheme of Arrangement" proposed to be made between the Target and the holders of the options to subscribe for the ordinary shares in the Target; and

(d) the Deed Poll proposed to be made by the Borrower in favor of the Scheme Shareholders and the Scheme Optionholders (as those terms are defined in the Implementation Deed).

"Target Credit Facilities" means, collectively:

(a) the Facility Agreement between the Target and Commonwealth Bank of Australia dated 15 September 1994 (as amended); and

(b) the facilities agreement dated 25 August 1998 between the Target and Australia and New Zealand Banking Group Limited (as amended).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Term Loan Availability Period" means the period from and including the Effective Date to and including the earliest of (a) April 30, 2003 (or, if such date is not a Business Day, the next succeeding Business Day), (b) the date the Implementation Deed is terminated or (c) 5:00 p.m. (New York City time) on the Implementation Date.

"Term Loan Commitments" means, collectively, the Tranche A Term Loan Commitments, the Tranche B Term Loan Commitments and the Incremental Term Loan Commitments.

"Term Loan Maturity Date" means: (a) with respect to the Tranche A Term Loans, February 29, 2008 (provided that if such day is not a Business Day, the Tranche A Term Loan Maturity Date shall be the immediately preceding Business Day), (b) with respect to the Tranche B Term Loans, November 30, 2008 (provided that if such date is not a Business Day, the Tranche B Term Loan Maturity Date shall be the immediately preceding Business Day) and (c) with respect to the Incremental Term Loans of any Series, the date specified in the

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Incremental Term Loan Agreement of such Series as the final date upon which any payment of principal in respect of Incremental Term Loans of such Series is to be made.

"Term Loans" means, collectively, the Tranche A Term Loans, the Tranche B Term Loans and the Incremental Term Loans.

"Tranche A Term Loan" means a Loan made pursuant to Section 2.01(c), which may be an ABR Loan and/or a Eurocurrency Loan.

"Tranche A Term Loan Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make one or more Tranche A Term Loans hereunder in U.S. Dollars during the Term Loan Availability Period, expressed as an amount in U.S. Dollars representing the maximum aggregate principal amount of the Tranche A Term Loans to be made by such Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or 2.10 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Tranche A Term Loan Commitment is set forth opposite the name of such Lender on its Lender Addendum under the caption "Tranche A Term Loan

Commitment", or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Tranche A Term Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Tranche A Term Loan Commitments is U.S.\$400,000,000.

"Tranche A Term Loan Lender" means (a) initially, a Lender that has a "Tranche A Term Loan Commitment" set forth opposite the name of such Lender on its Lender Addendum and (b) thereafter, a Lender from time to time holding a Tranche A Term Loan Commitment or an outstanding Tranche A Term Loan.

"Tranche B Term Loan" means a Loan made pursuant to Section 2.01(d), which may be an ABR Loan and/or a Eurocurrency Loan.

"Tranche B Term Loan Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make one or more Tranche B Term Loans hereunder in U.S. Dollars during the Term Loan Availability Period, expressed as an amount in U.S. Dollars representing the maximum aggregate principal amount of the Tranche B Term Loans to be made by such Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or 2.10 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Tranche B Term Loan Commitment is set forth opposite the name of such Lender on its Lender Addendum under the caption "Tranche B Term Loan Commitment", or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Tranche B Term Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Tranche B Term Loan Commitments is U.S.\$800,000,000.

"Tranche B Term Loan Lender" means (a) initially, a Lender that has a "Tranche B Term Loan Commitment" set forth opposite the name of such Lender on its Lender Addendum and (b) thereafter, a Lender from time to time holding a Tranche B Term Loan Commitment or an outstanding Tranche B Term Loan.

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"Transactions" means the execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is intended to be a party, the borrowing of Loans, the use of the proceeds thereof, the consummation of the Target Acquisition and the issuance of Letters of Credit hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans constituting such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Alternate Base Rate or, in the case of Swingline Loans, the Alternate Base Rate or the Federal Funds Base Rate.

"U.K. Equity Pledge Agreement" means a Mortgage of Shares, substantially in the forms of Exhibit B-2, executed and delivered by the Borrower in favor of the Administrative Agent creating in favor of the Administrative Agent, for the benefit of the Lenders, (a) a security interest in the shares of Canandaigua Limited and (b) a security interest in the shares of Matthew Clark (in the case of clauses (a) and (b), up to but not exceeding such portion thereof as does not represent more than 65% of the aggregate outstanding voting stock issued by Canandaigua Limited and Matthew Clark, respectively).

"U.S. Dollar Equivalent" means, (a) with respect to any Australian Dollar Revolving Loan, the amount of U.S. Dollars that would be required to purchase the amount of Australian Dollars of such Australian Dollar Revolving Loan on the day two Business Days prior to the day of such Australian Dollar Revolving Loan, based upon the spot selling rate at which the London Agent offers to sell Australian Dollars in the London foreign exchange market at approximately 11:00 a.m. (London time) for delivery two Business Days later and (b) as used in each Alternative Currency Letter of Credit Report and with respect to any Alternative Currency Letter of Credit, the amount of U.S. Dollars that would be required to purchase the amount of the relevant Alternative Currency with respect to such Alternate Currency Letter of Credit, as specified in such Alternate Currency Letter of Credit Report as determined by the Administrative Agent pursuant to Section 1.05 using the applicable Exchange Rate with respect to such Alternative Currency.

"U.S. Dollar Revolving Availability Period" means the period from and including the Effective Date to but excluding the earlier of the U.S. Dollar Revolving Commitment Termination Date and the date of termination of the U.S. Dollar Revolving Commitments.

"U.S. Dollar Revolving Commitment" means, with respect to each U.S. Dollar Revolving Lender, the commitment, if any, of such U.S. Dollar Revolving Lender to make U.S. Dollar Revolving Loans in U.S. Dollars and to acquire participations in Letters of Credit and Swingline Loans hereunder, representing the maximum aggregate amount of such U.S. Dollar Revolving Lender's U.S. Dollar Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or 2.10 and (b) reduced or increased from time to time pursuant to assignments by or to such U.S. Dollar Revolving

Lender pursuant to Section 10.04. The initial amount of each U.S. Dollar Revolving Lender's U.S. Dollar Revolving Commitment is set forth opposite the name of such Lender on its Lender Addendum under the caption "U.S. Dollar Revolving Commitment", or in the Assignment and Acceptance pursuant to which such U.S. Dollar Revolving Lender shall have assumed its U.S. Dollar

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Revolving Commitment, as applicable. The initial aggregate amount of the U.S. Dollar Revolving Lenders' U.S. Dollar Revolving Commitments is U.S.\$400,000,000.

"U.S. Dollar Revolving Commitment Termination Date" means February 29, 2008 (provided that if such day is not a Business Day, the U.S. Dollar Revolving Commitment Termination Date shall be the immediately preceding Business Day).

"U.S. Dollar Revolving Exposure" means, with respect to any U.S. Dollar Revolving Lender at any time, the sum of the outstanding principal amount of such U.S. Dollar Revolving Lender's U.S. Dollar Revolving Loans and its LC Exposure and Swingline Exposure at such time.

"U.S. Dollar Revolving Lender" means (a) initially, a Lender that has a "U.S. Dollar Revolving Commitment" set forth opposite the name of such Lender on its Lender Addendum and (b) thereafter, a Lender from time to time holding a U.S. Dollar Revolving Commitment or a Lender from time to time with an U.S. Dollar Revolving Exposure.

"U.S. Dollar Revolving Loan" means a Loan made pursuant to Section 2.01(a), which may be an ABR Loan and/or a Eurocurrency Loan.

"U.S. Dollars" or "U.S.\$" refers to lawful money of the United States of America.

"U.S. Pledge Agreement" means a Pledge Agreement substantially in the form of Exhibit B-1 between the Borrower, the Subsidiary Guarantors and the Administrative Agent.

"Voting Stock" means stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of a corporation (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

"Wholly-Owned Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other entity of which all of the equity securities or other ownership interests (other than, in the case of a corporation, directors' qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "Eurocurrency Loan") or by Class and Type (e.g., a "Revolving Eurocurrency Loan"); each Series of Incremental Term Loans shall be deemed a separate Class of Loans hereunder. Borrowings also may be classified and referred to by Class (e.g., a "Revolving

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Borrowing") or by Type (e.g., a "Eurocurrency Borrowing") or by Class and Type (e.g., a "Revolving Eurocurrency Borrowing"); and each Series of Incremental Term Loan Borrowings and Incremental Term Loan Commitments shall be deemed a separate Borrowing and Commitment hereunder. Swingline ABR Loans and Swingline FFBR Loans shall be deemed to be Loans of the same Class but different Types.

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this

Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "Property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.05. Currency Equivalents. (a) For purposes of determining (i) whether the amount of any Borrowing or any issuance, renewal or extension of any Alternate Currency Letter of Credit, together with all other Borrowings then outstanding or Alternate Currency Letters of Credit then issued, would exceed the aggregate amount of Commitments, (ii) the aggregate unutilized amount of the Commitments and (iii) the outstanding aggregate principal amount of Borrowings or aggregate face amount of issued Alternate Currency Letters of Credit, (x) the outstanding principal amount of any Borrowing that is denominated in Australian Dollars shall be deemed to be the U.S. Dollar Equivalent of the amount of Australian Dollars of such Borrowing determined as of the date of such Borrowing (determined in accordance with the last sentence of the definition of the term "Borrowing") and (y) the face

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amount of any Alternative Currency Letter of Credit shall be deemed to be the U.S. Dollar Equivalent of the face amount of such Alternative Currency Letter of Credit determined as of the date of such issuance, renewal or extension. Wherever in this Agreement in connection with a Borrowing or Loan or issuance, renewal or extension of a Letter of Credit a required minimum or multiple amount is expressed in U.S. Dollars, but such Borrowing or Loan is denominated in Australian Dollars or such Letter of Credit is denominated in an Alternative Currency, the minimum or multiple amount will be the Australian Dollar Equivalent or the relevant Alternative Currency Equivalent, as the case may be, of such U.S. Dollar amount (rounded to the nearest 1,000 units of Australian Dollars or the relevant Alternative Currency, as the case may be).

(b) Not later than 1:00 p.m., New York City time, on the last Business Day of each calendar month (each such day, a "Calculation Date"), the Administrative Agent shall (i) determine the Exchange Rate as of such Calculation Date to be used for calculating the U.S. Dollar Equivalent amounts of each Alternative Currency in which there is an outstanding Alternative Currency Letter of Credit or an unreimbursed LC Disbursement denominated in an Alternative Currency and (ii) give notice thereof to the Borrower. The Exchange Rates so determined shall become effective on the first Business Day immediately following the relevant Calculation Date (a "Reset Date"), shall remain effective until the next succeeding Reset Date and shall for all purposes of this Agreement (other than converting into U.S. Dollars under Sections 2.05(f), (g), (j), (l) and (n) and 2.11(b) the obligations of the Borrower and the U.S. Dollar Revolving Lenders in respect of LC Disbursements denominated in an Alternative Currency that have not been reimbursed when due) be the Exchange Rates employed in converting any amounts between the applicable currencies.

(c) Not later than 5:00 p.m., New York City time, on each Reset Date, the Administrative Agent shall (i) determine the Alternative Currency LC Exposure on such date (after giving effect to any Alternative Currency Letters of Credit issued, renewed or terminated or requested to be issued, renewed or terminated on such date) and (ii) notify the Borrower and each Issuing Lender of the results of such determination.

## ARTICLE II

### THE CREDITS

#### SECTION 2.01. The Commitments.

(a) U.S. Dollar Revolving Loans. Subject to the terms and conditions set forth herein, each U.S. Dollar Revolving Lender agrees to make U.S. Dollar Revolving Loans to the Borrower from time to time during the U.S. Dollar Revolving Availability Period in U.S. Dollars in an aggregate principal amount that will not result in (i) such Lender's U.S. Dollar Revolving Exposure exceeding such Lender's U.S. Dollar Revolving Commitment and (ii) the sum of the

total U.S. Dollar Revolving Exposures and the U.S. Dollar Equivalent of the total Australian Dollar Revolving Exposures exceeding the total U.S. Dollar Revolving Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow U.S. Dollar Revolving Loans.

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(b) Australian Dollar Revolving Loans. Subject to the terms and conditions set forth herein, each Australian Dollar Revolving Lender agrees to make Australian Dollar Revolving Loans to the Borrower from time to time during the Australian Dollar Revolving Availability Period in Australian Dollars in an aggregate principal amount that will not result in (i) such Lender's Australian Dollar Revolving Exposure exceeding such Lender's Australian Dollar Revolving Commitment and (ii) the total Australian Dollar Revolving Exposures exceeding the total Australian Dollar Revolving Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Australian Dollar Revolving Loans.

(c) Tranche A Term Loans. Subject to the terms and conditions set forth herein, each Tranche A Term Loan Lender agrees to make one or more Tranche A Term Loans to the Borrower during the Term Loan Availability Period in U.S. Dollars in a principal amount not exceeding its Tranche A Term Loan Commitment. Amounts repaid in respect of Tranche A Term Loans may not be reborrowed hereunder.

(d) Tranche B Term Loans. Subject to the terms and conditions set forth herein, each Tranche B Term Loan Lender agrees to make one or more Tranche B Term Loans to the Borrower during the Term Loan Availability Period in U.S. Dollars in a principal amount not exceeding its Tranche B Term Loan Commitment. Amounts repaid in respect of Tranche B Term Loans may not be reborrowed.

(e) Limit on Revolving Loans. Notwithstanding the foregoing provisions of this Section 2.01, in no event shall (i) the total Revolving Exposures after giving effect to any borrowing on any date of Revolving Loans, Swingline Loans or issuance, renewal or extension of any Letter of Credit hereunder exceed U.S.\$400,000,000, (ii) the total U.S. Dollar Revolving Exposure, after giving effect to any borrowing on any date of U.S. Dollar Revolving Loans, Swingline Loans or issuance, renewal or extension of any Letter of Credit hereunder, plus the total Australian Dollar Revolving Exposure, after giving effect to any borrowing on any date of Australian Dollar Revolving Loans hereunder, exceed the aggregate outstanding principal amount of the U.S. Dollar Revolving Commitments on such date and (iii) the total Australian Dollar Revolving Exposure, after giving effect to any borrowing on any date of Australian Dollar Revolving Loans hereunder, exceed the aggregate outstanding principal amount of the Australian Dollar Revolving Commitments on such date.

(f) Incremental Term Loans. In addition to Borrowings of U.S. Dollar Revolving Loans, Australian Dollar Revolving Loans, Tranche A Term Loans and Tranche B Term Loans specified in Section 2.01(a), (b), (c) and (d), respectively, at any time and from time to time prior to the Incremental Term Loan Availability Date, the Borrower may request that the Lenders offer to enter into commitments to make Incremental Term Loans to the Borrower in U.S. Dollars. It is understood in each case that such offer may be made by any financial institution that is to become a Lender hereunder in connection with the making of such offer under this paragraph (f), so long as the Administrative Agent shall have consented to such financial institution being a Lender hereunder (such consent shall not be unreasonably withheld). In the event that one or more of the Lenders offer, in their sole discretion, to enter into such commitments, and such

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Lenders and the Borrower agree as to the amount of such commitments that shall be allocated to the respective Lenders making such offers, as to the fees (if any) to be payable by the Borrower in connection therewith and the Applicable Rate and (in the case of Incremental Term Loans) amortization relating thereto, the Borrower, the Administrative Agent and such Lenders shall execute and deliver a Incremental Term Loan Agreement and such Lenders shall become obligated to make Incremental Term Loans under this Agreement in an amount equal to the amount of their respective Incremental Term Loan Commitments as specified in such Incremental Term Loan Agreement. The Incremental Term Loans to be made pursuant to any Incremental Term Loan Agreement in response to any such request by the Borrower shall be deemed to be a separate "Series" of Incremental Term Loans for all purposes of this Agreement.

Anything herein to the contrary notwithstanding, (i) the minimum aggregate principal amount of Incremental Term Loan Commitments entered into pursuant to any request specified above (and, accordingly, the minimum aggregate principal amount of any Series of Incremental Term Loans) shall be \$75,000,000, (ii) the aggregate outstanding principal amount of Incremental Term Loans of all Series, together with the aggregate unutilized Incremental Term Commitments of all Series, shall not exceed \$300,000,000 at any time, (iii) the Incremental Term Loan Commitments of any Series shall terminate on the earlier

of the Incremental Term Loan Availability Date and the date 30 days after the date of the respective Incremental Term Loan Agreement for such Series and (iv) in no event shall the Incremental Term Loan Agreement for any Series of Incremental Term Loans provide for the final maturity of the Incremental Term Loans of such Series to be earlier than the Tranche B Term Loan Maturity Date, or for the weighted average life to maturity of the Incremental Term Loans of such Series to be less than the weighted average life to maturity of the Tranche B Term Loans as of the date of such Incremental Term Loan Agreement (such determination of average life to be made by the Administrative Agent).

Following agreement by the Borrower and one or more of the Lenders as provided above, subject to the terms and conditions set forth herein, each Incremental Term Loan Lender of any Series agrees to make Incremental Term Loans of such Series to the Borrower from time to time during the period from and including the date of the respective Incremental Term Loan Agreement for such Series to and including the earlier of the Incremental Term Loan Availability Date and the date 30 days after the date of such Incremental Term Loan Agreement, in an aggregate principal amount up to but not exceeding the amount of the Incremental Term Loan Commitment of such Series of such Incremental Term Loan Lender.

#### SECTION 2.02. Loans and Borrowings.

(a) Obligations of Lenders. Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

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(b) Type of Loans. Subject to Section 2.13, each Borrowing shall be constituted entirely of ABR Loan or Eurocurrency Loans may request in accordance herewith. Each Lender at its option may make any Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Minimum Amounts; Limitation on Number of Borrowings. At the commencement of the Interest Period for any Eurocurrency Borrowing, such Borrowing shall be in an aggregate amount of U.S.\$3,000,000 or a larger multiple of U.S.\$100,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount equal to U.S.\$3,000,000 or a larger multiple of U.S.\$100,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments of the applicable Class or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(g). Each Swingline Loan shall be in an amount equal to U.S.\$500,000 or a larger multiple of U.S.\$100,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of thirty (30) Eurocurrency Borrowings outstanding.

(d) Limitations on Lengths of Interest Periods. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert to or continue as a Eurocurrency Borrowing: (i) any Revolving Borrowing of any Class if the Interest Period requested therefor would end after the Revolving Commitment Termination Date of such Class; (ii) any Term Loan Borrowing if the Interest Period requested therefor would end after the Term Loan Maturity Date for the relevant Class; or (iii) unless the Borrower shall confirm to the Applicable Agent in connection with such request or election that the Borrower intends to compensate each Lender pursuant to Section 2.15 (to the extent required to do so thereunder), any Term Loan Borrowing if the Interest Period requested therefor would commence before and end after any Principal Payment Date unless, after giving effect thereto, the aggregate principal amount of the Tranche A Term Loans, Tranche B Term Loans or Incremental Term Loans, as the case may be, having Interest Periods that end after such Principal Payment Date shall be equal to or less than the aggregate principal amount of the Tranche A Term Loans, Tranche B Term Loans or Incremental Term Loans, respectively, permitted to be outstanding after giving effect to the payments of principal required to be made on such Principal Payment Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Applicable Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing denominated in U.S. Dollars, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing, (b) in the case of a Eurocurrency Borrowing denominated in Australian Dollars, not later than 11:00 a.m., London time, four Business Days before the date of the proposed Borrowing or (c) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing; provided that any such notice of a Revolving ABR Borrowing

to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(g) may be given not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing. Each such

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telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Applicable Agent of a written Borrowing Request in a form approved by such Applicable Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) whether the requested Borrowing is to be a U.S. Dollar Revolving Borrowing, Australian Dollar Revolving Borrowing, Tranche A Term Loan Borrowing, Tranche B Term Loan Borrowing or Incremental Term Loan Borrowing (including, if applicable, the respective Series of Incremental Term Loans to which such Borrowing relates);;

(ii) the aggregate amount of the requested Borrowing;

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

(iv) in the case of a Borrowing denominated in U.S. Dollars, whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing;

(v) in the case of a Eurocurrency Borrowing, the Interest Period therefor, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

#### SECTION 2.04. Swingline Loans.

(a) Agreement to Make Swingline Loans. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the U.S. Dollar Revolving Availability Period, in U.S. Dollars in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding U.S.\$30,000,000 or (ii) the sum of the total U.S. Dollar Revolving Exposures and the U.S. Dollar Equivalent of the total Australian Dollar Revolving Exposures exceeding the total U.S. Dollar Revolving Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) Interest Rates. Swingline Loans shall be ABR Loans or FFBR Loans (with an Interest Period of two weeks), as selected by the Borrower, except that the Swingline Lender and the Borrower may agree that the interest rate in respect of a Swingline Loan made by the Swingline Lender, for a period ending on the date that is not earlier than one day and not later

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than fifteen days after such Swingline Loan is made, be at an alternative rate of interest (and with such applicable margins and prepayment premiums) as may from time to time be offered by the Swingline Lender to the Borrower in its sole discretion; provided that upon any sale pursuant to Section 2.04(d) of participations in any Swingline Loan the interest on which is determined by reference to the Federal Funds Base Rate or any such alternative rate, such Swingline Loans shall automatically be converted into an ABR Loan.

(c) Notice of Swingline Loans by the Borrower. To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon, New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day), amount and Type of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to a deposit account designated by the Borrower (or, in the case of a Swingline Loan made to finance the reimbursement of an LC



Disbursement as provided in Section 2.05(g), by remittance to the respective Issuing Lender) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(d) Participations by Lenders in Swingline Loans. The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the U.S. Dollar Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice to the Administrative Agent shall specify the aggregate amount of Swingline Loans in which U.S. Dollar Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each U.S. Dollar Revolving Lender, specifying in such notice such U.S. Dollar Revolving Lender's Applicable Percentage of such Swingline Loan or Swingline Loans on the applicable Business Day as provided above. Each U.S. Dollar Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above in this paragraph, to pay to the Administrative Agent, for account of the Swingline Lender, such U.S. Dollar Revolving Lender's Applicable Percentage of such Swingline Loan or Loans. Each U.S. Dollar Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each U.S. Dollar Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such U.S. Dollar Revolving Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the U.S. Dollar Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the U.S. Dollar Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline

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Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

(e) Replacement of Swingline Lender. The Borrower may at any time, and from time to time, request that the then-current Swingline Lender be replaced with another Lender hereunder designated by the Borrower and reasonably satisfactory to the Administrative Agent. Any such replacement shall be effected pursuant to a written instrument, in form and substance reasonably satisfactory to the Administrative Agent, under which such new Lender agrees to become the "Swingline Lender" hereunder, and the predecessor Swingline Lender is relieved of all of its obligations hereunder as the "Swingline Lender"; provided that in no event shall any such replacement occur unless the principal of and interest on all of the Swingline Loans of the predecessor Swingline Lender shall have been paid in full.

#### SECTION 2.05. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request an Issuing Lender to issue, at any time and from time to time during the U.S. Dollar Revolving Availability Period, Committed Letters of Credit for its own account in such form as is acceptable to such Issuing Lender in its reasonable determination. Committed Letters of Credit issued hereunder shall be issued in U.S. Dollars and shall constitute utilization of the U.S. Dollar Revolving Commitments specified by the Borrower at the time it requests such Committed Letter of Credit to be issued hereunder.

(b) Notice of Issuance, Amendment, Renewal or Extension. To request the issuance of a Committed Letter of Credit (or the amendment, renewal or extension of an outstanding Committed Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the respective Issuing Lender) to the respective Issuing Lender and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Committed Letter of Credit, or identifying the Committed Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Committed Letter of Credit is to expire (which shall comply with paragraph (e) of this Section) and the amount of such Committed Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend

such Committed Letter of Credit. If requested by the respective Issuing Lender, the Borrower also shall submit a letter of credit application on such Issuing Lender's standard form in connection with any request for a Committed Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Lender relating to any Committed Letter of Credit, the terms and conditions of this Agreement shall control.

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(c) Alternative Currency Letters of Credit.

(i) Requests for Offers. From time to time during the U.S. Dollar Revolving Availability Period the Borrower may request the Issuing Lenders to make offers to issue a Letter of Credit denominated in an Alternative Currency for account of the Borrower. Each Issuing Lender may, but shall have no obligation to, make such offers on terms and conditions that are satisfactory to such Issuing Lender, and the Borrower may, but shall have no obligation to, accept any such offers. The issuance of each Alternative Currency Letter of Credit shall be subject to the conditions of Section 5.04 and to such other conditions as are agreed upon by the Borrower and the Issuing Lender issuing such Alternative Currency Letter of Credit. Subject to the other provisions of this Section 2.05, each such Alternative Currency Letter of Credit shall be issued, and subsequently, renewed, extended, amended and confirmed, on such terms as the Borrower and such Issuing Lender shall agree, including, without limitation, expiry, drawing conditions, reimbursement, interest, fees and provision of cover. Each Alternative Currency Letter of Credit shall constitute utilization of the U.S. Dollar Revolving Commitments specified by the Borrower at the time it requests such Alternative Currency Letter of Credit to be issued hereunder

(ii) Reports to Administrative Agent. Each Issuing Lender shall deliver to the Administrative Agent and each other Issuing Lender a report in respect of each Alternative Currency Letter of Credit (each such report, an "Alternative Currency Letter of Credit Report") on and as of the date on which (x) such Alternative Currency Letter of Credit is issued, (y) the issuance, renewal, extension or amendment of a Committed Letter of Credit, if any Alternative Currency Letter of Credit is then outstanding, and (z) the U.S. Dollar Revolving Commitments are to be reduced pursuant to Section 2.08, specifying for each such Alternative Currency Letter of Credit (after giving effect to issuance thereof, as applicable):

(A) the date on which such Alternative Currency Letter of Credit was or is being issued;

(B) the Alternative Currency of such Alternative Currency Letter of Credit;

(C) the aggregate undrawn amount of such Alternative Currency Letter of Credit (in such Alternative Currency);

(D) the aggregate unpaid amount of LC Disbursements under such Alternative Currency Letter of Credit (in such Alternative Currency);

(E) the U.S. Dollar Equivalent of the Alternative Currency LC Exposure in respect of such Alternative Currency Letter of Credit; and

(F) the U.S. Dollar Equivalent of the aggregate amount of Alternative Currency LC Exposures in respect of Alternative Currency Letters of Credit issued by such Issuing Lender.

Each Alternative Currency Letter of Credit Report shall be delivered to the Administrative Agent and the Issuing Lenders by 10:00 a.m. (New York City time) on the date on which it is required

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to be delivered. The Borrower agrees to promptly provide the Issuing Lenders with such reasonably requested information as may be needed to prepare an Alternative Currency Letter of Credit Report.

(d) Limitations on Amounts. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the aggregate LC Exposure of all Issuing Lenders

(determined for these purposes without giving effect to the participations therein of the U.S. Dollar Revolving Lenders pursuant to paragraph (f) of this Section) shall not exceed U.S.\$40,000,000, (ii) the sum of the total U.S. Dollar Revolving Exposures and the U.S. Dollar Equivalent of the total Australian Dollar Revolving Exposures shall not exceed the total U.S. Dollar Revolving Commitments and (iii) the aggregate LC Exposure of such Issuing Lender (determined for these purposes without giving effect to the participations therein of the Revolving Lenders pursuant to paragraph (f) of this Section) shall not exceed the maximum LC Exposure for such Issuing Lender, if any, specified in the instrument contemplated by clause (k) below.

(e) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date twelve months after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, twelve months after the then-current expiration date of such Letter of Credit, so long as such renewal or extension occurs within three months of such then-current expiration date) and (ii) the date that is five Business Days prior to the U.S. Dollar Revolving Commitment Termination Date.

(f) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) by any Issuing Lender in respect of the U.S. Dollar Revolving Commitments, and without any further action on the part of such Issuing Lender or the U.S. Dollar Revolving Lenders, such Issuing Lender hereby grants to each U.S. Dollar Revolving Lender, and each such U.S. Dollar Revolving Lender hereby acquires from such Issuing Lender, a participation in such Letter of Credit equal to such U.S. Dollar Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each U.S. Dollar Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the U.S. Dollar Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

In consideration and in furtherance of the foregoing, each U.S. Dollar Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for account of the respective Issuing Lender, such Lender's Applicable Percentage of (x) each LC Disbursement made by an Issuing Lender in respect of each Committed Letter of Credit and (y) the U.S. Dollar Equivalent, using the Exchange Rates on the date such payment is required, of each LC Disbursement made by such Issuing Lender in an Alternative Currency, promptly upon the request of such Issuing Lender at any time from the time of such LC Disbursement until such

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LC Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason. Each such payment shall be made in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the respective Issuing Lender the amounts so received by it from the U.S. Dollar Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to the next following paragraph, the Administrative Agent shall distribute such payment to the respective Issuing Lender or, to the extent that the Lenders have made payments pursuant to this paragraph to reimburse such Issuing Lender, then to such Lenders and such Issuing Lender as their interests may appear. Any payment made by a U.S. Dollar Revolving Lender pursuant to this paragraph to reimburse an Issuing Lender for any LC Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(g) Reimbursement. If an Issuing Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such Issuing Lender in respect of such LC Disbursement (i) under a Committed Letter of Credit by paying to the Administrative Agent an amount in U.S. Dollars equal to such LC Disbursement not later than 12:00 noon, New York City time, on (x) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is received prior to 10:00 a.m., New York City time, or (y) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time (provided that, if such LC Disbursement is not less than U.S.\$100,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with a U.S. Dollar Revolving ABR Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting U.S. Dollar Revolving ABR Borrowing or Swingline Loan) and (ii) under an Alternative Currency Letter of Credit by paying to the London Agent an amount in the relevant Alternative Currency equal to such LC Disbursement not later than 12:00 noon, London time, on (x) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is

received prior to 10:00 a.m., London time, or (y) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time.

If the Borrower fails to make such payment when due, the Administrative Agent shall notify each U.S. Dollar Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof together with, in the case of an LC Disbursement under an Alternative Currency Letter of Credit, the U.S. Dollar Equivalent of the Lender's Applicable Percentage thereof, using the Exchange Rates which would apply were such Lender to pay such amount on the date such notice is delivered to such Lender.

(h) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (g) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, or any term or provision therein, (ii) any draft or other document

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presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the respective Issuing Lender under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit, and (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Neither the Administrative Agent, the Lenders nor any Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the respective Issuing Lender or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the respective Issuing Lender; provided that the foregoing shall not be construed to excuse an Issuing Lender from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Lender's gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that:

(i) an Issuing Lender may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit;

(ii) an Issuing Lender shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iii) this sentence shall establish the standard of care to be exercised by an Issuing Lender when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable law, any standard of care inconsistent with the foregoing).

(i) Disbursement Procedures. The Issuing Lender for any Letter of Credit shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Lender shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Lender and the Lenders with respect to any such LC Disbursement.

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(j) Interim Interest. If the Issuing Lender for any Letter of Credit shall make any LC Disbursement, then, unless the Borrower shall reimburse

such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (g) of this Section, then Section 2.12(d) shall apply; provided further that, in case of any LC Disbursement made under an Alternative Currency Letter of Credit, the amount of interest due with respect thereto shall be payable in U.S. Dollars and shall accrue on the U.S. Dollar Equivalent thereof calculated using the Exchange Rates on the date such LC Disbursement was made. Interest accrued pursuant to this paragraph shall be for account of such Issuing Lender, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (g) of this Section to reimburse such Issuing Lender shall be for account of such Lender to the extent of such payment.

(k) Addition / Termination of Issuing Lenders. Any Lender may be added as an Issuing Lender (each such Lender, an "Additional Issuing Lender") at any time pursuant to a written agreement among the Borrower, the Administrative Agent and such Additional Issuing Lender and to be in form and substance reasonably satisfactory to such Additional Issuing Lender and the Administrative Agent. The Administrative Agent shall notify the Lenders of each Additional Issuing Lender. From and after the effective date of any such addition, (i) the Additional Issuing Lender shall have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "Issuing Lender" shall be deemed to include such Additional Issuing Lender.

In addition, any Issuing Lender, with the consent of the Borrower, may cease being an Issuing Lender (each such Issuing Lender, a "Terminating Issuing Lender") at any time pursuant to a written agreement among the Borrower, the Administrative Agent and such Terminating Issuing Lender and to be in form and substance reasonably satisfactory to such Terminating Issuing Lender, the Administrative Agent and the Borrower. The Administrative Agent shall notify the Lenders of each Terminating Issuing Lender. At the time such termination is effective, the Borrower shall pay all unpaid fees accrued for account of the respective Terminating Issuing Lender. After the termination of a Terminating Issuing Lender, such Terminating Issuing Lender shall remain a party hereto as an Issuing Lender and shall continue to have all the rights and obligations of an Issuing Lender with respect to the Letters of Credit issued by it prior to such termination, but shall not be required to issue additional Letters of Credit.

(l) Cash Collateralization. If an Event of Default shall occur and be continuing and the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing at least 66-2/3% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall immediately deposit into the Collateral Account an amount in cash equal to, in the case of an Event of Default, the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that (i) the portions of such amount attributable to Alternative Currency Letters of Credit or LC Disbursements denominated in Alternative

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Currencies shall be deposited in the applicable Alternative Currencies in the actual amounts of such undrawn Alternative Currency Letters of Credit and LC Disbursements and (ii) the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VIII. For purposes of this paragraph, Alternative Currency LC Exposure shall be calculated using the Exchange Rates on the date notice demanding cash collateralization is delivered to the Borrower. Such deposit shall be held by the Administrative Agent in the Collateral Account as collateral in the first instance for the LC Exposure under this Agreement and thereafter for the payment of the "Secured Obligations" under and as defined in the U.S. Pledge Agreement, and for these purposes the Borrower hereby grants a security interest to the Administrative Agent for the benefit of the Lenders in the Collateral Account and in any financial assets (as defined in the Uniform Commercial Code) or other Property held therein.

(m) Existing Letters of Credit. Pursuant to Section 2.05 of the 1999 Credit Agreement, JPMorgan Chase, as an "Issuing Lender" thereunder, has issued various "Letters of Credit" under and as defined in the 1999 Credit Agreement. On the Effective Date, subject to the satisfaction of the conditions to effectiveness of the obligations of the Lenders hereunder set forth in Article V, each of such "Letters of Credit" under the 1999 Credit Agreement shall automatically, and without any action on the part of any Person, become a Letter of Credit hereunder and constitute a utilization of the U.S. Dollar Revolving Commitments.

(n) Conversion. In the event that the Loans become immediately due and payable on any date pursuant to Article VIII, all amounts (i) that the

Borrower is at the time or thereafter becomes required to reimburse or otherwise pay to the Administrative Agent in respect of LC Disbursements made under any Alternative Currency Letter of Credit (other than amounts in respect of which the Borrower has deposited cash collateral pursuant to paragraph (1) of this Section, if such cash collateral was deposited in the applicable Alternative Currency to the extent so deposited or applied), (ii) that the U.S. Revolving Lenders are at the time or thereafter become required to pay to the Administrative Agent and the Administrative Agent is at the time or thereafter becomes required to distribute to the Issuing Lenders pursuant to paragraph (g) of the Section in respect of unreimbursed LC Disbursements made under any Alternative Currency Letter of Credit and (iii) of each U.S. Revolving Lender's participation in any Alternative Currency Letter of Credit under which an LC Disbursement has been made shall, automatically and with no further action required, be converted into the U.S. Dollar Equivalent, calculated using the Exchange Rates on such date (or in the case of any LC Disbursement made after such date, on the date such LC Disbursement is made), of such amounts. On and after such conversion, all amounts accruing and owed to the Administrative Agent, the Issuing Lenders or any U.S. Dollar Revolving Lender in respect of the obligations described in this paragraph shall accrue and be payable in U.S. Dollars at the rates otherwise applicable hereunder.

#### SECTION 2.06. Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time (or, in the case of any Australian Dollar Revolving Loan, 12:00 noon,

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London time), to the account of the Applicable Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.04. The Applicable Agent will make such Loans available to the Borrower by promptly remitting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request; provided that U.S. Dollar Revolving ABR Borrowings made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(g) shall be remitted by the Administrative Agent to the respective Issuing Lender.

(b) Presumption by the Administrative Agent. Unless the Applicable Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Applicable Agent such Lender's share of such Borrowing, the Applicable Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Applicable Agent, then the applicable Lender and the Borrower severally agree to pay to the Applicable Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Applicable Agent, at (i) in the case of such Lender, the Federal Funds Effective Rate or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Applicable Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

#### SECTION 2.07. Interest Elections.

(a) Elections for Borrowings. Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have the Interest Period specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing made to it to a Borrowing of a different Type or to continue such Borrowing as a Borrowing of the same Type and, the Borrower, in the case of a Eurocurrency Borrowing, may elect the Interest Period for Borrowings made to it, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans constituting such Borrowing, and the Loans constituting each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued. Notwithstanding the foregoing, no Australian Dollar Revolving Loan may be converted to another Type, and the Borrower may not convert its Loans of other Types to Australian Dollar Revolving Loans.

(b) Notice of Elections. To make an election pursuant to this Section, the Borrower shall notify the Applicable Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Applicable Agent of a written Interest Election Request in a form approved by the Applicable Agent and signed by the Borrower.

(c) Information in Interest Election Requests. Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies (including, if applicable, the respective Series of Incremental Term Loans to which such Interest Election Request relates) and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) of this paragraph shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) if the resulting Borrowing is denominated in U.S. Dollars, whether such resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period therefor after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Notice by the Applicable Agent to Lenders. Promptly following receipt of an Interest Election Request, the Applicable Agent shall advise each relevant Lender of the details thereof and of each such Lender's portion of each resulting Borrowing.

(e) Failure to Elect; Events of Default. If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing denominated in U.S. Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing, and if the Borrower fails to deliver a timely Interest Election Request with respect to an Australian Dollar Revolving Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period the Borrower shall be deemed to have requested an Australian Dollar Revolving Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing denominated in U.S. Dollars and (ii) unless repaid, each Eurocurrency Borrowing denominated in U.S. Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08. Termination and Reduction of the Commitments.

(a) Scheduled Termination. Unless previously terminated, (i) the Tranche A Term Loan Commitments and the Tranche B Term Loan Commitments shall terminate at 5:00 p.m., New York City time, on the last day of the Term Loan Availability Period, (ii) the Incremental Term Loan Commitments of each Series shall terminate on the Incremental Term Loan Availability Date, (iii) the U.S. Dollar Revolving Commitments shall terminate on the U.S. Dollar Revolving Commitment Termination Date and (iv) the Australian Dollar Revolving Commitments shall terminate on the Australian Dollar Revolving Commitment Termination Date.

(b) Voluntary Termination or Reduction. The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided that (i) each reduction of the Commitments of any Class pursuant to this Section shall be in an amount that is U.S.\$3,000,000 or a larger multiple of U.S.\$100,000, or the remaining amount of the Commitments of such Class and (ii) except as provided in Section 2.08(d) (but subject to Section 2.10(c)), the Borrower shall not terminate or reduce the Revolving Commitments of any Class if, after giving effect to any concurrent prepayment of the Revolving Loans of such Class of in accordance with Section 2.10, the total Revolving Exposures of such Class would exceed the total Revolving Commitments of such Class.

(c) Notice of Voluntary Termination or Reduction. The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments of any Class under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following

receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(d) Effect of Termination or Reduction. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.09. Repayment of Loans; Evidence of Debt.

(a) Repayment. The Borrower hereby unconditionally promises to pay the Loans as follows:

(i) to the Administrative Agent for account of the U.S. Dollar Revolving Lenders the outstanding principal amount of the U.S. Dollar Revolving Loans on the U.S. Dollar Revolving Commitment Termination Date;

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(ii) to the Administrative Agent for account of the Tranche A Term Loan Lenders the outstanding principal amount of the Tranche A Term Loans on each Principal Payment Date set forth below in the aggregate principal amount set forth opposite such Principal Payment Date (subject to adjustment pursuant to the first sentence of paragraph (b) of this Section):

Principal Payment Date	Amount (U.S.\$)
August 31, 2003	13,300,000
November 30, 2003	13,300,000
February 29, 2004	13,400,000
May 31, 2004	15,000,000
August 31, 2004	15,000,000
November 30, 2004	15,000,000
February 28, 2005	15,000,000
May 31, 2005	20,000,000
August 31, 2005	20,000,000
November 30, 2005	20,000,000
February 28, 2006	20,000,000
May 31, 2006	25,000,000
August 31, 2006	25,000,000
November 30, 2006	25,000,000
February 28, 2007	25,000,000
May 31, 2007	30,000,000
August 31, 2007	30,000,000
November 30, 2007	30,000,000
February 29, 2008	30,000,000

(iii) to the London Agent for account of the Australian Dollar Revolving Lenders the outstanding principal amount of the Australian Dollar Revolving Loans on the Australian Dollar Revolving Commitment Termination Date;

(iv) to the Administrative Agent for account of the Tranche B Term Loan Lenders the outstanding principal amount of the Tranche B Term Loans on each Principal Payment Date set forth below in the aggregate principal amount set forth opposite such Principal Payment Date (subject to adjustment pursuant to the first sentence of paragraph (b) of this Section):

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Principal Payment Date	Amount (U.S.\$)
August 31, 2003	3,300,000
November 30, 2003	3,300,000
February 29, 2004	3,400,000
May 31, 2004	13,750,000
August 31, 2004	13,750,000



November 30, 2004	13,750,000
February 28, 2005	13,750,000
May 31, 2005	20,000,000
August 31, 2005	20,000,000
November 30, 2005	20,000,000
February 28, 2006	20,000,000
May 31, 2006	20,000,000
August 31, 2006	20,000,000
November 30, 2006	20,000,000
February 28, 2007	20,000,000
May 31, 2007	43,750,000
August 31, 2007	43,750,000
November 30, 2007	43,750,000
February 29, 2008	43,750,000
May 31, 2008	133,300,000
August 31, 2008	133,300,000
November 30, 2008	133,400,000

(v) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earliest of (A) the U.S. Dollar Revolving Commitment Termination Date, (B) the fifteenth day after such Loan is made (but not earlier than one Business Day after such Swingline Loan is made) and (C) in the case of any Swingline FFBR Loan, the earlier of (x) the last day of the Interest Period for such Loan and (y) the last day of each March, June, September and December in each year; provided that (i) if any such day is not a Business Day, then the Borrower shall pay such Swingline Loan on the next preceding Business Day and (ii) on each date that a U.S. Dollar Revolving Borrowing is made, the Borrower shall repay all Swingline ABR Loans then outstanding; and

(vi) to the Administrative Agent for the account of each Incremental Term Loan Lender of any Series the outstanding principal amount of each Incremental Term Loan of such Lender of such Series on the respective Incremental Term Loan Principal Payments Dates for the Incremental Term Loans of such Series,

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(b) Adjustment of Amortization Schedule. If the initial aggregate amount of the Term Loan Commitments of any Class exceeds the aggregate principal amount of Term Loans of such Class that are made during the Term Loan Availability Period, then the scheduled repayments of Borrowings of such Class to be made pursuant to clause (a)(ii) and (iv) as applicable above shall be reduced ratably by an aggregate amount equal to such excess. To the extent not previously paid, all Term Loans of each Class shall be due and payable on the Term Loan Maturity Date for such Class.

(c) Manner of Payment. Prior to any repayment or prepayment of any Borrowings of any Class hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class to be paid and shall notify the Applicable Agent by telephone (confirmed by telecopy) of such selection not later than 11:00 a.m., New York City time (or in the case of any repayment or prepayment of any Australian Dollar Revolving Borrowing, 11:00 a.m., London time), four Business Days before the scheduled date of such payment; provided that, in the case of a payment by the Borrower, unless otherwise specified by the Borrower, each payment of Borrowings by the Borrower of any Class shall be applied to pay any outstanding ABR Borrowings of such Class before any other Borrowings by the Borrower of such Class. If the Borrower fails to make a selection of the Borrowing or Borrowings by the Borrower to be repaid or prepaid within the applicable time period, such payment shall be applied, first, to pay any outstanding ABR Borrowings of the applicable Class and, second, to other Borrowings of the Borrower of such Class in the order of the remaining duration of their respective Interest Periods (the Borrowing with the shortest remaining Interest Period to be paid first). Each payment of a Borrowing shall be applied ratably to the Loans included in such Borrowing.

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

(e) Maintenance of Loan Accounts by the Applicable Agent. The Applicable Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and each Interest Period therefor, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Applicable Agent hereunder for account of the Lenders and each Lender's share thereof.

(f) Effect of Entries. The entries made in the accounts maintained pursuant to paragraph (d) or (e) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Applicable Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(g) Promissory Notes. Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest

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thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### SECTION 2.10. Prepayment of Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing made to it identified by the Borrower in whole or in part, subject to the requirements of this Section; provided that the aggregate principal amount of any prepayment on any date pursuant to this paragraph shall be at least equal to U.S.\$1,000,000. Any prepayment of a Tranche A Term Loan Borrowing, Tranche B Term Loan Borrowing or a Incremental Term Loan Borrowing pursuant to this paragraph shall be applied first to reduce the next three scheduled repayments thereof in direct chronological order and second to reduce the remaining scheduled repayments thereof on a pro rata basis.

(b) Mandatory Prepayments - All Loans. The Borrower will make prepayments of the Loans hereunder as follows:

(i) Casualty Events. Upon the date 270 days following the receipt by the Borrower of the proceeds of insurance, condemnation award or other compensation in respect of any Casualty Event affecting any Property of the Borrower or any of its Subsidiaries (or upon such earlier date as the Borrower or such Subsidiary, as the case may be, shall have determined not to repair or replace the Property affected by such Casualty Event), the Borrower shall prepay the Loans in an aggregate amount, if any, equal to 100% of the Net Available Proceeds of such Casualty Event not theretofore applied to the repair or replacement of such Property, such prepayment to be effected in each case in the manner and to the extent specified in clause (viii) below; provided that, notwithstanding the foregoing, the Borrower shall not be required to make a prepayment under this clause (i) to the extent that

(A) the Borrower advises the Administrative Agent at the time of receipt thereof that it intends to reinvest such Net Available Proceeds into the business of the Borrower and its Subsidiaries,

(B) such Net Available Proceeds are held by the Borrower in a segregated investment or other account (or, alternatively, applied to the prepayment of Revolving Loans), to the extent such Net Available Proceeds equal an amount greater than \$10,000,000, until so used to make such reinvestment as contemplated above, and

(C) such Net Available Proceeds are in fact so applied to such reinvestment within 270 days of receipt thereof (it being understood that, in the event Net Available Proceeds from more than one Casualty Event are held by the Borrower, or have been applied to the prepayment of Revolving Loans, such Net Available Proceeds shall be deemed to be utilized in the same order in which such Dispositions occurred and, accordingly, any such Net Available Proceeds so held

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or applied to the prepayment of Revolving Loans for more than 270 days shall be forthwith applied to the prepayment of Loans as provided above),

it being understood that, if the Borrower does not so advise the Administrative Agent that it intends to use such Net Available Proceeds to make such reinvestment as provided above, or does not in fact apply such Net Available Proceeds to reinvestments within

the time periods specified above, the Borrower shall immediately prepay Loans in an amount equal to the amount specified above.

(ii) Equity Issuance. Until the repayment in full of all Indebtedness incurred under the Bridge Credit Agreement with the proceeds of an issuance of equity securities of the Borrower or, if such repayment is not made with the proceeds of an issuance of equity securities of the Borrower, until such time as the Debt Ratio is less than 4.0 to 1 (after which time the Borrower shall have no obligation to prepay Loans as set forth in this clause (ii)), on or prior to the date 90 days after any Equity Issuance, the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Available Proceeds thereof, such prepayment to be effected in each case in the manner and to the extent specified in clause (viii) below; provided that, notwithstanding the foregoing, the Borrower shall not be required to make a prepayment under this clause (ii) (x) from Net Available Proceeds received from the issuance or sale of capital stock in connection with Stock Based Plans in effect from time to time or (y) to the extent that

(A) the Borrower advises the Administrative Agent at the time of the relevant Equity Issuance that it intends to use such Net Available Proceeds to repay Indebtedness under the Bridge Credit Agreement,

(B) such Net Available Proceeds are held by the Borrower in a segregated investment or other account (or, alternatively, applied to the prepayment of Revolving Loans), until so used to repay such Indebtedness, and

(C) such Net Available Proceeds (or portion thereof necessary to repay such Indebtedness) are in fact so applied to the repayment of such Indebtedness within 180 days of such Equity Issuance (it being understood that, in the event Net Available Proceeds from more than one Equity Issuance are held by the Borrower, or have been applied to the prepayment of Revolving Loans, such Net Available Proceeds shall be deemed to be utilized in the same order in which such Equity Issuances occurred and, accordingly, any such Net Available Proceeds so held or applied to the prepayment of Revolving Loans for more than 180 days shall be forthwith applied to the prepayment of Loans as provided above),

it being understood that, if the Borrower does not so advise the Administrative Agent that it intends to use such Net Available Proceeds to repay such Indebtedness as provided above, or does not in fact apply such Net Available Proceeds to the repayment of such Indebtedness within the time periods specified above, the Borrower shall immediately prepay Loans in an amount equal to the amount specified above.

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(iii) Dispositions. In the event that the Net Available Proceeds of any Disposition (herein, the "Current Disposition"), and of all prior Dispositions consummated in the then-current fiscal year of the Borrower as to which a prepayment has not yet been made under this paragraph, shall exceed U.S.\$15,000,000 then, no later than 180 days after the occurrence of the Current Disposition, the Borrower will deliver to the Lenders a statement, certified by a Financial Officer of the Borrower, in reasonable detail, of the amount of the Net Available Proceeds of the Current Disposition and of all such prior Dispositions and will prepay Loans in an aggregate amount equal to 100% of the Net Available Proceeds of the Current Disposition and such prior Dispositions, such prepayment to be effected in each case in the manner and to the extent specified in clause (viii) below; provided that, notwithstanding the foregoing, so long as the Current Disposition is not a Disposition of Receivable Assets as part of a Permitted Receivables Securitization, the Borrower shall not be required to make a prepayment under this clause (iii) to the extent that

(A) the Borrower advises the Administrative Agent at the time of such Disposition that it intends to use such Net Available Proceeds to finance one or more Acquisitions pursuant to Section 7.05(b), or otherwise to reinvest the proceeds thereof into the business of the Borrower and its Subsidiaries,

(B) such Net Available Proceeds are held by the Borrower in a segregated investment or other account (or, alternatively, applied to the prepayment of Revolving Loans), to the extent such Net Available Proceeds equal an

amount greater than \$10,000,000, until so used to finance one or more Acquisitions or to make such reinvestment as contemplated above, and

(C) such Net Available Proceeds are in fact so applied to such Acquisition(s) or reinvestment within 270 days of such Disposition (it being understood that, in the event Net Available Proceeds from more than one Disposition are held by the Borrower, or have been applied to the prepayment of Revolving Loans, such Net Available Proceeds shall be deemed to be utilized in the same order in which such Dispositions occurred and, accordingly, any such Net Available Proceeds so held or applied to the prepayment of Revolving Loans for more than 270 days shall be forthwith applied to the prepayment of Loans as provided above),

it being understood that, if the Borrower does not so advise the Administrative Agent that it intends to use such Net Available Proceeds to finance one or more Acquisitions or make such reinvestment as provided above, or does not in fact apply such Net Available Proceeds to one or more Acquisitions or reinvestments within the time periods specified above, the Borrower shall immediately prepay Loans in an amount equal to the amount specified above.

Notwithstanding the foregoing, to the extent that the amount of the required prepayment on any date is not greater than U.S.\$20,000,000, the Borrower shall not be required to make any prepayment of a Eurocurrency Borrowing until the expiration(s) of the then-current Interest Periods.

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(iv) Senior Debt Incurrence. On or prior to the date 90 days after the date of any Senior Debt Incurrence, the Borrower shall prepay Loans in an aggregate amount equal to the Net Available Proceeds thereof, such prepayment to be effected in each case in the manner and to the extent specified in clause (viii) below; provided that, notwithstanding the foregoing, the Borrower shall not be required to make a prepayment under this clause (iv) with respect to the Net Available Proceeds of Senior Debt Incurrences after the date hereof to the extent that

(A) the Borrower advises the Administrative Agent at the time of the relevant Senior Debt Incurrence that it intends to use such Net Available Proceeds, in compliance with Section 7.01(c) (ii) (A), to finance one or more Acquisitions pursuant to Section 7.05(b), to prepay a Designated Revolving Borrowing in respect of which the related Acquisition has been consummated as of the time of the relevant Senior Debt Incurrence, to repay Senior Unsecured Indebtedness, or a combination of such Acquisitions and payments,

(B) such Net Available Proceeds are held by the Borrower in a segregated investment or other account (or, alternatively, applied to the prepayment of a Designated Revolving Borrowing or other Revolving Loans), until so used to finance one or more Acquisitions, or to repay such Senior Unsecured Indebtedness, as contemplated above, and

(C) such Net Available Proceeds are in fact so applied to such Acquisition(s), or to the repayment of such Senior Unsecured Indebtedness, within 180 days of such Senior Debt Incurrence (it being understood that, in the event Net Available Proceeds from more than one Senior Debt Incurrence are held by the Borrower, or have been applied to the prepayment of Revolving Loans, such Net Available Proceeds shall be deemed to be utilized in the same order in which such Senior Debt Incurrences occurred and, accordingly, any such Net Available Proceeds so held or applied to the prepayment of Revolving Loans (other than any Designated Revolving Borrowing) for more than 180 days shall be forthwith applied to the prepayment of Loans as provided above),

it being understood that, if the Borrower does not so advise the Administrative Agent that it intends to use such Net Available Proceeds to finance one or more Acquisitions, to prepay a Designated Revolving Borrowing or to repay such Senior Unsecured Indebtedness, or does not in fact apply such Net Available Proceeds to one or more Acquisitions, to the prepayment of a Designated Revolving Borrowing or to the repayment of such Senior Unsecured Indebtedness within the time periods specified above, the Borrower shall immediately prepay Loans in an amount equal to the amount specified above.

(v) Subordinated Debt Incurrence. On or prior to the date 90 days after the date of any Subordinated Debt Incurrence, the Borrower shall prepay Loans in an aggregate amount equal to the portion of the Net Available Proceeds thereof that exceeds (in the aggregate for all Subordinated Debt Incurrences after the date hereof) U.S.\$100,000,000, such prepayment to be effected in each case in the manner and to the extent specified in

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clause (viii) below; provided that, notwithstanding the foregoing, the Borrower shall not be required to make a prepayment under this clause (v) to the extent that

(A) the Borrower advises the Administrative Agent at the time of the relevant Subordinated Debt Incurrence that it intends to use such Net Available Proceeds to finance one or more Acquisitions pursuant to Section 7.05(b), to prepay a Designated Revolving Borrowing in respect of which the related Acquisition has been consummated as of the time of the relevant Subordinated Debt Incurrence, to repay or prepay Subordinated Indebtedness or Senior Unsecured Indebtedness, or a combination of such Acquisitions and payments,

(B) such Net Available Proceeds are held by the Borrower in a segregated investment or other account (or, alternatively, applied to the prepayment of a Designated Revolving Borrowing or other Revolving Loans), until so used to finance one or more Acquisitions or pay such Indebtedness, as contemplated above, and

(C) such Net Available Proceeds are in fact so applied to such Acquisition(s) or to the payment of such Indebtedness within 180 days of such Debt Incurrence (it being understood that, in the event Net Available Proceeds from more than one Subordinated Debt Incurrence are held by the Borrower, or have been applied to the prepayment of Revolving Loans, such Net Available Proceeds shall be deemed to be utilized in the same order in which such Subordinated Debt Incurrences occurred and, accordingly, any such Net Available Proceeds so held or applied to the prepayment of Revolving Loans (other than any Designated Revolving Borrowing) for more than 180 days shall be forthwith applied to the prepayment of Loans as provided above),

it being understood that, if the Borrower does not so advise the Administrative Agent that it intends to use such Net Available Proceeds to finance one or more Acquisitions or pay such Indebtedness, or does not in fact apply such Net Available Proceeds to one or more Acquisitions or pay such Indebtedness within the time periods specified above, the Borrower shall immediately prepay Loans in an amount equal to the amount specified above.

(vi) Foreign Subsidiary Debt Incurrence. On or prior to the date 90 days after the date of any Foreign Subsidiary Debt Incurrence, the Borrower shall prepay Loans in an aggregate amount equal to the Net Available Proceeds thereof unless such Net Available Proceeds are applied or maintained for working capital or other general corporate purposes of the applicable Foreign Subsidiary, such prepayment to be effected in each case in the manner and to the extent specified in clause (viii) below.

(vii) Excess Cash Flow. Not later than the date 100 days after the end of each fiscal year of the Borrower ending on or after February 28, 2004 (unless as of the last day of such fiscal period (x) all Indebtedness incurred under the Bridge Credit Agreement has been repaid in full with the proceeds of an issuance of equity securities of the Borrower or (y) if such repayment is not made with the proceeds of an issuance of equity securities

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of the Borrower, the Debt Ratio is less than 4 to 1, in the case of either, this clause (vii) shall not apply for such fiscal year or for any fiscal year thereafter), the Borrower shall prepay the Loans in an aggregate amount equal to 50% of Excess Cash Flow for such fiscal year, such prepayment to be effected in each case in the manner and to the extent specified in clause (viii) below.

(viii) Application. Prepayments by the Borrower pursuant to this paragraph (b) shall be applied as follows:

first, such prepayment shall be applied to any then outstanding Term Loans, ratably in accordance with the then-outstanding aggregate principal amounts thereof; and

second, after the payment in full of any then outstanding Term Loans, such prepayment shall be applied to any then outstanding Revolving Loans (without reduction of Revolving Commitments), ratably in accordance with the then-outstanding aggregate principal amounts thereof.

Notwithstanding anything in this clause (viii) to the contrary, if at any time Tranche A Terms Loans are outstanding, any Tranche B Term Loan Lender shall have the option to forego any such prepayment of a Tranche B Term Loan held by it in its sole discretion, and in any such case, the amount that would otherwise be applied to prepay such Tranche B Term Loan will be applied pro rata to the outstanding Tranche B Term Loans of the Tranche B Term Loan Lenders who have not foregone the related prepayment, and any amount remaining after prepayment in full of the Tranche B Term Loans of any Tranche B Term Loan Lenders who have not foregone such prepayment will be applied pro rata to the outstanding Tranche A Term Loans.

Each such prepayment of the Term Loans of any Class pursuant to this clause (b)(viii) shall be applied to the remaining installments thereof on a pro rata basis.

(c) Mandatory Prepayments - U.S. Dollar Revolving Loans. The Borrower will prepay the U.S. Dollar Revolving Loans hereunder if requested by the Required U.S. Dollar Revolving Lenders (through the Administrative Agent) if the Administrative Agent or such Lenders determine on any date that the total U.S. Dollar Revolving Exposure, after giving effect to any Borrowing on any date of U.S. Dollar Revolving Loans or issuance, renewal or extension of any Letter of Credit hereunder, plus the total Australian Dollar Revolving Exposure, after giving effect to any Borrowing on any date of Australian Dollar Revolving Loans hereunder, exceeds the aggregate outstanding principal amount of the U.S. Dollar Revolving Commitments on such date, in an aggregate principal amount equal to such excess.

(d) Notices, Etc. The Borrower shall notify the Applicable Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurocurrency Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment (or in the case of prepayment of a Eurocurrency Borrowing denominated in

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Australian Dollars, not later than 11:00 a.m., London time, four Business Days before the date of prepayment), (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.08(c), then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08(c). Promptly following receipt of any such notice relating to a Borrowing, the Applicable Agent shall advise the relevant Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12 and shall be made in the manner specified in Section 2.09(c).

#### SECTION 2.11. Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for account of each U.S. Dollar Revolving Lender a commitment fee, which shall accrue at the Applicable Rate on the daily amount of the unused U.S. Dollar Revolving Commitments of such U.S. Dollar Revolving Lender during the period from and including the Effective Date to but excluding the earlier of the date such U.S. Dollar Revolving Commitment terminates and the applicable U.S. Dollar Revolving Commitment Termination Date. The Borrower agrees to pay to the Administrative Agent for account of each Australian Dollar Revolving Lender a commitment fee, which shall accrue at the Applicable Rate on the daily amount of the unused Australian Dollar Revolving Commitments of such

Australian Dollar Revolving Lender during the period from and including the date hereof to but excluding the earlier of the date such Australian Dollar Revolving Commitment terminates and the applicable Australian Dollar Revolving Commitment Termination Date. Accrued commitment fees shall be payable on each Quarterly Date and on the earlier of the date the Revolving Commitments of the applicable Class terminate and the applicable Revolving Commitment Termination Date of such Class, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for account of each U.S. Dollar Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at a rate per annum equal to the Applicable Rate applicable to interest on Eurocurrency U.S. Dollar Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's U.S. Dollar Revolving Commitment

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terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Lender, a fronting fee, which shall accrue at the rate set forth in the instrument of such Issuing Lender contemplated by Section 2.05(k) on the average daily amount of the LC Exposure of such Issuing Lender (excluding any portion thereof attributable to unreimbursed LC Disbursements and determined for these purposes without giving effect to the participations therein of the U.S. Dollar Revolving Lenders pursuant to paragraph (f) of Section 2.05) during the period from and including the Effective Date to but excluding the later of the date of termination of the U.S. Dollar Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Lender's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including each Quarterly Date shall be payable on the third Business Day following such Quarterly Date, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the U.S. Dollar Revolving Commitments terminate and any such fees accruing after the date on which the U.S. Dollar Revolving Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For the purposes of calculating the average daily balance of the LC Exposure for any period under this Section 2.11(b), the average daily amount of the Alternative Currency LC Exposure for such period shall be calculated by multiplying (x) the average daily balance of each Alternative Currency Letter of Credit (expressed in the Alternate Currency of such Alternative Currency Letter of Credit) by (y) the Exchange Rate for each such Alternative Currency in effect on the last Business Day of such period or by such other reasonable method that the Administrative Agent deems appropriate.

(c) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) Payment of Fees. All fees payable hereunder shall be paid on the dates due, in U.S. Dollars and in immediately available funds, to the Administrative Agent (or to the respective Issuing Lender, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

#### SECTION 2.12. Interest.

(a) ABR Loans. The Loans constituting each ABR Borrowing (other than in respect of Swingline Loans, as to which paragraph (c) below shall apply) shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Rate.

(b) Eurocurrency Loans. The Loans constituting each Eurocurrency Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period for such Borrowing plus the Applicable Rate.

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(c) Swingline ABR and FFBR Borrowings. Each ABR Borrowing constituting a Swingline Loan shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Rate. Each Swingline Borrowing the interest on which is determined by reference to the Federal Funds Base Rate for any Interest Period therefor shall bear interest at a rate per annum, for each

day during such Interest Period, equal to the Federal Funds Base Rate for such period plus the Applicable Rate plus 0.50%. Each Swingline Borrowing the interest on which is determined at an alternate rate of interest as contemplated in Section 2.04(b), shall bear interest at the respective alternate rate of interest so agreed for the period so contemplated by Section 2.04(b).

(d) Default Interest. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration, by mandatory prepayment or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided above or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Payment of Interest. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans of any Class, upon termination of the Revolving Commitments of such Class; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Revolving ABR Loan prior to the U.S. Dollar Revolving Commitment Termination Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Borrowing prior to the end of the Interest Period therefor, accrued interest on such Borrowing shall be payable on the effective date of such conversion.

(f) Computation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13. Alternate Rate of Interest. If prior to the commencement of the Interest Period for a Eurocurrency Borrowing (the Loan Currency of such Borrowing herein called the "Affected Currency"):

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate for such Affected Currency, as applicable, for such Interest Period; or

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(b) if such Borrowing is of a particular Class of Loans, the Administrative Agent is advised by the Required Lenders of such Class that the Adjusted LIBO Rate or the LIBO Rate for such Affected Currency, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing denominated in the Affected Currency shall be ineffective, and, if the Affected Currency is U.S. Dollars, such Borrowing (unless prepaid) shall be continued as, or converted to, an ABR Borrowing, (ii) if the Affected Currency is U.S. Dollars and any Borrowing Request requests a Eurocurrency Borrowing denominated in U.S. Dollars, such Borrowing shall be made as an ABR Borrowing and (iii) if the Affected Currency is Australian Dollars, any Borrowing Request that requests a Eurocurrency Borrowing denominated in the Australian Dollars shall be ineffective.

SECTION 2.14. Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Lender; or

(ii) impose on any Lender or any Issuing Lender or the London interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or



participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lenders of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such Issuing Lender of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such Issuing Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing

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Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

(c) Certificates from Lenders. A certificate of a Lender or an Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or such Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error (such certificate, in the case of any amount payable as specified in paragraph (a) of this Section, shall set forth in reasonable detail the calculation of such amount). The Borrower shall pay such Lender or such Issuing Lender, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

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

SECTION 2.15. Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Loan, Australian Dollar Revolving Loan or Swingline FFBR Loan other than on the last day of an Interest Period therefor (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Loan other than on the last day of an Interest Period therefor, (c) the failure to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice is permitted to be revocable under Section 2.10(d) and is revoked in accordance herewith), (c) the Borrowing of any Term Loan the Interest Period for which commences before and ends after any Principal Payment Date (unless, after giving effect thereto, the aggregate principal amount of the Tranche A Term Loans, Tranche B Term Loans or Incremental Term Loans, as the case may be, having Interest Periods that end after such Principal Payment Date shall be equal to or less than the aggregate principal amount of the Tranche A Term Loans, Tranche B Term Loans or Incremental Term Loans, respectively, permitted to be outstanding after giving effect to the payments of principal required to be made on such Principal Payment Date), or (e) the assignment of any Eurocurrency Loan other than on the last day of an Interest Period therefor as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the relevant Borrower shall compensate each Lender for the loss, cost and expense attributable to

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such event (including such loss, cost and expense as calculated below but otherwise excluding any lost profit):

(a) in the case of a Eurocurrency Loan, the loss to any Lender attributable to any such event shall be deemed to include an amount determined

by such Lender to be equal to the excess, if any, of (i) the amount of interest that such Lender would pay for a deposit equal to the principal amount of such Loan for the period from the date of such payment, conversion, Borrowing, failure or assignment to the last day of then current Interest Period for such Loan (or (x) in the case of a failure to borrow, convert or continue, the duration of the Interest Period that would have resulted from such borrowing, conversion or continuation and (y) in the case of a Borrowing of any Term Loan, the period from the date of such Borrowing to the applicable Principal Payment Date) if the interest rate payable on such deposit were equal to the Adjusted LIBO Rate for such Interest Period (or, in the case of any Borrowing of Term Loans, such other period), over (ii) the amount of interest that such Lender would earn on such principal amount for such period if such Lender were to invest such principal amount for such period at the interest rate that would be bid by such Lender (or an affiliate of such Lender) for deposits in U.S. Dollars from other banks in the eurocurrency market at the commencement of such period; and

(b) in the case of a Swingline FFBR Loan, the loss to the Swingline Lender attributable to any such event shall be deemed to include an amount determined by the Swingline Lender to be equal to the excess, if any, of (i) the Federal Funds Base Rate for the period commencing on the date of such payment to but not including the last day of the Interest Period for such Swingline FFBR Loan, over (ii) the Federal Funds Base Rate for such Interest Period.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error (such certificate to include in reasonable detail the calculation of such amount or amounts). The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

#### SECTION 2.16. Taxes.

(a) Payments Free of Covered Taxes. Any and all payments by or on account of any obligation of the Borrower or Subsidiary Guarantor hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower or such Subsidiary Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Subsidiary Guarantor shall make such deductions and (iii) the Borrower or such Subsidiary Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

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(b) Payment of Other Taxes by the Borrower. In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrowers. The Borrower shall indemnify the Administrative Agent, each Lender and each Issuing Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or such Issuing Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an Issuing Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Lender, shall be conclusive absent manifest error (such certificate to include in reasonable detail the calculation of such amount).

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any Subsidiary Guarantor to a Governmental Authority, the Borrower or such Subsidiary Guarantor, as the case may be, shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Foreign Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as

will permit such payments to be made without withholding or at a reduced rate.

(f) Refund. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Tax or Other Tax as to which it has been indemnified by the Borrower or any Subsidiary Guarantor under this Section 2.16, it shall pay over such refund to the Borrower or such Subsidiary Guarantor (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or such Subsidiary Guarantor under this Section 2.16 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower or such Subsidiary Guarantor, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or such Subsidiary Guarantor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower, any Subsidiary Guarantor or any other Person.

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SECTION 2.17. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Obligors. Each Obligor shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or under Section 2.14, 2.15 or 2.16, or otherwise) or under any other Loan Document (except to the extent otherwise provided therein) prior to 12:00 noon, New York City time (or, in the case of any payment of any Australian Dollar Revolving Loan, London time), on the date when due, in immediately available funds, without set-off or counterclaim; provided that if a new Loan is to be made by any Lender on a date the Borrower is to repay any principal of an outstanding Loan of such Lender, such Lender shall apply the proceeds of such new Loan to the payment of the principal to be repaid and only an amount equal to the difference between the principal to be borrowed and the principal to be repaid shall be made available by such Lender to the Administrative Agent as provided in Section 2.06 or paid by the Borrower to the Administrative Agent pursuant to this paragraph, as the case may be. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at an office specified by it, except as otherwise expressly provided in the relevant Loan Document, and except payments to be made directly to an Issuing Lender or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 10.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder or under any other Loan Document shall be made in U.S. Dollars (except for payments in respect of Loans denominated in Australian Dollars, which are payable in Australian Dollars).

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, to pay interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, to pay principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing of a particular Class shall be made from the relevant Lenders, each payment of commitment fee under Section 2.11 shall be made for account of the relevant Revolving Lenders, and each termination or reduction of the amount of the Commitments of a particular Class under Section 2.08 shall be applied to the respective Commitments of such Class of the relevant Lenders, pro rata according to the amounts of their respective Commitments of such Class; (ii) each Borrowing of any Class shall be allocated pro rata among the relevant Lenders according to the amounts of their respective Commitments of such Class (in the case of the

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making of Loans) or their respective Loans of such Class (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of

principal of U.S. Dollar Revolving Loans, Australian Dollar Revolving Loans, Tranche A Term Loans, Tranche B Term Loans and Incremental Term Loans by the Borrower shall be made for account of the relevant Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans of such Class held by them; and (iv) each payment of interest on U.S. Dollar Revolving Loans, Australian Dollar Revolving Loans, Tranche A Term Loans, Tranche B Term Loans and Incremental Term Loans by the Borrower shall be made for account of the relevant Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

(d) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon then due than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Obligor consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Obligor rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Obligor in the amount of such participation.

(e) Presumptions of Payment. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for account of the Lenders or an Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or such Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Effective Rate.

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(f) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(d), 2.05(f) or (g), 2.06(b) or 2.17(e), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

#### SECTION 2.18. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.16, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort,

upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a U.S. Dollar Revolving Commitment is being assigned, each Issuing Lender and the Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the relevant Borrower to require such assignment and delegation cease to apply.

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### ARTICLE III

#### GUARANTEE

SECTION 3.01. The Guarantee. The Subsidiary Guarantors hereby jointly and severally guarantee to each Lender and the Administrative Agent and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans made by the Lenders to the Borrower and all other amounts from time to time owing to the Lenders or the Administrative Agent by the Borrower under this Agreement and by any Obligor under any of the other Loan Documents, and all obligations of the Borrower or any of its Subsidiaries to any Lender (or any Affiliate of any Lender) in respect of any Hedging Agreement, in each case strictly in accordance with the terms hereof and thereof (such obligations being herein collectively called the "Guaranteed Obligations"). The Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 3.02. Obligations Unconditional. The obligations of the Subsidiary Guarantors under Section 3.01 are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Borrower under this Agreement or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. In full recognition and in furtherance of the foregoing, each Subsidiary Guarantor agrees that:

(a) Without affecting the enforceability or effectiveness of Section 3.01 in accordance with its terms and without affecting, limiting, reducing, discharging or terminating the liability of such Subsidiary Guarantor, or the rights, remedies, powers and privileges of the Administrative Agent and the Lenders under this Agreement or any other agreement or instrument referred to herein or therein, the Administrative Agent and the Lenders may, at any time and from time to time and without notice or demand of any kind or nature whatsoever:

(i) amend, supplement, modify, extend, renew, waive, accelerate or otherwise change the time for payment or performance of, or the terms of, all or any part of the Guaranteed Obligations (including any increase or decrease in the rate or rates of interest on all or any part of the Guaranteed Obligations);

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(ii) amend, supplement, modify, extend, renew, waive or otherwise change, or enter into or give, any Loan Document or any agreement, security document, guarantee, approval, consent or other instrument with respect to all or any part of the Guaranteed Obligations, any Loan Document or any such other instrument or any term or provision of the foregoing (it being

understood that this clause (ii) shall not be deemed to constitute a consent by any Subsidiary Guarantor to any such amendment with respect to any Loan Document to which it is a party);

(iii) accept or enter into new or additional agreements, security documents, guarantees (including letters of credit) or other instruments in addition to, in exchange for or relative to any Loan Document, all or any part of the Guaranteed Obligations or any collateral now or in the future serving as security for the Guaranteed Obligations;

(iv) accept or receive (including from any other Subsidiary Guarantor) partial payments or performance on the Guaranteed Obligations (whether as a result of the exercise of any right, remedy, power or privilege or otherwise);

(v) accept, receive and hold any additional collateral for all or any part of the Guaranteed Obligations (including from any other Subsidiary Guarantor);

(vi) release, reconvey, terminate, waive, abandon, allow to lapse or expire, fail to perfect, subordinate, exchange, substitute, transfer, foreclose upon or enforce any collateral, security documents or guarantees (including letters of credit or the obligations of any other Subsidiary Guarantor) for or relative to all or any part of the Guaranteed Obligations;

(vii) apply any collateral or the proceeds of any collateral or guarantee (including any letter of credit or the obligations of any other Subsidiary Guarantor) to all or any part of the Guaranteed Obligations in such manner and extent as the Administrative Agent or any Lender may in its discretion determine;

(viii) release any Person (including any other guarantor) from any personal liability with respect to all or any part of the Guaranteed Obligations;

(ix) settle, compromise, release, liquidate or enforce upon such terms and in such manner as the Administrative Agent or the Lenders may determine or as applicable law may dictate all or any part of the Guaranteed Obligations or any collateral on or guarantee (including any letter of credit issued with respect to) of all or any part of the Guaranteed Obligations;

(x) consent to the merger or consolidation of, the sale of substantial assets by, or other restructuring or termination of the corporate existence of the Borrower or any other Person (including any other Subsidiary Guarantor);

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(xi) proceed against the Borrower, such or any other Subsidiary Guarantor or any other guarantor of (including any issuer of any letter of credit issued with respect to) all or any part of the Guaranteed Obligations or any collateral provided by any Person and exercise the right, remedies, powers and privileges of the Administrative Agent and the Lenders under this Agreement or any other agreement or instrument referred to herein or therein, or otherwise in such order and such manner as the Administrative Agent or any Lender may, in its discretion, determine, without any necessity to proceed upon or against or exhaust any collateral, right, remedy, power or privilege before proceeding to call upon or otherwise enforce Section 3.01 as to any Subsidiary Guarantor;

(xii) foreclose upon any deed of trust, mortgage or other instrument creating or granting liens on any interest in real Property by judicial or nonjudicial sale or by deed in lieu of foreclosure, bid any amount or make no bid in any foreclosure sale or make any other election of remedies with respect to such liens or exercise any right of set-off;

(xiii) obtain the appointment of a receiver with respect to any collateral for all or any part of the Guaranteed Obligations and apply the proceeds of such receivership as the Administrative Agent or any Lender may in its discretion determine (it being agreed that nothing in this clause (xiii) shall be deemed to make the Administrative Agent or any Lender a party in possession in contemplation of law, except at its option);

(xiv) enter into such other transactions or business dealings with any other Subsidiary Guarantor, the Borrower, any Subsidiary or Affiliate of the Borrower or any other guarantor of all or any

part of the Guaranteed Obligations as the Administrative Agent or any Lender may desire; and

(xv) do all or any combination of the actions set forth in this Section.

(b) The enforceability and effectiveness of this Article and the liability of the Subsidiary Guarantors, and the rights remedies, powers and privileges of the Administrative Agent and the Lenders, under this Agreement or any other agreement or instrument referred to herein or therein, shall not be affected, limited, reduced, discharged or terminated, and each Subsidiary Guarantor hereby expressly waives any defense now or in the future arising, by reason of:

(i) the illegality, invalidity, irregularity, authenticity, or unenforceability of all or any part of the Guaranteed Obligations, this Agreement or any other agreement or instrument referred to herein or therein, or any agreement, security document, guarantee or other instrument relative to all or any part of the Guaranteed Obligations;

(ii) any disability or other defense of the Borrower or any other Subsidiary Guarantor with respect to all or any part of the Guaranteed Obligations or any other guarantor of all or any part of the Guaranteed Obligations (including

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any issuer of any letters of credit), including the effect of any statute of limitations that may bar the enforcement of all or any part of the Guaranteed Obligations or the obligations of any such other guarantor;

(iii) the illegality, invalidity, irregularity, authenticity or unenforceability of any security or guarantee (including any letter of credit) for all or any part of the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of the priority of any lien on any collateral for all or any part of the Guaranteed Obligations;

(iv) the cessation, for any cause whatsoever, of the liability of the Borrower or any other Subsidiary Guarantor (other than subject to Section 3.05, by reason of the full payment and performance of all Guaranteed Obligations);

(v) any failure of the Administrative Agent or any Lender to marshal assets in favor of the Borrower or any other Person (including any other guarantor), to exhaust any collateral for all or any part of the Guaranteed Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against any other Subsidiary Guarantor, the Borrower, any other guarantor, all or any part of the Guaranteed Obligations (including any Issuing Lender in respect of Letters of Credit) or any other Person or to take any action whatsoever to mitigate or reduce such or any other Subsidiary Guarantor's liability under this Article, neither the Administrative Agent nor any Lender being under any obligation to take any such action notwithstanding the fact that all or any part of the Guaranteed Obligations may be due and payable and that the Borrower may be in default of its obligations under this Agreement or any other agreement or instrument referred to herein or therein;

(vi) any failure of the Administrative Agent or any Lender to give notice after any Default of sale or other disposition of any collateral (including any notice of any judicial or nonjudicial foreclosure or sale of any interest in real Property serving as collateral for all or any part of the Guaranteed Obligations) for all or any part of the Guaranteed Obligations to the Borrower, any Subsidiary Guarantor or any other Person or any defect in, or any failure by any Subsidiary Guarantor or any other Person to receive, any notice that may be given in connection with any sale or disposition of any collateral;

(vii) any failure of the Administrative Agent or any Lender to comply with applicable laws in connection with the sale or other disposition of any collateral for all or any part of the Guaranteed Obligations, including any failure to conduct a commercially reasonable sale or other disposition of any collateral for all or any part of the Guaranteed Obligations;

(viii) any judicial or nonjudicial foreclosure or sale of, or other election of remedies with respect to, any interest in real Property or other collateral serving as security for all or any part of the Guaranteed Obligations, even though such foreclosure, sale or election of remedies may impair the subrogation rights of

Subsidiary Guarantor or may preclude any Subsidiary Guarantor from obtaining reimbursement, contribution, indemnification or other recovery from any other Subsidiary Guarantor, the Borrower any other guarantor or any other Person and even though the Borrower may not, as a result of such foreclosure, sale or election of remedies, be liable for any deficiency;

(ix) any benefits the Borrower, any Subsidiary Guarantor or any other guarantor may otherwise derive from Sections 580(a), 580(b), 580(d) or 726 of the California Code of Civil Procedure or any comparable provisions of the laws of any other jurisdiction;

(x) any act or omission of the Administrative Agent, any Lender or any other person that directly or indirectly results in or aids the discharge or release of the Borrower or any other Subsidiary Guarantor, of all or any part of the Guaranteed Obligations or any security or guarantee (including any letter of credit) for all or any part of the Guaranteed Obligations by operation of law or otherwise;

(xi) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's principal obligation;

(xii) the possibility that the obligations of the Borrower to the Administrative Agent and the Lenders may at any time and from time to time exceed the aggregate liability of the Subsidiary Guarantors under this Article;

(xiii) any counterclaim, set-off or other claim which the Borrower or any other Subsidiary Guarantor has or alleges to have with respect to all or any part of the Guaranteed Obligations;

(xiv) any failure of the Administrative Agent or any Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person;

(xv) the election by the Administrative Agent or any Lender, in a bankruptcy proceeding of any Person, of the application or nonapplication of Section 1111(b)(2) of the United States Bankruptcy Code;

(xvi) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code;

(xvii) any use of cash collateral under Section 363 of the United States Bankruptcy Code;

(xviii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person;

(xix) the avoidance of any lien in favor of the Administrative Agent or any Lender for any reason;

(xx) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any part of the Guaranteed Obligations (or any interest on all or any part of the Guaranteed Obligations) in or as a result of any such proceeding;

(xxi) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, including by reason of Sections 2809, 2810, 2819, 2839, 2845, 2850, 2899, 3275 and 3433 of the California Civil Code, and any future judicial decisions or legislation or of any comparable provisions of the laws of any other jurisdiction; or

(xxiii) diligence, presentment, demand of payment, protest and all notices whatsoever.

(c) Each Subsidiary Guarantor represents and warrants to the Administrative Agent that it has established adequate means of obtaining financial and other information pertaining to the business, operations and condition (financial and otherwise) of the Borrower and its properties on a



continuing basis and that such Subsidiary Guarantor is now and will in the future remain fully familiar with the business, operations and condition (financial and otherwise) of the Borrower and its properties. Each Subsidiary Guarantor further represents and warrants that it has reviewed and approved this Agreement and the related Loan Documents and is fully familiar with the transactions contemplated by such Loan Documents and that it will in the future remain fully familiar with such transaction and with any new Loan Documents and the transaction contemplated by such Loan Documents. Each Subsidiary Guarantor hereby expressly waives and relinquishes any duty on the part of the Administrative Agent or the Lenders (should any such duty exist) to disclose to such or any other Subsidiary Guarantor any matter of fact or other information related to the business, operations or condition (financial or otherwise) of the Borrower or its properties or to any Loan Documents or the transactions undertaken pursuant to, or contemplated by, such Loan Documents, whether now or in the future known by the Administrative Agent or any Lender.

SECTION 3.03. Reinstatement. The obligations of the Subsidiary Guarantors under this Article shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Administrative Agent and each Lender on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

SECTION 3.04. Subrogation. Each Subsidiary Guarantor hereby waives all rights of subrogation or contribution, whether arising by contract or operation of law (including

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any such right arising under the Bankruptcy Code) or otherwise by reason of any payment by it pursuant to the provisions of this Article until such time as the obligations under this Agreement have been indefeasibly paid and satisfied in full and the Commitments have terminated. Each Subsidiary Guarantor understands that, by reason of the foregoing provisions of this Section, the exercise by the Administrative Agent or any Lender of the rights, remedies, powers and privileges that it has under this Article and under the other Loan Documents will result in nonreimbursable liabilities under this Agreement. Nevertheless, each Subsidiary Guarantor hereby authorizes and empowers the Administrative Agent and the Lenders to exercise, in its or their sole discretion, any combination of such rights, remedies, powers and privileges as they, in their sole discretion, shall deem appropriate.

SECTION 3.05. Remedies. Each Subsidiary Guarantor jointly and severally agrees that, as between the Subsidiary Guarantors and the Lenders, the obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Article VIII (and shall be deemed to have become automatically due and payable in the circumstances provided in Article VIII) for purposes of Section 3.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of Section 3.01.

SECTION 3.06. Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this Article constitutes an instrument for the payment of money, and consents and agrees that any Lender or the Administrative Agent, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to bring motion-action under New York CPLR Section 3213.

SECTION 3.07. Continuing Guarantee. The guarantee in this Article is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 3.08. Rights of Contribution. The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this Section shall be subordinate and subject in right of payment to the prior payment in full of the

obligations of such Subsidiary Guarantor under the other provisions of this Article and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

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For purposes of this Section, (i) "Excess Funding Guarantor" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (ii) "Excess Payment" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (iii) "Pro Rata Share" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such Subsidiary Guarantor (including contingent, subordinated, unmaturred and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmaturred and unliquidated liabilities, but excluding the obligations of the Borrower and the Subsidiary Guarantors hereunder and under the other Loan Documents) of all of the Subsidiary Guarantors, determined (A) with respect to any Subsidiary Guarantor that is a party hereto on the Effective Date, as of the Effective Date, and (B) with respect to any other Subsidiary Guarantor, as of the date such Subsidiary Guarantor becomes a Subsidiary Guarantor hereunder.

SECTION 3.09. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, Federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally (including "financial assistance" rules under the laws of England, including Sections 151 to and including 158 of the Companies Act), if the obligations of any Subsidiary Guarantor under Section 3.01 would otherwise, taking into account the provisions of Section 3.08, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 3.01, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Lender, the Administrative Agent or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding (or, in the case of Canandaigua Limited, be limited so as not to guarantee the portion of the Loans that are not permitted to be guaranteed under such "financial assistance" rules).

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that (subject to Section 10.15):

SECTION 4.01. Organization; Powers. Each of the Borrower and its Subsidiaries (excluding Inactive Subsidiaries) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and

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authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 4.02. Authorization; Enforceability. The Transactions are within each Obligor's corporate powers and (other than with respect to Borrowings of Incremental Term Loans until such date as any such Borrowings are made) have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 4.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for (i)

such as have been obtained or made and are in full force and effect, (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents and (iii) in the case of the Target Acquisition, as specified in Section 1.4(c)(i) of Schedule 1 of the Implementation Deed, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) except for the Liens created pursuant to the Security Documents, will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries. The Borrower is not, on the date hereof, subject to any indenture, agreement, instrument or other arrangement of the type described in the second paragraph of Section 7.09 (and not permitted by clauses (i) through (iii) of said paragraph).

#### SECTION 4.04. Financial Condition; No Material Adverse Change.

(a) Financial Condition. The Borrower has heretofore furnished to the Lenders the following:

(i) its consolidated balance sheet and statements of income, stockholders' equity and cash flows (x) as of and for the fiscal year ended February 28, 2002, reported on by Arthur Andersen LLP, independent public accountants, and (y) as of and for the fiscal quarter and the portion of the fiscal year ended November 30, 2002, certified by a financial officer of the Borrower; and

(ii) the consolidated balance sheet and income statement of the Target as of and for the sixth-month period ended June 30, 2002.

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Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods, with respect to statements in clause (i) above only, in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in subclause (y) of clause (a)(i) and in clause (a)(ii) above.

(b) No Material Adverse Change. Since February 28, 2002, there has been no material adverse change in the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries (and including the Target and its Subsidiaries prior to the date that the Target becomes a Subsidiary of the Borrower), taken as a whole.

#### SECTION 4.05. Properties.

(a) Property Generally. Each of the Borrower and its Subsidiaries (excluding Inactive Subsidiaries) has good title to, or valid leasehold interests in, all its real and personal Properties material to its business, subject only to Liens permitted by Section 7.02 and except for minor defects in title or leasehold interests that do not interfere with its ability to conduct its business as currently conducted or to utilize such Properties for their intended purposes or where failure to have such title or interest could not reasonably be expected to have a Material Adverse Effect.

(b) Intellectual Property. Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any failure to own or license any such trademarks, tradenames, copyrights, patents and other intellectual property, or any such infringements, that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### SECTION 4.06. Litigation.

(a) Actions, Suits and Proceedings. There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions (other than the review of the Target Acquisition by the Supreme Court of South Australia and customary proceedings arising in the ordinary course of business and from or otherwise relating to the Target Acquisition).

(b) Disclosed Matters. Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a

Material Adverse Effect.

SECTION 4.07. Environmental Matters. Except as described in the Disclosed Matters, each of the Borrower and its Subsidiaries has obtained all environmental, health and

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safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, except to the extent failure to have any such permit, license or authorization could not reasonably be expected to have a Material Adverse Effect. Each of such permits, licenses and authorizations is in full force and effect and each of the Borrower and its Subsidiaries is in compliance with the terms and conditions thereof, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except as described in Disclosed Matters and except to the extent failure to comply therewith could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

In addition, except as described in Disclosed Matters:

(a) No Pending Environmental Matters. No notice, notification, demand, request for information, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity with respect to any alleged failure by the Borrower or any of its Subsidiaries to have any environmental, health or safety permit, license or other authorization required under any Environmental Law in connection with the conduct of the business of the Borrower or any of its Subsidiaries or with respect to any generation, treatment, storage, recycling, transportation, discharge or disposal, or any Release of any Hazardous Materials generated by the Borrower or any of its Subsidiaries, in each case in circumstances which could reasonably be expected to have a Material Adverse Effect.

(b) No Permits Required; Certain Specific Representations. Neither the Borrower nor any of its Subsidiaries owns, operates or leases a treatment, storage or disposal facility requiring a permit under the Resource Conservation and Recovery Act of 1976, as amended, or under any comparable state, local or foreign statute; and

(i) no polychlorinated biphenyls (PCB's) are or have been present at any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

(ii) no asbestos or asbestos-containing materials is or has been present at any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

(iii) there are no underground storage tanks or surface impoundments for Hazardous Materials, active or abandoned, at any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

(iv) except as otherwise authorized by Environmental Laws and/or environmental, health and safety permits and licenses, no Hazardous Materials

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have been Released at, on or under any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries in a reportable quantity established by statute, ordinance, rule, regulation or order; and

(v) no Hazardous Materials have been otherwise Released at, on or under any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

that, in the case of any of clauses (i) through (v) above, could reasonably be expected to have a Material Adverse Effect.

(c) No Hazardous Material Transported to NPL Sites. Neither the Borrower nor any of its Subsidiaries has transported or arranged for the

transportation of any Hazardous Material to any location that is listed on the National Priorities List ("NPL") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), listed for possible inclusion on the NPL by the Environmental Protection Agency in the Comprehensive Environmental Response and Liability Information System, as provided for by 40 C.F.R. ss. 300.5 ("CERCLIS"), or on any similar state or local list or that is the subject of Federal, state or local enforcement actions or other investigations that may lead to Environmental Claims against the Borrower or any of its Subsidiaries, except to the extent any such listing, enforcement action or other investigation could not reasonably be expected to (either individually or in the aggregate) have a Material Adverse Effect.

(d) No Notifications or Listings. No oral or written notification of a Release of a Hazardous Material has been filed by or on behalf of the Borrower or any of its Subsidiaries and no site or facility now or, to the Borrower's knowledge, previously owned, operated or leased by the Borrower or any of its Subsidiaries is listed or proposed for listing on the NPL, CERCLIS or any similar state list of sites requiring investigation or clean-up that in any such case could reasonably be expected to result in remediation costs and fines that in the aggregate could reasonably be expected to have a Material Adverse Effect.

(e) No Liens or Restrictions. No Liens have arisen under or pursuant to any Environmental Laws on any site or facility owned, operated or leased by the Borrower or any of its Subsidiaries, and no government action has been taken or is in process that could subject any such site or facility to such Liens and neither the Borrower nor any of its Subsidiaries would be required to place any notice or restriction relating to the presence of Hazardous Materials at any site or facility owned by it in any deed to the real Property on which such site or facility is located, except to the extent any such event or action could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

(f) Full Disclosure. All environmental investigations, studies, audits, tests, reviews or other analyses conducted by or that are in the possession of the Borrower or

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any of its Subsidiaries in relation to facts, circumstances or conditions at or affecting any site or facility now or previously owned, operated or leased by the Borrower or any of its Subsidiaries and that could reasonably be expected to have a Material Adverse Effect have been made available to the Lenders.

SECTION 4.08. Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its Property and all indentures, agreements and other instruments binding upon it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. On the date hereof, no Default has occurred and is continuing.

SECTION 4.09. Investment and Holding Company Status. Neither the Borrower nor any of its Subsidiaries is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 4.10. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Person has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to have in a Material Adverse Effect.

SECTION 4.11. ERISA. The Borrower and its ERISA Affiliates have fulfilled their respective obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and are in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and have not incurred any liability to the PBGC or any Plan or Multiemployer Plan (other than to make contributions, pay annual PBGC premiums or pay out benefits in the ordinary course of business).

SECTION 4.12. Disclosure. The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect (for the purposes of this Section 4.12, the definition of "Material Adverse Effect" shall include the Target and its Subsidiaries as Subsidiaries of the Borrower). None of the reports, financial statements, certificates or other information furnished by or on behalf of the Obligors to the Lenders in connection with the negotiation of this Agreement and the other Loan Documents or the Transactions or delivered hereunder or thereunder (as modified or supplemented by other information so furnished)

contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and does not omit information that would render such projections misleading in any material respect.

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SECTION 4.13. Use of Credit. Neither the 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, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any extension of credit hereunder will be used to buy or carry any Margin Stock.

SECTION 4.14. Material Agreements and Liens.

(a) Material Agreements. Part A of Schedule I is a complete and correct list of each credit agreement (other than this Agreement), loan agreement, indenture, purchase agreement, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness or any extension of credit (or commitment for any extension of credit) to, or guarantee by, the Borrower or any of its Subsidiaries outstanding as of January 16, 2003 the aggregate principal or face amount of which equals or exceeds (or may equal or exceed) U.S.\$10,000,000, and the aggregate principal or face amount outstanding or that may become outstanding under each such arrangement is correctly described in Part A of Schedule I.

(b) Liens. Part B of Schedule I is a complete and correct list of each Lien securing Indebtedness of any Person outstanding as of January 16, 2003 the aggregate principal or face amount of which equals or exceeds (or may equal or exceed) U.S.\$5,000,000 and covering any Property of the Borrower or any of its Subsidiaries, and the aggregate Indebtedness secured (or that may be secured) by each such Lien and the Property covered by each such Lien is correctly described in Part B of Schedule I.

SECTION 4.15. Capitalization. Except for conversion rights associated with the Borrower's Class B common stock, purchase rights and options associated with Stock Based Plans and as disclosed in Schedule IV, as of January 16, 2003 there are no outstanding Equity Rights with respect to the Borrower. As of January 16, 2003, except Stock Based Plans, there are no outstanding obligations of the Borrower or any of its Subsidiaries to repurchase, redeem, or otherwise acquire any shares of capital stock of the Borrower nor are there any outstanding obligations of the Borrower or any of its Subsidiaries to make payments to any Person, such as "phantom stock" payments, where the amount thereof is calculated with reference to the fair market value or equity value of the Borrower or any Subsidiary. The Borrower has heretofore delivered to the Administrative Agent a complete and correct copy of each Stock Based Plans specified on Schedule IV (as in effect as of January 16, 2003).

SECTION 4.16. Subsidiaries and Investments.

(a) Subsidiaries. Set forth in Part A of Schedule III (subject to the footnotes therein) is a complete and correct list of all of the Subsidiaries of the Borrower as of the date hereof, together with, for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding ownership interests in such Subsidiary and (iii) the nature of the ownership interests held by each such Person and the percentage of ownership of such Subsidiary represented by such ownership interests. Except as disclosed in Part A of Schedule III, (x) each of the Borrower and its Subsidiaries owns, free and clear of Liens (other than Liens created pursuant to the Security Documents), and (except with respect to Joint Venture Entities) has the unencumbered right to vote, all outstanding ownership interests in each

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Person shown to be held by it in Part A of Schedule III, (y) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (z) there are no outstanding Equity Rights with respect to such Person (other than Joint Venture Entities).

(b) Investments. Set forth in Part B of Schedule III is a complete and correct list of all Investments (other than Investments disclosed in Part A of Schedule III and other than Investments of the types referred to in clauses (b), (c), (e) and (f) of Section 7.06) held by the Borrower or any of its Subsidiaries in any Person as of January 16, 2003 and, for each such Investment, (x) the identity of the Person or Persons holding such Investment and (y) the nature of such Investment. Except as disclosed in Part B of Schedule III, as of January 16, 2003 each of the Borrower and its Subsidiaries owns, free and clear of all Liens (other than Liens created pursuant to the Security Documents), all such Investments.

(c) Restrictions on Subsidiaries. None of the Subsidiaries of

the Borrower is, on the date hereof, subject to any indenture, agreement, instrument or other arrangement of the type described in the first paragraph of Section 7.09 (and not permitted by clauses (i) through (iv) of said paragraph).

SECTION 4.17. Solvency. The Borrower and the Subsidiary Guarantors, taken as a whole, are, and immediately after the making of each Borrowing and issuance, renewal and extension of each Letter of Credit will be, Solvent.

#### ARTICLE V

#### CONDITIONS

SECTION 5.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Lenders to issue Letters of Credit hereunder shall not become effective until the date requested by the Borrower pursuant to paragraph (b) below, provided that on such requested date each of the following conditions has been satisfied (or waived in accordance with Section 10.02):

(a) Documents. The Administrative Agent shall have received each of the following documents, each of which shall be satisfactory to the Administrative Agent (and to the extent specified below, to each Lender) in form and substance:

(i) Executed Counterparts. From each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page to this Agreement) that such party has signed a counterpart of this Agreement.

(ii) Opinions of Counsel to the Obligors. Favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (w) Nixon Peabody LLP, U.S. counsel for the Obligors, in the form of

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Exhibit D-1, and covering such other customary matters relating to the Borrower, this Agreement or the Transactions as the Administrative Agent shall reasonably request, (x) McDermott, Will and Emery, U.K. counsel for the Obligors, in the form of Exhibit D-2, and covering such other customary matters relating to the Borrower, Canandaigua Limited and the U.K. Equity Pledge Agreement as the Administrative Agent shall reasonably request (and each Obligor hereby instructs such counsel to deliver such opinions to the Lenders and the Administrative Agent), (y) Clifford Chance, Luxembourg counsel for certain of the Obligors, in the form of Exhibit D-3, and covering such other customary matters relating to FinCo and the Luxembourg Equity Pledge Agreement as the Administrative Agent shall reasonably request and (z) Clayton Utz, Australian counsel for certain of the Obligors, in the form of Exhibit D-4, and covering such other customary matters relating to Australian Acquisition Company 1 and Australian Acquisition Company 2 and the Australian Equity Pledge Agreements as the Administrative Agent shall reasonably request (and each such Obligor hereby instructs such counsel to deliver such opinions to the Lenders and the Administrative Agent).

(iii) Opinion of Special New York Counsel to JPMorgan Chase. An opinion, dated the Effective Date, of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to JPMorgan Chase, in the form of Exhibit E (and JPMorgan Chase hereby instructs such counsel to deliver such opinion to the Lenders).

(iv) Corporate Documents. Such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Obligor and FinCo, the authorization of the Transactions and any other legal matters relating to the Obligors, FinCo, this Agreement or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel (it being understood in respect of any Obligor that documents and certificates in substantially similar forms to documents and certificates delivered in respect of such Obligor under the 1999 Credit Agreement shall be deemed to be reasonably satisfactory for purposes of this clause (iv)).

(v) Officer's Certificate. A certificate in the form of Exhibit G, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with Section 5.01(b), (c), (d) and (e).

(vi) Security Documents. (v) The U.S. Pledge Agreement, duly executed and delivered by the Borrower, the Subsidiaries specified therein and the Administrative Agent and the certificates identified under the name of such Obligor in Annex 1 thereto (it being understood that such Subsidiaries shall not include Joint Venture Entities, Inactive Subsidiaries and, for so long as it shall conduct no business other than holding Indebtedness of Canandaigua Limited and having Indebtedness outstanding to Constellation International Holdings, Canandaigua B.V.), accompanied by undated stock powers executed in blank, (w) U.K. Equity Pledge Agreements, duly executed and delivered by the Borrower

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and Canandaigua Limited, respectively, together with certificates evidencing the applicable shares of Canandaigua Limited and Matthew Clark, (x) the Luxembourg Equity Pledge Agreement, duly executed and delivered by the Borrower, together with certificates evidencing the applicable shares of FinCo, (y) Australian Equity Pledge Agreements, duly executed and delivered by Constellation International Holdings and Australian Acquisition Company 1, respectively, together with certificates evidencing the applicable shares of Australian Acquisition Company 1 and Australian Acquisition Company 2 and (z) the Cash Collateral Pledge Agreement, duly executed and delivered by the Borrower and the Administrative Agent. In addition, the Borrower shall have taken such other action as the Administrative Agent shall have reasonably requested in order to perfect the security interests created pursuant to such Security Documents.

(vii) Target Acquisition Documents. Copies of the Target Acquisition Documents, and of all other documents and materials filed or released publicly by the Borrower in connection with the Target Acquisition, certified as true, correct and complete copies thereof as of the Effective Date by the President, a Vice President or a Financial Officer of the Borrower;

(viii) Bridge Credit Agreement. Evidence that the Bridge Credit Agreement is in full force and effect;

(ix) Amendments to Implementation Deed. Evidence that the Borrower has not (x) entered into, or consented to, whether directly or indirectly, to any Material Lender Provision Amendment or (y) exercised its discretion in relation to the provision of consent to a "BRL Hardy Prescribed Occurrence" (as defined in the Implementation Deed) where such BRL Hardy Prescribed Occurrence is reasonably likely to result in a BRL Hardy Material Adverse Change (as defined in the Implementation Deed), in either case, between the date of the Existing Credit Agreement and the Effective Date without the prior written consent of the Administrative Agent acting with the consent of the Required Lenders or (z) entered into the Implementation Deed in a form materially different from the version of the Implementation Deed attached hereto as Exhibit H without the prior written consent of the Required Lenders (such consent not to be unreasonably withheld);

(x) Amendments to the Legal and Compliance Report after signing. The Administrative Agent (acting at the instruction of the Required Lenders) shall not have advised the Borrower in writing by the expiry of 5 Business Days from the date that the Borrower provides the Administrative Agent with a certified copy of the Legal and Compliance Report under section 6.01(h) that it has an objection to any matter not contained in the version of the Legal and Compliance Report annexed as Exhibit J to this Agreement which in the reasonable opinion of the Required Lenders could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise of the Target and its Subsidiaries taken as a whole; and

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(xi) Other Documents. Such other documents as the Administrative Agent or any Lender or special New York counsel to JPMorgan Chase may reasonably request.

(b) the Borrower shall have notified the Administrative Agent of a requested Effective Date under this Agreement and certified to the Administrative Agent that such requested Effective Date is the first date on which an application is to be made to the Supreme Court of South Australia for an order approving the "Share Scheme" (as defined in the Implementation Deed);

(c) the representations and warranties of the Borrower set



forth in Sections 4.01, 4.02, 4.03, 4.04(a), 4.05, 4.06(a)(ii), 4.07(f), 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.16 of this Agreement (but as to representations and warranties set forth in Sections 4.14 and 4.16, in all material respects), shall be true and correct on and as of the Effective Date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(d) no Default shall have occurred and be continuing on the Effective Date under clause (a), (b), (c) (insofar as it relates to the representations made on the Effective Date), (d), (f), (g), (h), (i), (j), (n) or (o) of Article VIII; and no Default shall have occurred and be continuing on the Effective Date under paragraph (e) of Article VIII to the extent such Default occurred due to the Borrower's failure to observe or perform any covenant, condition or agreement specified in Section 6.01(f), 6.01(g), 6.02(a), 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.10, 6.11 or 6.12; and no Event of Default shall have occurred and be continuing on the Effective Date under paragraph (e) of Article VIII to the extent such Default occurred due to the Borrower's failure to observe or perform any other covenant, condition or agreement contained in this Agreement (assuming for this purpose that the 45 day period specified in said clause (e) is 10 days);

(e) prior to and during the syndication of the credit facilities evidenced by this Agreement there shall be no offering, placement or arrangement of any debt securities or bank financing by or on behalf of the Borrower or the Target or any Affiliate thereof in competition with the credit facilities evidenced hereby, and the Administrative Agent shall have received a written certificate from an officer of the Borrower to such effect;

(f) the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Existing Lender prior to 8 a.m. (Adelaide, Australia time) on the Approval Date to the effect that there shall have occurred a material disruption of or material adverse change in the financial, banking or capital market conditions that, in the reasonable judgment of such Existing Lender, has materially impaired the syndication of the credit facilities evidenced by this Agreement;

(g) the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Existing Lender prior to 8 a.m. on the Approval Date to the effect that, since February 28, 2002, there has been a material adverse change in the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole (for the purposes of this paragraph (g),

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the definition of "Material Adverse Effect" shall include the Target and its Subsidiaries as Subsidiaries of the Borrower).

The obligation of any Lender to make its initial extension of credit hereunder is also subject to the payment by the Borrower of such fees as the Borrower shall have agreed to pay to any Lender or the Administrative Agent in connection herewith, including the reasonable fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to JPMorgan Chase, in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the extensions of credit hereunder (to the extent that statements for such fees and expenses have been delivered to the Borrower).

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Lenders to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 10.02) on or prior to 3:00 p.m., New York City time, on April 30, 2003 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 5.02. Initial Borrowing of Loans. The obligations of the Lenders to make the initial Loans shall be subject to the satisfaction (or waiver in accordance with Section 10.02) of the following conditions precedent on the date of the making of such Loans:

(a) the Administrative Agent shall have received evidence satisfactory to it that the principal of and interest on, and all other amounts owing in respect of, the Indebtedness outstanding under the 1999 Credit Agreement shall have been (or shall be simultaneously) paid in full, that any commitments to extend credit under the agreements or instruments relating to such Indebtedness shall have been canceled or terminated and that all Guarantees in respect of, and all Liens securing, any such Indebtedness shall have been released (or arrangements for such release reasonably satisfactory to the Required Lenders shall have been made);

(b) the representations and warranties of the Borrower set forth in Sections 4.01, 4.02, 4.03, 4.04(a), 4.05, 4.06(a)(ii), 4.07(f), 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.16 of this Agreement (but as to

representations and warranties set forth in Sections 4.14 and 4.16, in all material respects), shall be true and correct on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(c) no Default shall have occurred and be continuing on such date under clause (a), (b), (c) (insofar as it relates to the representations made on the Effective Date), (d), (f), (g), (h), (i), (j), (n) or (o) of Article VIII; and no Default shall have occurred and be continuing on such date under paragraph (e) of Article VIII to the extent such Default occurred due to the Borrower's failure to observe or perform any covenant, condition or agreement specified in Section 6.01(f), 6.01(g), 6.02(a), 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.10, 6.11 or 6.12; and no Event of Default shall have occurred and be continuing on such date under paragraph (e) of Article VIII to the extent such Default occurred due to the

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Borrower's failure to observe or perform any other covenant, condition or agreement contained in this Agreement (assuming for this purpose that the 45 day period specified in said clause (e) is 10 days);

(d) such date shall be on or after the "Effective Date" (as defined in the Implementation Deed);

(e) if the "Effective Date" (as defined in the Implementation Deed) has not occurred by 7 p.m. (Adelaide, Australia time) on the 10th Business Day following the Approval Date, the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Existing Lender prior to 8 a.m. (Adelaide, Australia time) on the Second Court Date to the effect that there shall have occurred a material disruption of or material adverse change in the financial, banking or capital market conditions that, in the reasonable judgment of such Existing Lender, has materially impaired the syndication of the credit facilities evidenced by this Agreement;

(f) if the "Effective Date" (as defined in the Implementation Deed) has not occurred by 7 p.m. (Adelaide, Australia time) on the 10th Business Day following the Approval Date, the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Existing Lender prior to 8 a.m. (Adelaide, Australia time) on the Second Court Date to the effect that, since February 28, 2002, there has been a material adverse change in the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole (for the purposes of this paragraph (e), the definition of "Material Adverse Effect" shall include the Target and its Subsidiaries as Subsidiaries of the Borrower); and

(g) the initial borrowing of Loans pursuant to this Section 5.02 shall be comprised of the entire unfunded amount of the Tranche A Term Loans and the entire unfunded amount of the Tranche B Term Loans.

The Administrative Agent shall apply the proceeds of the Loans borrowed pursuant to this Section 5.02 first to repay all Indebtedness owing under the 1999 Credit Agreement and second, to a deposit to the Loan Collateral Account under the Cash Collateral Pledge Agreement.

The Borrowing of Loans pursuant to this Section 5.02 shall be deemed to constitute a representation and warranty by the Borrower on the date of such Borrowing as to the matters specified in clauses (b) and (c) of this Section.

SECTION 5.03. Release of Funds from Loan Collateral Account. Funds on deposit in or credited to the Loan Collateral Account shall be released by the Administrative Agent to (or for the account of) the Borrower (to finance the Target Acquisition and to repay Indebtedness under the Target Credit Facilities) (i) by transfer of an amount sufficient to pay all or a portion of the Cash Consideration to the Australian Account (as defined in Section 5.03(b)(v) below) and (ii) by transfer of an amount sufficient to repay the Target Credit Facilities to the relevant financial institutions pursuant to written transfer instructions provided by the

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Borrower, in each case upon satisfaction (or waiver in accordance with Section 10.02) of the following conditions on the date of the release of such funds:

(a) the Administrative Agent shall have received evidence satisfactory to it that the principal of and interest on, and all other amounts owing in respect of, the Indebtedness outstanding under the Target Credit Facilities shall have been (or shall be simultaneously) paid in full, that any commitments to extend credit under the agreements or instruments relating to such Indebtedness shall have been canceled or terminated and that all Guarantees in respect of, and all Liens securing, any such Indebtedness shall have been released (or arrangements for such release reasonably satisfactory to the Required Lenders shall have been made); and

(b) the Administrative Agent shall have received each of the following documents, each of which shall be satisfactory to the Administrative Agent (and to the extent specified below, to each Lender) in form and substance:

(i) a certificate of the President, a Vice President or a Financial Officer of the Borrower addressed to the Administrative Agent and the Lenders certifying that, to his or her knowledge, all conditions precedent to Section 4.1 of the Implementation Deed have been satisfied, except for (i) the waiver by the Target of clauses 4.1(j) and/or (k) thereof, or clauses 4.1(j) and (k) thereof cease to have effect pursuant to clause 4.6 of the Implementation Deed, (ii) the waiver by the Borrower and, as required, the Target of any of the conditions in clauses (a), (b), (c), (l), (m), (n) and (o), of said Section 4.1, (iii) waiver by the Borrower of clauses 4.1(e) and/or (f) thereof (provided that the certificate is provided in accordance with Section 5.03(b)(iv) of this Agreement) or clauses 4.1(e) and (f) thereof cease to have effect pursuant to clause 4.6 of the Implementation Deed and (iv) with the prior written consent of the Required Lenders (which shall not be unreasonably withheld or delayed and which shall be required only where the event which is the subject of the waiver is reasonably likely to result in a BRL Hardy Material Adverse Change (as defined in the Implementation Deed) ), the waiver by the Borrower of clauses 4.1 (g), (h) or (i) of the Implementation Deed, together with certified copies of each of the documents delivered under said Section 4.1;

(ii) a copy of the court orders approving the Target Acquisition in accordance with Section 411(4) of the Corporations Act (bearing an acknowledgement of receipt by the Australian Securities and Investment Commission) and certified by Clayton Utz;

(iii) a certificate signed by Clayton Utz stating that an office copy of the court orders referred to in clause (ii) above has been lodged with the Australian Securities and Investment Commission;

(iv) a certificate of the President, Vice President or a Financial Officer of the Borrower certifying:

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(x) that all necessary actions have been taken and all legal requirements satisfied to permit the valid issue of the Borrower Shares and Borrower CDIs to satisfy that part of the consideration payable by the Borrower in Borrower Shares or Borrower CDIs pursuant to the orders of the South Australian Supreme Court approving the Share Scheme (as defined in the Implementation Deed) and the number of such Borrower Shares and Borrower CDIs and that there is existing no judgment, injunction or other order which would prevent such issue; or

(y) that the Borrower will not to use Borrower Shares or Borrower CDIs to satisfy that part of the consideration payable by the Borrower in Borrower Shares or Borrower CDIs, and specifying the amount (if any) to be drawn pursuant to the Bridge Credit Agreement;

in either case to ensure to the reasonable satisfaction of the Administrative Agent that the full consideration payable by the Borrower pursuant to the orders of the South Australian Supreme Court approving the Share Scheme (as defined in the Implementation Deed) will be satisfied;

(v) evidence that the following steps have taken place: (u) delivery of a transfer or transfers in respect of all of the shares in the Target to Computershare Investor Services Pty Limited ACN 078 279 277 ("Compushare") in a form approved by the Administrative Agent, acting reasonably; (v) confirmation of registration of the transfer or transfers by Compushare by the issuing of an issuer-sponsored holding statement in the name of Australian Acquisition Company 2 for all of the shares of the Target as evidence that all of the shares of the Target have been validly and effectively transferred to Australian Acquisition Company 2; (w) establishment by the Borrower (or another Obligor designated by the Borrower) of an Australian Dollar denominated account (the "Australian Account") with and in the name of a bank (the "Account Bank") that is an affiliate of Citibank, N.A. located in Australia; (x) the execution and delivery of an agreement in form and substance reasonably satisfactory to the

Administrative Agent among, inter alia, the Account Bank and the Borrower (or such other Obligor), which agreement shall (A) provide the mechanism and procedures for the payment of funds from the Australian Account to the Target shareholders (by issuance of checks drawn on the Australian Account or by such other means as may be reasonably acceptable to the Administrative Agent) and (B) provide that (i) funds on deposit in the Australian Account shall be held for payment to the Target shareholders, (ii) without the prior written consent of the Administrative Agent, the Borrower (or such other Obligor) shall have no access to or right to direct the disposition of any of the funds in the Australian Account and (iii) without the prior written consent of the Administrative Agent, such agreement may not be amended, modified or terminated and no provision of such agreement may be waived; and (y) receipt by the Administrative Agent of a transfer direction from the Borrower to transfer to the Australian Account sufficient funds from the

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Loan Collateral Account to satisfy that part of the cash consideration payable by Australian Acquisition Company 2;

(vi) prior to the time of delivery of a transfer or transfers in respect of all of the shares in the Target to Compushare, evidence that the Borrower has established a share register in the Australian Capital Territory and has done everything required (including giving all necessary notices) to ensure that after registration of the transfer or transfers, all of the shares in the Target will be on that share register;

(vii) a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Implementation Date) of Clayton Utz, Australian counsel for the Obligors, in the form of Exhibit D-5, and covering such other customary matters relating to Australian Acquisition Company 2 and the Target and the Australian Equity Pledge Agreement as the Administrative Agent shall reasonably request (and each such Obligor hereby instructs such counsel to deliver such opinions to the Lenders and the Administrative Agent);

(viii) an Australian Equity Pledge Agreement, duly executed and delivered by Australian Acquisition Company 2 and the Administrative Agent. In addition, the Borrower shall have taken such other action as the Administrative Agent shall have reasonably requested in order to perfect the security interests created pursuant to such Pledge Agreement, including without limitation that the Borrower procure that the Target cause a Holding Lock for the benefit of the Lenders in accordance with ASX Listing Rule 8.10.1(i) or other equivalent effective mechanism to be applied to 65% of the Target Shares to prevent a transfer of those shares and the Target unconditionally and irrevocably undertakes to the Administrative Agent in writing not to permit or procure the removal of such Holding Lock without the prior written consent of the Administrative Agent; and

(ix) a certificate of the President, Vice President or a Financial Officer of the Borrower certifying the Cash Consideration in respect of the Target Acquisition and the aggregate amount of Indebtedness owing under the Target Credit Facilities and the amount of proceeds of the Tranche A Term Loans, Tranche B Term Loans and U.S. Dollar Revolving Loans (in each case applied from the Loan Collateral Account), and the amount of Indebtedness incurred under the Bridge Credit Agreement, that the Borrower intends to apply to pay such Cash Consideration and Indebtedness.

The Administrative Agent shall notify the Borrower and the Lenders of the satisfaction (or waiver in accordance with Section 10.02) of the conditions specified in this Section 5.03, and such notice shall be conclusive and binding. Upon delivery of such notice, the Administrative Agent shall remit the proceeds of the Loans held in the Loan Collateral Account to (or for the account of) the Borrower. Anything herein to the contrary notwithstanding, (a) the aggregate amount of Loans the proceeds of which are to be applied to finance the Target Acquisition may not exceed (together with any Indebtedness borrowed under the Bridge Credit

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Agreement) the aggregate amount of the Cash Consideration in respect of the Target Acquisition and all Indebtedness owing under the Target Credit Facilities and (b) funds may not be applied from the Loan Collateral Account as provided herein unless each of the foregoing conditions is satisfied (or waived pursuant to Section 10.02) on or prior to 3:00 p.m., New York City time, on April 30, 2003.

SECTION 5.04. Each Credit Event. The obligation of each Revolving Lender to make a Revolving Loan or a Swingline Loan on the occasion of any Borrowing (excluding any Borrowing of Revolving Loans pursuant to Section 5.02, as to which the conditions precedent set forth therein shall apply), and of each Issuing Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) the representations and warranties of the Borrower set forth in this Agreement, and of each Obligor in each of the other Loan Documents to which it is a party (but as to such other Loan Documents, in all material respects), shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date); and

(b) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

Each Borrowing of a Revolving Loan or a Swingline Loan pursuant to this Section 5.04 and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in the preceding sentence.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 100 days after the end of each fiscal year of the Borrower (or ten (10) days after such shorter period as may be required for filing the Borrower's Annual Report on Form 10-K with the Securities and Exchange Commission), the audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for such fiscal year,

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setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 55 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or ten (10) days after such shorter period as may be required for filing the Borrower's Quarterly Report on Form 10-Q with the Securities and Exchange Commission), the consolidated balance sheet and related statements of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for such fiscal quarter (for the statement of operations only) and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of the previous fiscal year (or, in the case of the balance sheet, as of the end of the previous fiscal year), all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) of this Section, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth calculations in form and detail satisfactory to the Administrative Agent demonstrating compliance with Sections 7.01(g), 7.01(i), 7.06(e), 7.06(h) and 7.10, (iii) setting forth a calculation of the Debt Ratio as at the end of the respective fiscal period (and indicating which Category of Applicable Rate shall become effective upon the delivery of such financial statements as contemplated by the definition of the term "Applicable Rate" in Section 1.01), (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of

the audited financial statements referred to in Section 4.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (v) certifying that, except as otherwise specified, no Subsidiaries that were Inactive Subsidiaries as at the delivery of the immediately preceding certificate under this paragraph (c) (or, in the case of the first such delivery, as at the date hereof) has ceased to be an Inactive Subsidiary;

(d) concurrently with any delivery of financial statements under clause (a) of this Section, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any of its

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Subsidiaries with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally or to holders of Senior Unsecured Indebtedness or Subordinated Indebtedness generally, as the case may be;

(f) promptly after the same becomes available, copies of (i) the consolidated balance sheet, statement of income and cash flows of the Target as of and for the nine-month period ended November 30, 2002 (with a reconciliation to GAAP for any material discrepancies) and (ii) the Appendix 4B (or any replacement thereof) of the ASX Listing Rules in respect of the Target for the year ending December 31, 2002 and copies of the audited accounts on which that Appendix 4B is based;

(g) promptly after the same becomes available, copies of the pro forma consolidated balance sheet, statement of income and cash flows of the Borrower (including of the Target and its Subsidiaries) as of and for the nine-month period ended November 30, 2002 and based on estimates with respect to the Target as at November 30, 2002 prepared under the assumption that the Target Acquisition had been consummated on March 1, 2002;

(h) promptly after the same becomes available, a certified copy of any Legal and Compliance Report received by the Borrower under the Implementation Deed, any other document or information received by the Borrower that qualifies the representations and warranties made by the Target or any of its Related Parties under the Implementation Deed and any further or new information received by the Borrower under clause 1.2(d) of Schedule 1 of the Implementation Deed; and

(i) promptly following any request therefor, such other information (including without limitation information regarding the operations, business affairs and financial condition) of the Borrower or any of its Subsidiaries, or compliance with the terms of this Agreement and the other Loan Documents, as the Administrative Agent or any Lender may reasonably request.

SECTION 6.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding U.S.\$2,500,000;

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(d) the assertion of any Environmental Claim by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations, other than any Environmental Claim or alleged violation that, if adversely determined, could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;

(e) the downgrading of the published rating of the senior secured bank debt of the Borrower by Moody's or Standard & Poor's to below "Ba2" or "BB", respectively, or the withdrawal of such published rating by Moody's or

Standard and Poor's; and

(f) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 6.03. Existence; Conduct of Business. Except as otherwise expressly permitted hereunder, the Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises relating to the conduct of its business (except where the failure to do so (in each case other than with respect to the existence of the Borrower), individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect); provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.03.

SECTION 6.04. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could reasonably be expected to have a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all Property relating to the conduct of its business in good working order and condition, ordinary wear and tear excepted (except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and except for Dispositions permitted by Section 7.04), and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

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SECTION 6.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 6.07. Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.08. Use of Proceeds. The proceeds of the Tranche A Term Loans and the Tranche B Term Loans will be used solely to (a) repay Indebtedness owing under the 1999 Credit Agreement and (b) finance the Target Acquisition and repay Indebtedness owing under the Target Credit Facilities (and, pending such application pursuant to clause (b), will be pledged by the Borrower pursuant to the Cash Collateral Pledge Agreement). The proceeds of the Revolving Loans will be used solely to (i) finance the Target Acquisition and repay Indebtedness owing under the Target Credit Facilities, (ii) provide working capital for the Borrower and its Subsidiaries and (iii) provide funds for the other general corporate purposes (including Capital Expenditures) of the Borrower and its Subsidiaries (provided that, as provided in Section 7.05(b), the Borrower will not use more than U.S.\$250,000,000 of the proceeds of each U.S. Dollar Revolving Loan Borrowing to fund each transaction described therein and/or pay any related fees or expenses referred to in said Section). No part of the proceeds of any Loan or other extension of credit hereunder will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X. Letters of Credit will be issued only to support general corporate purposes of the Borrower and its Subsidiaries.

SECTION 6.09. Certain Obligations Respecting Subsidiaries.

(a) Ownership of Subsidiaries. The Borrower will, and will cause each of its Subsidiaries to, take such action from time to time as shall

be necessary to ensure that each of the Borrower's Subsidiaries (other than Joint Venture Entities and Inactive Subsidiaries) is a Wholly-Owned Subsidiary.

(b) Subsidiary Guarantors. The Borrower will take such action, and will cause each of its Subsidiaries to take such action, from time to time as shall be necessary to ensure that all Subsidiaries of the Borrower that are not Excluded Entities are "Subsidiary Guarantors" hereunder. In furtherance of the foregoing, in the event that (x) the Borrower or any of its Subsidiaries shall acquire or form any new Subsidiary after the date hereof that is not at such time an Excluded Entity or (y) any Excluded Entity shall cease to be an Excluded Entity but shall continue to be a Subsidiary of the Borrower, the Borrower will cause (or will cause its Subsidiaries to cause) such new Subsidiary or previously Excluded Entity to (i) become a "Subsidiary Guarantor" hereunder, and a "Subsidiary Guarantor" under the U.S. Pledge

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Agreement, by delivering to the Administrative Agent a Guarantee Assumption Agreement; (ii) take the actions, if any, required to be taken by such new Subsidiary or previously Excluded Entity under paragraph (c) below and (iii) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to Section 5.01 on the Effective Date or as the Administrative Agent shall have requested.

(c) Pledge Agreements. If after the date hereof (x) any Obligor, including any Subsidiary (herein, a "Paragraph (b) Obligor") that becomes a Subsidiary Guarantor pursuant to paragraph (b) above and therefor an Obligor hereunder, shall acquire or form any new Subsidiary (it being understood that the term "new Subsidiary" includes any entity that is a Subsidiary of any Paragraph (b) Obligor at the time it becomes an Obligor hereunder), or (y) any Excluded Entity shall cease to be an Excluded Entity but shall continue to be a Subsidiary of the Borrower, then, in addition to any actions that may be required to be taken as a result thereof pursuant to paragraph (b) above, each Obligor (including any Paragraph (b) Obligor) will take the following actions with respect to such new Subsidiary or previously Excluded Entity:

(i) if such new Subsidiary or previously Excluded Entity is organized under the laws of the United States of America or a State thereof, each Obligor that holds any of the shares of capital stock or other ownership interests in such new Subsidiary or previously Excluded Entity shall take such action (including delivering the certificates, if any, evidencing such shares or other ownership interests, accompanied by undated stock or other powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority Liens in such shares and other ownership interests under the U.S. Pledge Agreement (or, if necessary, a supplement thereto);

(ii) if such new Subsidiary or previously Excluded Entity is organized under the laws of a jurisdiction other than the United States of America or a State thereof, the Borrower shall ensure that each Obligor that holds any of the shares of capital stock or other ownership interests in such new Subsidiary or previously Excluded Entity shall execute and deliver a Foreign Equity Pledge Agreement (or, as applicable, supplement the U.K. Equity Pledge Agreement or Australian Equity Pledge Agreement) with respect to such shares of capital stock or other ownership interests and take such other action (including delivering the certificates, if any, evidencing such shares or other ownership interests, accompanied by undated stock or other powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority Liens in such shares and other ownership interests under the law governing such Foreign Equity Pledge Agreement (or, as applicable, U.K. Equity Pledge Agreement or the Australian Equity Pledge Agreement); and

(iii) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to Section 5.01 on the Effective Date or as the Administrative Agent shall have requested;

provided, however, that (A) the foregoing shall not require any action that the Borrower and the Administrative Agent have determined would either result in adverse tax consequences under

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Section 956 of the Code or would contravene any applicable law, rule or regulation, (B) notwithstanding anything in this Agreement or the Pledge Agreements to the contrary none of the Borrower or any of its Subsidiaries shall be required to pledge more than 65% of the outstanding shares of voting stock of any Foreign Subsidiary and (C) the foregoing shall not require the Borrower or any of its Subsidiaries to pledge any shares of stock or other ownership



interests in Inactive Subsidiaries, Joint Venture Entities and, for so long as it shall conduct no business other than holding Indebtedness of Canandaigua Limited and having Indebtedness outstanding to the Constellation International Holdings, Canandaigua B.V.

(d) Shares of Subsidiary Stock; Reclassification of Shares of Target.

(i) In the event that any additional shares of stock shall be issued to any Obligor by any Subsidiary of the Borrower, such Obligor agrees forthwith to deliver to the Administrative Agent pursuant to the U.S. Pledge Agreement and, if applicable, any Foreign Equity Pledge Agreement, the certificates evidencing such shares of stock, accompanied by undated stock powers executed in blank and to take such other action as the Administrative Agent shall reasonably request to perfect the security interest created therein pursuant to such Pledge Agreement; provided that notwithstanding anything in this Agreement to the contrary, the Obligors shall not be required to pledge more than 65% of the outstanding shares of voting stock of any Foreign Subsidiary.

(ii) After the consummation of the Target Acquisition, the Borrower will use reasonable commercial efforts to cause as promptly as practicable a reclassification of the shares of capital stock of the Target resulting in two classes of stock, voting common and non-voting preferred, in such respective amounts as may be reasonably requested by the Administrative Agent, but only so long as, in the reasonable opinion of Administrative Agent and the Borrower, this will not have (or cannot be reasonably expected to have) any adverse tax consequences to the Borrower and its Subsidiaries in any material respect (taking into account present and future tax structures and fundings).

(e) Intercompany Notes. If required by the terms of Section 7.06(e)(ii) or 7.06(e)(iv), the Borrower shall, concurrently with the making of any loan or advance to a Foreign Subsidiary specified therein, cause such Foreign Subsidiary to execute an Intercompany Note in favor of the Borrower and shall forthwith deliver to the Administrative Agent pursuant to the U.S. Pledge Agreement such Intercompany Note, accompanied by an undated bond power executed in blank, and shall take such other action as the Administrative Agent shall reasonably request to perfect the security interest created therein pursuant to such Pledge Agreement.

(f) Further Assurances. The Borrower will, and will cause each of its Subsidiaries (other than Excluded Entities) to, take such action from time to time (including executing and delivering such assignments, security agreements and other instruments) as shall be reasonably requested by the Administrative Agent to create, in favor of the Administrative Agent for the benefit of the Lenders, perfected security interests and Liens in all Collateral required to be pledged by such Subsidiary under the U.S. Pledge Agreement and, if applicable, any Foreign Equity Pledge Agreement.

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SECTION 6.10. Pledge of Certain Collateral of the Borrower. If at any time prior to the Debt Reduction Date (as defined below) the published rating of the Borrower's senior secured bank debt shall be downgraded to less than "Ba2" by Moody's or "BB" by Standard & Poor's, respectively, or if Moody's or Standard & Poor's shall withdraw its published rating of the Borrower's senior secured bank debt, then the Borrower shall, and shall cause each Subsidiary Guarantor to, promptly pledge to the Administrative Agent for the benefit of the Lenders all Relevant Assets of the Borrower and such Subsidiary Guarantor and, in furtherance of the foregoing, the Borrower shall, and shall cause each Subsidiary Guarantor to, execute and deliver an Additional Security Agreement and, concurrently with the execution and delivery (or amendment) thereof, (A) take such action as shall be necessary to create and perfect valid and enforceable first priority Liens on any Collateral to be pledged thereunder and (B) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by the Obligors pursuant to Section 5.01 on the Effective Date or as the Administrative Agent shall have requested; provided that this Section 6.10 shall cease to apply and be of no further effect upon the Debt Reduction Date.

For purposes hereof "Debt Reduction Date" means either (i) the first date after the Effective Date on which all Indebtedness incurred under the Bridge Credit Agreement is repaid with the proceeds of an issuance of equity securities of the Borrower or (ii) if such repayment is not made with the proceeds of an issuance of equity securities of the Borrower, the first date after the Effective Date on which the Debt Ratio is less than 4.0 to 1.

For purposes hereof "Relevant Assets" has the meaning assigned thereto on Schedule VIII.

SECTION 6.11. Target Acquisition.

will:

(a) In connection with the Target Acquisition, the Borrower

(i) comply in all material respects with all applicable laws and regulations relevant in the context of the Target Acquisition;

(ii) provide the Administrative Agent with such information regarding the progress of the Target Acquisition as it may reasonably request or that is publicly available;

(iii) provide the Administrative Agent and its counsel with all information reasonably requested by either of them in any due diligence inquiry with respect to the Target prior to the date of the Scheme Meetings (as defined in the Implementation Deed);

(iv) not issue any press release or make any statement during the course of the Target Acquisition that contains any information or statement concerning this Agreement or the Lenders without first obtaining the prior approval of the information or statement from the Administrative Agent or the Required Lenders;

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(v) ensure that all of its obligations in connection with the Target Acquisition are complied with and performed in all material respects;

(vi) as soon as practicable after the acquisition by the Borrower of any of the shares of the Target, cause such shares (if the same are not in certificated form) to be converted into certificated form, and to be delivered in pledge to the Administrative Agent pursuant to the Australian Equity Pledge Agreement executed and delivered by the Borrower, provided that in no event shall the Borrower be required to deliver and pledge to the Administrative Agent more than 65% of the issued Voting Stock of the Target; and

(vii) promptly upon registration by the Australian Securities and Investments Commission provide the Administrative Agent and the Lenders with a certified copy of the document described as "Scheme Booklet" to be prepared by the Target and to be sent to the shareholders and optionholders of the Target, and ensure that such "Scheme Booklet" is consistent with the matters set forth in the Target Acquisition Documents;

(b) Implementation Deed. The Borrower will:

(i) not enter into, or consent to, any Material Lender Provision Amendment or exercise its discretion in relation to the provision of consent to a "BRL Hardy Prescribed Occurrence" (as defined in the Implementation Deed) where such BRL Hardy Prescribed Occurrence is reasonably likely to result in a BRL Hardy Material Adverse Change (as defined in the Implementation Deed); and

(ii) promptly notify the Administrative Agent in writing if it becomes aware of any proposal described in sub-paragraph (i) and seek the prior written approval of the Required Lenders thereto.

(c) Conditions Under Implementation Deed. The Borrower must:

(i) keep the Administrative Agent promptly and reasonably informed of the steps the parties to the Implementation Deed have taken and of their progress towards satisfaction of the conditions precedent set out in clause 4.1 of the Implementation Deed;

(ii) promptly notify the Administrative Agent in writing if it becomes aware that any condition precedent set out in clause 4.1 of the Implementation Deed has been satisfied or has become incapable of being satisfied; and

(iii) to the extent that it wishes to exercise any waiver under clause 4.2 of the Implementation Deed, and the exercise of such right requires the prior written approval of the Administrative Agent acting with the consent of the Required Lenders under Section 5.03(b) (i) of this Agreement, promptly notify the Administrative Agent in writing of this fact and seek such prior written approval of the Administrative Agent to such waiver.

(d) Constituent Documents. The Borrower will ensure that on and after the Effective Date there is no restriction, in relevant constituent documents or otherwise, on a

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transfer or registration of a transfer pursuant to an Australian Equity Pledge Agreement, of an interest or shares in an Australian Acquisition Entity or a share in the Target.

SECTION 6.12. Syndication Letter. The Borrower will comply with its obligations under the Syndication Letter and the fee letters referred to therein.

## ARTICLE VII

### NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 7.01. Indebtedness. The Borrower will not, nor will it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness created hereunder;

(b) Indebtedness existing on the date hereof and set forth in Part A of Schedule I (or, to the extent not meeting the minimum thresholds for required listing on said Schedule I pursuant to Section 4.14, in an aggregate amount not exceeding U.S.\$5,000,000); provided that the principal of and interest on, and all other amounts owing in respect of Indebtedness under the 1999 Credit Agreement (other than in respect of letters of credit which, as provided in Section 2.05(m) are to become Letters of Credit hereunder) and the Target Credit Facilities shall in any event be (or shall be simultaneously) repaid in full on the Effective Date and the Implementation Date, respectively);

(c) (i) Indebtedness outstanding in respect of the Senior Unsecured Notes and (ii) other unsecured Indebtedness (other than Subordinated Indebtedness); provided that the following conditions shall be satisfied with respect to such other Indebtedness (each of which shall be fulfilled in form and substance reasonably satisfactory to the Administrative Agent):

(A) the Net Available Proceeds of such other Indebtedness shall be applied to (x) prepay Loans in accordance with Section 2.10(b)(iv), (y) refinance or pay at maturity the Senior Unsecured Indebtedness (in accordance with Section 7.12) or (z) finance one or more Acquisitions pursuant to Section 7.05(b) (provided that the aggregate principal amount of such Senior Unsecured Indebtedness the Net Available proceeds of which is applied to finance one or more such Acquisitions shall not exceed U.S.\$500,000,000 unless at the time such Indebtedness is incurred, the Senior Debt Ratio is less than 2.5 to 1 (the determination of such ratio to be calculated as of the last day of the most recently-

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ended fiscal quarter of the Borrower under the assumption that such Indebtedness was issued at the beginning of the applicable calculation period);

(B) the terms of such Indebtedness shall not provide for payment of any portion of the principal thereof prior to the date six months after the final maturity of the Loans hereunder;

(C) terms in respect of financial and other covenants, events of default and mandatory prepayments applicable to such Indebtedness shall be no more restrictive in any material respect on the Borrower or any of its Subsidiaries than the terms of the Senior Unsecured Notes;

(D) at the time of issuance of such Indebtedness, and after giving effect thereto, the Borrower shall be in compliance with Section 7.10 (the determination of such ratios to be calculated under the assumption that such Indebtedness was issued at the beginning of the respective period and that any other Indebtedness to be retired with the proceeds thereof was in fact retired on such date of

issuance), and the Borrower shall have delivered to the Administrative Agent a certificate of its chief financial officer to such effect setting forth in reasonable detail the computations necessary to determine such compliance (including, if applicable, computations in reasonable detail as to the satisfaction of the conditions specified in clauses (A) above);

(E) at the time of such issuance, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing hereunder; and

(F) prior to such issuance, the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect specified in the foregoing clauses (C), (D) and (E) (and setting forth in reasonable detail the computations necessary to determine compliance with said clause (D) and including, if applicable, computations in reasonable detail as to the satisfaction of the conditions specified in the foregoing clauses (A));

(d) Indebtedness created under the Bridge Credit Agreement in an aggregate principal amount not exceeding U.S.\$450,000,000 at any time outstanding;

(e) Subordinated Indebtedness;

(f) Indebtedness (i) of any Subsidiary to the Borrower or to any other Subsidiary or (ii) of the Borrower to any Subsidiary Guarantor or to any other Subsidiary (provided, that (x) the aggregate principal amount of such Indebtedness of the Borrower outstanding to such other Subsidiaries shall at no time exceed U.S.\$50,000,000 (or its Australian Equivalent) and (y) such Indebtedness of the Borrower shall be subordinated to the obligations of the Borrower to pay principal of and interest on the Loans, the reimbursement obligation in respect of each LC Disbursement and all other amounts payable hereunder on terms and conditions reasonably satisfactory to the Administrative Agent);

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(g) Indebtedness of any one or more Foreign Subsidiaries denominated in U.S. Dollars or in any other currency that is convertible into U.S. Dollars in an aggregate principal amount not exceeding U.S.\$250,000,000 (or the spot rate equivalent thereof in such other currency as reasonably determined by the Borrower) at any time outstanding;

(h) Guarantees by the Borrower of Indebtedness or other obligations of any Subsidiary (subject to the terms of Section 7.06(e) and (h)) and by any Subsidiary of Indebtedness or other obligations of the Borrower or any other Subsidiary;

(i) Guarantees by the Borrower or by any Subsidiary of Indebtedness of any Person (other than the Borrower or any of its Subsidiaries); provided that the aggregate principal amount of Indebtedness in respect of all such Guarantees shall not exceed U.S.\$40,000,000 at any time outstanding;

(j) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (j) shall not exceed \$75,000,000 at any time outstanding; and

(k) other Indebtedness to the extent not otherwise permitted by the forgoing paragraphs of this Section of the Borrower and its Subsidiaries; provided that at any time after giving effect thereto the aggregate principal amount of such Indebtedness shall not exceed U.S.\$50,000,000.

SECTION 7.02. Liens. The Borrower will not, nor will it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any Property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created pursuant to the Security Documents;

(b) Permitted Encumbrances;

(c) any Lien on any Property or asset of the Borrower or any of its Subsidiaries existing on the date hereof and set forth in Part B of

Schedule I (or, to the extent not meeting the minimum thresholds for required listing on said Schedule I pursuant to Section 4.14, in an aggregate amount not exceeding U.S.\$5,000,000); provided that (i) no such Lien shall extend to any other Property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

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(d) any Lien upon tangible Property acquired after the date hereof by the Borrower or any of its Subsidiaries, which Lien either (A) existed on such Property before the time of its acquisition and was not created in anticipation thereof, or (B) was created solely for the purpose of securing Indebtedness permitted under Section 7.01(j) representing, or incurred to finance, refinance or refund, the cost of such Property; provided that (i) such Lien shall not apply to any other Property or assets of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date of such acquisition and extensions, renewals and replacements thereof permitted under clause (g) below;

(e) any Lien on Property or assets of any Foreign Subsidiary specified in Section 7.01(g) securing Indebtedness of such Foreign Subsidiary permitted thereunder, so long as the 1999 Indenture and the Senior Subordinated Notes Indentures do not prohibit the incurrence of such Lien (provided that such Lien shall not in any event apply to any Property or assets of the Borrower or any other Subsidiary);

(f) at any time when (x) the Indebtedness under the Bridge Credit Agreement has been repaid in full from the proceeds of an Equity Issuance and (y) the published rating of the senior secured bank debt of the Borrower by Moody's or Standard & Poor's is at least "Ba2" and "BB", respectively (and such rating is not on credit watch with negative implications (or its equivalent)), any Lien in favor of a special purpose company or Receivable Financier created or deemed to exist pursuant to a Permitted Receivable Financing, but only to the extent such Lien relates to the applicable Receivable Assets conveyed by the Borrower or any Subsidiary;

(g) any Lien on any Property or assets securing Indebtedness of the Borrower or any of its Subsidiaries permitted to be incurred by this Agreement in an aggregate amount not to exceed U.S.\$10,000,000 at any time outstanding;

(h) any purchase option or similar right on securities held by the Borrower or any of its Subsidiaries in any Joint Venture Entity permitted by Section 7.06(h) which option or similar right is granted to a third-party who holds securities in such Joint Venture Entity; and

(i) any extension, renewal or replacement of the foregoing; provided, however, that the Liens permitted hereunder shall not be spread to cover any additional Indebtedness or Property (other than a substitution of like Property).

SECTION 7.03. Fundamental Changes. The Borrower will not, nor will it permit any of its Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that (x) the Borrower or any Subsidiary may enter into transactions permitted by Section 7.05 and (y) if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing:

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(a) any Subsidiary of the Borrower may be merged or consolidated with or into: (i) the Borrower if the Borrower shall be the continuing or surviving corporation, (ii) any Wholly-Owned Subsidiary of the Borrower that is not a Foreign Subsidiary or (iii) if such Subsidiary is a Foreign Subsidiary, any Wholly-Owned Subsidiary of the Borrower that is a Foreign Subsidiary; provided that in any such transaction, the Wholly-Owned Subsidiary shall be the continuing or surviving corporation;

(b) the Borrower or any such Subsidiary may convey, sell, lease, transfer or otherwise dispose of any or all of its Property (upon voluntary liquidation or otherwise) either (A) in compliance with the provisions of Section 7.04(i), (ii) or (iv) or (B) in the case of any such Subsidiary, to (i) the Borrower, (ii) any Wholly-Owned Subsidiary of the Borrower that is not a Foreign Subsidiary or (iii) if such Subsidiary is a Foreign Subsidiary, any Wholly-Owned Subsidiary of the Borrower that is a Foreign Subsidiary;

(c) the Borrower or any Subsidiary of the Borrower may merge or consolidate with any other Person if, in the case of a merger or consolidation of the Borrower, the Borrower is the surviving corporation, and,

in any other case, the surviving corporation is a Wholly-Owned Subsidiary of the Borrower that is not a Foreign Subsidiary or, if such merging or consolidating Subsidiary is a Foreign Subsidiary, any Wholly-Owned Subsidiary of the Borrower that is a Foreign Subsidiary; and

(d) the Borrower may, for the purpose of transferring its jurisdiction of incorporation from Delaware to another state of incorporation, merge with and into a Wholly-Owned Subsidiary in a transaction constituting a tax-free reorganization under 368(a)(1)(F) of the Code, so long as:

(x) the Borrower shall give the Lenders and the Administrative Agent at least 15 days prior written notice of the occurrence of such merger;

(y) such Subsidiary shall execute and deliver an instrument in form and substance satisfactory to each Lender and the Administrative Agent pursuant to which such Subsidiary shall, effective upon such merger, assume all of the obligations of the Borrower hereunder and under the Security Documents (and execute and deliver such other instruments as the Administrative Agent shall request to ensure the continued perfection and priority of any Liens granted by the Borrower pursuant to the Security Documents); and

(z) such Subsidiary shall deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by the Borrower pursuant to Section 5.01 hereof upon the Effective Date or as any Lender or the Administrative Agent shall have requested;

provided, that (A) if any such merger shall be between a Subsidiary Guarantor and a Subsidiary not a Subsidiary Guarantor, and such Subsidiary Guarantor is not the continuing or surviving corporation, then the continuing or surviving corporation shall have assumed all of the obligations of such Subsidiary Guarantor hereunder and under the other Loan Documents and (B) if any such sale is by a Subsidiary Guarantor to a Subsidiary of the Borrower not a

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Subsidiary Guarantor, then such Subsidiary shall have assumed all of the obligations of such Subsidiary Guarantor hereunder and under the other Loan Documents.

SECTION 7.04. Disposition of Property. The Borrower will not, nor will it permit any of its Subsidiaries to, convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, any part of its business or Property, whether now owned or hereafter acquired (including, without limitation, receivables and leasehold interests); provided that the Borrower or any Subsidiary may convey, sell, lease, transfer or otherwise dispose of (i) any inventory or other Property sold or disposed of in the ordinary course of business and on ordinary business terms, (ii) Receivable Assets pursuant to any Permitted Receivable Financing, (iii) any Property to the extent permitted by Section 7.03(b) and (iv) other Property so long as the amount of such other Property sold in any single fiscal year by the Borrower and its Subsidiaries shall have a fair market value not in excess of 10% of the Consolidated Tangible Assets as at the last day of the fiscal quarter of the Borrower ending prior to the date of determination.

SECTION 7.05. Acquisition of Property. The Borrower will not, nor will it permit any of its Subsidiaries to, acquire any business or Property from, or capital stock of, or be a party to any acquisition of, any Person; provided that:

(a) the Borrower or any such Subsidiary may (i) purchase inventory and other Property to be sold or used in the ordinary course of business, (ii) make Investments permitted under Section 7.06 and (iii) make Capital Expenditures;

(b) the Borrower may (either directly, or indirectly through its Wholly-Owned Subsidiaries) acquire the business and related assets from, or capital stock of, or enter into a joint venture with, or be a party to an Acquisition of, another Person, so long as at the time thereof and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing hereunder and the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer to such effect; provided that (i) at the time of any such transaction, and after giving effect thereto, the Borrower shall be in compliance with Section 7.10(a), (b) and (c) (the determination of such ratios to be calculated under the assumption that such transaction was consummated at the beginning of the respective period) and, to the extent the aggregate consideration to be delivered by the Borrower and its Subsidiaries in connection with such transaction shall exceed U.S.\$20,000,000, the Borrower shall have furnished to the Administrative Agent a certificate of a Financial Officer to such effect setting forth in reasonable detail the computations

necessary to determine such compliance, (ii) the Borrower will not use more than U.S.\$250,000,000 of the proceeds of one or more U.S. Dollar Revolving Loans to fund any single such transaction and/or pay any related fees or expenses, (iii) at any time until the repayment in full of all Indebtedness incurred under the Bridge Credit Agreement with the proceeds of an issuance of equity securities of the Borrower or, if such repayment is not made with the proceeds of an issuance of equity securities of the Borrower, at any time when the Debt Ratio is 4.0 to 1 or higher (the determination of such ratio to be calculated as of the last day of the most recently-ended fiscal quarter of the Borrower under the assumption that such transaction was consummated at the beginning of the applicable calculation period) (after which time the restrictions of this

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sub-clause (iii) shall cease to apply), the Borrower may not enter into any transaction otherwise permitted by this clause (b) if the aggregate consideration to be delivered by the Borrower and its Subsidiaries in connection with such transaction when added to the aggregate consideration delivered by the Borrower and its Subsidiaries in connection with each other transaction permitted by this clause (b) consummated prior thereto but after the date hereof (other than the Target Acquisition) shall exceed U.S.\$250,000,000 and (iv) in the case of an Acquisition of a Person, such Acquisition has been approved by the board of directors of such Person prior to the commencement of any tender offer, proxy contest or the like in respect thereof; and

(c) the Borrower may consummate the Target Acquisition.

SECTION 7.06. Investments. The Borrower will not, nor will it permit any of its Subsidiaries to, make or permit to remain outstanding any Investments except:

(a) Investments outstanding on the date hereof and identified in Part B of Schedule III;

(b) operating deposit accounts with banks;

(c) Permitted Investments;

(d) Investments (including Guarantees permitted under Section 7.01 and other Guarantees) by the Borrower and its Wholly-Owned Subsidiaries in the Borrower and its Wholly-Owned Subsidiaries (excluding Foreign Subsidiaries) after the date hereof;

(e) Investments by the Borrower and its Wholly-Owned Subsidiaries in Foreign Subsidiaries consisting of (i) Guarantees by the Borrower of Indebtedness of Foreign Subsidiaries specified in Section 7.01(g), (ii) loans and advances by the Borrower to any Foreign Subsidiary for working capital and other general corporate purposes (provided that such Foreign Subsidiary shall execute and deliver an Intercompany Note evidencing such Investments and the Borrower shall comply with the requirements of Section 6.09(e)), (iii) capital contributions by the Borrower which are made, directly or indirectly, to any Foreign Subsidiary with the proceeds of an Equity Issuance of the Borrower, and (iv) other Investments not exceeding U.S.\$250,000,000 at any one time,

(f) Investments consisting of (i) security deposits with utilities, lessors and other like Persons made in the ordinary course of business, (ii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations or (iii) cash deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance or indemnity bonds and other obligations of a like nature, in each case in the ordinary course of business;

(g) any Guarantee by a Subsidiary of the Borrower of (i) Senior Unsecured Indebtedness incurred in compliance with Section 7.01(c) and 7.01(d) and (ii) Subordinated Indebtedness incurred in compliance with Section 7.11 (provided that such

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Guarantee of Subordinated Indebtedness shall comply with the requirements Section 7.11(b));

(h) Investments (including Guarantees permitted under Section 7.01) by the Borrower and its Subsidiaries in Joint Venture Entities (and Investments by Joint Venture Entities in other Persons) after the date hereof; provided that the aggregate amount of such Investments in Joint Venture Entities shall not exceed U.S.\$150,000,000 at any one time (or at any time the Senior Debt Ratio is less than 2.5 to 1 (the determination of such ratio to be calculated as of the last day of the most recently-ended fiscal quarter of the Borrower under the assumption that such Investment was made at the beginning of the applicable calculation period), \$200,000,000 at any one time);

(i) (x) Investments by the Borrower and its Subsidiaries in

connection with the Target Acquisition consisting of (A) Investments by the Borrower in Australian Acquisition Company 2 (directly or indirectly through the Australian Acquisition Entities) for the purpose of providing funds and other Property to pay the consideration in respect thereof, (B) the purchase of the ordinary shares (and related options) of the Target by Australian Acquisition Company 2 and the Target, as applicable, and (C) Investments by the Borrower in Australian Acquisition Company 2 and the Target (directly or indirectly through the Australian Acquisition Entities) for the purpose of repaying outstanding Indebtedness under the Target Credit Facilities and funding the repurchase of options in respect of the shares of the Target, and (D) the reclassification or conversion of such Investments to debt or equity or any combination thereof, and (y) acquisitions permitted by Section 7.05(b) (but in the case of any acquisition of any Foreign Subsidiary or Joint Venture Entity, subject to the limitations specified in this Section 7.06);

(j) Hedging Agreements entered into in the ordinary course of business and not for speculative purposes;

(k) (x) Guarantees by Foreign Subsidiaries of the Borrower of Indebtedness or other obligations of other Foreign Subsidiaries of the Borrower that are Wholly-Owned Subsidiaries of the Borrower and (y) Investments (other than any such Investment made with the proceeds of loans and advances specified in Section 7.06(e)(ii)) by Foreign Subsidiaries of the Borrower in other Foreign Subsidiaries of the Borrower that are Wholly-Owned Subsidiaries of the Borrower, made directly or indirectly (including through any Obligor), in connection with the corporate reorganization of the Target and the Subsidiaries of the Target after the Implementation Date (provided, that if the ownership interests of any such Foreign Subsidiary whose assets are the subject of such an Investment are required to be pledged to the Administrative Agent pursuant to Section 6.09, the requisite amount of ownership interests of the Foreign Subsidiary that is the recipient of such Investment shall also be pledged to the Administrative Agent as provided in Section 6.09); and

(l) additional Investments by the Borrower or any of its Subsidiaries not otherwise permitted by the foregoing paragraphs of this Section up to but not exceeding U.S.\$50,000,000 in the aggregate at any one time outstanding.

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The aggregate amount of an Investment at any one time outstanding for purposes of clauses (d), (e), (h) and (k) above shall be deemed to be equal to (A) the aggregate amount of cash, together with the aggregate fair market value of Property, loaned, advanced, contributed, transferred or otherwise invested that gives rise to such Investment minus (B) the aggregate amount of dividends, distributions or other payments received in cash in respect of such Investment; the amount of an Investment shall not in any event be reduced by reason of any write-off of such Investment nor increased by any increase in the amount of earnings retained in the Person in which such Investment is made that have not been dividended, distributed or otherwise paid out.

SECTION 7.07. Restricted Payments. (a) The Borrower will not, nor will it permit any of its Subsidiaries (other than Joint Venture Entities) to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that the Borrower may (i) declare and pay dividends with respect to its capital stock payable solely in additional shares of its capital stock (other than Disqualified Stock), (ii) make Restricted Payments in respect of stock appreciation rights, or other stock-based awards, under any stock option plan of the Borrower (including without limitation any Stock Based Plan) so long as no Default shall have occurred and be continuing or would result therefrom, (iii) cancel or terminate any warrants, options or any other rights to acquire any shares of capital stock of the Borrower in exchange for the issuance of any other warrants, options or rights to acquire shares of capital stock of the Borrower, (iv) repurchase its capital stock to the extent provided in paragraph (b) below and (v) declare and make Restricted Payments in cash, subject (in the case of this clause (v)) to the satisfaction of each of the following conditions on the date of such Restricted Payment and after giving effect thereto:

(w) no Default shall have occurred and be continuing;

(x) the aggregate amount of Restricted Payments made during any fiscal year, including the fiscal year ending February 28, 2002, shall not exceed an amount equal to 50% of consolidated net income of the Borrower and its Consolidated Subsidiaries for such fiscal year;

(y) the Debt Ratio for the period of four consecutive fiscal quarters most recently ended prior to the date of any such Restricted Payment shall not exceed 2.00 to 1; and

(z) the Borrower shall have delivered to the Administrative Agent, at least 10 Business Days (but not more than 20 Business Days) prior to the date of declaration of any such Restricted Payment, a certificate of a Financial



Officer of the Borrower setting forth computations in reasonable detail demonstrating satisfaction of the foregoing conditions as at the date of such certificate and stating that such Financial Officer believes in good faith that none of such conditions will fail to be satisfied on the date of payment of such Restricted Payment,

it being understood that to the extent the conditions specified in the foregoing clauses (w) through (y) are satisfied on the date of declaration of such Restricted Payment by the board of directors of the Borrower, such Restricted Payment may be made at any time within the 60-day period thereafter, regardless of whether such conditions continue to be satisfied.

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(b) The Borrower may make Restricted Payments consisting of repurchases of its capital stock; provided that:

(i) the aggregate amount of all such Restricted Payments made during the term of this Agreement shall not exceed U.S.\$100,000,000;

(ii) after giving effect to any such Restricted Payment, the Borrower shall be in compliance, on a pro forma basis, with Section 7.10 during the four quarter period most-recently ended under the assumption that such Restricted Payment, and any related borrowing, shall have been made or incurred at the beginning of such period (and, to the extent requested by the Administrative Agent, the Borrower shall have delivered a calculation demonstrating such pro forma compliance satisfactory to the Administrative Agent); and

(iii) the Borrower will not make any Restricted Payment under this paragraph (b) unless at the time thereof, and after giving effect thereto, no Default shall have occurred and be continuing.

(c) Nothing in this Section shall be deemed to prohibit the making or paying of any dividends (in any type of Property), or entering into any agreement to pay or make dividends, directly or indirectly, by any Subsidiary of the Borrower to the Borrower or to any other Subsidiary of the Borrower.

SECTION 7.08. Transactions with Affiliates. The Borrower will not, nor will it permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates; provided that (x) any Affiliate who is an individual may serve as a director, officer or employee of the Borrower or any of its Subsidiaries and receive reasonable compensation for his or her services in such capacity and (y) the Borrower and its Subsidiaries may enter into transactions with any Affiliate of the Borrower or any Subsidiary (other than extensions of credit by the Borrower or any of its Subsidiaries to an Affiliate) providing for the leasing of Property, the rendering or receipt of services or the purchase or sale of inventory and other Property in the ordinary course of business if the monetary or business consideration arising therefrom would be substantially as advantageous to the Borrower and its Subsidiaries as the monetary or business consideration which would obtain in a comparable transaction with a Person not an Affiliate.

During any period that the Borrower is a public company regulated by, and required to file regular periodic reports with, the Securities and Exchange Commission, any compensation paid to an executive officer of the Borrower or any Subsidiary (who is an Affiliate) which has been specifically approved by the board of directors of the Borrower (or by the Human Resources Committee of the board of directors of the Borrower or other committee responsible for such approval) during such period will be deemed to be reasonable for purposes of the foregoing. Notwithstanding the foregoing, the Borrower and/or any Subsidiary may enter into so-called split-dollar life insurance agreements with Affiliates, so long as the aggregate amount of premiums payable by the Borrower during any fiscal year pursuant to such agreements shall not exceed U.S.\$2,000,000 in the aggregate.

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SECTION 7.09. Certain Restrictions. The Borrower will not permit any of its Subsidiaries (other than Joint Venture Entities) to enter into, after the date hereof, any indenture, agreement, instrument or other arrangement that, directly or indirectly, prohibits or restrains, or has the effect of prohibiting or restraining, or imposes materially adverse conditions upon, the incurrence or payment of Indebtedness, the granting of Liens, the declaration or payment of dividends, the making of loans, advances, guarantees or Investments or the sale, assignment, transfer or other disposition of Property; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, by this Agreement or, in the case of any restrictions

or conditions other than in respect of the declaration or payment of dividends by Subsidiaries, restrictions or conditions imposed by any evidence of Senior Unsecured Indebtedness, Subordinated Indebtedness or Foreign Subsidiary Indebtedness (so long as no such restriction or condition is materially more restrictive on the Borrower or any Subsidiary than the corresponding provisions of the 1999 Indenture or the Senior Subordinated Note Indentures as in effect on the date hereof), (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or its assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or its assets that are to be sold and such sale is permitted hereunder, (iii) as applied to Liens, the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iv) as applied to Liens, the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to Indebtedness of Foreign Subsidiaries obligated in respect of such Indebtedness and (v) as applied to Liens, the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

In addition, the Borrower will not enter into, after the date hereof, any indenture, agreement, instrument or other arrangement that, directly or indirectly, prohibits or restrains, or has the effect of prohibiting or restraining, or imposes materially adverse conditions upon the granting of Liens contemplated by Section 6.10; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, (ii) the foregoing shall not apply to restrictions or conditions imposed by the Bridge Credit Agreement or any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (iii) the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 7.10. Certain Financial Covenants.

(a) Debt Ratio. The Borrower will not permit the Debt Ratio to exceed the following respective ratios at any time during the following respective periods:

Period -----	Ratio -----
From the date hereof through February 29, 2004	5.25 to 1
From March 1, 2004 through February 28, 2005	4.75 to 1
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From March 1, 2005 and at all times thereafter	4.00 to 1

provided, that if after the date of this Agreement Indebtedness created under the Bridge Credit Agreement is repaid with the proceeds of an issuance of equity securities of the Borrower or commitments outstanding under the Bridge Credit Agreement are permanently reduced due to the issuance of equity securities of the Borrower to shareholders of the Target, then (x) to the extent the aggregate amount of such repayments of Indebtedness and such reductions of commitments (effected at any time after the date of this Agreement) is greater than \$100,000,000 but less than \$300,000,000, each Debt Ratio level specified above shall be reduced by 0.25 and (y) to the extent the aggregate amount of such repayments of Indebtedness and such reductions of commitments (effected at any time after the date of this Agreement) is greater than or equal to \$300,000,000, each Debt Ratio level specified above shall be reduced by 0.50, but in any event the required Debt Ratio level shall not at any time be lower than 4.00 to 1.

(b) Senior Debt Ratio. The Borrower will not permit the Senior Debt Ratio to exceed the following respective ratios at any time during the following respective periods:

Period -----	Ratio -----
From the date hereof through February 29, 2004	4.50 to 1
From March 1, 2004 through February 28, 2005	4.00 to 1
From March 1, 2005 through February 28, 2006	3.50 to 1
From March 1, 2006 and at all times thereafter	3.00 to 1

provided, that if after the date of this Agreement Indebtedness created under the Bridge Credit Agreement is repaid with the proceeds of an issuance of equity securities of the Borrower or commitments outstanding under the Bridge Credit Agreement are permanently reduced due to the issuance of equity securities of the Borrower to shareholders of the Target, then (x) to the extent the aggregate amount of such repayments of Indebtedness and such reductions of commitments (effected at any time after the date of this Agreement) is greater than \$100,000,000 but less than \$300,000,000, each Senior Debt Ratio level specified above shall be reduced by 0.25 and (y) to the extent the aggregate amount of such repayments of Indebtedness and such reductions of commitments (effected at any time after the date of this Agreement) is greater than or equal to \$300,000,000, each Senior Debt Ratio level specified above shall be reduced by 0.50, but in any event the required Senior Debt Ratio level shall not at any time be lower than 3.00 to 1.

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(c) Interest Coverage Ratio. The Borrower will not permit the Interest Coverage Ratio to be less than the following respective ratios at any time during the following respective periods:

Period	Ratio
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From the date hereof through February 28, 2005	2.75 to 1
From March 1, 2005 and at all times thereafter	3.00 to 1

(d) Fixed Charges Ratio. The Borrower will not permit the Fixed Charges Ratio to be less than 1.00 to 1 as at the last day of any fiscal quarter of each fiscal year.

SECTION 7.11. Subordinated Indebtedness. The Borrower may after the date hereof incur additional Subordinated Indebtedness subject to the following conditions (each of which shall have been fulfilled in form and substance reasonably satisfactory to the Administrative Agent):

(a) such Indebtedness shall be subordinated to the obligations of the Borrower to pay principal of and interest on the Loans, the reimbursement obligation in respect of each LC Disbursement and all other amounts payable hereunder on terms and conditions no less favorable to the Lenders than the terms and conditions of the Senior Subordinated Note Indentures;

(b) such Indebtedness shall be an obligation of the Borrower only, and none of its Subsidiaries shall be contingently or otherwise obligated in respect thereof, unless subordinated to the obligations of such Subsidiary to pay principal of and interest on the Loans, the Reimbursement Obligations and all other amounts payable hereunder on terms and conditions no less favorable to the Lenders than the terms and conditions of the Senior Subordinated Note Indentures;

(c) the Net Available Proceeds of such Indebtedness shall be applied to (i) prepay Loans in accordance with Section 2.10(b)(v), (ii) repay or prepay Subordinated Indebtedness (in accordance with this Section 7.11) or Senior Unsecured Indebtedness (in accordance with Section 7.12) or (iii) finance one or more Acquisitions pursuant to Section 7.05(b);

(d) the terms of such Indebtedness shall not provide for payment of any portion of the principal thereof prior to the date six months after the final maturity of the Loans hereunder;

(e) terms in respect of financial and other covenants, events of default and mandatory prepayments applicable to such Indebtedness shall be terms that are at the time customary in the market for subordinated debt being incurred by the Borrower, and in transactions, comparable to the Borrower's proposed debt issuance;

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(f) at the time of issuance of such Indebtedness, and after giving effect thereto, the Borrower shall be in compliance with Section 7.10 (the determination of such ratios to be calculated under the assumption that such Indebtedness was issued, at the beginning of the respective period and that any other Indebtedness to be retired with the proceeds thereof was in fact retired on such date of issuance);

(g) at the time of such issuance, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing hereunder; and

(h) prior to such issuance the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect specified in the foregoing clauses (a), (b), (e), (f) and (g) (and setting forth

in reasonable detail the computations necessary to determine compliance with said clause (f)).

Neither the Borrower nor any of its Subsidiaries shall purchase, redeem, retire or otherwise acquire for value, or set apart any money for a sinking, defeasance or other analogous fund for, the purchase, redemption, retirement or other acquisition of, or make any voluntary payment or prepayment of the principal of or interest on, or any other amount owing in respect of, any Subordinated Indebtedness, except that (i) the Borrower may make payments on the regularly-scheduled payment dates with respect to the principal of and interest on the Subordinated Indebtedness as in effect on the date hereof (or, as to any Subordinated Indebtedness issued after the date hereof, as originally in effect), (ii) so long as no Default shall have occurred and be continuing (or will occur as a result of such payment), from the proceeds of Subordinated Indebtedness issued in accordance with the first paragraph of this Section, the Borrower may redeem or prepay Subordinated Indebtedness that is being refinanced with such proceeds and (iii) the Borrower or any Subsidiary may acquire Subordinated Indebtedness to the extent that the Borrower's investment therein is permitted by Section 7.06(i). Neither the Borrower nor any of its Subsidiaries will consent to any modification, supplement or waiver of any of the provisions of any Subordinated Indebtedness if such amendment, supplement or waiver would (A) increase the amount of principal, interest or other amounts payable by the Borrower or any Subsidiary in respect thereof or change the date when any such amount is due, (B) amend any financial or other covenant, term of subordination, event of default or mandatory prepayment provision in respect thereof (in the case of any covenant, if such covenant, as amended, would be materially more restrictive on the Borrower or any Subsidiary) or (C) have a material adverse effect on (x) the legal ability or financial capacity of any Obligor to perform any of its obligations under this Agreement or any of the other Loan Documents to which it is a party or (y) the rights of or benefits available to the Lenders under this Agreement or any of the other Loan Documents.

SECTION 7.12. Senior Unsecured Indebtedness. Neither the Borrower nor any of its Subsidiaries shall purchase, redeem, retire or otherwise acquire for value, or set apart any money for a sinking, defeasance or other analogous fund for the purchase, redemption, retirement or other acquisition of, or make any voluntary payment or prepayment of the principal of or interest on, or any other amount owing in respect of, Senior Unsecured Indebtedness, except that the Borrower may (i) make payments on the regularly-scheduled payment dates with respect to the principal of and interest on Senior Unsecured Indebtedness and (ii) so long as no Default shall have occurred and be continuing (or will occur as a result of such payment), from the proceeds of Senior Unsecured Indebtedness incurred in accordance with Section 7.01(c)

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or the proceeds of Subordinated Indebtedness issued in accordance with the first paragraph of Section 7.11, redeem any Senior Unsecured Indebtedness being refinanced with such proceeds. Neither the Borrower nor any of its Subsidiaries will consent to any modification, supplement or waiver of any of the provisions of any Senior Unsecured Indebtedness if such amendment, supplement or waiver could reasonably be expected to have a Material Adverse Effect on (x) the legal ability or financial capacity of any Obligor to perform any of its obligations under this Agreement or any of the other Loan Documents to which it is a party or (y) the rights of or benefits available to the Lenders under this Agreement or any of the other Loan Documents.

SECTION 7.13. Modifications of Certificate of Incorporation. Notwithstanding the provisions of clause (d) of Section 7.03, the Borrower will not modify or supplement its Certificate of Incorporation as in effect on the date hereof in any manner materially adverse to the interests of the Lenders without the prior consent of the Administrative Agent (with the approval of the Required Lenders).

## ARTICLE VIII

### EVENTS OF DEFAULT

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

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or under any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five or more Business Days;

(c) any representation or warranty made or deemed made by or

on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall prove to have been incorrect when made or deemed made in any material respect;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 6.02(a) or (e), 6.03 (with respect to the Borrower's existence), 6.08, 6.11, 6.12 (with respect to covenants, conditions or agreements contained in any fee letter referred to in the Syndication Letter) or in Article VII;

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(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any other Loan Document and such failure shall continue unremedied for a period of 45 or more days after notice thereof from the Administrative Agent (given at the request of any Lender) to the Borrower;

(f) the Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the Property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its Subsidiaries or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, administrator, conservator or similar official for the Borrower or any of its Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of 60 or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any of its Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, administration, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, administrator, conservator or similar official for the Borrower or any of its Subsidiaries or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any of its Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of U.S.\$15,000,000 (exclusive of any judgment amount to the extent covered by insurance, bond, surety or similar instrument where the insurer or holder of such bond,

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surety or instrument, as the case may be, has not contested liability in respect of such judgment so long as the Borrower or such Subsidiary is seeking to recover under such insurance, bond, surety or similar instrument) shall be rendered against the Borrower or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any of its Subsidiaries to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have

occurred, could reasonably be expected to have a Material Adverse Effect;

(m) a reasonable basis shall exist for the assertion against the Borrower or any of its Subsidiaries of (or there shall have been asserted against the Borrower or any of its Subsidiaries) claims or liabilities, whether accrued, absolute or contingent, based on or arising from the generation, storage, transport, handling or disposal of Hazardous Materials by the Borrower or any of its Subsidiaries or Affiliates, or any predecessor in interest of the Borrower or any of its Subsidiaries or Affiliates, or relating to any site or facility owned, operated or leased by the Borrower or any of its Subsidiaries or Affiliates, which claims or liabilities (insofar as they are payable by the Borrower or any of its Subsidiaries but after deducting any portion thereof which is reasonably expected to be paid by other creditworthy Persons jointly and severally liable therefor), in the judgment of the Required Lenders are reasonably likely to be determined adversely to the Borrower or any of its Subsidiaries, and the amount thereof is reasonably likely to have a Material Adverse Effect;

(n) a Change in Control shall occur; or

(o) any Lien created by the Security Documents shall at any time not constitute a valid and perfected Lien on the collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Administrative Agent for the benefit of the Lenders, free and clear of all other Liens (other than Liens permitted under Section 7.02 or under the respective Security Documents), or, except for expiration or termination in accordance with its terms, any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Obligor;

then, and in every such event (other than an event with respect to any Obligor described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Obligors accrued

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hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and in case of any event with respect to any Obligor described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Obligors accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

In the event that any outstanding U.S. Dollar Revolving Loans, Australian Dollar Revolving Loans or Swingline Loans are declared to be, or become, due and payable pursuant to this Article, the Administrative Agent shall calculate the Funding Percentages of the U.S. Dollar Revolving Lenders and the Australian Dollar Revolving Lenders as of the date that such Loans are declared to be, or become, due and payable (the "Acceleration Date") and shall, on or prior to the Business Day next succeeding the Acceleration Date, provide notice of such Funding Percentages to all U.S. Dollar Revolving Lenders and Australian Dollar Revolving Lenders, together with a calculation of any amounts required to be paid by the Underfunded Revolving Lenders as provided below. If on the Acceleration Date either (i) the Funding Percentage of the U.S. Dollar Revolving Lenders exceeds the Funding Percentage of the Australian Dollar Revolving Lenders or (ii) the Funding Percentage of the Australian Dollar Revolving Lenders exceeds the Funding Percentage of the U.S. Dollar Revolving Lenders (such Revolving Lenders whose Funding Percentage is so in excess being referred to herein as the "Overfunded Revolving Lenders" and such other Revolving Lenders being referred to herein as the "Underfunded Revolving Lenders"), each Underfunded Revolving Lender shall be deemed to have acquired, on the Acceleration Date, a participation in each outstanding Revolving Loan or Swingline Loan made by, and in the LC Exposure of, each Overfunded Revolving Lender (on a pro rata basis based on the Applicable Percentage of such Underfunded Revolving Lender as of the Acceleration Date) such that, after giving effect thereto, the Funding Percentage of the Overfunded Revolving Lenders is equal to the Funding Percentage of the Underfunded Revolving Lenders.

Each U.S. Dollar Revolving Lender and Australian Dollar Revolving Lender hereby absolutely and unconditionally agrees that, if such Lender is an Underfunded Revolving Lender as provided above, upon receipt of notice from the Administrative Agent as provided above, such Revolving Lender shall on or prior to the date five Business Days after the Acceleration Date pay to the Administrative Agent, for the account of the Overfunded Revolving

Lenders, an amount equal to the aggregate purchase price for all of the participations acquired by such Revolving Lender as provided above. Each U.S. Dollar Revolving Lender and Australian Dollar Revolving Lender acknowledges and agrees that its obligation to acquire participations in Revolving Loans, Swingline Loans and LC Exposure pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or Event of Default or the reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each U.S. Dollar Revolving Lender and Australian Dollar Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall

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apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Overfunded Revolving Lenders (as their interests may appear) the respective amounts so received by it from the Underfunded Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Loans and LC Exposure acquired pursuant to this paragraph. The purchase of participations in any Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

#### ARTICLE IX

##### THE ADMINISTRATIVE AGENT AND THE LONDON AGENT

Each of the Lenders and the Issuing Lenders hereby appoints the Administrative Agent as its agent hereunder and under the other Loan Documents and as its trustee in respect of the U.K. Equity Pledge Agreement and the Australian Equity Pledge Agreements and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Australian Dollar Revolving Lenders appoints the London Agent as its agent hereunder.

The Person serving as the Administrative Agent or the London Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent or the London Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent or the London Agent hereunder.

The Administrative Agent and the London Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent and the London Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent and the London Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the London Agent is required to exercise in writing by the Required Lenders, and (c) except as expressly set forth herein and in the other Loan Documents, the Administrative Agent and the London Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent, London Agent or any of its Affiliates in any capacity. The Administrative Agent and the London Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders or in the absence of its own gross negligence or willful misconduct. The Administrative Agent and the London Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent and the London Agent by the Borrower or a Lender, and the Administrative Agent and the London Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan

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Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article V or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or the London Agent.

The Administrative Agent and the London Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any

notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent and the London Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent and the London Agent may consult with legal counsel (who may be counsel for an Obligor), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent and the London Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent or the London Agent. The Administrative Agent, the London Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent, the London Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent and the London Agent.

Subject to the appointment and acceptance of a successor Administrative Agent or London Agent as provided in this paragraph, the Administrative Agent or the London Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower (no such consultation being required if an Event of Default shall have occurred and be continuing), to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent or London Agent gives notice of its resignation, then the retiring Administrative Agent or London Agent may, on behalf of the Lenders, appoint a successor Administrative Agent or London Agent which shall be a bank with an office in New York, New York (or London in the case of the London Agent), or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent or London Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or London Agent, and the retiring Administrative Agent or London Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent or London Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the

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Administrative Agent's or the London Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent or London Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent or London Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the London Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the London Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Without the authorization of the Required Lenders, neither the Administrative Agent nor the London Agent nor any Lender shall send to the Borrower or the Trustee under the Senior Subordinated Note Indentures any notice of a Default or Event of Default hereunder if such notice would result in a payment block in respect of the Senior Subordinated Notes.

The Administrative Agent in its capacity as trustee or otherwise under the U.K. Equity Pledge Agreement and the Australian Equity Pledge Agreements:

(a) shall not be liable for any failure, omission, or defect in perfecting the security constituted or created by the U.K. Equity Pledge Agreement or the Australian Equity Pledge Agreements including, without limitation, any failure to (i) register the same in accordance with the provisions of any of the documents of title of the Chargor (as defined in the U.K. Equity Pledge Agreement) to any of the assets thereby charged or (ii) effect or procure registration of or otherwise protect the security created by this deed under any registration laws in any jurisdiction;

(b) may accept without inquiry such title as the Chargor (as defined in the U.K. Equity Pledge Agreement) or the Mortgagor (as defined in



each Australian Equity Pledge Agreement) may have to the Shares (as so respectively defined); and

(c) shall not be under any obligation to hold any title deed or any other documents in connection with the U.K. Equity Pledge Agreement or the Australian Equity Pledge Agreements or to take any steps to protect or preserve the same. The Administrative Agent may permit the Chargor (as defined in the U.K. Equity Pledge Agreement) or the Mortgagor (as defined in each Australian Equity Pledge Agreement) to retain all such title deeds and other documents in its possession.

Except as otherwise provided in the U.K. Equity Pledge Agreement and the Australian Equity Pledge Agreements, all moneys which under the trusts therein contained are received by the Administrative Agent in its capacity as trustee or otherwise may be invested in the name of or under the control of the Administrative Agent in any investment for the time being authorized by English law (or in the case of the Australian Equity Pledge Agreements,

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Australian law) for the investment by trustees of trust money or in any other investments which may be selected by the Administrative Agent. Additionally, the same may be placed on deposit in the name of or under the control of the Administrative Agent at such bank or institution (including JPMorgan Chase) and upon such terms as the Administrative Agent may think fit.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower or any Subsidiary Guarantor, to it at 300 Willowbrook Office Park, Fairport, New York 14450, Attention of Thomas Mullin, Esq. (Telecopy No. (585) 218-3603);

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, 270 Park Avenue, 4th Floor New York, NY 10017, Attention of Martha Gurwit (Telecopy No. (212) 270-5127);

(iii) if to the London Agent, as notified by the London Agent to each other party hereto;

(iv) if to an Issuing Lender, to it at such address as may be notified by it to the other parties hereto;

(v) if to the Swingline Lender, to it at such address as may be notified by it to the other parties hereto; and

(vi) if to a Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto (or, in the case of any such change by a Lender, by notice to the Borrower and the Administrative Agent (and the London Agent in the case of an Australian Dollar Revolving Lender). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(c) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent and the London Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent, the London Agent and the applicable Lender. The Administrative Agent, the London Agent or the Borrower

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may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

### SECTION 10.02. Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay by the Administrative Agent, the London Agent, any Issuing Lender or any Lender in exercising any right or power hereunder shall operate as a waiver

thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the London Agent, the Issuing Lenders and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Obligor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the London Agent, any Lender or any Issuing Lender may have had notice or knowledge of such Default at the time.

(b) Amendments. Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase any Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as among the Lenders or Types or Classes of Loans, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender or (vi) release all or substantially all of the Subsidiary Guarantors from their guarantee obligations under Article III without the written consent of each Lender; and provided further that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the London Agent, any Issuing Lender or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the London Agent, such Issuing Lender or the Swingline Lender, as the case may be, (y) any modification or supplement of Article III shall require the consent of each Subsidiary Guarantor and (z) subject to the foregoing clause (vi), any Subsidiary Guarantor may

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be released from its guarantee obligations under Article III if such Subsidiary Guarantor is the subject of a Disposition permitted by this Agreement or if such Subsidiary Guarantor becomes an Inactive Subsidiary (and any other release of a Subsidiary Guarantor not described in the foregoing clause (vi) may be effected only with the consent of the Required Lenders).

Anything in this Agreement to the contrary notwithstanding, no waiver or modification of any provision of this Agreement that has the effect (either immediately or at some later time) of enabling the Borrower to satisfy a condition precedent to the making of a Loan of any Class shall be effective against the Lenders of such Class for purposes of the Commitments of such Class unless the Required Lenders of such Class shall have concurred with such waiver or modification, and no waiver or modification of any provision of this Agreement or any other Loan Document that could reasonably be expected to adversely affect the Lenders of any Class in a manner that does not affect all Classes equally shall be effective against the Lenders of such Class unless the Required Lenders of such Class shall have concurred with such waiver or modification.

(c) Amendments to Security Documents. No Security Document nor any provision thereof may be waived, amended or modified, nor may the Liens thereof be spread to secure any additional or other obligations (including any increase in Loans hereunder) of the Obligors except pursuant to an agreement or agreements in writing entered into by the Borrower or any Subsidiary party thereto, and by the Administrative Agent with the consent of the Required Lenders; provided that, (i) any provision of the Cash Collateral Pledge Agreement may be waived, amended or modified to the extent provided therein, (ii) without the written consent of each Lender, no such agreement shall release all or substantially all of the Borrower and Subsidiaries from their respective obligations under the Security Documents and (iii) without the written consent of each Lender, no such agreement shall release all or substantially all of the collateral security or otherwise terminate all or substantially all of the Liens under the Security Documents, alter the relative priorities of the obligations entitled to the Liens created under the Security Documents (except in connection with securing additional or other obligations equally and ratably with the Loans and other obligations hereunder) with respect to all or substantially all of the collateral security provided thereby, except that (A) no such consent shall be

required, and the Administrative Agent is hereby authorized (and so agrees with the Borrower and the Subsidiary Guarantors), to release any Lien covering property (and to release any such Subsidiary Guarantor) that is the subject of either a Disposition permitted hereunder or a Disposition to which the Required Lenders have consented and (B) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent.

(d) Syndication. Notwithstanding anything in this Section 10.02 to the contrary, if the syndication of the credit facilities provided by this Agreement has not been completed on or before the date 120 days after the Implementation Date and the Existing Lenders determine that changes to the terms of this Agreement are advisable in order to ensure a successful syndication of such facilities, this Agreement may be amended to the extent provided in the Syndication Letter or in any fee letter referred to therein. With respect to such changes, the Borrower and the Lenders agree that, notwithstanding anything to the contrary in Section 10.02 or otherwise, no consent of any Lender is required to amend or modify the terms of this

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Agreement or any other Loan Document as provided in the previous sentence so long as such amendments and modifications will not adversely affect the Lenders. The Administrative Agent agrees to promptly notify the Lenders of any amendments or modifications to the Loan Documents permitted by this clause (d).

#### SECTION 10.03. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all out-of-pocket expenses incurred by the Administrative Agent, the London Agent, any Issuing Lender or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the London Agent, any Issuing Lender or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including in connection with any workout, restructuring or negotiations in respect thereof and (iv) and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, the London Agent, each Issuing Lender and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any Property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are

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determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) Reimbursement by Lenders. To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the London Agent, an Issuing Lender or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the

Administrative Agent, the London Agent, such Issuing Lender or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the London Agent, such Issuing Lender or the Swingline Lender in its capacity as such.

(d) Waiver of Consequential Damages, Etc. To the extent permitted by applicable law, no Obligor shall assert, and each Obligor hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) Payments. All amounts due under this Section shall be payable promptly after written demand therefor.

#### SECTION 10.04. Successors and Assigns.

(a) Assignments Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) (unless in connection with a transaction expressly permitted under Section 7.03) no Obligor may 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 any Obligor without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. 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, Participants referred to in paragraph (e) below and the directors, officers, employees, attorneys and agents of each of the Administrative Agent, the London Agent, each Issuing Lender and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders.

(i) Assignments Generally. Subject to the conditions set forth in clause (ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s), Loan(s), LC Exposure and Swingline Exposure) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

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(A) the Borrower; provided that no consent of the Borrower shall be required for an assignment (x) to a Lender, an Affiliate of a Lender, an Approved Fund, (y) if an Event of Default has occurred and is continuing, any other assignee or (z) in connection with the syndication contemplated by the Syndication Letter; and

(B) the Administrative Agent (and the London Agent in the case of an Australian Dollar Revolving Commitment or Loan), provided that no consent of the Administrative Agent or the London Agent shall be required for an assignment of any Commitment, Loan, LC Exposure or Swingline Exposure to an assignee that is a Lender with a Commitment, Loan, LC Exposure or Swingline Exposure immediately prior to giving effect to such assignment.

(ii) Certain Conditions to Assignments. Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund of such assigning Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment(s), Loan(s), LC Exposure or Swingline Exposure, the amount of the Commitment(s), Loan(s), LC Exposure or Swingline Exposure of the assigning Lender subject to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than U.S.\$5,000,000 (or, in the case of any assignment of a Tranche B Terms Loan or Tranche B Term Loan Commitment, U.S.\$1,000,000) unless each of the Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment of any Commitment, Loan, LC Exposure or Swingline Exposure shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of its Commitment, Loan, LC Exposure and Swingline Exposure;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of U.S.\$3,500; and

(D) the assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(iii) Effectiveness of Assignments. Subject to acceptance and recording thereof pursuant to paragraph (c) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance,

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have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 10.03 hereof). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 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 paragraph (e) of this Section 10.04.

(c) Maintenance of Register by the Administrative Agent. The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in New York City a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment(s) of, and principal amount of the Loan(s), LC Exposure and Swingline Exposure held by, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, each Issuing Lender and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Issuing Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Acceptance of Assignments by Administrative Agent. Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 10.04 and any written consent to such assignment required by paragraph (b) of this Section 10.04, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Participations. Any Lender may, without the consent of the Borrower, the Administrative Agent, the London Agent, any Issuing Lender or the Swingline Lender, sell participations to one or more Lenders or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s), Loan(s), LC Exposure and Swingline Exposure held by it); provided that (i) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the London Agent, the Issuing Lenders and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document;

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provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) hereof that affects such Participant. Subject to paragraph (f) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 hereof to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 hereof as though it were a Lender; provided that such Participant agrees to be subject to Section 2.17(d) hereof as though it were a Lender hereunder.

(f) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Sections 2.14, 2.15 and 2.16 hereof than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.16(e) as though it were a Lender.

(g) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank or a Farm Credit Bank, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(h) No Assignments to the Borrower or Affiliates. Anything in this Section 10.04 to the contrary notwithstanding, no Lender may assign or participate any interest in any Commitment, Loan, LC Exposure or Swingline Exposure held by it hereunder to the Borrower or any of its Affiliates or Subsidiaries without the prior consent of each Lender.

SECTION 10.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the London Agent, any Issuing Lender or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16, 3.03 and 10.03 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions

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contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 10.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other

jurisdiction.

SECTION 10.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or Affiliate thereof to or for the credit or the account of any Obligor against any of and all the obligations of any Obligor now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 10.09. Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Submission to Jurisdiction. Each Obligor hereby irrevocably and unconditionally submits, for itself and its Property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the Syndication Letter, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such

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Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or the Syndication Letter shall affect any right that the Administrative Agent, the London Agent, any Issuing Lender or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the Syndication Letter against any Obligor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Obligor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Syndication Letter in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01 except that process may not be served by telecopy. Nothing in this Agreement or the Syndication Letter will affect the right of any party to this Agreement or the Syndication Letter to serve process in any other manner permitted by law.

SECTION 10.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SYNDICATION LETTER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 10.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 10.12. Treatment of Certain Information; Disclosure.

(a) The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Subsidiaries (in connection with this Agreement or otherwise) by any Lender or by one or more subsidiaries or affiliates of such Lender and the Borrower hereby authorizes each Lender, subject to applicable Federal or State securities laws, to share any information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this

with the decision of such Lender to enter into this Agreement, to any such subsidiary or affiliate. Such authorization shall survive the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

(b) The Borrower hereby agrees that each Subsidiary Guarantor, each Lender, the Administrative Agent and the London Agent (and each of their respective, and their respective affiliates', employees, officers, directors, agents and advisors (collectively, "Agent/Lender Representatives") is, and has been from the commencement of discussions with respect to the facility established by this Agreement (the "Facility"), permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Facility, and all materials of any kind (including opinions or other tax analyses) that are or have been provided to such Lender, the Administrative Agent, the London Agent or such Subsidiary Guarantor related to such tax treatment and tax structure. In this regard, each of the Lenders, the Administrative Agent, the London Agent and the Subsidiary Guarantors acknowledges and agrees that its disclosure of the tax treatment and tax structure of the Facility is not limited in any way by an express or implied understanding or agreement, oral or written (whether or not such understanding or agreement is legally binding). Furthermore, each of the Lenders, the Administrative Agent, the London Agent and the Subsidiary Guarantors acknowledges and agrees that it does not know or have reason to know that its use or disclosure of information relating to the tax treatment or tax structure of the Facility is limited in any other manner (such as where the Facility is claimed to be proprietary or exclusive) for the benefit of any other Person.

(c) Notwithstanding anything to the contrary herein, neither the Lenders, the Administrative Agent, the London Agent nor the Subsidiary Guarantors may disclose to any Person any information that constitutes material non-public information regarding the Borrower or its securities for purposes of Regulation FD of the Securities and Exchange Commission or any other federal or state securities laws (it being acknowledged and agreed that the provisions of this Section 10.12 with respect to such information are reasonably necessary to comply with Regulation FD and/or such other federal and state securities laws) (such information referred to collectively herein as the "Borrower Information"), except that each of the Administrative Agent, the London Agent and each of the Lenders may disclose Borrower Information (i) to its and its affiliates' Agent/Lender Representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential), (ii) to the extent requested by any regulatory authority or the National Association of Insurance Commissioners, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this paragraph, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or to any direct or indirect contractual counterparties in swap agreements or such contractual counterparties' professional advisors, (vi) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis through no fault or action by any of the Lenders, the Administrative Agent, the London

Agent or the Subsidiary Guarantors, or (B) is or becomes available to the such Lenders, the Administrative Agent, the London Agent or the Subsidiary Guarantors on a nonconfidential basis from a source other than the Borrower and (vii) with the consent of the Borrower.

SECTION 10.13. "Credit Agreement" under Indentures; 1999 Credit Agreement.

(a) It is the intention of the parties hereto that this Agreement constitutes one of the successive renewals, substitutions, refinancings or replacements of the Credit Agreement dated as of June 29, 1993 between the Borrower, the Subsidiaries of the Borrower identified on the signature pages thereof under the caption "Subsidiary Guarantors", the lenders named therein and JPMorgan Chase Bank, as agent, referred to in the definition of "Credit Agreement" in Section 101 of the Senior Subordinated Note Indentures and that, accordingly, this Agreement constitutes the "Credit Agreement" under and as defined in the Senior Subordinated Notes Indentures.

(b) It is the intention of the parties hereto that this Agreement constitutes one of the successive renewals, substitutions, refinancings or replacements of the "Credit Agreement" referred to in each of the indentures listed in Part A of Schedule I, and that, accordingly, this



Agreement constitutes the "Credit Agreement" under and as defined in each such indenture.

(c) Notwithstanding anything to the contrary in this Agreement, to the extent that compliance by the Borrower with any provision of Article VI or VII would violate or conflict with any provision of the 1999 Credit Agreement, then such provision of Article VI or VII (as applicable) shall have no force or effect until on and after the Effective Date.

SECTION 10.14. Judgment Currency. This is an international loan transaction in which the specification of U.S. Dollars, Australian Dollars or an Alternative Currency, as the case may be (the "Specified Currency"), and any payment in New York County or the country of the Specified Currency, as the case may be (the "Specified Place"), is of the essence, and the Specified Currency shall be the currency of account in all events relating to Loans denominated in the Specified Currency. The payment obligations of the Borrower under this Agreement shall not be discharged by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on conversion to the Specified Currency and transfer to the Specified Place under normal banking procedures does not yield the amount of the Specified Currency at the Specified Place due hereunder. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified Currency into another currency (the "Second Currency"), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures the Applicable Agent could purchase the Specified Currency with the Second Currency on the Business Day next preceding that on which such judgment is rendered. The obligation of the Borrower in respect of any such sum due from it to the Applicable Agent or any Lender hereunder shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by the Applicable Agent or such Lender, as the case may be, of any sum adjudged to be due hereunder in the Second Currency to the Applicable Agent or such Lender, as the case may be, the Applicable Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase and transfer to

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the Specified Place the Specified Currency with the amount of the Second Currency so adjudged to be due; and the Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify the Applicable Agent or such Lender, as the case may be, against, and to pay the Applicable Agent or such Lender, as the case may be, on demand in the Specified Currency, any difference between the sum originally due to the Applicable Agent or such Lender, as the case may be, in the Specified Currency and the amount of the Specified Currency so purchased and transferred.

SECTION 10.15. Cleanup Period. The Lenders and the Administrative Agent acknowledge and agree that if, at any time during the period (herein, the "Cleanup Period") commencing on the Effective Date through but not including the 60th day following the Effective Date, the Borrower shall fail to cause the Target or any of its Subsidiaries to comply with any of the covenants herein or in any of the other Loan Documents, or if any of the representations or warranties made herein or in any of the other Loan Documents (or in any report, financial statement, certificate or other document furnished in connection herewith or therewith) by or on behalf of the Target or any of its Subsidiaries shall prove to have been incorrect in any material respect, then, notwithstanding anything herein to the contrary, such failure to comply with covenants (other than any such failure that is caused or authorized by the Borrower, it being understood that mere knowledge of a failure to comply shall not constitute authorization for purposes hereof) and any such incorrectness with respect to representations or warranties shall not constitute a Default or Event of Default hereunder until after the expiration of the Cleanup Period (and then only to the extent that the same is continuing).

SECTION 10.16. Delivery of Lender Addenda. Each Lender (other than the Swingline Lender and the Issuing Lender) shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender and the Borrower and, by executing its Lender Addendum, each such Lender agrees to be bound by the provisions hereof with the Commitments set forth opposite its name in such Lender Addendum.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CONSTELLATION BRANDS, INC.

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Executive Vice President and  
Chief Financial Officer

JPMORGAN CHASE BANK, as Swingline  
Lender, Issuing Lender and  
Administrative Agent

By /s/Martha Gurwit

-----  
Name: Martha Gurwit  
Title: Vice President

J.P. MORGAN EUROPE LIMITED,  
as London Agent

By /s/ Bruce Borden

-----  
Name: Bruce Borden  
Title: Vice President

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SUBSIDIARY GUARANTORS

ALLBERRY, INC.  
CLOUD PEAK CORPORATION  
FRANCISCAN VINEYARDS, INC.  
MT. VEEDER CORPORATION

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Vice President and Treasurer

ROBERTS TRADING CORP.

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: President and Treasurer

BATAVIA WINE CELLARS, INC.  
CONSTELLATION INTERNATIONAL HOLDINGS LIMITED  
CANANDAIGUA WINE COMPANY, INC.

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Treasurer

BARTON INCORPORATED  
BARTON BRANDS, LTD.  
BARTON BEERS, LTD.  
BARTON BEERS OF WISCONSIN, LTD.  
BARTON BRANDS OF CALIFORNIA, INC.  
BARTON BRANDS OF GEORGIA, INC.  
BARTON CANADA, LTD.  
BARTON DISTILLERS IMPORT CORP.  
MONARCH IMPORT COMPANY  
BARTON FINANCIAL CORPORATION

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Vice President

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CANANDAIGUA LIMITED

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Finance Director

CBI AUSTRALIA HOLDINGS PTY LIMITED

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Director and Chief Financial Officer

CONSTELLATION AUSTRALIA PTY LIMITED

By /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Director and Chief Financial Officer

Exhibit K

[Form of Lender Addendum]

LENDER ADDENDUM

Reference is made to the Amended and Restated Credit Agreement dated as of March 19, 2003 (as in effect on the date hereof, the "Credit Agreement") between Constellation Brands, Inc. (the "Borrower"), the Subsidiary Guarantors party thereto, the lenders party thereto (the "Lenders") and JPMorgan Chase Bank as Administrative Agent. Capitalized terms used and not defined herein have the respective meanings assigned thereto in the Credit Agreement.

Upon execution and delivery of this Lender Addendum by the parties hereto as provided in Section 10.16 of the Credit Agreement, the undersigned hereby becomes a Lender thereunder having the Commitments set forth opposite it signature below, effective as of the Effective Date.

This Lender Addendum shall be construed in accordance with and governed by the law of the State of New York. This Lender Addendum may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page hereof by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lender Addendum to be duly executed and delivered by their proper and duly authorized officers as of this \_\_\_\_ day of \_\_\_\_\_, 2003.

Commitments: [NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed:

CONSTELLATION BRANDS, INC.

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK,  
as Administrative Agent

By: \_\_\_\_\_  
Name:

Title:

The preceding form of Lender Addendum had been entered into with the Lenders listed below on or prior to March 27, 2003, the date of funding under the Credit Agreement. The Lender Addendum with respect to each Lender contains the commitments set forth opposite such Lender's name below. Subsequent to March 27, 2003, certain of the Lenders listed below have assigned all or a portion of their loans under the Credit Agreement pursuant to the terms of the Credit Agreement. Such assignments may also occur in the future.

<TABLE>  
<CAPTION>

COMMITMENTS			
-----			
			REVOLVING
			-----
LENDERS	TRANCHE A	TRANCHE B	LOAN
-----	-----	-----	-----
<S>	<C>	<C>	<C>
JPMorgan Chase Bank.....	\$25,000,000	\$229,659,200	\$25,000,000
Citicorp North America, Inc.....	\$25,000,000	\$229,659,200	\$25,000,000
UBS AG, Cayman Islands Branch.....	\$14,000,000	\$114,829,600	\$14,000,000
Bank of America, N.A.....	\$13,000,000	\$4,000,000	\$13,000,000
Bank One, NA.....	\$13,000,000	\$4,000,000	\$13,000,000
Barclays Bank Plc.....	\$13,000,000	\$3,000,000	\$13,000,000
CoBank, ACB.....	\$75,000,000	\$30,000,000	\$75,000,000
Commerzbank AG, New York and Grand Cayman Branches...	\$8,750,000	\$3,000,000	\$8,750,000
Commonwealth Bank of Australia.....	\$13,000,000		\$13,000,000
Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch.....	\$20,000,000	\$10,000,000	\$20,000,000
Credit Industriel et Commercial.....	\$8,750,000	\$3,000,000	\$8,750,000
Erste Bank.....	\$4,500,000		\$4,500,000
Farm Credit Services of Mid-America, PCA.....	\$12,000,000		\$12,000,000
Fleet National Bank.....	\$13,000,000	\$4,000,000	\$13,000,000
General Electric Capital Corporation.....		\$24,000,000	
Hamilton Floating Rate Fund, LLC.....		\$2,000,000	
Harris Trust & Savings Bank.....	\$13,000,000	\$4,000,000	\$13,000,000
HSBC Bank USA.....	\$13,000,000		\$13,000,000
IKB Capital Corporation.....		\$9,000,000	
Jupiter Loan Funding LLC.....		\$2,000,000	
KeyBank National Association.....	\$8,750,000		\$8,750,000
KZH CNC LLC.....		\$3,000,000	
KZH Crescent LLC.....		\$1,000,000	
KZH Crescent-2 LLC.....		\$2,000,000	
KZH Crescent-3 LLC.....		\$1,000,000	
KZH Cypress Tree-1 LLC.....		\$6,000,000	
KZH Highland-2 LLC.....		\$2,000,000	
KZH ING-2 LLC.....		\$6,000,000	
KZH Riverside LLC.....		\$2,034,000	
KZH Soleil LLC.....		\$2,106,000	
KZH Soleil-2 LLC.....		\$4,212,000	
KZH Sterling LLC.....		\$3,500,000	
KZH Waterside LLC.....		\$4,000,000	
Manufacturers and Traders Trust Company.....	\$12,500,000		\$12,500,000
Metropolitan Life Insurance Company.....		\$25,000,000	

COMMITMENTS			
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			REVOLVING
			-----
LENDERS	TRANCHE A	TRANCHE B	LOAN
-----	-----	-----	-----
MONEY Life Insurance Company of America.....		\$8,000,000	
Morgan Stanley Prime Income Trust.....		\$8,000,000	
Natexis Banques Populaires.....		\$10,000,000	
Pinehurst Trading, Inc.....		\$3,000,000	
Seminole Funding LLC.....		\$2,000,000	
Stanwich Loan Funding LLC.....		\$2,000,000	
SunTrust Bank.....	\$20,000,000	\$2,000,000	\$20,000,000
The Bank of New York.....	\$7,500,000		\$7,500,000
The Bank of Nova Scotia.....	\$20,000,000		\$20,000,000
The Norichunkin Bank, New York Branch.....	\$7,500,000		\$7,500,000
Toronto Dominion (New York), Inc.....		\$11,000,000	
United Overseas Bank Ltd., New York Agency.....	\$11,000,000		\$11,000,000
US Bank National Association.....	\$8,750,000		\$8,750,000

Wells Fargo Bank, N.A.....	\$20,000,000	\$10,000,000	\$20,000,000
Winged Foot Funding Trust.....		\$6,000,000	
	-----	-----	-----
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TOTAL	\$400,000,000	\$800,000,000	\$400,000,000

</TABLE>

The Registrant has omitted from this filing the Schedules and Exhibits listed below. The Registrant will furnish supplementally to the Commission, upon request, a copy of such Schedules and Exhibits.

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EXHIBIT B-4	-	Form of Luxembourg Equity Pledge Agreement
EXHIBIT C	-	Form of Guarantee Assumption Agreement
EXHIBIT D-1	-	Form of Opinion of U.S. Counsel to the Obligors
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EXHIBIT D-3	-	Form of Opinion of Luxembourg Counsel to the Obligors
EXHIBIT D-4	-	Form of Opinion of Australian Counsel to the Obligors (Effective Date)
EXHIBIT D-5	-	Form of Opinion of Australian Counsel to the Obligors (Implementation Date)
EXHIBIT E	-	Form of Opinion of Special New York Counsel to JPMorgan Chase
EXHIBIT F	-	Form of Intercompany Note
EXHIBIT G	-	Form of Officer's Certificate
EXHIBIT H	-	Draft Implementation Deed
EXHIBIT I	-	Cash Collateral Pledge Agreement
EXHIBIT J	-	Legal and Compliance Report

</TABLE>

=====
AMENDED AND RESTATED BRIDGE LOAN AGREEMENT

dated as of

January 16, 2003

Amended and Restated as of March 26, 2003

between

CONSTELLATION BRANDS, INC.,

The GUARANTORS Party Hereto,

The LENDERS Party Hereto

and

JPMORGAN CHASE BANK,
as Administrative Agent

J.P. MORGAN SECURITIES INC.

and

SALOMON SMITH BARNEY INC.,
as Joint Bookrunners

J.P. MORGAN SECURITIES INC.,

SALOMON SMITH BARNEY INC. and

UBS WARBURG LLC,

as Joint Lead Arrangers

CITICORP NORTH AMERICA, INC.,

as Syndication Agent

and

UBS WARBURG LLC,
as Documentation Agent

\$450,000,000

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Exhibit C-3 - Form of Opinion of Clayton Utz  
Exhibit D - Form of Opinion of Cahill Gordon & Reindel  
Exhibit E - Form of Guarantee Assumption Agreement  
Exhibit F - Form of Assignment and Acceptance  
Exhibit G - Form of Intercompany Note  
Exhibit H - Form of Officer's Certificate  
Exhibit I - Draft Implementation Deed  
Exhibit J - Legal and Compliance Report

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AMENDED AND RESTATED BRIDGE LOAN AGREEMENT dated as of January 16, 2003, amended and restated as of March 26, 2003, between CONSTELLATION BRANDS, INC., the GUARANTORS party hereto, the LENDERS party hereto and JPMORGAN CHASE BANK, as Administrative Agent.

The Borrower (as hereinafter defined), the Guarantors party



hereto, the Lenders party hereto, and the Administrative Agent are entering into this Agreement in order to amend and restate that certain Bridge Loan Agreement (the "Original Bridge Loan Agreement") dated as of January 16, 2003, to effect certain changes to the Original Bridge Loan Agreement. The parties hereto agree that the Original Bridge Loan Agreement is hereby amended and restated in its entirety as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Acquired Indebtedness" means Indebtedness of a Person (i) existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Indebtedness incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Restricted Subsidiary.

"Adjusted LIBO Rate" means, for the Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate for such Interest Period.

"Administrative Agent" means JPMorgan Chase, in its capacity as administrative agent for the Lenders hereunder, together with its successors and assigns.

"Administrative Agent Fee Letter" means the Fee Letter dated January 16, 2003 between the Borrower and the Administrative Agent.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any specified Person: (i) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; (ii) any other Person that owns, directly or indirectly, 5% or more

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of such Person's Capital Stock or any officer or director of any such Person or other Person or, with respect to any natural person, any Person having a relationship with such Person by blood, marriage or adoption not more remote than first cousin; or (iii) any other Person 10% or more of the voting Capital Stock of which is beneficially owned or held directly or indirectly by such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" means on any date, this Bridge Loan Agreement dated as of January 16, 2003, and amended and restated as of March 26, 2003, as it may be amended, supplemented, amended and restated or otherwise modified and in effect from time to time. For avoidance of doubt, references herein to the date of this Agreement shall refer to January 16, 2003.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Applicable Bridge Spread" means 375 basis points; provided that if the Bridge Loans are not repaid in whole on or prior to the date that is three-months following the Funding Date, the Applicable Bridge Spread shall increase by 75 basis points at the end of such three-month period and shall increase by an additional 75 basis points at the end of each three-month period thereafter; provided, further, that the applicable interest rate on such Loans shall in any event be subject to Section 2.03(a)(iii).

"Applicable Percentage" means, with respect to any Lender in respect of any indemnity claim under subsection 10.03(c) arising out of an action or omission of the Administrative Agent under this Agreement, the percentage of the total Commitments or Loans represented by the aggregate amount of such Lender's Commitments or Loans.

"Applicable Term Spread" means 75 basis points; provided that if the Term Loans are not repaid in whole on or prior to the date that is three

months after the Initial Maturity Date, the Applicable Term Spread shall increase by 75 basis points at the end of such three-month period and shall increase by an additional 75 basis points at the end of each three-month period thereafter; provided, further, that the applicable interest rate on such Loans shall in any event be subject to Section 2.03(a)(iii).

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"Approval Date" means the date of the meeting of shareholders of the Target in respect of the Target Acquisition.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset Sale" means any sale, issuance, conveyance, transfer, lease or other disposition (including, without limitation, by way of merger, consolidation or Sale and Leaseback Transaction) (collectively, a "transfer"), directly or indirectly, in one or a series of related transactions of: (i) any Capital Stock of any Restricted Subsidiary; (ii) all or substantially all of the properties and assets of any division or line of business of the Borrower or its Restricted Subsidiaries; or (iii) any other properties or assets of the Borrower or any Restricted Subsidiary, other than in the ordinary course of business. For the purposes of this definition, the term "Asset Sale" shall not include (x) any transfer of properties and assets (A) that is governed by Section 7.03(a) or (B) that is of the Borrower to any Restricted Subsidiary, or of any Subsidiary to the Borrower or any Subsidiary in accordance with the terms of this Agreement or (y) transfers of properties and assets in any given fiscal year with an aggregate Fair Market Value of less than \$3,000,000.

"Asset Swap" means the execution of a definitive agreement, subject only to customary closing conditions that the Borrower in good faith believes will be satisfied, for a substantially concurrent purchase and sale, or exchange, of Productive Assets between the Borrower or any of its Restricted Subsidiaries and another Person or group of affiliated Persons; it being understood that an Asset Swap may include a cash equalization payment made in connection therewith provided that such cash payment, if received by the Borrower or its Subsidiaries, shall be deemed to be proceeds received from an Asset Sale and applied in accordance with Section 2.05(a)(iv)(B) and Section 7.04(b).

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), and accepted by the Administrative Agent, in the form of Exhibit F or any other form approved by the Administrative Agent.

"ASX" means the Australian Stock Exchange Limited ACN 008 624 691.

"ASX Listing Rules" means the listing rules of the ASX in force from time to time.

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"Australian Acquisition Company 1" means CBI Australia Holdings Pty Limited ACN 103 359 299, an unlisted proprietary company incorporated in the Australian Capital Territory and a Wholly-Owned Subsidiary of the Borrower.

"Australian Acquisition Company 2" means Constellation Australia Pty Limited ACN 103 362 232, an unlisted proprietary company incorporated in the Australian Capital Territory and a Wholly-Owned Subsidiary of Australian Acquisition Company 1.

"Average Life to Stated Maturity" means, as of the date of determination with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (a) the number of years from the date of determination to the date or dates of each successive scheduled principal payment of such Indebtedness multiplied by (b) the amount of each such principal payment by (ii) the sum of all such principal payments.

"Bankruptcy Law" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States Federal or state law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" means, as to any Person, the board of directors or management or supervisory board of such Person, as the case may be, or any duly authorized committee thereof.

"Borrower" means Constellation Brands, Inc., a Delaware corporation, until a successor Person shall have become such pursuant to the applicable provisions of this Agreement, and thereafter "Borrower" shall mean such successor person.

"Borrower CDIs" means the securities of the Borrower in the form of CHESS Depository Interests to be listed on the Australian Stock Exchange.

"Borrower Shares" means the Class A common stock in the capital of the Borrower to be listed on the New York Stock Exchange.

"Borrowing Base" means the sum of (i) 85% of accounts receivable of the Borrower and its Subsidiaries and (ii) 50% of the net book value of the inventory of the Borrower and its Subsidiaries, in each case, as determined on a consolidated basis in accordance with GAAP.

"Bridge Loan" has the meaning assigned to that term in subsection 2.01(a).

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"Bridge Loan Commitment" has the meaning assigned to that term in subsection 2.01(a).

"Bridge Note" has the meaning assigned to that term in subsection 2.01(d).

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Capital Lease Obligation" means any obligation of the Borrower and its Restricted Subsidiaries on a Consolidated basis under any capital lease of real or personal property which, in accordance with GAAP, has been recorded as a capitalized lease obligation.

"Capital Stock" of any Person means any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock.

"Cash Consideration" has the meaning given to such term in the Implementation Deed.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.08(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Change of Control" means the occurrence of any of the following events:

(i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 30% of the voting power of the total outstanding Voting Stock of the Borrower voting as one class, provided that the Permitted Holders "beneficially own" (as so defined) a percentage of Voting Stock having a lesser percentage of the voting power than such other Person and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of the Borrower;

(ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Borrower (together

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with any new directors whose election to such Board of Directors or whose nomination for election by the shareholders of the Borrower was approved by a vote of 66 2/3% of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of Directors then in office;

(iii) the Borrower consolidates with or merges with or into any Person or conveys, transfers or leases all or substantially all of its assets to any Person, or any corporation consolidates with or merges into or with the Borrower, in any such event pursuant to a transaction in which the outstanding Voting Stock of the Borrower is changed into or exchanged for cash, securities or other property, other than any such transaction where the outstanding Voting Stock of the Borrower is not changed or exchanged at all (except to the extent necessary to reflect a change in the jurisdiction of incorporation of the Borrower) or where (A) the outstanding Voting Stock of the Borrower is changed into or exchanged for (x) Voting Stock of the surviving corporation which is not Redeemable Capital Stock or (y) cash, securities and other property (other than Capital Stock of the surviving corporation) in an amount which could be paid by the Borrower as a Restricted Payment in accordance with Section 7.05 (and such amount shall be treated as a Restricted Payment subject to the provisions set forth in Section 7.05) and (B) no "person" or "group" other than Permitted Holders owns immediately after such transaction, directly or indirectly, more than the greater of (1) 30% of the voting power of the total outstanding Voting Stock of the surviving corporation voting as one class and (2) the percentage of such voting power of the surviving corporation held, directly or indirectly, by Permitted Holders immediately after such transaction; or

(iv) the Borrower is liquidated or dissolved or adopts a plan of liquidation or dissolution other than in a transaction which complies with the provisions described in Section 7.03.

"Change of Control Offer" has the meaning assigned to that term in subsection 2.05(a) (iv) (A) (2).

"Change of Control Repayment Date" has the meaning assigned to that term in subsection 2.05(a) (iv) (A) (1).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commitments" means, collectively, the Bridge Loan Commitments and Term Loan Commitments.

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"Companies Act" means the Companies Act of 1985 of England and Wales, as amended from time to time.

"Compushare" has the meaning assigned to such term in Section 5.02 (b) (v).

"Consolidated Fixed Charge Coverage Ratio" of the Borrower means, for any period, the ratio of (a) the sum of Consolidated Net Income (Loss), Consolidated Interest Expense, Consolidated Income Tax Expense and Consolidated Non-cash Charges deducted in computing Consolidated Net Income (Loss) in each case, for such period, of the Borrower and its Restricted Subsidiaries on a Consolidated basis, all determined in accordance with GAAP to (b) the sum of Consolidated Interest Expense for such period and cash and non-cash dividends paid on any Preferred Stock of the Borrower and its Restricted Subsidiaries during such period; provided that (i) in making such computation, the Consolidated Interest Expense attributable to interest on any Indebtedness computed on a pro forma basis and (A) bearing a floating interest rate, shall be computed as if the rate in effect on the date of computation had been the applicable rate for the entire period and (B) which was not outstanding during the period for which the computation is being made but which bears, at the option of the Borrower, a fixed or floating rate of interest, shall be computed by applying at the option of the Borrower, either the fixed or floating rate and (ii) in making such computation, the Consolidated Interest Expense of the Borrower attributable to interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period.

"Consolidated Income Tax Expense" means for any period, as applied to the Borrower, the provision for federal, state, local and foreign income taxes of the Borrower and its Restricted Subsidiaries for such period as determined in accordance with GAAP on a Consolidated basis.

"Consolidated Interest Expense" of the Borrower means, without duplication, for any period, the sum of (a) the interest expense of the Borrower and its Restricted Subsidiaries for such period, on a Consolidated basis, including, without limitation, (i) amortization of debt discount, (ii) the net cost under interest rate contracts (including amortization of discounts), (iii) the interest portion of any deferred payment obligation and (iv) accrued interest, plus (b) (i) the interest component of the Capital Lease Obligations paid, accrued and/or scheduled to be paid or accrued by the Borrower and its Restricted Subsidiaries during such period and (ii) all capitalized interest of

the Borrower and its Restricted Subsidiaries, in each case as determined in accordance with GAAP on a Consolidated basis. Whenever pro forma effect is to be given to an acquisition or disposition of assets for the purpose of calculating the Consolidated Fixed Charge Coverage Ratio, the amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection with such acquisition or disposition of assets shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, as in effect on the date of such calculation.

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"Consolidated Net Income (Loss)" of the Borrower means, for any period, the Consolidated net income (or loss) of the Borrower and its Restricted Subsidiaries for such period as determined in accordance with GAAP on a Consolidated basis, adjusted, to the extent included in calculating such net income (loss), by excluding, without duplication: (i) all extraordinary gains or losses (less all fees and expenses relating thereto); (ii) the portion of net income (or loss) of the Borrower and its Restricted Subsidiaries allocable to minority interests in unconsolidated Persons to the extent that cash dividends or distributions have not actually been received by the Borrower or one of its Restricted Subsidiaries; (iii) net income (or loss) of any Person combined with the Borrower or any of its Restricted Subsidiaries on a "pooling of interests" basis attributable to any period prior to the date of combination; (iv) any gain or loss, net of taxes, realized upon the termination of any employee pension benefit plan; (v) net gains (but not losses) (less all fees and expenses relating thereto) in respect of dispositions of assets other than in the ordinary course of business; or (vi) the net income of any Restricted Subsidiary to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulations applicable to that Restricted Subsidiary or its stockholders. Whenever pro forma effect is to be given to an acquisition or disposition of assets for the purpose of calculating the Consolidated Fixed Charge Coverage Ratio, the amount of income or earnings related to such assets shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, as in effect on the date of such calculation.

"Consolidated Net Tangible Assets" means with respect to any Person, as of any date of determination, the book value of such Person's total assets, less goodwill, deferred financing costs and other intangibles and less accumulated amortization, shown on the most recent balance sheet of such Person, determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Worth" of any Person means the Consolidated stockholders' equity (excluding Redeemable Capital Stock) of such Person and its subsidiaries, as determined in accordance with GAAP on a Consolidated basis.

"Consolidated Non-cash Charges" of the Borrower means, for any period, the aggregate depreciation, amortization and other non-cash charges of the Borrower and its Restricted Subsidiaries for such period, as determined in accordance with GAAP on a Consolidated basis (excluding any non-cash charge which requires an accrual or reserve for cash charges for any future period).

"Consolidated Subsidiary" means, for any Person, each Subsidiary of such Person (whether now existing or hereafter created or acquired) the financial statements of which would be consolidated with the financial statements of such Person in accordance with

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GAAP. For purposes hereof, upon the Funding Date, the Target and its Subsidiaries shall be deemed to be "Consolidated Subsidiaries".

"Consolidation" means, with respect to any Person, the consolidation of the accounts of such Person and each of its subsidiaries if and to the extent the accounts of such Person and each of its subsidiaries would normally be consolidated with those of such Person, all in accordance with GAAP. The term "Consolidated" shall have a similar meaning.

"Constellation International Holdings" means Constellation International Holdings Limited, a New York corporation (f/k/a Canandaigua Europe Limited) and a Wholly-Owned Subsidiary of the Borrower.

"Corporations Act" means the Corporations Act 2001 (Commonwealth of Australia), as amended from time to time.

"Covered Taxes" means any and all present or future withholding taxes, including levies, imports, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Credit Agreement" means the Credit Agreement dated as of January 16, 2003, amended and restated as of March 19, 2003, among the Borrower, the Subsidiaries of the Borrower identified on the signature pages thereof, the lenders named therein and JPMorgan Chase Bank, as Administrative Agent,

including any deferrals, renewals, extensions, replacements, refinancings or refundings thereof or amendments, modifications or supplements thereto and any agreements therefor (including any of the foregoing that increase the principal amount of Indebtedness or the commitments to lend thereunder and have been made in compliance with the provisions of Section 7.01; provided that, for purposes of the definition of "Permitted Indebtedness," no such increase may result in the principal amount of Indebtedness of the Borrower under the Credit Agreement exceeding the amount permitted by Section 7.01(b)(i)), whether by or with the same or any other lender, creditor, group of lenders or group of creditors, and including related notes, guarantees and note agreements and other instruments and agreements executed in connection therewith.

"Debt Incurrence" means the incurrence by the Borrower or any of its Subsidiaries after the Effective Date of Indebtedness (other than (i) Indebtedness incurred under the Credit Agreement, (ii) Indebtedness incurred by Foreign Restricted Subsidiaries for working capital purposes in an aggregate principal amount incurred after the date of this Agreement not to exceed \$250,000,000 and (iii) Indebtedness permitted to be incurred under Section 7.01(b)(iv) or (v)).

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

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"Designation" has the meaning set forth in Section 7.10.

"Designation Amount" has the meaning set forth in Section 7.10.

"Disclosed Matters" means the actions, suits proceedings and the environmental matters disclosed in Schedule II.

"Dollars" and "\$" refer to lawful money of the United States of America.

"Domestic Restricted Subsidiary" means a Restricted Subsidiary of the Borrower organized under the laws of the United States or any political subdivision thereof or the operations of which are located substantially inside the United States.

"Effective Date" means the date on which the conditions specified in Section 5.01 are satisfied (or waived in accordance with Section 10.02).

"Eligible Trust Company" means a bank or trust company that is a corporation organized and doing business under the laws of the United States of America or the State of New York, in good standing and having its principal offices in the Borough of Manhattan, in The City of New York, which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority and which has a combined capital and surplus of not less than \$100,000,000.

"Environmental Claim" means, with respect to any Person, (a) any written notice, claim, demand or other written communication (collectively, a "claim") by any other Person alleging or asserting such Person's liability for investigatory costs, cleanup costs, governmental response costs, damages to natural resources or other Property, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, or Release into the environment, of any Hazardous Material at any location, whether or not owned by such Person, or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law. The term "Environmental Claim" shall include, without limitation, any written claim by any governmental authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence of Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

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"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage,

treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Issuance" means (a) any issuance or sale by the Borrower or any of its Subsidiaries after the Effective Date of (i) any of its capital stock, (ii) any warrants or options exercisable in respect of its capital stock or (iii) any other security or instrument representing an equity interest (or the right to obtain any equity interest) in the Borrower or any of its Subsidiaries (excluding any such security or instrument the issuance of which constitutes a Debt Incurrence) or (b) the receipt by the Borrower or any of its Subsidiaries after the Effective Date of any capital contribution (whether or not evidenced by any equity security issued by the recipient of such contribution); provided that Equity Issuance shall not include (w) any such issuance or sale by any Subsidiary of the Borrower to the Borrower, any Wholly-Owned Subsidiary thereof or any Joint Venture Entity, (x) any capital contribution by any Person other than the Borrower or any Subsidiary thereof to any Joint Venture Entity, (y) any capital contribution by the Borrower, any Wholly-Owned Subsidiary thereof or any Joint Venture Entity to any Subsidiary of the Borrower or any Joint Venture Entity or (z) any issuance of capital stock of the Borrower as "Scrip Consideration" under (and as defined in) the Target Acquisition Documents.

"Equity Rights" means, with respect to any Person, any subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including any shareholders' or voting trust agreements) to which such Person is a party for the issuance, sale, registration or voting of, or securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, such Person.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of

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ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Event of Default" has the meaning assigned to such term in Section 8.01.

"Excess Funding Guarantor" has the meaning set forth in Section 3.08.

"Excess Payment" has the meaning set forth in Section 3.08.

"Excess Proceeds" has the meaning set forth in Section 7.04.

"Excess Proceeds Offer" has the meaning set forth in subsection 2.05(a) (iv) (B) (1).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Note Indenture" means an indenture to be entered into among the Borrower, the Guarantors and an Eligible Trust Company, as trustee on behalf of holders of Exchange Notes, pursuant to Section 2.06, substantially in form to be agreed between the Borrower and the Administrative Agent and providing for interest rates and interest payment and calculation

methods and having a final maturity date, covenants, events of default and prepayment provisions substantially consistent with the interest rates, interest payment and calculation methods, Final Maturity Date, covenants, events of default and prepayment provisions applicable to Term Loans that are not Prepayable Term Loans herein; provided that (i) the Exchange Note Indenture shall provide that any Exchange Notes (for purposes of a resale of such Exchange Notes to a third party that was not a Lender on or prior to the Initial Maturity Date) held by a person that was a Lender on or prior to the Initial Maturity Date may be exchanged at the option of such holder for Exchange Notes having the same terms except that the interest rate on the Exchange Notes to be received in exchange, at the election of the exchanging holder, may have a fixed interest rate as determined by the exchanging holder but not to exceed 11.50% per annum; (ii) Exchange Notes held by a person that was a Lender on or prior to the Initial Maturity Date may be optionally redeemed by the Borrower at any time without penalty or premium; and (iii) Exchange Notes held by persons other than those con-

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templated by clause (ii) shall be noncallable prior to the third anniversary of the Initial Maturity Date and, thereafter, shall be optionally redeemable by the Borrower at any time with a premium equal to 50% of the interest rate in effect with respect to such Exchange Notes at the time of their issuance which premium shall decline ratably on an annual basis (on each anniversary of the Initial Maturity Date) to par in the final year of the Exchange Notes.

"Exchange Note Registration Rights Agreement" means a registration rights agreement to be entered into among the Borrower, the Guarantors and holders of Exchange Notes pursuant to Section 2.06, in a form to be agreed between the Borrower and the Administrative Agent.

"Exchange Notes" means the notes issued under the Exchange Note Indenture in exchange for Loans pursuant to Section 2.06, which notes shall be in the form attached to the Exchange Note Indenture and shall have the terms contemplated by the definition of "Exchange Note Indenture" above.

"Exchange Request" has the meaning assigned to that term in subsection 2.06(a).

"Excluded Taxes" means, with respect to the Administrative Agent or any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located.

"Execution Date" means the date of execution of this Agreement by all parties hereto.

"Existing Credit Agreement" means the Credit Agreement dated as of October 6, 1999 between the Borrower, the Guarantors party thereto, the Lenders party thereto and JPMorgan Chase, as Administrative Agent, as amended and in effect on the date hereof.

"Fair Market Value" means, with respect to any asset or property, the sale value that would be obtained in an arm's length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds

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brokers, as published on such day for the immediately preceding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for such preceding Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means the Initial Lender Fee Letter dated as of January 16, 2003 by and between Borrower and J.P. Morgan Securities Inc., Salomon Smith Barney Inc. and UBS Warburg LLC, as such letter may be amended, and in effect from time to time.

"Final Maturity Date" means the date that is the seven year anniversary of the Funding Date (or, if such date is not a Business Day, the immediately preceding Business Day).



"Financial Officer" means the chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of the Borrower.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Restricted Subsidiary" means a Restricted Subsidiary of the Borrower not organized under the laws of the United States or any political subdivision thereof and the operations of which are located substantially outside of the United States.

"Funding Date" means the date on which the conditions specified in Section 5.02 are satisfied (or waived in accordance with Section 10.02).

"GAAP" or "Generally Accepted Accounting Principles" means generally accepted accounting principles in the United States, consistently applied, which are in effect on the date of this Agreement.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" means the guarantee by each Guarantor of the Borrower's Obligations pursuant to a guarantee given in accordance with this Agreement, including the Guarantees by the Guarantors and any Guarantee delivered pursuant to the provisions of Section 7.07.

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"Guarantee Assumption Agreement" means a Guarantee Assumption Agreement substantially in the form of Exhibit E by an entity that, pursuant to Section 7.07, is required to become a "Guarantor" hereunder in favor of the Administrative Agent.

"Guaranteed Debt" of any Person means, without duplication, all Indebtedness of any other Person referred to in the definition of "Indebtedness" contained in this Section 1.01 guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to, or in any other manner invest in, the debtor (including any agreement to pay for property or services without requiring that such property be received or such services be rendered), (iv) to maintain working capital or equity capital of the debtor, or otherwise to maintain the net worth, solvency or other financial condition of the debtor or (v) otherwise to assure a creditor against loss; provided that the term "guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business.

"Guaranteed Obligations" means the prompt payment in full when due (whether at Stated Maturity, by acceleration or otherwise) of the principal of and interest on all Loans made by the Lenders to the Borrower and all other amounts owing from time to time to the Lenders or the Administrative Agent by the Borrower under this Agreement and by any Obligor under any of the other Loan Documents.

"Guarantor" means the Subsidiaries listed on the signature pages of this Agreement as guarantors and each other Subsidiary required to become a Guarantor after the date hereof pursuant to Section 7.07.

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

"Hedging Agreement" means, with respect to any Person, all interest rate swap or similar agreements or foreign currency or commodity hedge, exchange or similar agreements of such Person.

"Hedging Obligations" means, with respect to any Person, the Obligations of such Person under Hedging Agreements.

"Implementation Date" has the meaning given to such term in the Implementation Deed.

"Implementation Deed" means the Implementation Deed dated January 16, 2003 between the Target and the Borrower.

"Inactive Subsidiary" means, as at any date, any Subsidiary of the Borrower that as at the end of and for the fiscal quarter ending on or most recently ended prior to such date, shall have assets with a fair market value of less than \$1,000,000 and gross revenues of less than \$100,000, as so certified in the certificate of a Financial Officer of the Borrower delivered with respect to such fiscal quarter pursuant to Section 6.01(c). For purposes hereof, the fair market value of any trade name, trademark, service mark, logo, trade dress, trademark or service mark registration or application for trademark or service mark registration (including any rights related thereto) held by any Subsidiary shall be determined without giving effect to any licenses or user agreements granted by such Subsidiary to any other Person. The only Inactive Subsidiaries on the date hereof which are organized under the laws of the United States of America are the entities identified as such on Schedule III.

"Incur" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume, guarantee or otherwise become liable in respect of such Indebtedness or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence," "Incurred" and "Incurring" shall have meanings correlative to the foregoing). Indebtedness of any acquired Person or any of its Subsidiaries existing at the time such acquired Person becomes a Subsidiary (or is merged into or consolidated with the Borrower or any Subsidiary), whether or not such Indebtedness was Incurred in connection with, as a result of, or in contemplation of, such acquired Person becoming a Subsidiary (or being merged into or consolidated with the Borrower or any Subsidiary), shall be deemed Incurred at the time any such acquired Person becomes a Subsidiary or merges into or consolidates with the Borrower or any Subsidiary.

"Indebtedness" means, with respect to any Person, without duplication, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services, excluding any trade payables and other accrued current liabilities arising in the ordinary course of business, but including, without limitation, all obligations, contingent or otherwise, of such Person in connection with any letters of credit issued under letter of credit facilities, acceptance facilities or other similar facilities and in connection with any agreement to purchase, redeem, exchange, convert or otherwise acquire for value any Capital Stock of such Person, or any warrants, rights or options to acquire such Capital Stock, now or hereafter outstanding, (ii) all obligations of such Person evidenced by bonds, notes, debentures or other similar instruments, (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person

(even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), but excluding trade payables arising in the ordinary course of business, (iv) all Hedging Obligations of such Person, (v) all Capital Lease Obligations of such Person, (vi) all Indebtedness referred to in clauses (i) through (v) above of other Persons and all dividends of other Persons, the payment of which is secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or with respect to property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (vii) all Guaranteed Debt of such Person, (viii) all Redeemable Capital Stock valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued and unpaid dividends, and (ix) any amendment, supplement, modification, deferral, renewal, extension, refunding or refinancing of any liability of the types referred to in clauses (i) through (viii) above. For purposes hereof, the "maximum fixed repurchase price" of any Redeemable Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Redeemable Capital Stock as if such Redeemable Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the Fair Market Value of such Redeemable Capital Stock, such Fair Market Value to be determined in good faith by the board of directors of the issuer of such Redeemable Capital Stock.

"Indemnified Taxes" means Covered Taxes other than Excluded Taxes.

"Initial Lenders" means each of JPMorgan Chase Bank, Citicorp North America, Inc. and UBS AG, Cayman Islands Branch (or any Affiliate of any

of the foregoing that is regularly engaged in making or investing in loans similar to the Loans).

"Initial Maturity Date" means the first anniversary of the Funding Date (or, if such date is not a Business Day, the immediately preceding Business Day).

"Interest Period" means with respect to any Loan, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is three months thereafter; provided that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day.

"Investments" means, with respect to any Person, directly or indirectly, any advance, loan (including guarantees) or other extension of credit or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase, acquisition or ownership by such Person of any Capital Stock, bonds, notes, debentures or other securities issued or owned by, any other Person and all other items that would be classified as investments on a balance sheet prepared in accordance with GAAP.

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"Joint Venture Entity" means any corporation, limited liability company, partnership, association or other entity less than 100% of the ownership interests of which are owned by the Borrower or any Wholly-Owned Subsidiary thereof.

"JPMorgan Chase" means JPMorgan Chase Bank.

"Legal and Compliance Report" has the meaning given in the Implementation Deed.

"Lenders" means the Initial Lenders and any other Person that shall have become a party hereto pursuant to an Assignment and Acceptance, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Acceptance.

"LIBO Rate" means, for any Interest Period, the applicable rate appearing on Page 3750 of the Telerate Service of Bridge Information Services (or on any successor or substitute page of such Service or any successor to or substitute for such Service (in each case as determined by the Administrative Agent) providing rate quotations comparable to those currently provided on such page of such Service from time to time for purposes of providing quotations of interest rates applicable to deposits in Dollars in interbank market in London) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for the offering of deposits in Dollars with a three-month maturity.

In the event that such rate is not available at such time for any reason, then the LIBO Rate for such Interest Period shall be the rate (rounded upwards, if necessary, to the next 1/16 of 1%) at which Dollar deposits of \$5,000,000 with a three-month maturity are offered by the principal London office of JPMorgan Chase in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Lien" means any mortgage, charge, pledge, lien (statutory or otherwise), privilege, security interest, hypothecation or other encumbrance upon or with respect to any property of any kind, real or personal, movable or immovable, now owned or hereafter acquired.

"Loan Documents" means, collectively, (i) this Agreement, the Notes, the Guarantees, the Fee Letter, Administrative Agent Fee Letter, the Syndication Letter, the Exchange Notes, the Exchange Note Registration Rights Agreement and the Exchange Note Indenture, and (ii) each other agreement, certificate, document or instrument executed by the Borrower or any Subsidiary of the Borrower delivered in connection with any Loan Document and designated to be a "Loan Document," whether or not specifically mentioned herein or therein.

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"Loans" means, collectively, the Bridge Loans and Term Loans as each may be outstanding.

"Margin Stock" means "margin stock" within the meaning of Regulations T, U and X of the Board.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole, (b) the legal ability of any Obligor, or the financial capacity of all of the Obligors collectively, to perform any of its or their obligations under this Agreement or any of the other applicable Loan Documents or (c) the rights of or benefits available to the

Lenders under this Agreement or any of the other Loan Documents.

"Material Lender Provision Amendment" means any modification, supplement or waiver (whether direct or indirect) to the draft Implementation Deed which does or may reasonably be expected to do any of the following:

(x) increase the amount of the consideration under the Schemes;

(y) have a Material Adverse Effect; or

(z) has the effect of changing any of the conditions precedent in Section 4.1 of the Implementation Deed (except with respect to a waiver of any such conditions in accordance with Section 5.01(a)(viii)).

"Moody's" means Moody's Investor Services, Inc. or any successor thereto.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Proceeds" means (a) with respect to any Asset Sale by any Person, the proceeds thereof in the form of cash or Temporary Cash Investments including payments in respect of deferred payment obligations when received in the form of, or stock or other assets when disposed for, cash or Temporary Cash Investments (except to the extent that such obligations are financed or sold with recourse to the Borrower or any Restricted Subsidiary) net of (i) brokerage commissions and other actual fees and expenses (including fees and expenses of counsel and investment bankers) related to such Asset Sale, (ii) provisions for all taxes payable as a result of such Asset Sale, (iii) payments made to retire Indebtedness where payment of such Indebtedness is secured by the assets or properties the subject of such Asset Sale, (iv) amounts required to be paid to any Person (other than the Borrower or any Restricted Subsidiary) owning a beneficial interest in the assets subject to the Asset Sale and (v) appropriate amounts to be provided by the Borrower or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with

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such Asset Sale and retained by the Borrower or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an officers' certificate delivered to the Administrative Agent and (b) with respect to any issuance or sale of Capital Stock or options, warrants or rights to purchase Capital Stock, or debt securities or Capital Stock that have been converted into or exchanged for Capital Stock, as referred to in Section 7.05, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, including payments in respect of deferred payment obligations when received in the form of, or stock or other assets when disposed for, cash or Temporary Cash Investments (except to the extent that such obligations are financed or sold with recourse to the Borrower or any Restricted Subsidiary), net of attorneys' fees, accountants' fees and brokerage, consultation, underwriting and other fees and expenses actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

"Net Debt Proceeds" means the aggregate amount of all cash received by the Borrower and its Subsidiaries in a Debt Incurrence (net of expenses incurred by the Borrower and its Subsidiaries in connection therewith).

"Net Equity Proceeds" means the aggregate amount of all cash received by the Borrower and its Subsidiaries in respect of any Equity Issuance (net of expenses incurred by the Borrower and its Subsidiaries in connection therewith).

"1999 Indenture" means the Indenture dated as of February 25, 1999 between the Borrower, certain Subsidiaries and BNY Midwest Trust Company (successor Trustee to Harris Trust and Savings Bank), as trustee.

"Notes" means, collectively, the Bridge Notes and the Term Notes.

"Notice of Borrowing" means a notice substantially in the form of Exhibit B-1 delivered by Borrower to the Administrative Agent pursuant to subsection 2.01(b).

"Notice of Conversion" means a notice substantially in the form of Exhibit B-2 delivered by Borrower to the Administrative Agent pursuant to subsection 2.02(b).

"Obligations" means the obligations of the Borrower and any other obligor under this Agreement or under the Loans, including any Guarantor,

to pay principal of, premium, if any, and interest when due and payable, and all other amounts due or to become due under or in connection with this Agreement and the Loans and the performance of all other obligations to the Administrative Agent and the Lenders under this Agreement and the Loans, according to the terms hereof or thereof.

"Obligor" means each Borrower and each Guarantor.

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"Offering" has the meaning assigned to that term in Section 6.09(a).

"Other Indebtedness" has the meaning set forth in Section 7.07.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, but excluding all other U.S. federal taxes other than withholding taxes.

"Pari Passu Debt Amount" has the meaning specified in subsection 2.05(a) (iv) (B) (1).

"Pari Passu Indebtedness" means any Indebtedness of the Borrower or a Guarantor that is pari passu in right of payment with the Loans or a Guarantee, as the case may be.

"Pari Passu Offer" has the meaning set forth in subsection 2.05(a) (iv) (B) (1).

"Participant" has the meaning set forth in subsection 10.04(d).

"Payment Office" means (i) the office of the Administrative Agent located at 270 Park Avenue, New York, NY 10017, or (ii) such other office as may from time to time hereafter be designated as such in a written notice delivered by the Administrative Agent to the Borrower and each Lender.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Holders" means as of the date of determination (i) Marilyn Sands, Richard Sands and Robert Sands; (ii) family members or the relatives of the Persons described in clause (i) or the Mac and Sally Sands Foundation, Incorporated; (iii) any trusts created for the benefit of the Persons described in clause (i), (ii) or (v) or for the benefit of Andrew Stern or any trust for the benefit of any such trust; (iv) any partnerships that are controlled by (and a majority of the partnership interests in which are owned by) any of the Persons described in clause (i), (ii), (iii) or (v), Andrew Stern or any partnership that satisfies the conditions of this clause (iv); or (v) in the case of Marvin Sands and in the event of the incompetence or death of any of the Persons described in clauses (i) and (ii), such Person's estate, executor, administrator, committee or other personal representative or beneficiaries, in each case, who at any particular date shall beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Borrower.

"Permitted Indebtedness" has the meaning set forth in subsection 7.01(b).

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"Permitted Investment" means (i) Investments in any Wholly-Owned Restricted Subsidiary or any Person which, as a result of such Investment, becomes a Wholly-Owned Restricted Subsidiary; (ii) Indebtedness of the Borrower or a Restricted Subsidiary described under clauses (iv) and (v) of the definition of "Permitted Indebtedness"; (iii) Temporary Cash Investments; (iv) Investments acquired by the Borrower or any Restricted Subsidiary in connection with an Asset Sale permitted under Section 7.04 to the extent such Investments are non-cash proceeds as permitted under such Section; (v) guarantees of Indebtedness otherwise permitted by this Agreement; (vi) Investments in existence as of the date of this Agreement; and (vii) Investments in joint ventures in an aggregate amount not to exceed at any one time the greater of (x) \$50,000,000 and (y) 5.0% of Consolidated Net Tangible Assets.

"Permitted Payment" has the meaning set forth in subsection 7.05(b).

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

"Plan" means any employee pension benefit plan (other than a

Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Preferred Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's preferred stock, whether now outstanding or issued after the Effective Date, and including, without limitation, all classes and series of preferred or preference stock.

"Prepayable Exchange Note" means any Exchange Note held by a Person that was a Lender on or prior to the Initial Maturity Date.

"Prepayable Term Loan" means any Term Loan held by any Lender that was a Lender on or prior to the Initial Maturity Date.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Pro Rata Share" has the meaning set forth in Section 3.08.  
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"Productive Assets" means assets of a kind used or usable by the Borrower and its Restricted Subsidiaries in their respective businesses (including, without limitation, contracts, leases, licenses or other agreements of value to the Borrower or any of its Restricted Subsidiaries), provided, however, that productive assets to be acquired by the Borrower or any Restricted Subsidiary shall be, in the good faith judgment of management of the Borrower or such Restricted Subsidiary, assets which are reasonably related, ancillary or complementary to the business of the Borrower and its Restricted Subsidiaries as conducted on the Effective Date.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Qualified Capital Stock" of any Person means any and all Capital Stock of such Person other than Redeemable Capital Stock.

"Redeemable Capital Stock" means any Capital Stock that, either by its terms or by the terms of any security into which it is convertible or exchangeable or otherwise, is or upon the happening of an event (other than as a result of a change of control provision substantially similar to that contained in subsection 2.05(a)(iv)(A)) or passage of time would be, required to be redeemed prior to any Stated Maturity of the principal of the Term Loans or is redeemable at the option of the holder thereof at any time prior to any such Stated Maturity, or is convertible into or exchangeable for debt securities at any time prior to any such Stated Maturity at the option of the holder thereof.

"Register" has the meaning set forth in subsection 2.05(f).

"Related Parties" means, with respect to any specified Person, such specified Person's Affiliates and the respective directors, officers, employees, agents and advisors of such specified Person and such specified Person's Affiliates.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

"Required Lenders" means, at any time, Lenders holding at least a majority of (i) if prior to the Funding Date, the Bridge Loan Commitments, and (ii) if on or after the Funding Date, the Loans outstanding.

"Restricted Payment" has the meaning set forth in Section 7.05.

"Restricted Subsidiary" means any Subsidiary of the Borrower that has not been designated by the Board of

Directors of the Borrower, by a resolution of the Board of Directors of the Borrower delivered to the Administrative Agent, as an Unrestricted Subsidiary pursuant to Section 7.10. Any such designation may be revoked by a resolution of the Board of Directors of the Borrower delivered to the Administrative Agent, subject to the provisions of such covenant.

"Revocation" has the meaning set forth in subsection 7.10(c).

"Sale and Leaseback Transaction" means any transaction or series of related transactions pursuant to which the Borrower or a Restricted Subsidiary sells or transfers any property or asset in connection with the leasing, or the resale against installment payments, of such property or asset to the seller or transferor.

"SCH Business Rules" means the business rules of the ASX Settlement and Transfer Corporation Pty Ltd.

"Schemes" has the meaning given to such term in the Implementation Deed.

"Second Court Date" has the meaning given to such term in the Implementation Deed.

"Securities" means any stock, shares, partnership 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, as amended from time to time, and any successor statute.

"Senior Secured Facility Documentation" means, collectively, the Credit Agreement and the letters of credit, the promissory notes, guarantees, collateral documents and other instruments and agreements evidencing the Indebtedness of the Borrower incurred under the Credit Agreement.

"Senior Subordinated Note Indentures" means, collectively, (i) Supplemental Indenture No. 1, dated as of February 25, 1999, to the 1999 Indenture among the Borrower, as issuer, certain Subsidiaries, as guarantors, and BNY Midwest Trust Company (as successor to Harris Trust and Savings Bank), as trustee, with respect to the 8.50% Senior Subordinated Notes due 2009 in an original aggregate principal amount of U.S. \$200,000,000 and (ii) Supplemental Indenture No. 7, dated as of January 23, 2002, to the 1999 Indenture among the Borrower, as issuer, certain Subsidiaries, as guarantors, and BNY Midwest Trust Com-

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pany, as trustee, with respect to the 8 1/8% Senior Subordinated Notes due 2012 in an original aggregate principal amount of U.S. \$250,000,000.

"Senior Subordinated Notes" means Senior Subordinated Notes issued pursuant to the Senior Subordinated Note Indentures.

"Solvent" means, with respect to any Person at any time, that (a) the fair value of the Property of such Person is greater than the total amount of liabilities (including without limitation contingent liabilities) of such Person, (b) the present fair saleable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (d) such Person is not engaged in a business and is not about to engage in a business for which such Person's property would constitute an unreasonably small capital.

"Standard & Poor's" means Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon, means the dates specified in such Indebtedness as the fixed date on which the principal of such Indebtedness or such installment of interest is due and payable.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. All Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted

automatically on and as of the effective date of any change in any reserve percentage.

"Stock Based Plans " means, collectively, (i) the stock option and other stock purchase plans specified on Schedule IV hereto and (ii) all other stock option, stock-based incentive compensation and stock purchase plans and other stock-based plans of the Borrower or any of its Subsidiaries adopted from time to time hereafter in the ordinary course of business.

"Subordinated Indebtedness" means Indebtedness of the Borrower or a Guarantor subordinated in right of payment to the Loans or a Guarantee, as the case may be.

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"Subsidiary" means any Person a majority of the equity ownership or the Voting Stock of which is at the time owned, directly or indirectly, by the Borrower or by one or more other Subsidiaries, or by the Borrower and one or more other Subsidiaries.

"Syndication Letter" means the Syndication Letter dated January 16, 2003 between the Borrower, JPMorgan Chase, Citicorp North America, Inc., UBS AG, Stamford Branch, J.P. Morgan Securities Inc., Salomon Smith Barney Inc. and UBS Warburg LLC.

"Take-Out Banks" means Salomon Smith Barney Inc., J.P. Morgan Securities Inc. and UBS Warburg LLC.

"Take-Out Securities" has the meaning assigned to that term in subsection 6.09(a).

"Target" means BRL Hardy Limited ACN 008 273 907, a company organized under the laws of Australia.

"Target Acquisition" means the schemes of arrangement proposed between the Target and the holders of ordinary shares in the Target and the holders of options to subscribe for ordinary shares in the Target, by which Australia Acquisition Company 2 will acquire beneficially and legally all of the issued capital of the Target in accordance with the approvals granted by the Supreme Court of South Australia.

"Target Acquisition Documents" means, collectively:

- (a) the Implementation Deed;
- (b) the document described as "Scheme of Arrangement" proposed to be made between the Target and the holders of ordinary shares in the Target, to be dated upon approval of the scheme of arrangement described in the document;
- (c) the document described as "Scheme of Arrangement" proposed to be made between the Target and the holders of the options to subscribe for the ordinary shares in the Target; and
- (d) the Deed Poll proposed to be made by the Borrower in favor of the Scheme Shareholders and the Scheme Optionholders (as those terms are defined in the Implementation Deed).

"Target Credit Facilities" means, collectively:

- (a) the Facility Agreement between the Target and Commonwealth Bank of Australia dated September 15, 1994 (as amended); and

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- (b) the facilities agreement dated August 25, 1998 between the Target and Australia and New Zealand Banking Group Limited (as amended).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, but excluding all United States federal taxes other than withholding taxes.

"Temporary Cash Investments" means: (i) any evidence of Indebtedness of a Person, other than the Borrower or its Subsidiaries, maturing not more than one year after the date of acquisition, issued by the United States of America or an instrumentality or agency thereof and guaranteed fully as to principal, premium, if any, and interest by the United States of America, (ii) any certificate of deposit, maturing not more than one year after the date of acquisition, issued by, or time deposit of, a commercial banking institution that is a member of the Federal Reserve System and that has combined capital and surplus and undivided profits of not less than \$500,000,000, whose debt has a rating, at the time as of which any investment therein is made, of "P-1" (or higher) according to Moody's or any successor rating agency or "A-1" (or higher) according to Standard & Poor's or any successor rating agency, (iii) commercial paper, maturing not more than one year after the date of acquisition, issued by



a corporation (other than an Affiliate or Subsidiary of the Borrower) organized and existing under the laws of the United States of America with a rating, at the time as of which any investment therein is made, of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to Standard & Poor's and (iv) any money market deposit accounts issued or offered by a domestic commercial bank having capital and surplus in excess of \$500,000,000.

"Term Loan" has the meaning assigned to that term in subsection 2.02(a).

"Term Loan Commitment" has the meaning assigned to that term in subsection 2.02(a).

"Term Note" has the meaning assigned to that term in subsection 2.02(e).

"Transactions" means the execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is intended to be a party, the borrowing of Loans, the use of the proceeds thereof and the consummation of the Target Acquisition.

"Trigger Date" means (i) with respect to any Restricted Payment to be made or declared prior to the Initial Maturity Date or thereafter for as long as any Prepayable Term Loan or Prepayable Exchange Note is outstanding, the Effective Date and (ii) with respect to any Restricted Payment made or declared after the end of the period described in clause (i), in the case of Section 7.05(a)(3)(A), December 1, 1998, and in all other cases, November 17, 1999.

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"United States" or "U.S." means the United States of America, its fifty states and the District of Columbia.

"Unrestricted Subsidiary" means any Subsidiary of the Borrower designated as such pursuant to Section 7.10. Any such designation may be revoked by a resolution of the Board of Directors of the Borrower delivered to the Administrative Agent, subject to the provisions of Section 7.10.

"Voting Stock" means stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of a corporation (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

"Wholly-Owned Restricted Subsidiary" means any Restricted Subsidiary all the Capital Stock of which (other than directors' qualifying shares and up to 5% of the issued and outstanding Capital Stock which may be owned by executive officers of such Subsidiary) is owned by the Borrower or another Wholly-Owned Restricted Subsidiary.

"Wholly-Owned Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other entity of which all of the equity securities or other ownership interests (other than, in the case of a corporation, directors' qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. For purposes hereof, BB Servicios, S.A. de C.V. shall be deemed to be a Wholly-Owned Subsidiary so long as the direct or indirect ownership interest of the Borrower therein shall not fall below that indicated on Schedule III.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "here-

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under", and words of similar import, shall be construed to refer to this

Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "Property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.03. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect at the date of this Agreement.

## ARTICLE II

### AMOUNTS AND TERMS OF LOAN COMMITMENT AND LOANS; NOTES

#### SECTION 2.01. Bridge Loans and Bridge Notes.

(a) Bridge Loan Commitment. Subject to the terms and conditions of this Agreement, the Lenders hereby agree to make available to Borrower for borrowing on the Funding Date, subject to the conditions in Section 5.01, bridge loans (the "Bridge Loans") in an aggregate principal amount of up to \$450,000,000, each such Lender committing to lend the amount set forth next to such Lender's name on the signature pages hereto. The commitments of the Lenders to make the Bridge Loans to Borrower pursuant to this subsection 2.01(a) are herein called individually, a "Bridge Loan Commitment" and collectively, the "Bridge Loan Commitments."

(b) Notice of Borrowing. Borrower shall deliver to the Administrative Agent a Notice of Borrowing no later than 11:00 A.M. (New York time), at least one Business Day in advance of the Funding Date or such later time as shall be agreed to by the Administrative Agent. The Notice of Borrowing shall specify the date of borrowing (which shall be a Business Day) and the amount to be borrowed. Upon receipt of the Notice of Borrowing, the Administrative Agent shall promptly notify each Lender of its share of the Bridge Loans and the other matters covered by the Notice of Borrowing.

(c) Disbursement of Funds.

(i) No later than 12:00 Noon (New York time) on the Funding Date, each Lender shall make available its pro rata share of the Bridge Loans in the manner provided below. All amounts shall be made available to the Administrative Agent in Dollars in immediately available funds at the Payment Office, and the Administrative Agent shall promptly make available to Borrower by depositing to an account designated by Borrower at the Payment Office the aggregate of the amounts so made available in the type of funds received. Unless the Administrative Agent shall have been notified by any Lender prior to the Funding

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Date that such Lender does not intend to make available to the Administrative Agent its portion of the Bridge Loans, the Administrative Agent may assume that such Lender has made such amount available to it on such date, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, and the Administrative Agent has made available the same to Borrower, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon demand therefor by the Administrative Agent, the Administrative Agent shall promptly notify Borrower, and Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent shall also be entitled to recover from the Lender and/or Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (x) if paid by such Lender, the Federal Funds Effective Rate or (y) if paid by Borrower, the then applicable rate of interest on the Bridge Loans.

(ii) Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Bridge Loan Commitment hereunder or to prejudice any rights which Borrower may have against any Lender as a result of any default by such Lender hereunder.

(d) Bridge Notes. Borrower shall execute and deliver to each Lender (upon request by such Lender) on the Funding Date a Bridge Note dated the Funding Date substantially in the form of Exhibit A-1 to evidence the portion of the Bridge Loan made by such Lender and with appropriate insertions (collectively, the "Bridge Notes").

(e) Scheduled Repayment of Bridge Loan. Subject to Sections 2.02, 2.06 and 5.03, Borrower shall repay in full the outstanding amount of Bridge Loans and all other Obligations owing hereunder on the Initial Maturity Date by way of conversion into Term Loans pursuant to Section 2.02.

(f) Termination of Bridge Loan Commitments. The Bridge Loan Commitments shall automatically and permanently terminate in their entirety on the earlier of (i) the Funding Date immediately after the making of the Bridge Loans and (ii) the termination of the Commitments pursuant to Section 5.01 or 5.02.

(g) Pro Rata Borrowings. The Bridge Loans shall be made by the Lenders pro rata on the basis of their respective Bridge Loan Commitments. It is understood that no Lender shall be responsible for any default by any other Lender of its obligation to make its portion of the Bridge Loan hereunder and that each Lender shall be obligated to make its portion of the Bridge Loan hereunder, regardless of the failure of any other Lender to fulfill its commitments hereunder.

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#### SECTION 2.02. Term Loans and Term Notes.

(a) Term Loan Commitment. Subject to the satisfaction or waiver of the conditions set forth in Section 5.03, the Lenders hereby agree that on the Initial Maturity Date, all of the then outstanding Bridge Loans not converted to Exchange Notes pursuant to Section 2.06 shall convert into term loans (the "Term Loans") and shall thereupon be deemed to be indefeasibly repaid hereunder, such Term Loans to be in the aggregate principal amount of the then outstanding aggregate principal amount of the Bridge Loans not converted to Exchange Notes pursuant to Section 2.06. The commitments of Lenders to permit the conversion of the Bridge Loans to Term Loans under this subsection 2.02(a) are herein called individually, a "Term Loan Commitment" and collectively, the "Term Loan Commitments."

(b) Notice of Conversion. If Borrower has not repaid and does not intend to repay the Bridge Loans in full on or prior to the Initial Maturity Date, then Borrower shall deliver to the Administrative Agent a Notice of Conversion no later than 11:00 A.M. (New York time), at least one Business Day in advance of the Initial Maturity Date. The Notice of Conversion shall specify the principal amount of the Bridge Loans to be outstanding on the Initial Maturity Date to be converted into Term Loans.

(c) Making of Term Loans. Upon satisfaction or waiver of the conditions precedent set forth in Section 5.03, each Lender shall extend to Borrower the Term Loans to be made on the Initial Maturity Date by such Lender by canceling on its records a corresponding principal amount of the Bridge Loans held by such Lender, which corresponding principal amounts of Bridge Loans shall be satisfied by the conversion into Term Loans in accordance with this Section 2.02.

(d) Maturity of Term Loans. The Term Loans shall mature and Borrower shall pay in full the outstanding principal amount thereof and accrued interest thereon on the Final Maturity Date.

(e) Term Notes. Borrower shall execute and deliver to each Lender (upon request by such Lender) on the Initial Maturity Date a Term Note dated the Initial Maturity Date substantially in the form of Exhibit A-2 to evidence the Term Loan made on such date, in the principal amount of the Bridge Notes held by such Lender on such date and with other appropriate insertions (collectively, the "Term Notes").

#### SECTION 2.03. Interest on the Loans.

(a) Rate of Interest. The Loans shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by prepayment, acceleration or otherwise) at a rate determined as set forth below:

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(i) Bridge Loans. The Bridge Loans shall bear interest at a rate per annum equal to the greater of (i) the Adjusted LIBO Rate (adjusted on the first day of each Interest Period) plus the Applicable Bridge Spread and (ii) the highest interest rate then applicable to the Tranche B Term Loans under the Credit Agreement at any time, plus 75 basis points; provided, that if at any time after the Execution Date and prior to the Initial Maturity Date Borrower's senior unsecured credit rating drops below either (i) BB- by Standard & Poor's or (ii) Ba3 by Moody's, then the Applicable Bridge Spread shall be increased by (a) 50 basis points if Borrower's senior secured credit rating is at least B+ by Standard & Poor's and B1 by Moody's or (b) 100 basis points in all other cases, in each case effective as of the date of the relevant drop in credit rating.

(ii) Term Loans. The Term Loans shall bear interest at the rate of interest borne by the Bridge Loans on the Initial Maturity Date plus the Applicable Term Spread.

(iii) Maximum Interest. Notwithstanding clauses (i) and (ii) of this subsection 2.03(a) or any other provision herein, in no event will the interest on the Loans (other than post-maturity interest pursuant to subsection 2.03(c)) exceed 11.50% per annum. In no event will the interest rate on the Loans exceed the highest rate permitted under applicable law.

(b) Interest Payments. Interest shall be payable

(i) with respect to the Bridge Loans, in arrears on each March 31, June 30, September 30 and December 31 and upon any prepayment of the Bridge Loans (to the extent accrued on the amount being prepaid) and at maturity of the Bridge Loans in respect of any amounts paid on such date and not converted to Exchange Notes or Term Loans; and

(ii) with respect to the Term Loans, in arrears on each March 31, June 30, September 30 and December 31, commencing on the first of such dates to follow the Initial Maturity Date, and upon any prepayment of the Term Loans (to the extent accrued on the amount being prepaid) and at maturity of the Term Loans.

(c) Post-Maturity Interest. Any principal payments on the Loans not paid when due and, to the extent permitted by applicable law, any interest payment on the Loans not paid when due, in each case whether at Final Maturity Date, by notice of prepayment, by acceleration or otherwise, shall thereafter bear interest payable upon demand at a rate which is 2.0% per annum in excess of the rate of interest otherwise payable under this Agreement for the Loans.

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(d) Computation of Interest. Interest on the Loans shall be computed on the basis of actual days elapsed in a year of 360 days. In computing interest on the Loans, the date of the making of the Loans shall be included and the date of payment shall be excluded; provided, however, 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.

SECTION 2.04. Fee Letter. The Borrower agrees to pay to the Administrative Agent and certain of its Affiliates all fees, expenses and other obligations specified in the Administrative Agent Fee Letter at the times specified therein.

Except as otherwise provided in the Fee Letter or in the Administrative Agent Fee Letter, the fees or any part thereof payable hereunder and under the Fee Letter and the Administrative Agent Fee Letter will not be refundable under any circumstances, regardless of whether the transactions or borrowings contemplated hereby are consummated.

SECTION 2.05. Prepayments; Mandatory Offers and Payments.

(a) Prepayments.

(i) Voluntary Prepayments of Loans. Borrower may prepay outstanding Loans according to the following provisions at the times permitted in this subsection 2.05(a)(i), except that no such voluntary prepayment shall be permitted during the period beginning on the occurrence of any Change of Control after the Initial Maturity Date and ending on the date the related Change of Control Offer expires:

A. Voluntary Prepayments of Bridge Loans and Prepayable Term Loans.

(1) Voluntary Prepayment. The Borrower may, without payment of premium or penalty, upon not less than two Business Day's prior written or telephonic notice confirmed in writing to the Administrative Agent, at any time and from time to time, prepay the Bridge Loans and Prepayable Term Loans in whole or in part. Any such partial prepayment shall be made in amounts of not less than \$1,000,000.

Notice of prepayment having been given as aforesaid, the principal amount of the Bridge Loans and Prepayable Term Loans to be prepaid shall become due and payable on the prepayment date specified in such notice. Amounts of the Bridge Loans and Prepayable Term Loans so prepaid may not be reborrowed.

(2) Pro Rata Prepayment Under Exchange Note Indenture. If any Prepayable Exchange Notes are outstanding, any prepayment pursuant to clause (1) above shall be made pro rata with an optional redemption of Prepayable Exchange Notes under the Exchange Note Indenture.

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B. Voluntary Prepayments of Term Loans Other than Prepayable Term Loans.

(1) Voluntary Prepayment. Except as otherwise provided in this subsection 2.05(a)(i)(B), the Borrower may not prepay the Term Loans (other than Prepayable Term Loans) prior to the date that is the four year anniversary of the Funding Date. The Borrower may, upon not less than two Business Days' prior written or telephonic notice confirmed in writing to the Administrative Agent (or such shorter notice as is reasonably acceptable to the Administrative Agent) at any time and from time to time, on and after the date that is the four year anniversary of the Funding Date prepay the Term Loans, in whole or in part, in an aggregate minimum amount of \$5,000,000 (in the case of partial prepayments), at 100% of the principal amount thereof, plus a premium equal to, for each Lender, the interest rate in effect on such Lender's portion of the Term Loans on the date notice of prepayment is given multiplied by the following factor, plus accrued and unpaid interest thereon, if any, to the date of prepayment if prepaid during the twelve-month period commencing on the date of the year that is the anniversary of the Funding Date of the year set forth below:

YEAR	PREMIUM FACTOR
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2007.....	0.50
2008.....	0.25
2009 and thereafter...	0

(2) Pro Rata Prepayment Under Exchange Note Indenture. If any Exchange Notes (other than Prepayable Exchange Notes) are outstanding, any prepayment pursuant to clause (1) above shall be made pro rata with an optional redemption of Exchange Notes (other than Prepayable Exchange Notes) under the Exchange Note Indenture.

(3) No Reborrowing. Amounts of the Term Loans so prepaid may not be reborrowed.

(ii) Mandatory Prepayments of Loans. The Borrower will be required to prepay outstanding Loans according to the following provisions:

A. Net Debt Proceeds. Concurrently with the receipt by the Borrower or any Subsidiary of any Net Debt Proceeds, the Borrower shall deliver to the Administrative Agent a calculation of the amount of such Net Debt Proceeds, and make a mandatory prepayment of the Bridge Loans or Prepayable Term Loans in an amount equal to 100% of such Net Debt Proceeds; provided that, in the case of Loans the interest rate of which is determined by reference to Adjusted LIBO, Borrower may defer

payment to the last day of the Interest Period in which Borrower receives such Net Debt Proceeds.

B. Net Equity Proceeds. Concurrently with the receipt by the Borrower of any Net Equity Proceeds (other than Net Equity Proceeds received from the issuance or sale of capital stock in connection with Stock Based Plans in effect from time to time), the Borrower shall deliver to the Administrative Agent a calculation of the amount of such Net Equity Proceeds and make a mandatory prepayment of the Bridge Loans or Prepayable Term Loans in an amount equal to 100% of such Net Equity Proceeds; provided that, in the case of Loans the interest rate of which is determined by reference to Adjusted LIBO, Borrower may defer payment to the last day of the Interest Period in which Borrower receives such Net Equity Proceeds.

C. Pro Rata Prepayment with Mandatory Redemption of Prepayable Exchange Notes. If any Prepayable Exchange Notes are outstanding, any prepayment pursuant to clause (A) or (B) above shall be made pro rata with any mandatory redemption of Prepayable Exchange Notes required by the Exchange Note Indenture.

D. Notice. The Borrower shall notify the Administrative Agent of any prepayment to be made pursuant to subsection 2.05(a)(ii) at least two Business Days prior to such prepayment date (unless shorter notice is satisfactory to the Administrative Agent).

(iii) Prepayment Obligations; Application of Prepayments. All prepayments shall include payment of accrued interest on the principal amount so prepaid and shall be applied to payment of interest before application to principal.

(iv) Mandatory Offers to Repay Loans.

A. Mandatory Offer to Repay Term Loans on Change of Control.

(1) Upon the occurrence of a Change of Control after the Initial Maturity Date, each Lender shall have the right to require that the Borrower repay such Lender's Term Loans in an amount in cash equal to 101% of the principal amount thereof on the date of repayment plus accrued and unpaid interest, if any, to, such date of repayment (the "Change of Control Repayment Date").

(2) Within five days following any Change of Control after the Initial Maturity Date, the Borrower shall mail a notice to each Lender with a copy to the Administrative Agent (the "Change of Control Offer") stating:

(w) that a Change of Control has occurred and that such Lender has the right to require the Borrower to repay such Lender's Term Loans in an amount in cash

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equal to 101% of the principal amount thereof on the Change of Control Repayment Date, plus accrued and unpaid interest, if any, to, the Change of Control Repayment Date;

(x) the circumstances and relevant facts regarding such Change of Control;

(y) the Change of Control Repayment Date (which shall be 14 days after such notice is mailed); and

(z) the instructions, as determined by the Borrower, consistent with this subsection 2.05(a)(iv)(A), that a Lender must follow in order to have its Term Loans repaid.

(3) Lenders electing to have a Term Loan repaid shall be required to surrender the applicable Term Note (if any) to the Borrower at the address specified in the notice at least two Business Days prior to the Change of Control Repayment Date.

(4) On the repayment date, all Term Notes (if any) evidencing Term Loans to be repaid by the Borrower under this subsection 2.05(a)(iv)(A) shall be delivered by the Borrower to the Administrative Agent for cancellation, and Borrower shall repay the loans in the amount in cash set forth in clause (1) above plus accrued and unpaid interest, if any, on the Term Loans to be repaid to the Lenders entitled thereto.

(5) The Borrower will not, and will not permit any Subsidiary to, create or permit to exist or become effective any restriction (other than restrictions existing under Indebtedness as in effect on the date of this Agreement) that would materially impair the ability of the Borrower to make a Change of Control Offer to repay the Loans or, if such Change of Control Offer is made, to repay the Loans tendered for repayment.

B. Mandatory Offer to Repay Bridge Loans and Term Loans with Net Cash Proceeds.

(1) When the aggregate amount of Excess Proceeds equals \$10,000,000 or more, the Borrower shall apply the Excess Proceeds to the repayment of the Loans and any Pari Passu Indebtedness required to be repaid under the instrument governing such Pari Passu Indebtedness as follows: (a) the Borrower shall make an offer to repay (an "Excess Proceeds Offer") the Loans of all Lenders in accordance with the procedures set forth in this Agreement in the maximum principal amount (expressed as a multiple of \$1,000) of Loans that may be repaid out of an amount (the "Loan Amount") equal to the product of such Excess Proceeds multiplied by a fraction, the numerator of which is the outstanding principal amount of the Loans, and the denominator of which is the sum of the outstanding principal amount of the Loans and such Pari Passu Indebtedness (subject to proration in the event such amount is less than the aggregate Offered Price (as defined below) of all Loans tendered) and (b) to the ex-

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tent required by such Pari Passu Indebtedness to permanently reduce the principal amount of such Pari Passu Indebtedness, the Borrower shall make an offer to repay or otherwise repurchase or redeem Pari Passu Indebtedness (a "Pari Passu Offer") in an amount (the "Pari Passu Debt Amount") equal to the excess of the

Excess Proceeds over the Loan Amount; provided that in no event shall the Pari Passu Debt Amount exceed the principal amount of such Pari Passu Indebtedness plus the amount of any premium required to be paid to repay or otherwise repurchase or redeem such Pari Passu Indebtedness. The Loans shall be repaid in cash in an amount equal to 100% of the principal amount of the Loans plus accrued and unpaid interest, if any, to the date (the "Offer Date") such Excess Proceeds Offer is consummated (the "Offered Price"), in accordance with the procedures set forth in this Agreement. To the extent that the aggregate Offered Price of the Loans tendered pursuant to the Excess Proceeds Offer is less than the Loan Amount relating thereto or the aggregate amount of Pari Passu Indebtedness that is repaid or otherwise repurchased or redeemed is less than the Pari Passu Debt Amount (the amount of such shortfall, if any, constituting a "Deficiency"), the Borrower shall use such Deficiency in the business of the Borrower and its Restricted Subsidiaries. Upon completion of the repayment of all the Loans tendered pursuant to an Excess Proceeds Offer and the repayment, repurchase or redemption of the Pari Passu Indebtedness pursuant to a Pari Passu Offer, the amount of Excess Proceeds, if any, shall be reset at zero.

(2) If the Borrower becomes obligated to make an Excess Proceeds Offer pursuant to paragraph (1) above, the Loans shall be repaid by the Borrower, at the option of the Lenders, in whole or in part in integral multiples of \$1,000,000, on a date that is 14 days from the date notice is given to Lenders, subject to proration in the event the Loan Amount is less than the aggregate Offered Price of all Loans tendered.

(3) Subject to paragraph (1) above, within 5 days after the date on which the amount of Excess Proceeds equals or exceeds \$10,000,000, the Borrower shall mail a notice to each Lender with a copy to the Administrative Agent stating:

(i) that the Lender has the right to require the Borrower to repay, subject to proration, such Lender's Loans at the Offered Price;

(ii) the Offer Date (which shall not be later than the date that any Pari Passu Indebtedness or Exchange Notes are repaid with such Excess Proceeds);

(iii) the instructions, as determined by the Borrower, consistent with this subsection 2.05(a)(iv)(B), that a Lender must follow in order to have its Bridge Loans or Term Loans repaid; and

(iv) the circumstances and relevant facts regarding such Excess Proceeds Offer.

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(4) Lenders electing to have a Loan repaid shall be required to surrender the applicable Note (if any) to the Borrower at the address specified in the notice at least three Business Days prior to the repayment date.

(5) On the repayment date, all Notes (if any) evidencing Loans to be repaid by the Borrower under this subsection 2.05(a)(iv)(B) shall be delivered by the Borrower to the Administrative Agent for cancellation, and the Borrower shall repay the Loans in the amount in cash set forth in clause (1) above plus accrued and unpaid interest, if any, on the Loans to be repaid to the Lenders entitled thereto.

(6) If any Exchange Notes are outstanding, any offer to repay the Loans pursuant to this subsection 2.05(a)(iv)(B) shall be made pro rata with any offer to purchase required by the Exchange Note Indenture.

(a) Manner and Time of Payment. All payments of principal and interest and fees hereunder and under the Notes by the Borrower shall be made without defense, set-off or counterclaim and in same-day funds and delivered to the Administrative Agent, unless otherwise specified, not later than 12:00 noon (New York time) on the date due at the Payment Office for the account of the Lenders; funds received by the Administrative Agent after that time shall be deemed to have been paid by the Borrower on the next succeeding Business Day. The Borrower hereby authorizes the Administrative Agent to charge its account with the Administrative Agent in order to cause timely payment to be made of all principal, interest and fees due hereunder (subject to sufficient funds being available in its account for that purpose).

(b) Payments on Non-Business Days. Whenever any payment to be made hereunder or under the Notes shall be stated to be due on a day which is not a

Business Day, the payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of interest hereunder or under the Notes or of the commitment and other fees hereunder, as the case may be.

(c) Notation of Payment. Each Lender agrees that before disposing of any Note held by it, or any part thereof (other than by granting participations therein), such Lender will make a notation thereon of all principal payments previously made thereon and of the date to which interest thereon has been paid and will notify the Borrower of the name and address of the transferee of that Note; provided, however, that the failure to make (or any error in the making of) such a notation or to notify the Borrower of the name and address of such transferee shall not limit or otherwise affect the obligation of the Borrower hereunder or under such Notes with respect to the Loans and payments of principal or interest on any such Note (it being understood that the transferee takes subject to the defense of payment as to any payment made but not noted).

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(d) Payments in Dollars. All payments of any Obligations to be made hereunder or under the Notes by the Borrower or any other obligor with respect thereto shall be made solely in Dollars or such other currency as is then legal tender for public and private debts in the United States of America.

(e) Register. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent to maintain a register (the "Register") on which it will record the Loans made by each Lender and each repayment in respect of the principal amount of the Loans of each Lender. The entries in the Register shall be conclusive in the absence of manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as the owner of a Loan for all purposes of this Agreement. Failure to make any such recordation, or any error in such recordation shall not affect the Borrower's obligations hereunder in respect of such Loans. With respect to any Lender, the transfer of the Commitments of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register maintained by the Administrative Agent with respect to ownership of such Commitments and Loans and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Register only upon the receipt by the Administrative Agent of a properly executed and delivered Assignment and Acceptance pursuant to Section 10.04. Coincident with the delivery of such an Assignment and Acceptance to the Administrative Agent for acceptance and registration of assignment or transfer of all or part of a Loan, or as soon thereafter as practicable, the assigning or transferor Lender shall surrender the Note evidencing such Loan, if any, and thereupon one or more new Notes of the same type and in the same aggregate principal amount shall be issued to the assigning or transferor Lender and/or the new Lender upon the request of such Lender.

(f) Pro Rata Treatment of Payments. Except to the extent otherwise provided herein: (i) each payment or prepayment of principal of Loans by the Borrower shall be made for account of the relevant Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by the relevant Lenders; and (ii) each payment of interest on Loans by the Borrower shall be made for account of the relevant Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations and accrued interest thereon then due than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations; pro-

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vided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Obligor consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Obligor rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Obligor in the amount of



such participation.

SECTION 2.06. Exchange of Loans for Exchange Notes.

(a) Exchange Notes; Exchange Note Indenture. On the Initial Maturity Date following the written request of a Lender of a Bridge Loan given not less than ten and not more than 30 Business Days prior to the Initial Maturity Date to exchange all or a portion of such Lender's Bridge Loans for Exchange Notes, or on the tenth Business Day following the written request of the Lenders of any Term Loan to exchange all or a portion of such Lender's Term Loans for Exchange Notes (any such notice, an "Exchange Request"), the Borrower will:

(i) Execute and deliver, cause the Guarantors to execute and deliver, and cause an Eligible Trust Company to execute and deliver as trustee on behalf of holders of Exchange Notes, the Exchange Note Indenture if the Exchange Note Indenture has not previously been executed and delivered by such party;

(ii) Execute and deliver to such holder in accordance with the Exchange Note Indenture one or more Exchange Notes in exchange for the Loans or portion thereof being exchanged, which Exchange Notes shall be dated the date of issuance thereof, payable to the order of such holder or owner, as the case may be, in the same principal amount as the Loans or portion thereof being exchanged, and cause each Guarantor to endorse its guarantee thereon; and

(iii) Execute and deliver, and cause the Guarantors to execute and deliver, the Exchange Note Registration Rights Agreement if the Exchange Note Registration Rights Agreement has not previously been executed and delivered by such party or, if the Exchange Note Registration Rights Agreement has previously been executed and delivered and such holder is not already a party thereto, permit such holder to become a party thereto.

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(b) Exchange Request; Cancellation of Notes. The Exchange Request shall specify the principal amount of Loans to be exchanged pursuant to this Section 2.06, which shall be at least \$1,000,000 and integral multiples of \$1,000,000 in excess thereof (or, if any Lender holds Loans with an outstanding amount less than \$1,000,000, such remaining amount). On the date of issuance of Exchange Notes, the requesting Lender shall deliver the Notes, if any, evidencing the Loans or portion thereof to be exchanged. Upon issuance of the Exchange Notes, any Notes so delivered shall be canceled by Borrower and the corresponding amount of the Loans deemed repaid.

SECTION 2.07. Alternate Rate of Interest. If prior to the commencement of any Interest Period:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, such Loans shall bear interest at the Alternate Base Rate plus the Applicable Bridge Spread or Applicable Term Spread, as the case may be, less 100 basis points.

SECTION 2.08. Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lenders of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce

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the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company, if any, with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates from Lenders. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error (such certificate, in the case of any amount payable as specified in paragraph (a) of this Section, shall set forth in reasonable detail the calculation of such amount). The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

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

SECTION 2.09. Break Funding Payments. In the event of (a) the payment of any principal of any Loan other than on the last day of an Interest Period therefor (including as a result of an Event of Default, voluntary or optional prepayment or offer to repay), or (b) the failure to borrow or prepay any Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (including such loss, cost and expense as calculated below but otherwise excluding any lost profit): the loss to any Lender attributable to any such event shall be deemed to include an amount determined by such Lender to be equal to the excess, if any, of (i) the amount of interest that such Lender would pay for a deposit

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equal to the principal amount of such Loan for the period from the date of such payment, borrowing, failure or assignment to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, the duration of the Interest Period that would have resulted from such borrowing) if the interest rate payable on such deposit were equal to the Adjusted LIBO Rate for such Interest Period, over (ii) the amount of interest that such Lender would earn on such principal amount for such period if such Lender were to invest such principal amount for such period at the interest rate that would be bid by such Lender (or an affiliate of such Lender) for deposits in U.S. Dollars from other banks in the eurocurrency market at the commencement of such period.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error (such certificate to include in reasonable detail the calculation of such amount or amounts). The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

SECTION 2.10. Taxes.

(a) Payments Free of Covered Taxes. Any and all payments by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower or such Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent and such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender shall be

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conclusive absent manifest error (such certificate to include in reasonable detail the calculation of such amount).

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any Guarantor to a Governmental Authority, the Borrower or such Guarantor, as the case may be, shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Foreign Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by such Borrower, the properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.

(f) Refund. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Tax or Other Tax as to which it has been indemnified by the Borrower or any Guarantor under this Section 2.10, it shall pay over such refund to the Borrower or such Guarantor (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or such Guarantor under this Section 2.10 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower or such Guarantor, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or such Guarantor (plus any penalties, interest or other charges imposed by the relevant Government Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower, any Guarantor or any other Person.

SECTION 2.11. Mitigation Obligations. If any Lender requests compensation under Section 2.08, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.10, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.08 or 2.10, as

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the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

### ARTICLE III

#### GUARANTEE

SECTION 3.01. The Guarantee. The Guarantors hereby, jointly and severally, guarantee to each Lender and the Administrative Agent and their respective successors and assigns the Guaranteed Obligations. The Guarantors hereby further agree, jointly and severally, that if the Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations in respect of which such Guarantor is

obligated, such Guarantor will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of such Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 3.02. Obligations Unconditional. The obligations of the Guarantors under Section 3.01 are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Borrower under this Agreement or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section that the obligations of the Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. In full recognition and in furtherance of the foregoing, each Guarantor agrees that:

(a) Without affecting the enforceability or effectiveness of Section 3.01 in accordance with its terms and without affecting, limiting, reducing, discharging or terminating the liability of such Guarantor, or the rights, remedies, powers and privileges of the Administrative Agent and the Lenders under this Agreement or any other agreement or instrument referred to herein or therein, the Administrative Agent and the Lenders may, at any time and from time to time and without notice or demand of any kind or nature whatsoever:

(i) amend, supplement, modify, extend, renew, waive, accelerate or otherwise change the time for payment or performance of, or the terms of, all or any part of the Guaranteed Obligations (including any increase

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or decrease in the rate or rates of interest on all or any part of the Guaranteed Obligations);

(ii) amend, supplement, modify, extend, renew, waive or otherwise change, or enter into or give, any Loan Document or any agreement, security document, guarantee, approval, consent or other instrument with respect to all or any part of the Guaranteed Obligations, any Loan Document or any such other instrument or any term or provision of the foregoing (it being understood that this clause (ii) shall not be deemed to constitute a consent by any Guarantor to any such amendment with respect to any Loan Document to which it is a party);

(iii) accept or enter into new or additional agreements, security documents, guarantees, security documents or other instruments in addition to, in exchange for or relative to any Loan Document, all or any part of the Guaranteed Obligations or any collateral now or in the future serving as security for the Guaranteed Obligations;

(iv) accept or receive (including from any other Guarantor) partial payments or performance on the Guaranteed Obligations (whether as a result of the exercise of any right, remedy, power or privilege or otherwise);

(v) accept, receive and hold any additional collateral for all or any part of the Guaranteed Obligations (including from any other Guarantor);

(vi) release, reconvey, terminate, waive, abandon, allow to lapse or expire, subordinate, exchange, substitute, transfer, foreclose upon or enforce any collateral, security documents or guarantees (including letters of credit or the obligations of any other Guarantor) for or relative to all or any part of the Guaranteed Obligations;

(vii) apply any collateral or the proceeds of any collateral or guarantee (including any letter of credit or the obligations of any other Guarantor) to all or any part of the Guaranteed Obligations in such manner and extent as the Administrative Agent or any Lender may in its discretion determine;

(viii) release any Person (including any other guarantor) from any personal liability with respect to all or any part of the Guaranteed Obligations;

(ix) settle, compromise, release, liquidate or enforce upon such terms and in such manner as the Administrative Agent or the Lenders

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may determine or as applicable law may dictate all or any part of the Guaranteed Obligations or any collateral or guarantee (including any letter of credit issued with respect to) of all or any part of the Guaranteed Obligations;

(x) consent to the merger or consolidation of, the sale of substantial assets by, or other restructuring or termination of the corporate existence of the Borrower or any other Person (including any other Guarantor);

(xi) proceed against the Borrower or any other Guarantor or any other guarantor of (including any issuer of any letter of credit issued with respect to) all or any part of the Guaranteed Obligations or any collateral provided by any Person and exercise the right, remedies, powers and privileges of the Administrative Agent and the Lenders under this Agreement or any other agreement or instrument referred to herein or therein, or otherwise in such order and such manner as the Administrative Agent or any Lender may, in its discretion, determine, without any necessity to proceed upon or against or exhaust any collateral, right, remedy, power or privilege before proceeding to call upon or otherwise enforce Section 3.01 as to any Guarantor;

(xii) foreclose upon any deed of trust, mortgage or other instrument creating or granting liens on any interest in real Property by judicial or nonjudicial sale or by deed in lieu of foreclosure, bid any amount or make no bid in any foreclosure sale or make any other election of remedies with respect to such liens or exercise any right of set-off;

(xiii) obtain the appointment of a receiver with respect to any collateral for all or any part of the Guaranteed Obligations and apply the proceeds of such receivership as the Administrative Agent or any Lender may in its discretion determine (it being agreed that nothing in this clause (xiii) shall be deemed to make the Administrative Agent or any Lender a party in possession in contemplation of law, except at its option);

(xiv) enter into such other transactions or business dealings with any other Guarantor, the Borrower, any Subsidiary or Affiliate of the Borrower or any other guarantor of all or any part of the Guaranteed Obligations as the Administrative Agent or any Lender may desire; and

(xv) do all or any combination of the actions set forth in this Section.

(b) The enforceability and effectiveness of this Article and the liability of the Guarantors, and the rights remedies, powers and privileges of the Administrative Agent and the Lenders, under this Agreement or any other agreement or instrument re-

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ferred to herein or therein, shall not be affected, limited, reduced, discharged or terminated, and each Guarantor hereby expressly waives any defense now or in the future arising, by reason of:

(i) the illegality, invalidity, irregularity, authenticity, or unenforceability of all or any part of the Guaranteed Obligations, this Agreement or any other agreement or instrument referred to herein or therein, or any agreement, security document, guarantee or other instrument relative to all or any part of the Guaranteed Obligations;

(ii) any disability or other defense of the Borrower or any other Guarantor with respect to all or any part of the Guaranteed Obligations or any other guarantor of all or any part of the Guaranteed Obligations (including any issuer of any letters of credit), including the effect of any statute of limitations that may bar the enforcement of all or any part of the Guaranteed Obligations or the obligations of any such other guarantor;

(iii) the illegality, invalidity, irregularity, authenticity or unenforceability of any security or guarantee (including any letter of credit) for all or any part of the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of the priority of any lien on any collateral for all or any part of the Guaranteed Obligations;

(iv) the cessation, for any cause whatsoever, of the liability of the Borrower or any other Guarantor (other than subject to Section 3.05, by reason of the full payment and performance of all Guaranteed Obligations);

(v) any failure of the Administrative Agent or any Lender to marshal assets in favor of the Borrower or any other Person (including any other guarantor), to exhaust any collateral for all or any part of the Guaranteed Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against any other Guarantor, the Borrower, any other guarantor, all or any part of the Guaranteed Obligations or any other Person or to take any action whatsoever to mitigate or reduce such or any other Guarantor's liability under this Article, neither the Administrative Agent nor any Lender being under any obligation to take any such action notwithstanding the fact that all or any part of the Guaranteed Obligations may be due and payable and that the Borrower may be in default of its obligations under this Agreement or any other agreement or instrument referred to herein or therein;

(vi) any failure of the Administrative Agent or any Lender to give notice after any Default of sale or other disposition of any collateral (including any notice of any judicial or nonjudicial foreclosure or sale of any in-

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terest in real Property serving as collateral for all or any part of the Guaranteed Obligations) for all or any part of the Guaranteed Obligations to the Borrower, any Guarantor or any other Person or any defect in, or any failure by any Guarantor or any other Person to receive, any notice that may be given in connection with any sale or disposition of any collateral;

(vii) any failure of the Administrative Agent or any Lender to comply with applicable laws in connection with the sale or other disposition of any collateral for all or any part of the Guaranteed Obligations, including any failure to conduct a commercially reasonable sale or other disposition of any collateral for all or any part of the Guaranteed Obligations;

(viii) any judicial or nonjudicial foreclosure or sale of, or other election of remedies with respect to, any interest in real Property or other collateral serving as security for all or any part of the Guaranteed Obligations, even though such foreclosure, sale or election of remedies may impair the subrogation rights of any Guarantor or may preclude any Guarantor from obtaining reimbursement, contribution, indemnification or other recovery from any other Guarantor, the Borrower any other guarantor or any other Person and even though the Borrower may not, as a result of such foreclosure, sale or election of remedies, be liable for any deficiency;

(ix) any benefits the Borrower, any Guarantor or any other guarantor may otherwise derive from Sections 580(a), 580(b), 580(d) or 726 of the California Code of Civil Procedure or any comparable provisions of the laws of any other jurisdiction;

(x) any act or omission of the Administrative Agent, any Lender or any other person that directly or indirectly results in or aids the discharge or release of the Borrower or any other Guarantor, of all or any part of the Guaranteed Obligations or any security or guarantee (including any letter of credit) for all or any part of the Guaranteed Obligations by operation of law or otherwise;

(xi) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's principal obligation;

(xii) the possibility that the obligations of the Borrower to the Administrative Agent and the Lenders may at any time and from time to time exceed the aggregate liability of the Guarantors under this Article;

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(xiii) any counterclaim, set-off or other claim which either Borrower or any other Guarantor has or alleges to have with respect to all or any part of the Guaranteed Obligations;

(xiv) any failure of the Administrative Agent or any Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person;

(xv) the election by the Administrative Agent or any Lender, in a bankruptcy proceeding of any Person, of the application or nonapplication of Section 1111(b)(2) of the United States Bankruptcy Code;

(xvi) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code;

(xvii) any use of cash collateral under Section 363 of the United States Bankruptcy Code;

(xviii) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person;

(xix) the avoidance of any lien in favor of the Administrative Agent or any Lender for any reason;

(xx) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any part of the Guaranteed Obligations (or any interest on all or any part of the Guaranteed Obligations) in or as a result of any such proceeding;

(xxi) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, including by reason of Sections 2809, 2810, 2819, 2839, 2845, 2850, 2899, 3275 and 3433 of the California Civil Code, and any future judicial decisions or legislation or of any comparable provisions of the laws of any other jurisdiction; or

(xxii) diligence, presentment, demand of payment, protest and all notices whatsoever.

(c) Each Guarantor represents and warrants to the Administrative Agent that it has established adequate means of obtaining financial and other information

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pertaining to the business, operations and condition (financial and otherwise) of the Borrower in respect of whose Guaranteed Obligations it is obligated as a Guarantor and its properties on a continuing basis and that such Guarantor is now and will in the future remain fully familiar with the business, operations and condition (financial and otherwise) of the Borrower and its properties. Each Guarantor further represents and warrants that it has reviewed and approved this Agreement and the related Loan Documents and is fully familiar with the transactions contemplated by such Loan Documents and that it will in the future remain fully familiar with such transaction and with any new Loan Documents and the transaction contemplated by such Loan Documents. Each Guarantor hereby expressly waives and relinquishes any duty on the part of the Administrative Agent or the Lenders (should any such duty exist) to disclose to such or any other Guarantor any matter of fact or other information related to the business, operations or condition (financial or otherwise) of the Borrower or its properties or to any Loan Documents or the transactions undertaken pursuant to, or contemplated by, such Loan Documents, whether now or in the future known by the Administrative Agent or any Lender.

SECTION 3.03. Reinstatement. The obligations of the Guarantors under this Article shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantors jointly and severally agree that they will indemnify the Administrative Agent and each Lender on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

SECTION 3.04. Subrogation. Each Guarantor hereby waives all rights of subrogation or contribution, whether arising by contract or operation of law (including any such right arising under Bankruptcy Law) or otherwise by reason of any payment by it pursuant to the provisions of this Article until such time as the obligations under this Agreement have been indefeasibly paid and satisfied in full and the Commitments have terminated. Each Guarantor understands that, by reason of the foregoing provisions of this Section, the exercise by the Administrative Agent or any Lender of the rights, remedies, powers and privileges that it has under this Article and under the other Loan Documents will result in nonreimbursable liabilities under this Agreement. Nevertheless, each Guarantor hereby authorizes and empowers the Administrative Agent and the Lenders to exercise, in its or their sole discretion, any combination of such rights, remedies, powers and privileges as they, in their sole discretion, shall deem appropriate.

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SECTION 3.05. Remedies. Each Guarantor agrees, jointly and severally, that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Article VIII (and shall be deemed to have become automatically due and payable in the circumstances provided in Article VIII) for purposes of Section 3.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 3.01.

SECTION 3.06. Instrument for the Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Article constitutes an instrument for the payment of money, and consents and agrees that any Lender or the Administrative Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring motion-action under New York CPLR Section 3213.

SECTION 3.07. Continuing Guarantee. The guarantee in this

Article is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 3.08. Rights of Contribution. The Guarantors hereby agree, as between themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Guaranteed Obligations, each other Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Guarantor to any Excess Funding Guarantor under this Section shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Article and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this Section, (i) "Excess Funding Guarantor" means, in respect of any Guaranteed Obligations, a Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (ii) "Excess Payment" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (iii) "Pro Rata Share" means, for any Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Guarantor (excluding any shares of stock of any other Guarantor) exceeds the amount of all the debts and liabilities of such Guarantor (including

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contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder and any obligations of any other Guarantor that have been Guaranteed by such Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Borrower and the Guarantors hereunder and under the other Loan Documents) of all of the Guarantors, determined (A) with respect to any Guarantor that is a party hereto on the Effective Date, as of the Effective Date, and (B) with respect to any other Guarantor, as of the date such Guarantor becomes a Guarantor hereunder.

SECTION 3.09. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, Federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally (including "financial assistance" rules under the laws of England, including Sections 151 to and including 158 of the Companies Act), if the obligations of any Guarantor under Section 3.01 would otherwise, taking into account the provisions of Section 3.08, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 3.01, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Lender, the Administrative Agent or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding (or, in the case of Canandaigua Limited, be limited so as not to guarantee the portion of the Loans that are not permitted to be guaranteed under such "financial assistance" rules).

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that (subject to Section 10.14):

SECTION 4.01. Organization; Powers. Each of the Borrower and its Subsidiaries (excluding Inactive Subsidiaries) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 4.02. Authorization; Enforceability. The Transactions are within each Obligor's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed

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and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 4.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect and (ii) in the case of the Target Acquisition, as specified in Section 1.4(c)(i) of Schedule 1 of the Implementation Deed, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

SECTION 4.04. Financial Condition; No Material Adverse Change.

(a) Financial Condition. The Borrower has heretofore furnished to the Lenders the following:

(i) its consolidated balance sheet and statements of income, stockholders' equity and cash flows (x) as of and for the fiscal year ended February 28, 2002, reported on by Arthur Andersen LLP, independent public accountants, and (y) as of and for the fiscal quarter and the portion of the fiscal year ended November 30, 2002, certified by the chief financial officer of the Borrower; and

(ii) the consolidated balance sheet and income statement of the Target as of and for the six-month period ended June 30, 2002.

Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods, with respect to statements in clause (i) above only, in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in subclause (y) of clause (a)(i) and in clause (a)(ii) above.

(b) No Material Adverse Change. Since February 28, 2002, there has been no material adverse change in the business, assets, operations or condition, financial or other-

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wise, of the Borrower and its Subsidiaries (and including the Target and its Subsidiaries prior to the date the Target becomes a Subsidiary of the Borrower), taken as a whole.

SECTION 4.05. Properties.

(a) Property Generally. Each of the Borrower and its Subsidiaries (excluding Inactive Subsidiaries) has good title to, or valid leasehold interests in, all its real and personal Properties material to its business, except for minor defects in title or leasehold interests that do not interfere with its ability to conduct its business as currently conducted or to utilize such Properties for their intended purposes or where failure to have such title or interest could not reasonably be expected to have a Material Adverse Effect or Liens permitted to be incurred under Section 7.02.

(b) Intellectual Property. Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any failure to own or license any such trademarks, trade names, copyrights, patents and other intellectual property, or any such infringements that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.06. Litigation.

(a) Actions, Suits and Proceedings. There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if

adversely determined, could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions (other than the review of Target Acquisition by the Supreme Court of South Australia and customary proceedings arising in the ordinary course of business and from or otherwise relating to the Target Acquisition).

(b) Disclosed Matters. Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 4.07. Environmental Matters. Except as described in the Disclosed Matters, each of the Borrower and its Subsidiaries has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, except to the extent failure to have any such permit, license or authorization could not reasonably be expected to have a Material Adverse Effect. Each of such permits, licenses and authorizations is in full

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force and effect and each of the Borrower and its Subsidiaries is in compliance with the terms and conditions thereof, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except as described in Disclosed Matters and except to the extent failure to comply therewith could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

In addition, except as described in Disclosed Matters:

(a) No Pending Environmental Matters. No notice, notification, demand, request for information, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity with respect to any alleged failure by the Borrower or any of its Subsidiaries to have any environmental, health or safety permit, license or other authorization required under any Environmental Law in connection with the conduct of the business of the Borrower or any of its Subsidiaries or with respect to any generation, treatment, storage, recycling, transportation, discharge or disposal, or any Release of any Hazardous Materials generated by the Borrower or any of its Subsidiaries, in each case in circumstances which could reasonably be expected to have a Material Adverse Effect.

(b) No Permits Required; Certain Specific Representations. Neither the Borrower nor any of its Subsidiaries owns, operates or leases a treatment, storage or disposal facility requiring a permit under the Resource Conservation and Recovery Act of 1976, as amended, or under any comparable state, local or foreign statute; and

(i) no polychlorinated biphenyls (PCB's) are or have been present at any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

(ii) no asbestos or asbestos-containing materials is or has been present at any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

(iii) there are no underground storage tanks or surface impoundments for Hazardous Materials, active or abandoned, at any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

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(iv) except as otherwise authorized by Environmental Laws and/or environmental, health and safety permits and licenses, no Hazardous Materials have been Released at, on or under any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries in a reportable quantity established by statute, ordinance, rule, regulation or order; and

(v) no Hazardous Materials have been otherwise Released at, on or under any site or facility now or, during the Borrower's period of ownership, operation or lease, previously owned, operated or leased by the Borrower or any of its Subsidiaries;

that, in the case of any of clauses (i) through (v) above, could reasonably be expected to have a Material Adverse Effect.

(c) No Hazardous Material Transported to NPL Sites. Neither the Borrower nor any of its Subsidiaries has transported or arranged for the transportation of any Hazardous Material to any location that is listed on the National Priorities List ("NPL") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), listed for possible inclusion on the NPL by the Environmental Protection Agency in the Comprehensive Environmental Response and Liability Information System, as provided for by 40 C.F.R.ss. 300.5 ("CERCLIS"), or on any similar state or local list or that is the subject of Federal, state or local enforcement actions or other investigations that may lead to Environmental Claims against the Borrower or any of its Subsidiaries, except to the extent any such listing, enforcement, action or other investigation could not reasonably be expected (either individually or in the aggregate) to have a Material Adverse Effect.

(d) No Notifications or Listings. No oral or written notification of a Release of a Hazardous Material has been filed by or on behalf of the Borrower or any of its Subsidiaries and no site or facility now, to the Borrower's knowledge, or previously owned, operated or leased by the Borrower or any of its Subsidiaries is listed or proposed for listing on the NPL, CERCLIS or any similar state list of sites requiring investigation or clean-up that in any such case could reasonably be expected to result in remediation costs and fines that in the aggregate could reasonably be expected to have a Material Adverse Effect.

(e) No Liens or Restrictions. No Liens have arisen under or pursuant to any Environmental Laws on any site or facility owned, operated or leased by the Borrower or any of its Subsidiaries, and no government action has been taken or is in process that could subject any such site or facility to such Liens and neither the Borrower nor any of its Subsidiaries would be required to place any notice or restriction relating to the presence of Hazardous Materials at any site or facility owned by it in

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any deed to the real Property on which such site or facility is located, except to the extent any such event or action could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

(f) Full Disclosure. All environmental investigations, studies, audits, tests, reviews or other analyses conducted by or that are in the possession of the Borrower or any of its Subsidiaries in relation to facts, circumstances or conditions at or affecting any site or facility now or previously owned, operated or leased by the Borrower or any of its Subsidiaries and that could reasonably be expected to have a Material Adverse Effect have been made available to the Lenders.

SECTION 4.08. Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its Property and all indentures, agreements and other instruments binding upon it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. On the Execution Date and the Effective Date, no Default has occurred and is continuing.

SECTION 4.09. Investment and Holding Company Status. Neither the Borrower nor any of its Subsidiaries is (a) an "investment company" as defined in, or subject to regulation under, the Investment Borrower Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 4.10. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Person has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.11. ERISA. The Borrower and its ERISA Affiliates have fulfilled their respective obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and are in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and have not incurred any liability to the PBGC or any Plan or Multiemployer Plan (other than to make contributions, pay annual PBGC premiums or pay out benefits in the ordinary course of business).

SECTION 4.12. Disclosure. The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect (for purposes of this Section 4.12, the definition of "Material Adverse Effect" shall include the Target and its Subsidiaries as Subsidiaries of the Borrower). None of the reports, financial statements,

other information furnished by or on behalf of the Obligors to the Lenders in connection with the negotiation of this Agreement and the other Loan Documents or the Transactions delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and does not omit information that would render such projections misleading in any material respect.

SECTION 4.13. Use of Credit. Neither the 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, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any loan hereunder will be used to buy or carry any Margin Stock.

SECTION 4.14. Material Agreements and Liens.

(a) Material Agreements. Part A of Schedule I is a complete and correct list of each credit agreement (other than the Credit Agreement), loan agreement, indenture, purchase agreement, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness or any extension of credit (or commitment for any extension of credit) to, or guarantee by, the Borrower or any of its Subsidiaries outstanding as of January 16, 2003, the aggregate principal or face amount of which equals or exceeds (or may equal or exceed) \$10,000,000, and the aggregate principal or face amount outstanding or that may become outstanding under each such arrangement is correctly described in Part A of Schedule I.

(b) Liens. Part B of Schedule I is a complete and correct list of each Lien securing Indebtedness of any Person outstanding as of January 16, 2003, the aggregate principal or face amount of which equals or exceeds (or may equal or exceed) \$5,000,000 and covering any Property of the Borrower or any of its Subsidiaries, and the aggregate Indebtedness secured (or that may be secured) by each such Lien and the Property covered by each such Lien is correctly described in Part B of Schedule I.

SECTION 4.15. Capitalization. Except for conversion rights associated with the Borrower's Class B common stock, purchase rights and options associated with Stock Based Plans and as disclosed in Schedule IV, as of January 16, 2003 there are no outstanding Equity Rights with respect to the Borrower. As of January 16, 2003, except under Stock Based Plans, there are no outstanding obligations of the Borrower or any of its Subsidiaries to repurchase, redeem, or otherwise acquire any shares of capital stock of the Borrower nor are there any outstanding obligations of the Borrower or any of its Subsidiaries to make payments to any Person, such as "phantom stock" payments, where the amount thereof is calculated with reference to the fair market value or equity value of the Borrower or

any Subsidiary. The Borrower has heretofore delivered to the Administrative Agent a complete and correct copy of each Stock Based Plans specified on Schedule IV (as of January 16, 2003).

SECTION 4.16. Subsidiaries and Investments.

(a) Subsidiaries. Set forth in Part A of Schedule III (subject to the footnotes therein) is a complete and correct list of all of the Subsidiaries of the Borrower as of the date hereof, together with, for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding ownership interests in such Subsidiary and (iii) the nature of the ownership interests held by each such Person and the percentage of ownership of such Subsidiary represented by such ownership interests. Except as disclosed in Part A of Schedule III, (x) each of the Borrower and its Subsidiaries owns, free and clear of Liens, and (except with respect to Joint Venture Entities) has the unencumbered right to vote, all outstanding ownership interests in each Person shown to be held by it in Part A of Schedule III, (y) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (z) there are no outstanding Equity Rights with respect to such Person (other than Joint Venture Entities).

(b) Investments. Set forth in Part B of Schedule III is a complete and correct list of all Investments (other than Investments disclosed in Part A of Schedule III and other than Investments of the types referred to in clauses (b), (c), (e) and (f) of Section 7.06 of the Credit Agreement) held by the Borrower or any of its Subsidiaries in any Person as of January 16, 2003 and, for each such Investment, (x) the identity of the Person or Persons holding such Investment and (y) the nature of such Investment. Except as disclosed in Part B

of Schedule III, as of January 16, 2003 each of the Borrower and its Subsidiaries owns, free and clear of all Liens, all such Investments.

(c) Restrictions on Subsidiaries. None of the Subsidiaries of the Borrower is, on the date hereof, or will be on the Effective Date, subject to any indenture, agreement, instrument or other arrangement of the type described in the first paragraph of Section 7.09 (and not permitted by clauses (a) through (d) of said paragraph).

SECTION 4.17. Solvency. The Borrower and the Guarantors, taken as a whole, are and immediately after the making of the Bridge Loans will be, Solvent.

#### ARTICLE V

#### CONDITIONS

SECTION 5.01. Effective Date. The obligations of the Lenders to make Bridge Loans hereunder shall not become effective until the date requested by Borrower pur-

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suant to paragraph (b) below; provided, that on such requested date each of the following conditions has been satisfied (or waived in accordance with Section 10.02):

(a) Documents. The Administrative Agent shall have received each of the following documents, each of which shall be satisfactory to the Administrative Agent (and to the extent specified below, to each Lender) in form and substance:

(i) Executed Counterparts. From each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page to this Agreement) that such party has signed a counterpart of this Agreement.

(ii) Opinions of Counsel to the Obligors. Favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (x) Nixon Peabody LLP, U.S. counsel for the Obligors, in the form of Exhibit C-1, and covering such other customary matters relating to the Borrower, this Agreement or the Transactions as the Administrative Agent shall reasonably request, (y) McDermott, Will & Emery, U.K. counsel for the Obligors, in the form of Exhibit C-2, and covering such other customary matters relating to the Borrower and Canandaigua Limited as the Administrative Agent shall reasonably request (and each Obligor hereby instructs such counsel to deliver such opinions to the Lenders and the Administrative Agent) and (z) Clayton Utz, Australian counsel for certain of the Obligors, in the form of Exhibit C-3, and covering such other customary matters relating to Australian Acquisition Company 1 and Australian Acquisition Company 2 as the Administrative Agent shall reasonably request (and each such Obligor hereby instructs such counsel to deliver such opinions to the Lenders and the Administrative Agent).

(iii) Opinion of Special New York Counsel to JPMorgan Chase. An opinion, dated the Effective Date, of Cahill Gordon & Reindel, special New York counsel to the Administrative Agent, in the form of Exhibit D (and JPMorgan Chase hereby instructs such counsel to deliver such opinion to the Lenders).

(iv) Corporate Documents. Such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Obligor and the authorization of the Transactions and any other legal matters relating to the Obligors, this Agreement or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel (it being understood in respect of any Obligor that documents and certificates in substantially similar forms to

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documents and certificates delivered in respect of such Obligor under the Existing Credit Agreement shall be deemed to be reasonably satisfactory for purposes of this clause (iv)).

(v) Officer's Certificate. A certificate in the form of Exhibit H, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with Section 5.01(b), (c), (d) and (e).

(vi) Target Acquisition Documents. Copies of the Target Acquisition Documents, and of all other documents and materials filed or released publicly by the Borrower in connection with the Target Acquisition, certified as true, correct and complete copies thereof as of the Effective Date by the President, a Vice President or a Financial Officer of the

Borrower.

(vii) Credit Agreement. Evidence that the Credit Agreement is in full force and effect.

(viii) Amendments to Implementation Deed. Evidence that the Borrower has not (x) entered into, or consented to, whether directly or indirectly, any Material Lender Provision Amendment or (y) exercised its discretion in relation to the provision of consent to a "BRL Hardy Prescribed Occurrence" (as defined in the Implementation Deed) where such BRL Hardy Prescribed Occurrence is reasonably likely to result in a "BRL Hardy Material Adverse Change" (as defined in the Implementation Deed), in either case, between the date of this Agreement and the Effective Date without the prior written consent of the Administrative Agent acting with the consent of the Required Lenders or (z) entered into the Implementation Deed in a form materially different from the version of the Implementation Deed attached hereto as Exhibit I without the prior written consent of the Required Lenders (such consent not to be unreasonably withheld);

(ix) Amendments to the Legal and Compliance Report After Signing. The Administrative Agent (acting at the instruction of the Required Lenders) shall not have advised the Borrower in writing by the expiry of 5 Business Days from the date that the Borrower provides the Administrative Agent with a certified copy of the Legal and Compliance Report under section 6.01(h) that it has an objection to any matter not contained in the version of the Legal and Compliance Report annexed as Exhibit J to this Agreement which in the reasonable opinion of the Required Lenders could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Target and its Subsidiaries taken as a whole; and

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(x) Other Documents. Such other documents as the Administrative Agent or any Lender or special New York counsel to JPMorgan Chase may reasonably request;

(b) the Borrower shall have notified the Administrative Agent of a requested Effective Date under this Agreement and certified to the Administrative Agent that such requested Effective Date is the first date on which an application is to be made to the Supreme Court of South Australia for an order approving the "Share Scheme" (as defined in the Implementation Deed);

(c) the representations and warranties of the Borrower set forth in Sections 4.01, 4.02, 4.03, 4.04(a), 4.05, 4.06(a)(ii), 4.07(f), 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.16 of this Agreement, (but as to representations and warranties set forth in Sections 4.14 and 4.16 in all material respects), shall be true and correct on and as of the Effective Date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(d) no Default shall have occurred and be continuing on the Effective Date under clause (a), (b), (c)(ii), (d), (g), (h), (i), (j) (insofar as it relates to the representations made on the Effective Date) or (k) of Article VIII; and no Default shall have occurred and be continuing on the Effective Date under paragraph (c)(i) of Article VIII (including after assuming Article VII has been effective since the date of this Agreement) to the extent such Default occurred due to the Borrower's failure to observe or perform any covenant, condition or agreement specified in Section 6.01(f) or (g), 6.11 or 6.12; and no Event of Default shall have occurred and be continuing on the Effective Date under paragraph (c)(i) of Article VIII (including after assuming Article VII has been effective since the date of this Agreement) to the extent such Default occurred due to the Borrower's failure to observe or perform any covenant, condition or agreement contained in this Agreement (assuming for this purpose that the 30 day period specified in said clause (c)(i) is 10 days);

(e) prior to and during the syndication of the credit facilities evidenced by this Agreement there shall be no offering, placement or arrangement of any debt securities or bank financing (other than the Credit Agreement) by or on behalf of the Borrower or the Target or any Affiliate thereof in competition with the credit facilities evidenced hereby, and the Administrative Agent shall have received a written certificate from an officer of the Borrower to such effect;

(f) the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Initial Lender prior to 8 a.m. (Adelaide, Australia time) on the Approval Date to the effect that there shall have occurred a material disruption of or material adverse change in the financial, banking or capital

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market conditions that, in the reasonable judgment of such Initial Lender, has materially impaired the syndication of the credit facilities evidenced by this

Agreement; and

(g) the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Initial Lender prior to 8 a.m. (Adelaide, Australia time) on the Approval Date to the effect that, since February 28, 2002, there has been a material adverse change in the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries (for the purposes of this paragraph (g), the definition of "Material Adverse Effect" shall include the Target and its Subsidiaries as Subsidiaries of the Borrower).

The obligation of any Lender to make a Bridge Loan hereunder is also subject to the payment by the Borrower of such fees as the Borrower shall have agreed to pay to any Lender or the Administrative Agent in connection herewith, including the reasonable fees and expenses of Cahill Gordon & Reindel, special New York counsel to JPMorgan Chase, in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the extensions of credit hereunder (to the extent that statements for such fees and expenses have been delivered to the Borrower).

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans hereunder shall not become effective and the Commitments shall terminate unless each of the foregoing conditions is satisfied (or waived pursuant to Section 10.02) on or prior to 3:00 p.m., New York City time, on April 30, 2003 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 5.02. Borrowing to Consummate Target Acquisition. The obligations of the Lenders to make the Bridge Loans the proceeds of which are to be applied to finance the Target Acquisition shall be subject to the satisfaction (or waiver in accordance with Section 10.02) of the following conditions precedent on the date of the making of such Bridge Loans:

(a) the Administrative Agent shall have received evidence satisfactory to it that the principal of and interest on, and all other amounts owing in respect of, the Indebtedness outstanding under the Existing Credit Agreement and the Target Credit Facilities shall have been (or shall, in the case of the Target Credit Facilities, be simultaneously) paid in full, that any commitments to extend credit under the agreements or instruments relating to such Indebtedness shall have been canceled or terminated and that all Guarantees in respect of, and all Liens securing, any such Indebtedness shall have been released (or arrangements for such release reasonably satisfactory to the Required Lenders shall have been made);

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(b) the Administrative Agent shall have received each of the following documents, each of which shall be satisfactory to the Administrative Agent (and to the extent specified below, to each Lender) in form and substance:

(i) a certificate of the President, a Vice President or a Financial Officer of the Borrower addressed to the Administrative Agent and the Lenders certifying that, to his or her knowledge, all conditions precedent to Section 4.1 of the Implementation Deed have been satisfied, except for (i) the waiver by the Target of clauses 4.1(j) and/or (k) thereof, or clauses 4.1(j) and (k) thereof cease to have effect pursuant to clause 4.6 of the Implementation Deed, (ii) the waiver by the Borrower and, as required, the Target of any of the conditions in clauses (a), (b), (c), (l), (m), (n) and (o) of said Section 4.1, (iii) waiver by the Borrower of clauses 4.1(e) and/or (f) thereof (provided that the certificate is provided in accordance with Section 5.02(b)(iv) of this Agreement) or clauses 4.1(e) and (f) thereof cease to have effect pursuant to clause 4.6 of the Implementation Deed and (iv) with the prior written consent of the Required Lenders (which shall not be unreasonably withheld or delayed and which shall be required only where the event which is the subject of the waiver is reasonably likely to result in a BRL Hardy Material Adverse Change (as defined in the Implementation Deed), the waiver by the Borrower of clauses 4.1(g), (h) or (i) of the Implementation Deed, together with certified copies of each of the documents delivered under said Section 4.1;

(ii) a copy of the court orders approving the Target Acquisition in accordance with Section 411(4) of the Corporations Act (bearing an acknowledgement of receipt by the Australian Securities and Investment Commission) and certified by Clayton Utz;

(iii) a certificate signed by Clayton Utz stating that an office copy of the court orders referred to in clause (ii) above has been lodged with the Australian Securities and Investment Commission;

(iv) a certificate of the President, Vice President or a Financial Officer of the Borrower certifying:

(x) that all necessary actions have been taken and all

legal requirements satisfied to permit the valid issue of the Borrower Shares and Borrower CDIs to satisfy that part of the consideration payable by the Borrower in Borrower Shares or Borrower CDIs pursuant to the orders of the South Australian Supreme Court approving the Share Scheme (as defined in the Implementation Deed) and the number of such Borrower Shares and Borrower CDIs and that there is existing no judgment, injunction or other order which would prevent such issue; or

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(y) that the Borrower will not use Borrower Shares or Borrower CDIs to satisfy that part of the consideration payable by the Borrower in Borrower Shares or Borrower CDIs, and specifying the amount (if any) to be drawn pursuant to this Agreement;

in either case to ensure to the reasonable satisfaction of the Administrative Agent that the full consideration payable by the Borrower pursuant to the orders of the South Australian Supreme Court approving the Share Scheme (as defined in the Implementation Deed) will be satisfied;

(v) evidence that the following steps have taken place: (w) delivery of a transfer or transfers in respect of all of the shares in the Target to Computershare Investor Services Pty Limited ACN 078 279 277 ("Compushare") in a form approved by the Administrative Agent, acting reasonably; (x) confirmation of registration of the transfer or transfers by Compushare by the issuing of an issuer-sponsored holding statement in the name of Australian Acquisition Company 2 for all of the shares of the Target as evidence that all of the shares of the Target have been validly and effectively transferred to Australian Acquisition Company 2; (y) establishment by Borrower (or another Obligor designated by Borrower) of an Australian dollar denominated account (the "Australian Account") with and in the name of a bank (the "Account Bank") that is an affiliate of Citibank, N.A., located in Australia; and (z) the execution and delivery of an agreement in form and substance reasonably satisfactory to the Administrative Agent among, inter alia, the Account Bank and the Borrower (or such other Obligor), which agreement shall provide the mechanism and procedures for the payment of funds from the Australian Account to Target shareholders (by issuance of checks drawn on the Australian Account or by such other means as may be reasonably acceptable to the Administrative Agent);

(vi) prior to the time of delivery of a transfer or transfers in respect of all of the shares in the Target to Compushare, evidence that the Borrower has established a share register in the Australian Capital Territory and has done everything required (including giving all necessary notices) to ensure that after registration of the transfer or transfers, all of the shares in the Target will be on that share register; and

(vii) a certificate of the President, Vice President or a Financial Officer of the Borrower certifying the Cash Consideration in respect of the Target Acquisition and the aggregate amount of Indebtedness owing under the Target Credit Facilities and the amount of proceeds of the Credit Agreement

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and the amount of Indebtedness incurred under this Agreement, that the Borrower intends to apply to pay such Cash Consideration and Indebtedness;

(c) the representations and warranties of the Borrower set forth in Sections 4.01, 4.02, 4.03, 4.04(a), 4.05, 4.06(a) (ii), 4.07(f), 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.16 of this Agreement (but as to representations and warranties set forth in Sections 4.14 and 4.16, in all material respects), and of each Obligor in each of the other Loan Documents to which it is a party (but as to such other Loan Documents, in all material respects), shall be true and correct on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(d) no Default shall have occurred and be continuing on such date under clause (a), (b), (c) (ii), (d), (g), (h), (i), (j) (insofar as it relates to the representations made on the Effective Date) or (k) of Article VIII; and no Default shall have occurred and be continuing on such date under paragraph (c) (i) of Article VIII to the extent such Default occurred due to the Borrower's failure to observe or perform any covenant, condition or agreement specified in Section 6.01(f), 6.01(g), 6.02(a) 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.11 or 6.12; and no Event of Default shall have occurred and be continuing on such date under paragraph (c) (i) of Article VIII to the extent such Default occurred due to the Borrower's failure to observe or perform any covenant, condition or agreement contained in this Agreement (assuming for this purpose that the 30 day period specified in said clause (c) (i) is 10 days);

(e) such date shall be on or after the "Effective Date" (as defined in the Implementation Deed);



(f) if the "Effective Date" (as defined in the Implementation Deed) has not occurred by 7 p.m. (Adelaide, Australia time) on the 10th Business Day following the Approval Date, the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Initial Lender prior to 8 a.m. (Adelaide, Australia time) on the Second Court Date to the effect that there shall have occurred a material disruption of or material adverse change in the financial, banking or capital market conditions that, in the reasonable judgment of such Initial Lender, has materially impaired the syndication of the credit facilities evidenced by this Agreement; and

(g) if the "Effective Date" (as defined in the Implementation Deed) has not occurred by 7 p.m. (Adelaide, Australia time) on the 10th Business Day following the Approval Date, the Borrower shall not have received written notice (together with a reasonably detailed description thereof) from any Initial Lender prior to 8 a.m. (Adelaide, Australia time) on the Second Court Date to the effect that, since February 28, 2002, there has been a material adverse change in the business, assets, operations or

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condition, financial or otherwise, of the Borrower and its Subsidiaries (for the purpose of this paragraph (f), the definition of "Material Adverse Effect" shall include the Target and its Subsidiaries as Subsidiaries of the Borrower); and

(h) prior to or simultaneously with any funding hereunder, all of the term loans under the Credit Agreement shall have been funded;

provided, however, that the conditions in Section 5.02(c), (d), (e) and (f) shall be deemed satisfied at the time that Borrower shall have borrowed the full amount of the term loans under the Credit Agreement.

The Administrative Agent shall notify the Borrower and the Lenders of the satisfaction (or waiver in accordance with Section 10.02) of the conditions specified in this Section 5.02, and such notice shall be conclusive and binding. Anything herein to the contrary notwithstanding, (a) the aggregate amount of Bridge Loans the proceeds of which are to be applied to finance the Target Acquisition that may be borrowed pursuant to this Section 5.02 may not exceed (together with the full amount of the term loans borrowed under the Credit Agreement) the aggregate amount of the Cash Consideration in respect of the Target Acquisition and all Indebtedness owing under the Target Credit Facilities and the Existing Credit Facilities and (b) the obligations of the Lenders to make Bridge Loans as provided in this Section 5.02 shall not become effective and the Commitments shall terminate unless each of the foregoing conditions is satisfied (or waived pursuant to Section 10.02) on or prior to 3:00 p.m., New York City time, on April 30, 2003.

The Borrowing of Bridge Loans the proceeds of which will be used to finance the Target Acquisition shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in the clauses (c) and (d) of this Section.

SECTION 5.03. Conditions to Term Loans. The obligations of the Lenders to make the Term Loans on the Initial Maturity Date are subject to the prior or concurrent satisfaction or waiver of the following conditions precedent:

(A) Notice of Conversion. The Administrative Agent shall have received in accordance with the provisions of subsection 2.02(b) an originally executed Notice of Conversion.

(B) No Event of Default or Payment Default; No Acceleration. No Event of Default shall have occurred and be continuing under subsections 8.01(a) and (b) (in respect of principal or interest), 8.01(d) or 8.01(f), and neither the Borrower nor any Restricted Subsidiary shall be subject to any proceeding of the kind described in subsection 8.01(h) or (i), and the Bridge Loans shall not have been accelerated in accordance with the terms of Section 8.01.

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(C) Forms of Exchange Note Indenture and Exchange Note Registration Rights Agreement. On or prior to the Initial Maturity Date, the Administrative Agent shall have received forms of an Exchange Note Indenture and Exchange Note Registration Rights Agreement reasonably satisfactory in form and substance to the Administrative Agent.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

From and after the Effective Date (except for Sections 6.01(f) and (g), 6.11 and 6.12, which shall apply from the date hereof) and until the Commitments have expired or been terminated and the principal of and interest on

each Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 100 days after the end of each fiscal year of the Borrower (or ten (10) days after such shorter period as may be required for filing the Borrower's Annual Report on Form 10-K with the Securities and Exchange Commission), the audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 55 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or ten (10) days after such shorter period as may be required for filing the Borrower's Quarterly Report on Form 10-Q with the Securities and Exchange Commission), the consolidated balance sheet and related statements of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for such fiscal quarter (for the statement of operations only) and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of the previous fiscal year (or, in the case of the balance sheet, as of the end of the previous fiscal year), all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Sub-

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sidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) of this Section, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 4.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) concurrently with any delivery of financial statements under clause (a) of this Section, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any of its Subsidiaries with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally or to holders of other unsecured Indebtedness of the Borrower generally, as the case may be;

(f) promptly after the same becomes available, copies of (i) the consolidated balance sheet, statement of income and statement of cash flows of the Target as of and for the nine-month period ended November 30, 2002 (with a reconciliation to GAAP for any material discrepancies), and (ii) the Appendix 4B (and any replacement thereof) of the ASX Listing Rules in respect of the Target for the year ended December 31, 2002 and copies of the audited accounts on which that Appendix 4B is based;

(g) promptly after the same becomes available, copies of the pro forma consolidated balance sheet, statement of income and statement of cash flows of the Borrower (including of the Target and its Subsidiaries) as of and for the nine-month period ended November 30, 2002 and based on estimates with respect to the Target as at November 30, 2002 prepared under the assumption that the Target Acquisition had been consummated on March 1, 2002;

(h) promptly after the same becomes available, a certified copy of any Legal and Compliance Report received by the Borrower under the Implementation Deed, any other document or information received by the Borrower that qualifies the repre-

sentations and warranties made by the Target or any of its Related Parties under the Implementation Deed and any further or new information received by the Borrower under clause 1.2(d) of Schedule 1 of the Implementation Deed; and

(i) promptly following any request therefor, such other information (including without limitation information regarding the operations, business affairs and financial condition) of the Borrower or any of its Subsidiaries, or compliance with the terms of this Agreement and the other Loan Documents, as the Administrative Agent or any Lender may reasonably request.

SECTION 6.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$2,500,000;

(d) the assertion of any Environmental Claim by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations, other than any Environmental Claim or alleged violation that, if adversely determined, could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;

(e) the downgrading of the published rating of the senior secured bank debt of the Borrower by Moody's or Standard & Poor's to below "Ba2" or "BB", respectively, or the withdrawal of such published rating by Moody's or Standard & Poor's; and

(f) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or de-

velopment requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 6.03. Existence; Conduct of Business. Except as otherwise expressly permitted hereunder, the Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises relating to the conduct of its business (except where the failure to do so (in each case other than with respect to the existence of the Borrower), individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect); provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.03.

SECTION 6.04. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could reasonably be expected to have a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all Property relating to the conduct of its business in good working order and condition, ordinary wear and tear excepted (except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and except for Asset Sales permitted by Section 7.04), and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 6.06. Books and Records; Inspection Rights. The

Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 6.07. Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

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SECTION 6.08. Use of Proceeds. The proceeds of the Bridge Loans will be used solely to finance the Target Acquisition on the Funding Date. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X.

SECTION 6.09. Take-Out Financing (a) The Borrower shall (i) not later than July 15, 2003, file a registration statement under the Securities Act and/or provide a prospectus that may be used under an effective registration statement with respect to an offering and sale of equity securities and (ii) if the Loans shall not have been refinanced in full by the 120th day after the Funding Date, prepare and deliver to the Take-Out Banks an offering memorandum for a private placement through resale pursuant to Rule 144A of, or file a registration statement and/or provide a prospectus that may be used under an effective registration statement under the Securities Act with respect to an offering and sale of, debt securities (any such Offering under this Section 6.09, an "Offering"), in each case in form and substance reasonably satisfactory to the Take-Out Banks, for the purpose of, and yielding net proceeds in an amount sufficient in the aggregate with all other Offerings to, refinance in full outstanding Bridge Loans (such securities issued under this Section 6.09, "Take-Out Securities") and to consummate such Offering as soon as practicable thereafter. Except as provided in the Fee Letter with respect to an Offering that constitutes a Securities Demand (as defined in the Fee Letter), such Offering shall be on such terms and conditions as the Take-Out Banks and the Borrower mutually agree in light of then prevailing circumstances and market conditions and the financial condition and prospects of Borrower and its Subsidiaries at the time of sale. If any Take-Out Securities are issued in a transaction not registered under the Securities Act, all such securities shall be entitled to the benefit of a registration rights agreement to be entered into by the Borrower and any other obligor in customary form reasonably acceptable to the Take-Out Banks (which shall include provisions for a customary registered exchange offer with respect to any such securities).

(b) In connection with the foregoing, the Borrower shall:

(i) cooperate with the Take-Out Banks in the completion of the preparation of any registration statement, prospectus or private placement memorandum relating to the Offering and other marketing materials to be used in connection with the syndication of the Take-Out Securities;

(ii) assist the Take-Out Banks in connection with the marketing of the Offering (including reasonably promptly providing to the Take-Out Banks any information reasonably requested to effect the issue and sale of the Offering and making available senior management of the Borrower for related due diligence meetings, rating agency presentations, "road show" presentations and other investor meetings);

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(iii) provide or make available all information and other assistance reasonably requested by the Take-Out Banks and their counsel in connection with their due diligence;

(iv) if the Take-Out Securities are debt Securities, use its commercially reasonable efforts to achieve ratings of the Take-Out Securities from rating agencies acceptable to the Take-Out Banks in a time frame acceptable to the Take-Out Banks;

(v) if required, make appropriate filings under the "blue sky" laws of such jurisdictions as the Take-Out Banks reasonably determine and pay the reasonable fees and expenses of counsel to the Take-Out Banks in connection therewith; provided that the Borrower shall not be required to subject itself to material taxation in any state where it would not otherwise be so subject;

(vi) in the event that the Take-Out Banks determine to proceed with an offering of the Take-Out Securities registered under the Securities Act,

and, if necessary, engage a "qualified independent underwriter" (as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.) reasonably satisfactory to the Take-Out Banks and the Borrower and pay all reasonable costs and expenses in connection therewith; and

(vii) provide such other cooperation, assistance and information as is customarily provided by issuers in connection with the private placement and/or public sale of securities.

(c) After a full marketing of the Take-Out Securities, if and when requested by the Take-Out Banks after consultation with the Borrower, the Borrower shall:

(i) execute a purchase or underwriting agreement with the Take-Out Banks relating to the issuance and sale of the Take-Out Securities, which shall contain covenants, representations and warranties, indemnities, conditions (including delivery of legal opinions, officers' certificates and auditors' comfort letters) and other provisions customary for such financing for the Take-Out Banks and be in form and substance reasonably satisfactory to the Take-Out Banks and the Borrower;

(ii) if the Take-Out Securities are offered in an Offering pursuant to Rule 144A, execute a registration rights agreement with the Take-Out Banks, which shall be in customary form for such financings for the Take-Out Banks and be in form and substance reasonably satisfactory to the Take-Out Banks and the Borrower; and

(iii) use the proceeds from the issuance and sale of Take-Out Securities first to repay all outstanding Bridge Loans, including all interest thereon, and to pay

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all fees, expenses, commissions and all other amounts payable under the Loan Documents.

SECTION 6.10. Other Debt Securities. If Borrower shall have issued debt securities in the public or private placement markets at any time prior to the Initial Maturity Date that have covenants or events of default more favorable to the purchasers thereof than those contained in this Agreement that apply to Term Loans that are not Prepayable Term Loans, then this Agreement shall be deemed modified to reflect such more favorable covenants and events of defaults that apply to Term Loans that are not Prepayable Term Loans, and, if requested by the Administrative Agent, Borrower and the Guarantors shall enter into an amendment to this Agreement in form and substance satisfactory to the Administrative Agent to reflect such modifications.

#### SECTION 6.11. Target Acquisition.

(a) Conduct of Target Acquisition. In connection with the Target Acquisition, the Borrower will:

(i) comply in all material respects with all applicable laws and regulations relevant in the context of the Target Acquisition;

(ii) provide the Administrative Agent with such information regarding the progress of the Target Acquisition as it may reasonably request or that is publicly available;

(iii) provide the Administrative Agent and its counsel with all information reasonably requested by either of them in any due diligence inquiry with respect to the Target prior to the date of the Scheme Meetings (as defined in the Implementation Deed);

(iv) not issue any press release or make any statement during the course of the Target Acquisition that contains any information or statement concerning this Agreement or the Lenders without first obtaining the prior approval of the information or statement from the Administrative Agent or the Required Lenders;

(v) ensure that all of its obligations in connection with the Target Acquisition are complied with and performed in all material respects; and

(vi) promptly upon registration by the Australian Securities and Investments Commission provide the Administrative Agent and the Lenders with a certified copy of the document described as "Scheme Booklet" to be prepared by the Target and to be sent to the shareholders and optionholders of the Target, and ensure that

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such "Scheme Booklet" is consistent with the matters set forth in the Target Acquisition Documents.

(b) Implementation Deed. The Borrower will:

(i) not enter into, or consent to, any Material Lender Provision Amendment or exercise its discretion in relation to the provision of consent to a "BRL Hardy Prescribed Occurrence" (as defined in the Implementation Deed) where such BRL Hardy Prescribed Occurrence is reasonably likely to result in a BRL Hardy Material Adverse Change (as defined in the Implementation Deed); and

(ii) promptly notify the Administrative Agent in writing if it becomes aware of any proposal described in sub-paragraph (i) and seek the prior written approval of the Required Lenders thereto.

(c) Conditions Under Implementation Deed. The Borrower must:

(i) keep the Administrative Agent promptly and reasonably informed of the steps the parties to the Implementation Deed have taken and of their progress towards satisfaction of the conditions precedent set out in clause 4.1 of the Implementation Deed.

(ii) promptly notify the Administrative Agent in writing if it becomes aware that any condition precedent set out in clause 4.1 of the Implementation Deed has been satisfied or has become incapable of being satisfied; and.

(iii) to the extent that it wishes to exercise any waiver under clause 4.2 of the Implementation Deed, and the exercise of such right requires the prior written approval of the Administrative Agent acting with the consent of the Required Lenders under Section 5.02(b)(i) of this Agreement, promptly notify the Administrative Agent in writing of this fact and seek such prior written approval of the Administrative Agent to such waiver.

SECTION 6.12. Syndication Letter. The Borrower will comply with its obligations under the Syndication Letter and the fee letters referred to therein.

## ARTICLE VII

### NEGATIVE COVENANTS

Borrower covenants and agrees that from and after the Effective Date and the issuance of the Loans and the Notes until the satisfaction in full of the Loans and the Notes and all other Obligations due under this Agreement, Borrower shall and shall cause each of its

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Restricted Subsidiaries to, fully and timely perform all covenants in this Article VII required to be performed by any of them.

SECTION 7.01. Limitation on Indebtedness. (a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including any Acquired Indebtedness), except that the Borrower and any Guarantor may Incur Indebtedness (including any Acquired Indebtedness) and any Restricted Subsidiary that is not a Guarantor may Incur Acquired Indebtedness if, in each case, the Consolidated Fixed Charge Coverage Ratio for the Borrower for the four full fiscal quarters immediately preceding the Incurrence of such Indebtedness taken as one period (and after giving pro forma effect to (i) the Incurrence of such Indebtedness and (if applicable) the application of the net proceeds therefrom, including to refinance other Indebtedness, as if such Indebtedness was Incurred, and the application of such proceeds occurred, at the beginning of such four-quarter period; (ii) the Incurrence, repayment or retirement of any other Indebtedness by the Borrower and its Restricted Subsidiaries since the first day of such four-quarter period as if such Indebtedness was Incurred, repaid or retired at the beginning of such four-quarter period (except that, in making such computation, the amount of Indebtedness under any revolving credit facility shall be computed based upon the average daily balance of such Indebtedness during such four-quarter period); (iii) in the case of Acquired Indebtedness, the related acquisition as if such acquisition occurred at the beginning of such four-quarter period; and (iv) any acquisition or disposition by the Borrower and its Restricted Subsidiaries of any company or any business or any assets out of the ordinary course of business, whether by merger, stock purchase or sale or asset purchase or sale, or any related repayment of Indebtedness, in each case since the first day of such four-quarter period, assuming such acquisition or disposition had been consummated on the first day of such four-quarter period) is equal to at least 2.00:1.00.

(b) The foregoing limitation will not apply to the Incurrence of any of the following (collectively "Permitted Indebtedness"):

(i) Indebtedness of the Borrower and any Restricted Subsidiary under the Credit Agreement in an aggregate principal amount at any one time outstanding not to exceed an amount equal to the greater of (x) \$1,600,000,000, minus the amount of any repayment of such Indebtedness under the Credit Agreement pursuant to Section 7.04, and (y) the Borrowing

Base;

(ii) Indebtedness of the Borrower pursuant to the Loans and the Notes and any Exchange Notes and/or Take-Out Securities that refinance or replace any portion of the Loans and the Notes and other Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on the date of this Agreement (other than Indebtedness under the Credit Agreement);

(iii) Indebtedness of any Guarantor pursuant to a Guarantee;

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(iv) Indebtedness of the Borrower owing to a Restricted Subsidiary; provided that any Indebtedness of the Borrower owing to a Restricted Subsidiary that is not a Guarantor is made pursuant to an intercompany note in the form attached to this Agreement as Exhibit G and is subordinated in right of payment from and after such time as the Loans and the Notes shall become due and payable (whether at Stated Maturity, acceleration or otherwise) to the payment and performance of the Borrower's obligations under the Loans and the Notes; provided, further, that any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to a Restricted Subsidiary or a pledge to or for the benefit of the lenders under the Credit Agreement) shall be deemed to be an Incurrence of such Indebtedness by the obligor not permitted by this clause (iv);

(v) Indebtedness of a Restricted Subsidiary owing to the Borrower or a Wholly-Owned Restricted Subsidiary; provided that, with respect to Indebtedness owing to a Wholly-Owned Restricted Subsidiary that is not a Guarantor, (x) any such Indebtedness is made pursuant to an intercompany note in the form attached to this Agreement as Exhibit G and (y) any such Indebtedness shall be subordinated in right of payment from and after such time as the obligations under the Guarantee by such Wholly-Owned Restricted Subsidiary shall become due and payable to the payment and performance of such Wholly-Owned Restricted Subsidiary's obligations under its Guarantee; provided, further, that (a) any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to the Borrower or a Restricted Subsidiary or a pledge to or for the benefit of the lenders under the Credit Agreement) shall be deemed to be an Incurrence of such Indebtedness by the obligor not permitted by this clause (v), and (b) any transaction pursuant to which any Restricted Subsidiary which has Indebtedness owing to the Borrower or any other Restricted Subsidiary, ceases to be a Restricted Subsidiary shall be deemed to be the Incurrence of Indebtedness by such Restricted Subsidiary that is not permitted by this clause (v);

(vi) guarantees of any Restricted Subsidiary made in accordance with the provisions of Section 7.07 of this Agreement;

(vii) Hedging Obligations of the Borrower or any Guarantor entered into in the ordinary course of business (and not for speculative purposes) designed to protect against fluctuations in: (x) interest rates in respect of Indebtedness of the Borrower or any of its Restricted Subsidiaries, as long as such obligations at the time Incurred do not exceed the aggregate principal amount of such Indebtedness then outstanding or in good faith anticipated to be outstanding within 90 days of such Incurrence, (y) currencies or (z) commodities;

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(viii) any renewals, extensions, substitutions, refundings, refinancings or replacements (each, a "refinancing") of any Indebtedness described in clauses (ii) and (iii) of this definition of "Permitted Indebtedness," including any successive refinancings so long as the aggregate principal amount of Indebtedness represented thereby is not increased by such refinancing plus the lesser of (1) the stated amount of any premium, interest or other payment required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced or (2) the amount of premium, interest or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Borrower incurred in connection with such refinancing and, in the case of Pari Passu Indebtedness or Subordinated Indebtedness, such refinancing does not reduce the Average Life to Stated Maturity or the Stated Maturity of such Indebtedness; and

(ix) Indebtedness, in addition to that described in clauses (i) through (viii) of this definition of "Permitted Indebtedness," and any renewals, extensions, substitutions, refinancings or replacements of such Indebtedness, not to exceed \$75,000,000 outstanding at any one time in the aggregate.

SECTION 7.02. Limitations on Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, affirm or suffer to exist any Lien of any kind upon any of its property or assets (including any intercompany notes), owned at the date of this

Agreement or acquired after the date of this Agreement, or any income or profits therefrom, except if the Loans and Notes (or a Guarantee, in the case of Liens of a Guarantor) are directly secured equally and ratably with (or prior to in the case of Liens with respect to Subordinated Indebtedness or Indebtedness of a Guarantor subordinate in right of payment to the Guarantee of such Guarantor) the obligation or liability secured by such Lien, excluding, however, from the operation of the foregoing any of the following:

(a) any Lien existing as of the date of this Agreement;

(b) any Lien arising by reason of:

(i) any judgment, decree or order of any court, so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree or order shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(ii) taxes not yet delinquent or which are being contested in good faith;

(iii) security for payment of workers' compensation or other insurance;

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(iv) good faith deposits in connection with tenders, leases or contracts (other than contracts for the payment of money);

(v) zoning restrictions, easements, licenses, reservations, provisions, covenants, conditions, waivers, restrictions on the use of property or minor irregularities of title (and with respect to leasehold interests, mortgages, obligations, liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord or owner of the leased property, with or without consent of the lessee), none of which materially impairs the use of any parcel of property material to the operation of the business of the Borrower or any Restricted Subsidiary or the value of such property for the purpose of such business;

(vi) deposits to secure public or statutory obligations, or in lieu of surety or appeal bonds;

(vii) certain surveys, exceptions, title defects, encumbrances, easements, reservations of, or rights of others for, rights of way, sewers, electric lines, telegraph or telephone lines and other similar purposes or zoning or other restrictions as to the use of real property not interfering with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(viii) operation of law in favor of mechanics, materialmen, laborers, employees or suppliers, incurred in the ordinary course of business for sums which are not yet delinquent or are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof; or

(ix) standard custodial, bailee or depository arrangements (including (x) in respect of deposit accounts with banks and other financial institutions and (y) standard customer agreements in respect of accounts for the purchase and sale of securities and other property with brokerage firms or other types of financial institutions);

(c) any Lien now or hereafter existing on property of the Borrower or any Guarantor securing Indebtedness outstanding under the Credit Agreement;

(d) any Lien securing Acquired Indebtedness created prior to (and not created in connection with, or in contemplation of) the incurrence of such Indebtedness by the Borrower or any Restricted Subsidiary, in each case which Indebtedness is permitted under the provisions of Section 7.01; provided that any such Lien only extends to the assets that were subject to such lien securing such Acquired Indebtedness prior to the related transaction by the Borrower or its Restricted Subsidiaries; and

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(e) any extension, renewal, refinancing or replacement, in whole or in part, of any Lien described in the foregoing clauses (a) through (d) so long as the amount of security is not increased thereby.

SECTION 7.03. Borrower or Any Guarantor May Consolidate, etc., Only on Certain Terms. (a) The Borrower shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other Person or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets as an entirety to any Person or group of affiliated Persons, or permit any of its Restricted Subsidiaries to enter into any such transaction or transactions if such



transaction or transactions, in the aggregate, would result in a sale, assignment, conveyance, transfer, lease or disposal of all or substantially all of the properties and assets of the Borrower and its Restricted Subsidiaries on a consolidated basis to any other Person or group of affiliated Persons, unless at the time and after giving effect thereto:

(i) either (a) the Borrower shall be the continuing corporation, or (b) the Person (if other than the Borrower) formed by such consolidation or into which the Borrower is merged or the Person which acquires by sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Borrower and its Restricted Subsidiaries on a consolidated basis (the "Surviving Entity") shall be a corporation duly organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and such Person assumes, by an amendment or supplement to this Agreement in a form reasonably satisfactory to the Administrative Agent, all the obligations of the Borrower under the Loans and Notes and this Agreement and the other Loan Documents and this Agreement shall remain in full force and effect;

(ii) immediately before and immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(iii) immediately after giving effect to such transaction on a pro forma basis, the Consolidated Net Worth of the Borrower (or the Surviving Entity if the Borrower is not the continuing obligor under this Agreement) is equal to or greater than the Consolidated Net Worth of the Borrower immediately prior to such transaction;

(iv) immediately before and immediately after giving effect to such transaction on a pro forma basis (on the assumption that the transaction occurred on the first day of the four-quarter period immediately prior to the consummation of such transaction with the appropriate adjustments with respect to the transaction being included in such pro forma calculation), the Borrower (or the Surviving Entity if the Borrower is not the continuing obligor under this Agreement) could incur \$1.00 of additional Indebtedness under Section 7.01 (other than Permitted Indebtedness);

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(v) each Guarantor, if any, unless it is the other party to the transactions described above, shall have confirmed that its Guarantee shall apply to such Person's obligations under this Agreement and the Loans and the Notes;

(vi) if any of the property or assets of the Borrower or any of its Restricted Subsidiaries would thereupon become subject to any Lien, the provisions of Section 7.02 are complied with; and

(vii) the Borrower or the Surviving Entity shall have delivered, or caused to be delivered, to the Administrative Agent or counsel to the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, an officers' certificate and an opinion of counsel, each to the effect that such consolidation, merger, transfer, sale, assignment, conveyance, lease or other transaction and the amendment or supplement to this Agreement in respect thereto comply with this Agreement and that all conditions precedent therein or herein provided for relating to such transaction have been complied with.

(b) Each Guarantor shall not, and the Borrower will not permit a Guarantor to, in a single transaction or through a series of related transactions, merge or consolidate with or into any other corporation (other than the Borrower or any other Guarantor) or other entity, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets on a consolidated basis to any entity (other than the Borrower or any other Guarantor) unless at the time and after giving effect thereto:

(i) either (1) such Guarantor shall be the continuing corporation or partnership or (2) the entity (if other than such Guarantor) formed by such consolidation or into which such Guarantor is merged or the entity which acquires by sale, assignment, conveyance, transfer, lease or disposition the properties and assets of such Guarantor shall be a corporation duly organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume by an amendment or supplement to this Agreement, executed and delivered to the Administrative Agent, in a form reasonably satisfactory to the Administrative Agent, all the obligations of such Guarantor under its Guarantee, this Agreement and the Loan Documents;

(ii) immediately before and immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and

(iii) such Guarantor shall have delivered to the Administrative Agent

or counsel to the Administrative Agent an officers' certificate and an opinion of counsel in form and substance reasonably satisfactory to the Administrative Agent, each stating that such consolidation, merger, sale, assignment, conveyance, transfer, lease or

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disposition and such amendment or supplement to this Agreement comply with the this Agreement, and thereafter all obligations of the predecessor shall terminate.

The provisions of this subsection 7.03(b) shall not apply to any transaction (including any Asset Sale made in accordance with Section 7.04) with respect to any Guarantor (i) if the Guarantee of such Guarantor is released in connection with such transaction in accordance with Section 7.07(d) or (ii) if such transaction need not comply with the provisions set forth in Section 7.04 because the properties or assets so sold, assigned, conveyed, transferred, leased or otherwise disposed of do not constitute an "Asset Sale" by operation of the provisions of clause (y) of the last sentence of the definition of Asset Sale.

(c) Upon any consolidation or merger, or any sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Borrower or any Guarantor (except, in the case of a Guarantor, pursuant to a transaction set forth in the last paragraph of subsection 7.03(b)) in accordance with Section 7.03, the successor Person formed by such consolidation or into which the Borrower or such Guarantor, as the case may be, is merged or the successor Person to which such sale, assignment, conveyance, transfer, lease or disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Borrower or such Guarantor, as the case may be, under this Agreement, the other Loan Documents, the Loans and Notes and/or the Guarantees, as the case may be, with the same effect as if such successor had been named as the Borrower or such Guarantor, as the case may be, herein, the other Loan Documents, or the Loans and Notes and/or in the Guarantees, as the case may be. When a successor assumes all the obligations of its predecessor under this Agreement, the other Loan Documents, the Loans and Notes or a Guarantee, as the case may be, the predecessor shall be released from those obligations; provided that in the case of a transfer by lease, the predecessor shall not be released from the payment of principal and interest on the Loans and Notes or a Guarantee, as the case may be.

SECTION 7.04. Limitation on Sale of Assets. (a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, consummate an Asset Sale (other than an Asset Swap permitted by clause (d) below of this Section 7.04) unless (i) at least 75% of the proceeds from such Asset Sale are received in cash; provided, however, that the amount of (A) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet or the notes thereto) of the Borrower or any Restricted Subsidiary that are assumed by the transferee in such Asset Sale and from which the Borrower or such Restricted Subsidiary is released and (B) any notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are immediately converted by the Borrower or such Restricted Subsidiary into cash, shall be deemed cash for purposes of this Section 7.04, and (ii) the Borrower or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of

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the shares or assets sold (other than in the case of an involuntary Asset Sale, as determined by the Board of Directors of the Borrower and evidenced in a board resolution).

(b) If all or a portion of the Net Cash Proceeds of any Asset Sale are not required to be applied to repay permanently any secured Indebtedness then outstanding as required by the terms thereof, or the Borrower determines not to apply such Net Cash Proceeds to the permanent prepayment of such secured Indebtedness or if no such secured Indebtedness is then outstanding, then the Borrower may within 12 months of the Asset Sale, invest the Net Cash Proceeds in other properties and assets that (as determined by the Board of Directors of the Borrower) replace the properties and assets that were the subject of the Asset Sale or in properties and assets that will be used in the businesses of the Borrower or its Restricted Subsidiaries as existing at such time or reasonably related thereto. The amount of such Net Cash Proceeds neither used to permanently repay or prepay secured Indebtedness nor used or invested as set forth in this paragraph constitutes "Excess Proceeds." The Borrower will cause such Excess Proceeds to be used as required by Section 2.05(a) (iv) (B).

(c) The Borrower will not, and will not permit any Subsidiary to, create or permit to exist or become effective any restriction (other than restrictions existing under Indebtedness as in effect on the date of this Agreement as such Indebtedness may be refinanced from time to time, provided that such restrictions are no less favorable to the Lenders than those existing on the date of this Agreement) that would materially impair the ability of the Borrower to make an Offer to repay the Loans and Notes as required by Section

2.05(a)(iv)(B) or, if such Offer is made, to repay the Loans and Notes tendered for repayment.

(d) The Borrower will not, and will not permit any Restricted Subsidiary to, engage in any Asset Swaps, unless: (i) at the time of entering into such Asset Swap, and immediately after giving effect to such Asset Swap, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; (ii) in the event such Asset Swap involves an aggregate amount in excess of \$10,000,000, the terms of such Asset Swap have been approved by a majority of the members of the board of directors of the Borrower which determination shall include a determination that the Fair Market Value of the assets being received in such swap are at least equal to the Fair Market Value of the assets being swapped and (iii) in the event such Asset Swap involves an aggregate amount in excess of \$20,000,000, the Borrower has also received a written opinion from an independent investment banking firm of nationally recognized standing that such Asset Swap is fair to the Borrower or such Restricted Subsidiary, as the case may be, from a financial point of view.

SECTION 7.05. Limitation on Restricted Payments. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, directly or indirectly:

(i) declare or pay any dividend on, or make any distribution to holders of, any shares of the Borrower's Capital Stock (other than dividends or distributions

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payable solely in shares of its Qualified Capital Stock or in options, warrants or other rights to acquire such Qualified Capital Stock);

(ii) purchase, redeem or otherwise acquire or retire for value, directly or indirectly, any shares of the Capital Stock of the Borrower or any Affiliate thereof (other than any Wholly-Owned Restricted Subsidiary of the Borrower) or options, warrants or other rights to acquire such Capital Stock;

(iii) make any principal payment on, or repurchase, redeem, defease, retire or otherwise acquire for value, prior to any scheduled principal payment, sinking fund or maturity, any Subordinated Indebtedness;

(iv) declare or pay any dividend or distribution on any Capital Stock of any Restricted Subsidiary to any Person (other than the Borrower or any of its Restricted Subsidiaries) or purchase, redeem or otherwise acquire or retire for value any Capital Stock of any Restricted Subsidiary held by any Person (other than the Borrower or any of its Wholly-Owned Restricted Subsidiaries);

(v) Incur, create or assume any guarantee of Indebtedness of any Affiliate (other than a Wholly-Owned Restricted Subsidiary of the Borrower); or

(vi) make any Investment in any Person (other than any Permitted Investments)

(any of the foregoing payments described in clauses (i) through (vi), other than any such action that is a Permitted Payment, collectively, "Restricted Payments") unless after giving effect to the proposed Restricted Payment (the amount of any such Restricted Payment, if other than cash, as determined by the Board of Directors of the Borrower, whose determination shall be conclusive and evidenced by a board resolution), (1) no Default or Event of Default shall have occurred and be continuing and such Restricted Payment shall not be an event which is, or after notice or lapse of time or both, would be, an "event of default" under the terms of any Indebtedness of the Borrower or its Restricted Subsidiaries; (2) immediately before and immediately after giving effect to such transaction on a pro forma basis, the Borrower could Incur \$1.00 of additional Indebtedness (other than Permitted Indebtedness) under the provisions contained in Section 7.01, and (3) the aggregate amount of all such Restricted Payments declared or made after the Effective Date does not exceed the sum of:

(A) 50% of the aggregate cumulative Consolidated Net Income (Loss) of the Borrower accrued on a cumulative basis during the period beginning on the Trigger Date and ending on the last day of the Borrower's last fiscal quarter ending prior to the date of the Restricted Payment (or, if such aggregate cumulative Consolidated Net Income (Loss) shall be a loss, minus 100% of such loss); plus

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(B) the aggregate Net Cash Proceeds received after the Trigger Date by the Borrower from the issuance or sale (other than to any of its Subsidiaries) of its shares of Qualified Capital Stock or any options, warrants or rights to purchase such shares of Qualified Capital Stock of the Borrower (except, in each case, to the extent such proceeds are used to purchase, redeem or otherwise retire Capital

Stock or Subordinated Indebtedness as set forth below); plus

(C) the aggregate Net Cash Proceeds received after the Trigger Date by the Borrower (other than from any of its Subsidiaries) upon the exercise of any options or warrants to purchase shares of Qualified Capital Stock of the Borrower; plus

(D) the aggregate Net Cash Proceeds received after the Trigger Date by the Borrower from debt securities or Redeemable Capital Stock that has been converted into or exchanged for Qualified Capital Stock of the Borrower to the extent such debt securities or Redeemable Capital Stock are originally sold for cash plus the aggregate Net Cash Proceeds received by the Borrower at the time of such conversion or exchange; plus

(E) in the event the Borrower or any Restricted Subsidiary has made since the Trigger Date or makes an Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary, an amount equal to the Borrower's or any Restricted Subsidiary's existing Investment in such Person that was previously treated as a Restricted Payment; plus

(F) so long as the Designation thereof was treated as a Restricted Payment made after the Trigger Date, with respect to any Unrestricted Subsidiary that has been redesignated as a Restricted Subsidiary after the Effective Date in accordance with Section 7.10, an amount equal to the Borrower's Investment in such Unrestricted Subsidiary (provided that such amount shall not in any case exceed the Designation Amount with respect to such Restricted Subsidiary upon its Designation); plus

(G) \$50,000,000; minus

(H) the Designation Amount (measured as of the date of Designation) with respect to any Subsidiary of the Borrower which has been designated as an Unrestricted Subsidiary after the Trigger Date in accordance with Section 7.10; minus

(I) for any calculation after the Initial Maturity Date only, the aggregate amount of all Restricted Payments made after November 17, 1999 through the Effective Date.

(b) Notwithstanding the foregoing, and in the case of clauses (ii), (iii) and (iv) below, so long as there is no Default or Event of Default continuing, the foregoing provi-

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sions shall not prohibit the following actions (clauses (i) through (iv) being referred to as a "Permitted Payment"):

(i) the payment of any dividend within 60 days after the date of declaration thereof, if at such date of declaration such payment would be permitted by the provisions of paragraph (a) of this Section 7.05 and such payment shall be deemed to have been paid on such date of declaration for purposes of the calculation required by paragraph (a) of this Section 7.05;

(ii) the repurchase, redemption or other acquisition or retirement of any shares of any class of Capital Stock of the Borrower in exchange for (including any such exchange pursuant to the exercise of a conversion right or privilege or in which cash is paid in lieu of the issuance of fractional shares or scrip), or out of the Net Cash Proceeds of, a substantially concurrent issue and sale for cash (other than to a Subsidiary) of other shares of Qualified Capital Stock of the Borrower; provided that the Net Cash Proceeds from the issuance of such shares of Qualified Capital Stock are excluded from clause (3)(B) of paragraph (a) of this Section 7.05;

(iii) any repurchase, redemption, defeasance, retirement, refinancing or acquisition for value or payment of principal of any Subordinated Indebtedness in exchange for, or out of the Net Cash Proceeds of, a substantially concurrent issuance and sale for cash (other than to any Subsidiary of the Borrower) of any Qualified Capital Stock of the Borrower, provided that the Net Cash Proceeds from the issuance of such shares of Qualified Capital Stock are excluded from clause (3)(B) of paragraph (a) of this Section 7.05;

(iv) the repurchase, redemption, defeasance, retirement, refinancing or acquisition for value or payment of principal of any Subordinated Indebtedness (other than Redeemable Capital Stock) (a "refinancing") through the issuance of new Subordinated Indebtedness of the Borrower, provided that any such new Subordinated Indebtedness (1) shall be in a principal amount that does not exceed the principal amount so refinanced (or, if such Subordinated Indebtedness provides for an amount less than the principal amount thereof to be due and payable upon a declaration or acceleration thereof, then such lesser amount as of the date

of determination), plus the lesser of (x) the stated amount of any premium, interest or other payment required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced or (y) the amount of premium, interest or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Borrower Incurred in connection with such refinancing; (2) has an Average Life to Stated Maturity greater than the remaining Average Life to Stated Maturity of the Loans and the Notes; (3) has a Stated Maturity for its final scheduled principal payment later than the Stated Maturity for the final scheduled principal payment of the

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Loans and the Notes; and (4) is expressly subordinated in right of payment to the Loans and the Notes at least to the same extent as the Indebtedness to be refinanced.

SECTION 7.06. Limitations on Transactions with Affiliates. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or suffer to exist any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange or lease of assets, property or services) with any Affiliate of the Borrower (other than the Borrower or a Wholly-Owned Restricted Subsidiary) unless:

(i) such transaction or series of transactions is in writing on terms that are no less favorable to the Borrower or such Restricted Subsidiary, as the case may be, than would be available in a comparable transaction in arm's-length dealings with an unrelated third party;

(ii) with respect to any transaction or series of transactions involving aggregate payments in excess of \$10,000,000, the Borrower delivers an officers' certificate to the Administrative Agent certifying that such transaction or series of related transactions complies with clause (i) above and such transaction or series of related transactions has been approved by the Board of Directors of the Borrower; and

(iii) with respect to a transaction or series of related transactions involving aggregate value in excess of \$25,000,000, the Borrower delivers to the Administrative Agent an opinion of an independent investment banking firm of national standing in the United States, or an independent public accounting firm of national standing in the United States, stating that the transaction or series of transactions is fair to the Borrower or such Restricted Subsidiary; provided, however, that this provision shall not apply to any transaction with an officer or director of the Borrower entered into in the ordinary course of business (including compensation or employee benefit arrangements with any officer or director of the Borrower).

SECTION 7.07. Limitation on Guarantees by Restricted Subsidiaries. (a) In the event the Borrower (i) organizes or acquires any Domestic Restricted Subsidiary after the date of this Agreement that is not a Guarantor and causes or permits such Restricted Subsidiary to, directly or indirectly, guarantee the payment of any Indebtedness ("Other Indebtedness") of the Borrower or any Guarantor or (ii) causes or permits any Foreign Restricted Subsidiary that is not a Guarantor to, directly or indirectly, guarantee the payment of any Other Indebtedness, then, in each case the Borrower shall cause such Restricted Subsidiary to simultaneously execute and deliver a Guarantee Assumption Agreement pursuant to which it will become a Guarantor under this Agreement; provided, however, that in the event a Domestic Restricted Subsidiary is acquired in a transaction in which a merger agreement is entered into, such Domestic Restricted Subsidiary shall not be required to execute and deliver such Guarantee Assumption Agreement until the consummation of the merger contemplated by any such merger agreement; provided, further, that if such Other Indebtedness is (i) In-

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debtedness that is ranked pari passu in right of payment with the Loans and the Notes or the Guarantees of such Restricted Subsidiary, as the case may be, the Guarantee of such Restricted Subsidiary shall be pari passu in right of payment with the guarantee of the Other Indebtedness; or (ii) Subordinated Indebtedness, the Guarantees of such Restricted Subsidiary shall be senior in right of payment to the guarantee of the Other Indebtedness (which guarantee of such Subordinated Indebtedness shall provide that such guarantee is subordinated to the Guarantees of such Subsidiary to the same extent and in the same manner as the Other Indebtedness is subordinated to the Loans and the Notes or the Guarantee of such Restricted Subsidiary, as the case may be).

(b) If, subject to the requirements of Section 7.03, all or substantially all of the assets of any Guarantor or all of the Capital Stock of any Guarantor are sold (including by issuance or otherwise) by the Borrower in a transaction constituting an Asset Sale, and if (x) the Net Cash Proceeds from such Asset Sale are used in accordance with Sections 7.04 and 2.05(a) (iv) (B), or (y) the

Borrower delivers to the Administrative Agent an officers' certificate to the effect that the Net Cash Proceeds from such Asset Sale shall be used in accordance with Sections 7.04 and 2.05(a)(iv)(B) and within the time limits specified by such Sections, then such Guarantor (in the event of the sale or other disposition of all of the Capital Stock of such Guarantor), or the corporation acquiring such assets (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) shall be released and discharged of its Guarantee obligations in respect of the Loans and Notes.

(c) Any Guarantor that is designated an Unrestricted Subsidiary pursuant to and in accordance with Section 7.10 shall upon such Designation be released and discharged of its Guarantee obligations in respect of the Loans and Notes and any Unrestricted Subsidiary whose Designation is revoked pursuant to Section 7.10 will be required to become a Guarantor in accordance with Article III.

(d) In addition, a Guarantee of a Guarantor shall be released upon the sale or transfer of all or substantially all of the assets or all of the Capital Stock of such Guarantor; provided that either (i) such sale or transfer complies with the provisions set forth in Section 7.04 or (ii) such sale or transfer need not comply with the provisions set forth in Section 7.04 because the assets or Capital Stock so sold or transferred does not constitute an "Asset Sale" by operation of the provisions of clause (y) of the last sentence of the definition of Asset Sale.

SECTION 7.08. Limitation on Restricted Subsidiary Capital Stock. The Borrower will not permit any Restricted Subsidiary of the Borrower to issue any Capital Stock, except for:

(i) Capital Stock issued to and held by the Borrower or a Wholly-Owned Restricted Subsidiary;

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(ii) Capital Stock issued by a Person prior to the time (A) such Person becomes a Restricted Subsidiary, (B) such Person merges with or into a Restricted Subsidiary or (C) a Restricted Subsidiary merges with or into such Person, provided that such Capital Stock was not issued or incurred by such Person in anticipation of the type of transaction contemplated by subclause (A), (B) or (C);

(iii) Capital Stock issued or sold by a Restricted Subsidiary where, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary; and

(iv) Capital Stock issued to any minority owner of a Restricted Subsidiary; provided that immediately after giving effect to such issuance, (A) such Restricted Subsidiary remains a Restricted Subsidiary and (B) the Borrower has at least the same percentage of beneficial ownership in such Restricted Subsidiary as immediately prior to such issuance.

SECTION 7.09. Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Borrower to:

(i) pay dividends or make any other distribution on its Capital Stock;

(ii) pay any Indebtedness owed to the Borrower or a Restricted Subsidiary;

(iii) make any Investment in the Borrower or a Restricted Subsidiary;  
or

(iv) transfer any of its properties or assets to the Borrower or any Restricted Subsidiary, except

(a) any encumbrance or restriction pursuant to an agreement in effect on the date of this Agreement;

(b) any encumbrance or restriction, with respect to a Restricted Subsidiary that was not a Restricted Subsidiary of the Borrower on the date of this Agreement, in existence at the time such Person becomes a Restricted Subsidiary of the Borrower and, in the case of clauses (a) and (b), not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary;

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(c) any encumbrance or restriction existing under any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions in the foregoing clauses (a) and (b), or in this clause (c), provided that the terms and conditions of any such encumbrances or restrictions are not materially less favorable to the Lenders than those under or pursuant to the agreement evidencing

the Indebtedness so extended, renewed, refinanced or replaced (except that an encumbrance or restriction that is not more restrictive than those set forth in this Agreement shall in any event be permitted hereunder); and

(d) any encumbrance or restriction created pursuant to an asset sale agreement, stock sale agreement or similar instrument pursuant to which an Asset Sale permitted under Section 7.04 is to be consummated, so long as such restriction or encumbrance shall be effective only for a period from the execution and delivery of such agreement or instrument through a termination date not later than 270 days after such execution and delivery.

SECTION 7.10. Designation of Unrestricted Subsidiaries. (a) The Borrower may designate after the Effective Date any Subsidiary of the Borrower as an "Unrestricted Subsidiary" under this Agreement (a "Designation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation;

(ii) at the time of and after giving effect to such Designation, the Borrower could Incur \$1.00 of additional Indebtedness (other than Permitted Indebtedness) under the Consolidated Fixed Charge Coverage Ratio of Section 7.01(a); and

(iii) the Borrower would be permitted to make an Investment (other than a Permitted Investment) at the time of Designation (assuming the effectiveness of such Designation) pursuant to Section 7.05(a) in an amount (the "Designation Amount") equal to the amount of the Borrower's Investment in such Subsidiary on such date.

(b) Neither the Borrower nor any Restricted Subsidiary shall at any time (x) provide credit support for, subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, or guarantee, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness) or (y) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary. For purposes of the foregoing, the Designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary shall be deemed to include the Designation of all of the Subsidiaries of such Subsidiary.

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(c) The Borrower may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a "Revocation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and

(ii) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation would, if Incurred at such time, have been permitted to be Incurred for all purposes of this Agreement.

(d) All Designations and Revocations must be evidenced by resolutions of the Board of Directors of the Borrower, delivered to the Administrative Agent certifying compliance with the foregoing provisions.

## ARTICLE VIII

### EVENTS OF DEFAULT

SECTION 8.01. Events of Default. If any of the following events ("Events of Default") shall occur:

(a) a default in the payment of any interest on any Loan when it becomes due and payable, and such default shall continue for a period of 30 days;

(b) a default in the payment of the principal of (or premium, if any, on) any Loan at its maturity (upon Stated Maturity, acceleration, voluntary or mandatory repayment, required repurchase or otherwise);

(c) (i) a default in the performance, or breach, of any covenant or agreement of the Borrower or any Guarantor under this Agreement (other than a default in the performance, or breach, of a covenant or agreement which is specifically dealt with in clause (a) or (b) or in clause (ii) of this clause (c)) or any other Loan Document and such default or breach shall continue for a period of 30 days after written notice has been given, by certified mail, to the Borrower by the Lenders holding at least 25% in aggregate principal amount of the outstanding Loans, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; (ii) a default in the performance or breach of the provisions of Sections 6.09, 6.10, 6.11, 6.12, 7.03 or 2.05 or of the Fee Letter or the Administrative Agent Fee Letter or the Syndication Letter;

(d) one or more defaults shall have occurred under any agreements, indentures or instruments under which the Borrower, any Guarantor or any Subsidiary then has outstanding Indebtedness in excess of \$10,000,000 in the aggregate and, if not al-

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ready matured at its final maturity in accordance with its terms, such Indebtedness shall have been accelerated;

(e) any Guarantee shall for any reason cease to be, or be asserted in writing by any Guarantor or the Borrower not to be, in full force and effect and enforceable in accordance with its terms, except to the extent contemplated by this Agreement;

(f) one or more judgments, orders or decrees for the payment of money in excess of \$15,000,000 either individually or in the aggregate (net of amounts covered by insurance, bond, surety or similar instrument), shall be entered against the Borrower, any Guarantor, any Subsidiary or any of their respective properties and shall not be discharged and either (a) any creditor shall have commenced an enforcement proceeding upon such judgment, order or decree or (b) there shall have been a period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of an appeal or otherwise, shall not be in effect;

(g) any holder or holders of at least \$10,000,000 in aggregate principal amount of Indebtedness of the Borrower, any Guarantor or any Subsidiary after a default under such Indebtedness shall notify the Administrative Agent or the Lenders of the intended sale or disposition of any assets of the Borrower, any Guarantor or any Subsidiary that have been pledged to or for the benefit of such holder or holders to secure such Indebtedness or shall commence proceedings, or take any action (including by way of set-off), to retain in satisfaction of such Indebtedness or to collect on, seize, dispose of or apply in satisfaction of Indebtedness, assets of the Borrower, any Guarantor or any Subsidiary (including funds on deposit or held pursuant to lock-box and other similar arrangements);

(h) the entry by a court of competent jurisdiction of (i) a decree or order for relief in respect of the Borrower, any Guarantor or any Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or (ii) a decree or order adjudging the Borrower, any Guarantor or any Subsidiary bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower, any Guarantor or any Subsidiary under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Borrower, any Guarantor or any Subsidiary or of any substantial part of their respective properties, or ordering the winding up or liquidation of their affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order shall be unstayed and in effect, for a period of 60 consecutive days;

(i) (i) the Borrower, any Guarantor or any Subsidiary commences a voluntary case or proceeding under any applicable Bankruptcy Law or any other case or proceeding to be adjudicated bankrupt or insolvent, (ii) the Borrower, any Guarantor or any Subsidiary consents to the entry of a decree or order for relief in respect of the Borrower, any Guarantor

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or such Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against it, (iii) the Borrower, any Guarantor or any Subsidiary files a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, (iv) the Borrower, any Guarantor or any Subsidiary (1) consents to the filing of such petition or the appointment of, or taking possession by, a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Borrower, any Guarantor or such Subsidiary or of any substantial part of their respective properties, (2) makes an assignment for the benefit of creditors or (3) admits in writing its inability to pay its debts generally as they become due, or (v) the Borrower, any Guarantor or any Subsidiary takes any corporate action in furtherance of any such actions in this paragraph (i);

(j) any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall prove to have been incorrect when made or deemed made in any material respect; or

(k) the occurrence of a Change of Control on or prior to the Initial Maturity Date;

then, and in every such event (other than an event described in clause (h) or



(i) of this Section 8.01), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Obligors accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and in case of any event described in clauses (h) or (i) of this Section 8.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Obligors accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

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## ARTICLE IX

### THE ADMINISTRATIVE AGENT

SECTION 9.01. The Administrative Agent. Each of the Lenders hereby appoints the Administrative Agent as its agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders, and (c) except as expressly set forth herein and in the other Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article V or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

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The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for an Obligor), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties

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

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower (no such consultation being required if an Event of Default shall have occurred and be continuing), to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall 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 hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 10.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into

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this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Without the authorization of the Required Lenders, neither the Administrative Agent nor any Lender shall send to the Borrower or the Trustee under the Senior Subordinated Note Indentures (as "Trustee" is defined therein) any notice of a Default or Event of Default hereunder if such notice would result in a payment block in respect of the Senior Subordinated Notes.

#### ARTICLE X

##### MISCELLANEOUS

SECTION 10.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by teletype, as follows:

(i) if to the Borrower or any Guarantor, to it at 300 WillowBrook Office Park, Fairport, New York 14450, Attention of Thomas Mullin, Esq. (Teletype No. (585) 218-3603);

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, 270 Park Avenue, New York, NY 10017, Attention of Martha Gurwit, (Teletype No. (212) 270-5127); and

(iii) if to a Lender, to it at its address (or teletype number) set forth in its Administrative Questionnaire.

(b) Any party hereto may change its address or teletype number for notices and other communications hereunder by notice to the other parties hereto (or, in the case of any such change by a Lender, by notice to the Borrower and the Administrative Agent). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(c) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the

Administrative Agent and the applicable Lender. The Administrative Agent or each Borrower may, in its discretion, agree to accept notices and

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other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

#### SECTION 10.02. Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Obligor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Amendments. Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall; (i) increase any Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) extend the Initial Maturity Date or Final Maturity Date, (v) alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as among the Lenders, without the written consent of each Lender, (vi) change any of the provisions of this Section or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or (vii) release any Guarantor from any of its guarantee obligations under Article III without the written consent of each Lender; and provided, further, that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent, (y) any modification or supplement of Article III

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shall require the consent of each Guarantor and (z) any Guarantor may be released from its guarantee obligations under Article III to the extent permitted by Section 7.07.

#### SECTION 10.03. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with any syndication of the Commitments and Loans provided for herein or the Exchange Notes, the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including in connection with any workout, restructuring or negotiations in respect thereof and (iii) and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration or recording contemplated by any document referred to therein.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements

of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any Property owned or operated by either Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to either Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

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(c) Reimbursement by Lenders. To the extent that Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(d) Waiver of Consequential Damages, Etc. To the extent permitted by applicable law, no Obligor shall assert, and each Obligor hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) Payments. All amounts due under this Section shall be payable promptly after written demand therefor.

#### SECTION 10.04. Successors and Assigns.

(a) Assignments Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) (unless in connection with a transaction expressly permitted under Section 7.03) no Obligor may 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 any Obligor without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. 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, Participants referred to in paragraph (e) below and the directors, officers, employees, attorneys and agents of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders.

(i) Assignments Generally. Subject to the conditions set forth in clause (ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and Loan(s)) with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment or Loan to an assignee that is a Lender with a Commitment or Loan immediately prior to giving effect to such assignment.

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(ii) Certain Conditions to Assignments. Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund of such assigning Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment(s) or Loan(s), the amount of the Commitment(s) or Loan(s) of the assigning Lender subject to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless the Administrative Agent otherwise consents;

(B) each partial assignment of any Commitment or Loan shall be

made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of its Commitment or Loan;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(iii) Effectiveness of Assignments. Subject to acceptance and recording thereof pursuant to paragraph (c) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.08, 2.09, 2.10 and 10.03 hereof). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 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 paragraph (e) of this Section 10.04.

(c) Acceptance of Assignments by Administrative Agent. Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 10.04 and any written consent to such assignment required by paragraph (b) of this Section 10.04, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective

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for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(d) Participations. Any Lender may, without the consent of Borrower or the Administrative Agent sell participations to one or more Lenders or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) or Loan(s) held by it); provided that (i) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) hereof that affects such Participant. Subject to paragraph (f) of this Section 10.04, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.08, 2.09 and 2.10 hereof to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 hereof as though it were a Lender; provided that such Participant agrees to be subject to subsection 2.05(g) hereof as though it were a Lender hereunder.

(e) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Sections 2.08, 2.09 and 2.10 hereof than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the applicable Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.10 unless the applicable Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of such Borrower, to comply with subsection 2.10(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of

a security interest shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

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(g) No Assignments to the Borrower or Affiliates. Anything in this Section 10.04 to the contrary notwithstanding, no Lender may assign or participate any interest in any Commitment or Loan held by it hereunder to either Borrower or any of its Affiliates or Subsidiaries without the prior consent of each Lender.

SECTION 10.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any funds are extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.08, 2.09, 2.10, 3.03 and 10.03 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

SECTION 10.06. Counterparts; Integration; Effectiveness; Termination. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent and/or the Initial Lenders (including, without limitation, the Fee Letter and the Administrative Agent Fee Letter) constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

(b) Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement. Notwithstanding the foregoing, this Agreement shall automatically terminate upon the termination of the Commitments without any Bridge Loans being made pursuant to Section 5.01 or 5.02.

SECTION 10.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective

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to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 10.08. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or Affiliate thereof to or for the credit or the account of any Obligor against any of and all the obligations of any Obligor now or hereafter existing under this Agreement or any Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 10.09. Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Submission to Jurisdiction. Each Obligor hereby irrevocably and unconditionally submits, for itself and its Property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding

arising out of or relating to this Agreement or the Syndication Letter, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or the Syndication Letter shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the Syndication Letter against any Obligor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Obligor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Syndication Letter in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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(d) Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01, except that process may not be served by telecopy. Nothing in this Agreement or the Syndication Letter will affect the right of any party to this Agreement or the Syndication Letter to serve process in any other manner permitted by law.

SECTION 10.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SYNDICATION LETTER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 10.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 10.12. Treatment of Certain Information;  
Disclosure. (a) (a) The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Subsidiaries (in connection with this Agreement or otherwise) by any Lender or by one or more subsidiaries or affiliates of such Lender and the Borrower hereby authorizes each Lender, subject to applicable Federal or state securities laws, to share any information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such subsidiary or affiliate. Such authorization shall survive the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

(b) The Borrower hereby agrees that each Guarantor, each Lender, the Administrative Agent (and each of their respective, and their respective affiliates', employees, officers, directors, agents and advisors (collectively, "Agent/Lender Representatives") is, and has been from the commencement of discussions with respect to the facility established by this Agreement (the "Facility"), permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Facility, and all materials of any

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kind (including opinions or other tax analyses) that are or have been provided to such Lender, the Administrative Agent or such Guarantor related to such tax treatment and tax structure. In this regard, each of the Lenders, the Administrative Agent and the Guarantors acknowledges and agrees that its disclosure of the tax treatment and tax structure of the Facility is not limited in any way by an express or implied understanding or agreement, oral or written (whether or not such understanding or agreement is legally binding). Furthermore, each of the Lenders, the Administrative Agent and the Guarantors acknowledges and agrees that it does not know or have reason to know that its use or disclosure of information relating to the tax treatment or tax structure of the Facility is limited in any other manner (such as where the Facility is claimed to be proprietary or exclusive) for the benefit of any other Person.

(c) Notwithstanding anything to the contrary herein, neither the Lenders,

the Administrative Agent nor the Guarantors may disclose to any Person any information that constitutes material non-public information regarding the Borrower or its securities for purposes of Regulation FD of the Securities and Exchange Commission or any other federal or state securities laws (it being acknowledged and agreed that the provisions of this Section 10.12 with respect to such information are reasonably necessary to comply with Regulation FD and/or such other federal and state securities laws) (such information referred to collectively herein as the "Borrower Information"), except that each of the Administrative Agent and each of the Lenders may disclose Borrower Information (i) to its and its affiliates' Agent/Lender Representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential), (ii) to the extent requested by any regulatory authority or the National Association of Insurance Commissioners, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this paragraph, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or to any direct or indirect contractual counterparties in swap agreements or such contractual counterparties' professional advisors, (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a nonconfidential basis through no fault or action by any of the Lenders, the Administrative Agent or the Guarantors, or (B) is or becomes available to such Lenders, the Administrative Agent or the Guarantors on a nonconfidential basis from a source other than the Borrower and (viii) with the consent of the Borrower.

SECTION 10.13. "Credit Agreement" Under Indentures. (a) It is the intention of the parties hereto that this Agreement constitutes one of the successive renewals, substitutions, refinancings or replacements of the Credit Agreement dated as of June 29, 1993 between the Borrower, the Subsidiaries of the Borrower identified on the signature pages

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thereof under the caption "Subsidiary Guarantors", the lenders named therein and JPMorgan Chase Bank, as agent, referred to in the definition of "Credit Agreement" in Section 101 of the Senior Subordinated Note Indentures and that, accordingly, this Agreement constitutes the "Credit Agreement" under and as defined in the Senior Subordinated Notes Indentures.

(b) It is the intention of the parties hereto that this Agreement constitutes one of the successive renewals, substitutions, refinancings or replacements of the "Credit Agreement" referred to in each of the indentures listed in Part A of Schedule I and that, accordingly, this Agreement constitutes the "Credit Agreement" under and as defined in each such indenture.

SECTION 10.14. Cleanup Period. The Lenders and the Administrative Agent acknowledge and agree that if, at any time during the period (herein, the "Cleanup Period") commencing on the Effective Date through but not including the 60th day following the Effective Date, the Borrower shall fail to cause the Target or any of its Subsidiaries to comply with any of the covenants herein or in any of the other Loan Documents, or if any of the representations or warranties made herein or in any of the other Loan Documents (or in any report, financial statement, certificate or other document furnished in connection herewith or therewith) by or on behalf of the Target or any of its Subsidiaries shall prove to have been incorrect in any material respect, then, notwithstanding anything herein to the contrary, such failure to comply with covenants (other than any such failure that is caused or authorized by the Borrower, it being understood that mere knowledge of a failure to comply shall not constitute authorization for purposes hereof) and any such incorrectness with respect to representations or warranties shall not constitute a Default or Event of Default hereunder until after the expiration of the Cleanup Period (and then only to the extent that the same is continuing).

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CONSTELLATION BRANDS, INC.

By: /s/ Thomas S. Summer

-----  
Name: Thomas S. Summer



Title: Executive Vice President and  
Chief Financial Officer

Bridge Loan Agreement

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Commitment: \$163,125,000

JP MORGAN CHASE BANK,  
individually, as Lender and as  
Administrative Agent

By:/s/Bruce Borden  
-----

Name: Bruce Borden  
Title: Vice President

Bridge Loan Agreement

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Commitment: \$163,125,000

CITICORP NORTH AMERICA, INC.,  
as Lender

By:/s/Andrew Robinson  
-----

Name: Andrew Robinson  
Title: Vice President

Bridge Loan Agreement

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Commitment: \$123,750,000

UBS AG, CAYMAN ISLANDS BRANCH,  
as Lender

By:/s/David A. Juge  
-----

Name: David A. Juge  
Title: Managing Director

By:/s/Wilfred V. Saint  
-----

Name: Wilfred V. Saint  
Title: Associate Director  
Banking Products  
Services, US

Bridge Loan Agreement

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GUARANTORS

ALBERRY, INC.  
CLOUD PEAK CORPORATION  
FRANCISCAN VINEYARDS, INC.  
MT. VEEDER CORPORATION

By:/s/Thomas S. Summer  
-----

Name: Thomas S. Summer

Title: Vice President and Treasurer

ROBERTS TRADING CORP.

By:/s/Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: President and Treasurer

BATAVIA WINE CELLARS, INC.  
CONSTELLATION INTERNATIONAL HOLDINGS LIMITED  
CANANDAIGUA WINE COMPANY, INC

By:/s/Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Treasurer

Bridge Loan Agreement

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BARTON INCORPORATED  
BARTON BRANDS, LTD.  
BARTON BEERS, LTD.  
BARTON BEERS OF WISCONSIN, LTD.  
BARTON BRANDS OF CALIFORNIA, INC.  
BARTON BRANDS OF GEORGIA, INC.  
BARTON CANADA, LTD.  
BARTON DISTILLERS IMPORT CORP.  
MONARCH IMPORT COMPANY  
BARTON FINANCIAL CORPORATION

By:/s/Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Vice President

CANANDAIGUA LIMITED

By:/s/Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Finance Director

CBI AUSTRALIA HOLDINGS PTY LIMITED

By:/s/Thomas S. Summer

-----  
Name: Thomas S. Summer  
Title: Director and Chief Financial Officer

Bridge Loan Agreement

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CONSTELLATION AUSTRALIA PTY LIMITED

By:/s/Thomas S. Summer

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Name: Thomas S. Summer  
Title: Director and Chief Financial Officer

Bridge Loan Agreement

The Registrant has omitted from this filing the Schedules and Exhibits listed below. The Registrant will furnish supplementally to the Commission, upon request, a copy of such Schedules and Exhibits.

Schedules

SCHEDULE I	-	Material Agreements and Liens
SCHEDULE II	-	Disclosed Matters
SCHEDULE III	-	Subsidiaries and Investments
SCHEDULE IV	-	Stock Based Plans and Stock Options
SCHEDULE V	-	Certain Adjustment Amounts

Exhibits

Exhibit A-1	-	Form of Bridge Note
Exhibit A-2	-	Form of Term Note
Exhibit B-1	-	Form of Notice of Borrowing
Exhibit B-2	-	Form of Notice of Conversion
Exhibit C-1	-	Form of Opinion of Nixon Peabody LLP
Exhibit C-2	-	Form of Opinion of McDermott, Will & Emery
Exhibit C-3	-	Form of Opinion of Clayton Utz
Exhibit D	-	Form of Opinion of Cahill Gordon & Reindel
Exhibit E	-	Form of Guarantee Assumption Agreement
Exhibit F	-	Form of Assignment and Acceptance
Exhibit G	-	Form of Intercompany Note
Exhibit H	-	Form of Officer's Certificate
Exhibit I	-	Draft Implementation Deed
Exhibit J	-	Legal and Compliance Report