

Credit Obligation, (i) a joinder to the Guarantee and Security Agreement, which joinder shall be in form and substance satisfactory to the Required Lenders, and (ii) such mortgages, deeds of trust, leasehold mortgages and leasehold deeds of trust as are necessary to grant to the Administrative Agent for the benefit of the Lenders a first priority security interest in all material real property owned or leased by such Person, together with such title insurance policies, environmental site assessments, surveys and legal opinions as the Administrative Agent may reasonably request, and (b) to take such other actions as may be reasonably requested by the Administrative Agent to carry out the intent and purposes of this Agreement and the other Credit Documents.

7. REPRESENTATIONS AND WARRANTIES. In order to induce the Lenders to extend credit to the Borrower hereunder on each Closing Date occurring on or after the Exhibit Delivery Date, each of the Borrower and its Subsidiaries jointly and severally represents and warrants as follows on each such Closing Date (and not on the date hereof or any other date prior to the first Closing Date occurring on or after the Exhibit Delivery Date), subject to any exceptions set forth in the Disclosure Letter:

7.1. Organization and Business.

7.1.1. The Borrower. The Borrower is a duly organized and validly existing corporation, in good standing under the laws of Florida, with, subject to the approval of the Bankruptcy Court, all power and authority, corporate or otherwise, necessary (a) to enter into and perform this Agreement and each other Credit Document to which it is party, (b) to incur the Credit Obligations, (c) to grant the Administrative Agent for the benefit of the Lenders the security interests in the Credit Security owned by it to secure the Credit Obligations and (d) to own its properties and carry on the business now conducted or proposed to be conducted by it. Certified copies of the Charter and By-laws of the Borrower have been previously delivered to the Administrative Agent and are correct and complete. Exhibit 7.1, as from time to time hereafter supplemented in accordance with Sections 6.4.1 and 6.4.2, sets forth, as of the later of the date hereof or the end of the most recent fiscal quarter for which financial statements are required to be furnished in accordance with such Sections, (i) the jurisdiction of organization, the organizational identification number issued by such jurisdiction and the federal taxpayer identification number of the Borrower, (ii) the address of the Borrower's principal executive office and chief place of business, (iii) each name, including any trade name, under which the Borrower conducts its business and (iv) the jurisdictions in which the Borrower owns real or tangible personal property and, in the case of real property, whether such real property is owned or leased by the Borrower.

7.1.2. Subsidiaries. Each Subsidiary of the Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, with, subject to the approval of the Bankruptcy Court, all power and authority, corporate or otherwise, necessary (a) to enter into and perform this Agreement and each other Credit Document to which it is party, (b) to guarantee the Credit Obligations, (c) to grant the Administrative Agent for the benefit of the Lenders the security interest in the Credit Security owned by such Subsidiary to secure the Credit Obligations and (d) to own its properties and carry on the business now conducted or proposed to be conducted by it.

Certified copies of the Charter and By-laws of each Subsidiary of the Borrower have been previously delivered to the Administrative Agent and are correct and complete. Exhibit 7.1, as from time to time hereafter supplemented in accordance with Sections 6.4.1 and 6.4.2, sets forth, as of the later of the date hereof or the end of the most recent fiscal quarter for which financial statements are required to be furnished in accordance with such Sections, (i) the name, jurisdiction of organization, the organizational identification number issued by such jurisdiction and the federal taxpayer identification number of each Subsidiary of the Borrower, (ii) the address of the chief executive office and principal place of business of each such Subsidiary, (iii) each name under which each such Subsidiary conducts its business, (iv) each jurisdiction in which each such Subsidiary owns real or tangible personal property, and, in the case of real property, whether such real property is owned or leased by such Subsidiary and (v) the number of authorized and issued equity interests and ownership of each such Subsidiary.

7.1.3. Qualification. Each of the Borrower and its Subsidiaries is duly and legally qualified to do business as a foreign corporation or other entity and is in good standing in each state or jurisdiction in which such qualification is required and is duly authorized, qualified and licensed under all laws, regulations, ordinances or orders of public authorities, or otherwise, to carry on its business in the places and in the manner in which it is conducted, except for failures to be so qualified, authorized or licensed which would not in the aggregate result, or create a material risk of resulting, in any Material Adverse Change.

7.1.4. Capitalization. Except as set forth on Exhibit 7.1, no options, warrants, conversion rights, preemptive rights or other statutory or contractual rights to purchase shares of capital stock or other equity securities of any Subsidiary of the Borrower now exist, nor has any Subsidiary of the Borrower authorized any such right, nor is any Subsidiary of the Borrower obligated in any other manner to issue shares of its capital stock or other equity securities.

## 7.2. Financial Statements; Budget; Material Agreements.

7.2.1. Budget. Upon delivery by the Borrower to the Administrative Agent of the Budget, the Budget will, in the Borrower's judgment, constitute a reasonable basis as of the date thereof for the assessment of the future performance of the Borrower and its Subsidiaries during the 12-month period covered thereby, it being understood that any projected financial information will represent an estimate, based on various assumptions, of future results of operations which may or may not in fact occur.

7.2.2. Material Agreements. Upon the delivery by the Borrower to the Administrative Agent of Exhibit 7.2.2 on the Exhibit Delivery Date, each of the Material Agreements will be listed on Exhibit 7.2.2. Prior to the Exhibit Delivery Date, the Borrower will have furnished to the Administrative Agent correct and complete copies, including all exhibits, schedules and amendments thereto, of the Material Agreements, each as in effect on the Exhibit Delivery Date.

7.3. Agreements Relating to Financing, Debt, Investments, etc. Exhibit 7.3, as from time to time hereafter supplemented in accordance with Sections 6.4.1 and 6.4.2, sets forth:

(a) The amounts (as of the dates indicated in Exhibit 7.3, as so supplemented) of all Financing Debt of the Borrower and its Subsidiaries and all agreements, Liens and Guarantees which relate to such Financing Debt.

(b) The amounts (as of the dates indicated in Exhibit 7.3, as so supplemented) of all Investments of the Borrower and its Subsidiaries, all agreements which relate to such Investments and all agreements which directly or indirectly require the Borrower or any of its Subsidiaries to make any Investment.

(c) Material license agreements with respect to the products of the Borrower and its Subsidiaries, including the parties thereto and the expiration dates thereof.

(d) All copyrights owned by the Borrower and its Subsidiaries that are registered with the United States Copyright Office (or any office maintaining registration of copyrights in any foreign jurisdiction) and all applications for such registration.

(e) All trademarks and service marks owned by the Borrower and its Subsidiaries that are registered with the United States Patent and Trademark Office (or any office maintaining registration of trademarks and service marks in any state of the United States of America or any foreign jurisdiction) and all applications for such registration.

(f) All United States and foreign patents and patent applications owned by the Borrower and its Subsidiaries.

(g) All internet domain names owned by the Borrower and its Subsidiaries and the registry with which each such domain name is registered.

(h) All commercial tort claims held by the Borrower and its Subsidiaries and related information with respect to the status of the proceedings.

(i) All bank and deposit accounts owned by the Borrower and its Subsidiaries.

The Borrower has furnished the Lenders correct and complete copies of any agreements described above in this Section 7.3 requested by the Lenders.

7.4. Changes in Condition. Since May 3, 2004, no Material Adverse Change has occurred. Between May 3, 2004 and the date hereof, neither the Borrower nor any of its Subsidiaries has entered into any material transaction outside the ordinary course of business (other than the Credit Documents and other agreements relating to the filing of the Bankruptcy Cases).

7.5. Title to Assets. The Borrower and its Subsidiaries have good and marketable title to all assets necessary for or used in the operations of their business as now conducted by them and reflected in the most recent balance sheet referred to in Section 7.2.1 (or the balance sheet most recently furnished to the Lenders pursuant to Sections 6.4.1 or 6.4.2), and to all assets acquired

subsequent to the date of such balance sheet, subject to no Liens except for Permitted Liens and except for assets disposed of as permitted by Section 6.10.

7.6. Operations in Conformity with Law, etc. The operations of the Borrower and its Subsidiaries as now conducted or proposed to be conducted are not in violation of, nor are the Borrower or its Subsidiaries in default under, any Legal Requirement presently in effect, except for such violations and defaults as do not and will not, in the aggregate, result, or create a material risk of resulting, in any Material Adverse Change. The Borrower has received no notice of any such violation or default and has no knowledge of any basis on which the operations of the Borrower or its Subsidiaries, as now conducted and as currently proposed to be conducted after the date hereof, would be held so as to violate or to give rise to any such violation or default.

7.7. Litigation. No litigation, at law or in equity, or any proceeding before any court, board or other governmental or administrative agency or any arbitrator is pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened which involves any material risk of any final judgment, order or liability which, after giving effect to any applicable insurance, has resulted, or creates a material risk of resulting, in any Material Adverse Change or which seeks to enjoin the consummation, or which questions the validity, of any of the transactions contemplated by this Agreement or any other Credit Document. No judgment, decree or order of any court, board or other governmental or administrative agency or any arbitrator has been issued against or binds the Borrower or any of its Subsidiaries which has resulted, or creates a material risk of resulting, in any Material Adverse Change.

7.8. Authorization and Enforceability. Subject to the approval of the Bankruptcy Court, each Obligor has taken all corporate action required to execute, deliver and perform this Agreement and each other Credit Document to which it is party. No consent of stockholders of any Obligor is necessary in order to authorize the execution, delivery or performance of this Agreement or any other Credit Document to which such Obligor is party. Subject to the approval of the Bankruptcy Court, each of this Agreement and the other Credit Documents constitutes the legal, valid and binding obligation of each Obligor party thereto and is enforceable against such Obligor in accordance with its terms.

7.9. No Legal Obstacle to Agreements. Subject to the approval of the Bankruptcy Court, neither the execution and delivery of this Agreement or any other Credit Document, nor the making of any borrowings hereunder, nor the guaranteeing of the Credit Obligations, nor the securing of the Credit Obligations with the Credit Security, nor the consummation of any transaction referred to in or contemplated by this Agreement or any other Credit Document, nor the fulfillment of the terms hereof or thereof or of any other agreement, instrument, deed or lease contemplated by this Agreement or any other Credit Document, has constituted or resulted in or will constitute or result in:

(a) any breach or termination of the provisions of any agreement, instrument, deed or lease (other than the Prior Credit Agreement) to which the Borrower, any of its Subsidiaries or any other Obligor is a party or by which it is bound, or of the Charter or By-laws of the Borrower, any of its Subsidiaries or any other Obligor;

(b) the violation of any law, statute, judgment, decree or governmental order, rule or regulation applicable to the Borrower, any of its Subsidiaries or any other Obligor;

(c) the creation under any agreement, instrument, deed or lease of any Lien (other than Liens on the Credit Security which secure the Credit Obligations) upon any of the assets of the Borrower, any of its Subsidiaries or any other Obligor; or

(d) any redemption, retirement or other repurchase obligation of the Borrower, any of its Subsidiaries or any other Obligor under any Charter, By-law, agreement, instrument, deed or lease.

Except for the approval of the Bankruptcy Court, no approval, authorization or other action by, or declaration to or filing with, any governmental or administrative authority or any other Person is required to be obtained or made by the Borrower, any of its Subsidiaries or any other Obligor in connection with the execution, delivery and performance of this Agreement or any other Credit Document, the transactions contemplated hereby or thereby, the making of any borrowing hereunder, the guaranteeing of the Credit Obligations or the securing of the Credit Obligations with the Credit Security.

7.10. Defaults. Neither the Borrower nor any of its Subsidiaries is in default under any provision of its Charter or By-laws or of this Agreement or any other Credit Document. Neither the Borrower nor any of its Subsidiaries is in default under any provision of any agreement, instrument, deed or lease to which it is party or by which it or its property is bound so as to result, or create a material risk of resulting, in any Material Adverse Change.

7.11. Licenses, etc. The Borrower and its Subsidiaries have all patents, patent applications, patent licenses, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, licenses, franchises, permits, authorizations and other rights as are reasonably necessary for the conduct of the business of the Borrower and its Subsidiaries as now conducted by them. All of the foregoing are in full force and effect in all material respects, and each of the Borrower and its Subsidiaries is in substantial compliance with the foregoing without any known conflict with the valid rights of others which has resulted, or creates a material risk of resulting, in any Material Adverse Change. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such license, franchise or other right or which affects the rights of any of the Borrower and its Subsidiaries thereunder so as to result, or to create a material risk of resulting, in any Material Adverse Change.

7.12. Tax Returns. Each of the Borrower and its Subsidiaries has filed all material tax and information returns which are required to be filed by it and has paid, or made adequate provision for the payment of, all taxes which have or may become due pursuant to such returns or to any assessment received by it, other than taxes and assessments being contested by the Borrower and its Subsidiaries in good faith by appropriate proceedings and for which adequate reserves have been taken in accordance with GAAP. Neither the Borrower nor any of its Subsidiaries knows of any material additional assessments or any basis therefor. The Borrower reasonably believes that the charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of taxes or other governmental charges are adequate.

### 7.13. Certain Business Representations.

7.13.1. Labor Relations. No dispute or controversy between the Borrower or any of its Subsidiaries and any of their respective employees has resulted, or is reasonably likely to result, in any Material Adverse Change, and neither the Borrower nor any of its Subsidiaries anticipates that its relationships with its unions or employees will result, or are reasonably likely to result, in any Material Adverse Change. The Borrower and each of its Subsidiaries is in compliance in all material respects with all federal and state laws with respect to (a) non-discrimination in employment with which the failure to comply, in the aggregate, has resulted, or creates a material risk of resulting, in a Material Adverse Change and (b) the payment of wages.

7.13.2. Antitrust. Each of the Borrower and its Subsidiaries is in compliance in all material respects with all federal and state antitrust laws relating to its business and the geographic concentration of its business.

7.13.3. Consumer Protection. Neither the Borrower nor any of its Subsidiaries is in violation of any rule, regulation, order or interpretation of any rule, regulation or order of the Federal Trade Commission (including truth-in-lending), with which the failure to comply, in the aggregate, has resulted, or creates a material risk of resulting, in a Material Adverse Change.

7.13.4. Extraordinary Obligations. Neither the Borrower nor any of its Subsidiaries is party to or bound by any agreement, instrument, deed or lease or is subject to any Charter, By-law or other restriction, commitment or requirement which, in the opinion of the management of such Person, is so unusually burdensome as in the foreseeable future to result, or create a material risk of resulting, in a Material Adverse Change.

7.13.5. Future Expenditures. Neither the Borrower nor any of its Subsidiaries anticipate that the future expenditures, if any, by the Borrower and its Subsidiaries needed to meet the provisions of any federal, state or foreign governmental statutes, orders, rules or regulations will be so burdensome as to result, or create a material risk of resulting, in any Material Adverse Change.

7.14. Pension Plans. Each Plan (other than a Multiemployer Plan) and, to the knowledge of the Borrower and its Subsidiaries, each Multiemployer Plan is in material compliance with the applicable provisions of ERISA and the Code. Each Multiemployer Plan and each Plan that constitutes a “defined benefit plan” (as defined in ERISA) are set forth in Exhibit 7.14 (as from time to time hereafter supplemented in accordance with Sections 6.4.1 and 6.4.2). Each ERISA Group Person has met all of the funding standards applicable to all Plans that are not Multiemployer Plans, and no condition exists which would permit the institution of proceedings to terminate any Plan that is not a Multiemployer Plan under Section 4042 of ERISA. To the knowledge of the Borrower and each Subsidiary, no Plan that is a Multiemployer Plan is currently insolvent or in reorganization or has been terminated within the meaning of ERISA.

## 7.15. Environmental Regulations.

7.15.1. Environmental Compliance. Each of the Borrower and its Subsidiaries is in compliance in all material respects with the Clean Air Act, the Federal Water Pollution Control Act, the Marine Protection Research and Sanctuaries Act, RCRA, CERCLA and any other Environmental Law in effect in any jurisdiction in which any properties of the Borrower or any of its Subsidiaries are located or where any of them conducts its business, and with all applicable published rules and regulations (and applicable standards and requirements) of the federal Environmental Protection Agency and of any similar agencies in states or foreign countries in which the Borrower or any of its Subsidiaries conducts its business other than those which in the aggregate have not resulted, and do not create a material risk of resulting, in a Material Adverse Change.

7.15.2. Environmental Litigation. Except as set forth on Exhibit 7.15, no suit, claim, action or proceeding of which the Borrower or any of its Subsidiaries has been given notice or otherwise has knowledge is now pending before any court, governmental agency or board or other forum, or to the knowledge of the Borrower or any of its Subsidiaries, threatened by any Person (nor to the knowledge of the Borrower or any of its Subsidiaries, does any factual basis exist therefor) for, and neither the Borrower nor any of its Subsidiaries have received written correspondence from any federal, state or local governmental authority with respect to:

(a) noncompliance by the Borrower or any of its Subsidiaries with any Environmental Law;

(b) personal injury, wrongful death or other tortious conduct relating to materials, commodities or products used, generated, sold, transferred or manufactured by the Borrower or any of its Subsidiaries (including products made of, or containing or incorporating, asbestos, lead or other Hazardous Material); or

(c) the release into the environment by the Borrower or any of its Subsidiaries of any Hazardous Material generated by the Borrower or any of its Subsidiaries whether or not occurring at or on a site owned, leased or operated by the Borrower or any of its Subsidiaries.

7.15.3. Hazardous Material. Exhibit 7.15 (as from time to time hereafter supplemented in accordance with Sections 6.4.1 and 6.4.2) (a) contains a list as of the date hereof of all waste disposal or dump sites (i) at which Hazardous Material generated by either the Borrower or any of its Subsidiaries has been disposed of directly by the Borrower or any of its Subsidiaries since January 1, 2001 and all independent contractors to whom the Borrower and its Subsidiaries have delivered any such Hazardous Material since January 1, 2001 and (ii) to the knowledge of the Borrower or any of its Subsidiaries, where any such Hazardous Material finally came to be located since January 1, 2001, and (b) indicates all such sites which are or have been included (including as a potential or suspect site) in any published federal, state or local "superfund" or other list of hazardous or toxic waste sites. Any waste disposal or dump sites (A) at which Hazardous Material generated by either the Borrower or any its

Subsidiaries has been disposed of directly by the Borrower or any of its Subsidiaries or by any independent contractor to whom the Borrower or any of its Subsidiaries has delivered Hazardous Material or (B) to the knowledge of the Borrower or any of its Subsidiaries, where Hazardous Material finally came to be located, has not resulted, and does not create a material risk of resulting, in a Material Adverse Change.

7.15.4. Environmental Condition of Properties. None of the properties owned or leased by the Borrower or any of its Subsidiaries has been used as a treatment, storage or disposal site for Hazardous Material, other than as disclosed in Exhibit 7.15 (as from time to time hereafter supplemented in accordance with Sections 6.4.1 and 6.4.2). No Hazardous Material is present in any real property currently or formerly owned or operated by the Borrower or any of its Subsidiaries, except for such Hazardous Material which has not resulted, and does not create a material risk of resulting, in a Material Adverse Change.

7.16. Government Regulation; Margin Stock.

7.16.1. Government Regulation. Neither the Borrower nor any of its Subsidiaries, nor any Person controlling the Borrower or any of its Subsidiaries or under common control with the Borrower or any of its Subsidiaries, is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Investment Company Act, the Interstate Commerce Act or any other statute or regulation (other than Regulation X of the Board of Governors of the Federal Reserve System) that regulates the incurring by the Borrower or any of its Subsidiaries of Financing Debt as contemplated by this Agreement and the other Credit Documents.

7.16.2. Margin Stock. Neither the Borrower nor any of its Subsidiaries owns any Margin Stock.

7.16.3. Bank Secrecy Act; etc. Neither the extensions of credit hereunder nor the use of the proceeds thereof shall cause the Lenders to violate the federal Bank Secrecy Act or any applicable regulations thereunder or any of the sanctions programs administered by the Office of Foreign Assets Control of the United States Department of Treasury, any regulations thereunder or under any affiliated or successor governmental or quasi-governmental office, bureau or agency or any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither the Borrower nor any of its Subsidiaries is a Person (a) whose property or interests in property are blocked or subject to blocking pursuant to section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) who engages in any transactions prohibited by section 2 of such executive order, or is otherwise associated with any such Person in any manner in violation of such section 2 or (c) on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other similar regulation or executive order.

7.16.4. USA Patriot Act; etc. The Borrower and its Subsidiaries are in compliance in all material respects with the USA Patriot Act. No part of the proceeds of



the extensions of credit hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the federal Foreign Corrupt Practices Act of 1977.

7.17. Disclosure. Neither this Agreement nor any other Credit Document nor any financial statement, report, notice, mortgage, assignment or certificate furnished or to be furnished to the Lenders or the Administrative Agent by or on behalf of the Borrower or any of its Subsidiaries in connection with the transactions contemplated hereby or by such Credit Document contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. No fact is actually known to the Borrower or any of its Subsidiaries which has resulted, or in the future (so far as the Borrower or any of its Subsidiaries can reasonably foresee) will result, or creates a material risk of resulting, in any Material Adverse Change, except to the extent that present or future general economic conditions may result in a Material Adverse Change.

## 8. SPECIAL BANKRUPTCY PROVISIONS.

8.1. Post-Petition Security. From and after the date of filing of the Bankruptcy Cases, the Liens granted to and held by the Administrative Agent for the benefit of the Lenders with respect to the Credit Security will be and are post-petition Liens, entitled to first priority as set forth in any Order, subject only to Permitted Liens. The Administrative Agent will be entitled to the protections and priorities provided under section 507(b) of the Bankruptcy Code. Except for the Carve-Out and Permitted Liens, the post-petition Liens granted to the Administrative Agent for the benefit of the Lenders pursuant to section 364 of the Bankruptcy Code, and the protections and priorities provided to the Administrative Agent under section 507(b) of the Bankruptcy Code, are senior and superior to all claims, interests, demands, rights, rights of setoff, rights of recoupment and Liens, including all professional fees and disbursements incurred by the professionals retained by the Borrower and its Subsidiaries, attorneys' fees and costs, any statutory committee, trustee, examiner or other representative appointed in any Bankruptcy Case, any claims agent retained in any Bankruptcy Case and any and all claims and rights of any and all governmental authorities. Except for the Carve-Out, no claim, having a priority superior or pari passu to that granted to the Administrative Agent for the benefit of the Lenders by any Order, this Agreement or any other Credit Document will be granted while any portion of the Credit Obligations remains outstanding.

8.2. Liens Perfected Without Filing or Recording. Upon entry of any Order, the post-petition Liens granted to the Administrative Agent for the benefit of the Lenders on the Credit Security by virtue of such Order, this Agreement and the other Credit Documents (a) will, subject only to Permitted Liens, be first and prior and (b) will be valid and perfected, in each case as against all third parties and without regard to applicable federal, state or local filing or recording statutes, *nunc pro tunc* as of the date of filing of the Bankruptcy Cases, and without further action of any Person, including the Lenders and the Administrative Agent; provided, however, that the Administrative Agent may, but need not, take such steps as it deems desirable and applicable to comply with such statutes, and all financing statements which are filed listing

the Borrower or any of its Subsidiaries as debtor and the Administrative Agent (on behalf of the Lenders) as secured party, all account control agreements, mortgages, memoranda of security interests or similar instruments which are filed granting to the Administrative Agent on behalf of the Lenders Liens upon the Credit Security will be deemed to have been filed, and the Liens evidenced thereby will be deemed perfected, *nunc pro tunc* as of the date of filing of the Bankruptcy Cases. Without limiting the foregoing, and notwithstanding any other provision in this Agreement, the pre-petition Liens of the Administrative Agent for the benefit of the lenders under the Prior Credit Agreement on the Credit Security (as defined in the Prior Credit Agreement), will remain in full force and effect, and such pre-petition Liens will become post-petition Liens on the Credit Security (as defined in the Prior Credit Agreement) after the date of filing of the Bankruptcy Cases, without any further action by any lender under the Prior Credit Agreement, the Administrative Agent or any other Person, and without any lapse between the pre-petition and the post-petition Liens of the Administrative Agent in the Credit Security (as defined in the Prior Credit Agreement).

8.3. Relief from Stay. Immediately and automatically upon the entry of the Interim Order, the Lenders and the Administrative Agent will have irrevocable and presently effective stay relief. Pursuant to such stay relief, all stays and injunctions in the Bankruptcy Cases, including the automatic stay arising on the date of the filing of the Bankruptcy Cases under section 362(a) of the Bankruptcy Code, will be terminated automatically and irrevocably as to the Lenders and the Administrative Agent and with respect to the enforcement of their respective remedies against the Credit Security under the Credit Documents. In accordance with such stay relief terminating the automatic stay and any and all other applicable stays and injunctions: (a) the Lenders and the Administrative Agent will, upon at least three days' written notice to each of the Borrower, the Committee and the United States Trustee, have the right to enforce their respective remedies against the Credit Security without having to obtain any further order of the Bankruptcy Court; and (b) each of the Borrower and its Subsidiaries expressly and irrevocably waives and releases any right to claim in the Bankruptcy Court, any Bankruptcy Case or any other federal or state court that any stay, injunction or other restraint or prohibition of any kind should be issued, imposed or reimposed against or with respect to any Lender, the Administrative Agent or any item of Credit Security. The waivers and releases of the Borrower and its Subsidiaries set forth in this Section 8.3 include any and all proceedings for injunctive relief of any kind filed by or on behalf of the Borrower or any its Subsidiaries other under authority of section 105 or 362 of the Bankruptcy Code, rule 7065 of the Federal Bankruptcy Rules, rule 65 of the Federal Rules of Civil Procedure or any other or similar substantive or procedural provisions of federal or state law or rules of procedure. Without limiting the foregoing, each of the Borrower, its Subsidiaries and the other parties in interest will have the limited right to challenge the occurrence of an Event of Default by requesting an expedited hearing before the Bankruptcy Court prior to the expiration of the notice periods, if any, provided in Section 9.1 (the "Default Hearing"). The Borrower, any of its Subsidiaries or any other party in interest who challenges an Event of Default will provide the Lenders and the Administrative Agent with at least three days' written notice of the Default Hearing. The Default Hearing will be limited strictly to the issue of whether such Event of Default has occurred. No other arguments or issues relating to enforcement by any Lender or the Administrative Agent of its rights or remedies may be presented for adjudication by the Bankruptcy Court and no other relief against any Lender or the Administrative Agent may be requested. At the Default Hearing, the burden will be on the Borrower, its applicable Subsidiary

or the other applicable party in interest to establish that such Event of Default has not occurred. Pending the outcome of the Default Hearing, and provided that the events, occurrences and circumstances giving rise to such Event of Default do not involve the payment of any monetary sum, is not willful or intentional, and do not place any rights or property of any Lender or the Administrative Agent, including the Credit Security, in immediate jeopardy (to be determined by such Lender or the Administrative Agent, as the case may be, in its sole and absolute discretion), such Lender or the Administrative Agent, as the case may be, will refrain from exercising its remedies with respect to the Credit Security; provided, however, that the right of such Lender, or the Administrative Agent, to terminate the duties and obligations of the Lenders and/or the Administrative Agent under this Agreement, including the obligation to make any further extensions of credit under this Agreement and the other Credit Documents, will not be delayed or otherwise limited.

8.4. Extension of Post-Petition Credit and Other Remedies. The agreement of the Lenders to provide post-petition financing to the Borrower will be subject to the following exceptions:

(a) the agreement to provide post-petition financing will not prohibit any Lender from moving in the Bankruptcy Court for any other and further relief: (i) which such Lender believes in good faith to be reasonably and immediately necessary to protect the rights of the Lenders and the Administrative Agent with respect to the Credit Security (including a request for Borrower or any other Obligor to abandon any part of the Credit Security); and (ii) except as set forth in Section 8.3, as to which such Lender believes reasonably and in good faith that any Order is not sufficient to protect the rights of the Lenders and/or the Administrative Agent with respect to the Credit Security under the circumstances existing when such Lender requests such other and further relief; and

(b) from and after the termination of this Agreement, and except as provided in Section 8.9: (i) neither the Lenders nor the Administrative Agent will have any obligation to provide financing to or on behalf of the Borrower, its Subsidiaries or any of their respective bankruptcy estates; and (ii) except as set forth in Section 8.3, there will be no restriction of any kind against the exercise by the Lenders and the Administrative Agent of their respective rights and remedies under the Credit Documents, including the right of the Lenders and the Administrative Agent to exercise all of their respective remedies with respect to the Credit Security.

8.5. Plan of Reorganization. Neither the Borrower nor any of its Subsidiaries will file or propose any plan of reorganization (including any amendment or modification of any plan of reorganization, whether before or after confirmation) that: (a) does not incorporate all of the terms of the Orders, this Agreement and the other Credit Documents that pertain to the treatment of the secured claims of the Lenders and the Administrative Agent and the preservation of the rights of the Lenders and the Administrative Agent in the Credit Security; (b) does not provide for payment and performance in full of all of the Credit Obligations upon confirmation of the Reorganization Plan; or (c) would allow any Person to improve its Lien priority *vis a vis* the Lenders and the Administrative Agent with respect to the Credit Security. Nothing in this Agreement will be construed as a consent by any Lender or the Administrative Agent to, or an

approval by any Lender or the Administrative Agent of, the terms of any plan of reorganization or any amendment or modification thereto.

8.6. Disavowal and Waiver of Subsequent Relief Based on Changed Circumstances. The Borrower, its Subsidiaries, the Lenders and the Administrative Agent know and understand that there are rights and remedies provided under the Bankruptcy Code, the Federal Bankruptcy Rules and the Federal Rules of Civil Procedure pursuant to which parties otherwise bound by a previously entered order can attempt to obtain relief from such an order by alleging circumstances that may warrant a change or modification in such order, or circumstances such as fraud, mistake, inadvertence, excusable neglect, newly discovered evidence or similar matters that may justify vacating such order entirely, or otherwise changing or modifying it (collectively “Changed Circumstances”). Rights and remedies based on Changed Circumstances include: (a) modification of any plan of reorganization after confirmation of such plan and before its substantial consummation, pursuant to section 1127(b) of the Bankruptcy Code; (b) relief from a final order or judgment pursuant to rule 9024 of the Federal Bankruptcy Rules and rule 60(b) of the Federal Rules of Civil Procedure; and (c) the commencement and prosecution of a serial case under chapter 11 of the Bankruptcy Code by a debtor which is in default of obligations under a stipulation or plan of reorganization confirmed in an earlier case. With full knowledge and understanding of what are, or may be, their present or future rights and remedies based on allegations of Changed Circumstances, each of the Borrower and its Subsidiaries: (i) expressly disavows that there are any matters which constitute any kind of Changed Circumstances as of the date of entry of any Order; and (ii) expressly disavows that it is aware of any matters whatsoever that it is assuming, contemplating or expecting in proceeding with (A) having the Orders entered by the Bankruptcy Court and (B) the transactions contemplated by this Agreement and the other Credit Documents, that would serve as a basis to allege such Changed Circumstances.

8.7. Exclusive Remedy For Any Alleged Post-Petition Claim. Each of the Borrower and its Subsidiaries disavows, waives, and releases any and all adverse claims against the Lenders and the Administrative Agent through and including the Consummation Date, subject to the approval of the Bankruptcy Court in the case of adverse claims relating to the Prior Credit Agreement. If the Borrower or any of its Subsidiaries asserts that it has any adverse claims against any Lender or the Administrative Agent arising after the Consummation Date, then the sole and exclusive remedy of the Borrower or such Subsidiary for any and all such adverse claims will be an action for monetary damages (the “Damage Lawsuit”). Any such Damage Lawsuit, regardless of the procedural form in which it is alleged (e.g., by complaint, counterclaim, cross-claim, third-party claim, or otherwise) will be severed from any enforcement by any of the Lenders or the Administrative Agent of its legal, equitable and contractual rights (including collection of the Credit Obligations and foreclosure or other enforcement against the Credit Security) pursuant to this Agreement or any other Credit Document, and the Damage Lawsuit (including any and all adverse claims alleged against any Lender or the Administrative Agent therein) cannot be asserted by the Borrower or any of its Subsidiaries as a defense, setoff, recoupment, or grounds for delay, stay or injunction, against any enforcement by any Lender or the Administrative Agent of its legal, equitable and contractual rights under the Orders, this Agreement, any other Credit Document or otherwise.

8.8. Prohibition on Priming of Liens on Credit Security. No Person will be permitted to surcharge the Credit Security under section 506(c) of the Bankruptcy Code or to obtain a Lien with respect to the Credit Security which is equal or senior to the Liens of the Lenders and the Administrative Agent on the Credit Security, other than Permitted Liens. Any right of set off, tax lien or tax levy held by any governmental authority will be subordinate to the Liens and interests of the Lenders and the Administrative Agent in the Credit Security. Except as expressly provided in this Section 8.8, the prohibition on surcharging or priming of the Liens of the Lenders and the Administrative Agent on the Credit Security will survive the termination of this Agreement such that no Person, including to governmental authorities, will be permitted to obtain a Lien (through any means, at law or in equity) which is equal or senior to the Liens of the Lenders and the Administrative Agent on the Credit Security.

8.9. Marshaling. The right of the Lenders and the Administrative Agent to seek the equitable remedy of marshaling is expressly preserved, and the Borrower and its Subsidiaries will cooperate fully with any effort by any Lender or the Administrative Agent to exercise its equitable remedy of marshaling.

## 9. DEFAULTS.

9.1. Events of Default. The following events are referred to as “Events of Default”:

9.1.1. Payment. The Borrower shall fail to make any payment in respect of:  
(a) interest or any fee on or in respect of any of the Credit Obligations owed by it as the same shall become due and payable, and such failure shall continue for a period of three Business Days; (b) principal of any of the Credit Obligations owed by it as the same shall become due, whether at maturity or by acceleration or otherwise.

9.1.2. Specified Covenants. The Borrower or any of its Subsidiaries shall fail to perform or observe any of the provisions of Sections 6.4.4 through 6.4.7, Section 6.4.9 or 6.4.11 or Sections 6.5 through 6.23.

9.1.3. Other Covenants. The Borrower, any of its Subsidiaries or any other Obligor shall fail to perform or observe any other covenant, agreement or provision to be performed or observed by it under this Agreement or any other Credit Document, and such failure shall not be rectified or cured to the written satisfaction of the Required Lenders within 10 days after the earlier of (a) notice thereof by the Administrative Agent to the Borrower or (b) the date on which a Financial Officer of the Borrower, any of its Subsidiaries or any other Obligor shall have actual knowledge thereof.

9.1.4. Representations and Warranties. Any representation or warranty of or with respect to the Borrower, any of its Subsidiaries or any other Obligor made to the Lenders or the Administrative Agent in, pursuant to or in connection with this Agreement or any other Credit Document, or in any financial statement, report, notice, mortgage, assignment or certificate delivered to any of the Lenders or the Administrative Agent by the Borrower, any of its Subsidiaries or any other Obligor in connection herewith or therewith, shall be false in any material respect on the date as of which it was made.

9.1.5. Material Financing Debt Cross Default, etc.

(a) The Borrower or any of its Subsidiaries shall fail to make any payment when due (after giving effect to any applicable grace periods) in respect of any Material Financing Debt;

(b) the Borrower or any of its Subsidiaries shall fail to perform or observe the terms of any agreement or instrument relating to any Material Financing Debt, and such failure shall continue, without having been duly cured, waived or consented to, beyond the period of grace, if any, specified in such agreement or instrument, and such failure shall permit the acceleration of such Material Financing Debt;

(c) all or any part of any Material Financing Debt of the Borrower or any of its Subsidiaries shall be accelerated or shall become due or payable prior to its stated maturity for any reason whatsoever (except with respect to voluntary prepayments or mandatory contingent payments that do not result from a default thereunder or the occurrence of an event similar to an Event of Default hereunder);

(d) any Lien on any property of the Borrower or any of its Subsidiaries securing any Material Financing Debt shall be enforced by foreclosure or similar action; or

(e) any holder of any Material Financing Debt shall exercise any right of rescission with respect to the issuance thereof or put, mandatory prepayment or repurchase rights against the Borrower or any of its Subsidiaries with respect to such Material Financing Debt (other than any such rights that may be satisfied with "payment in kind" notes or other similar securities).

9.1.6. Ownership; Liquidation; etc. Except as permitted by Section 6.10:

(a) the Borrower shall cease to own, directly or indirectly, all the capital stock of its Subsidiaries, except to the extent permitted by Section 6.11.1; or

(b) the Borrower or any of its Subsidiaries or any other Obligor shall initiate any action to dissolve, liquidate or otherwise terminate its existence.

9.1.7. Enforceability, etc. Any Credit Document shall cease for any reason (other than the scheduled termination thereof in accordance with its terms) to be enforceable in accordance with its terms or in full force and effect; or any Obligor shall so assert in a judicial or similar proceeding; or the security interests created by this Agreement or any other Credit Documents shall cease to be enforceable and of the same effect and priority purported to be created hereby.

9.1.8. Judgments. A judgment (a) which, with other outstanding final judgments against the Borrower and its Subsidiaries, exceeds an aggregate of \$1,000,000 in excess of applicable insurance coverage shall be rendered against the Borrower or any of its Subsidiaries or (b) which grants injunctive relief that results, or creates a material risk of resulting, in a Material Adverse Change and in either case if (i) within 30 days after entry thereof, such judgment shall not have been discharged or execution thereof stayed

pending appeal or (ii) within 30 days after the expiration of any such stay, such judgment shall not have been discharged.

9.1.9. ERISA. Any “reportable event” (as defined in section 4043 of ERISA) shall have occurred that reasonably could be expected to result in termination of a Plan or the appointment by the appropriate United States District Court of a trustee to administer any Plan or the imposition of a Lien in favor of a Plan; or any ERISA Group Person shall fail to pay when due amounts aggregating in excess of \$500,000, which it shall have become liable to pay to the PBGC or to a Plan under Title IV of ERISA; or notice of intent to terminate a Plan shall be filed under Title IV of ERISA by any ERISA Group Person or administrator; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Plan or a proceeding shall be instituted by a fiduciary of any Plan against any ERISA Group Person to enforce section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within 30 days thereafter; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Plan must be terminated.

9.1.10. Bankruptcy, etc. Except for the Bankruptcy Cases, the Borrower, any of its Subsidiaries or any other Obligor shall:

(a) commence a voluntary case under the Bankruptcy Code or authorize, by appropriate proceedings of its board of directors or other governing body, the commencement of such a voluntary case;

(b) (i) have filed against it a petition commencing an involuntary case under the Bankruptcy Code that shall not have been dismissed within 60 days after the date on which such petition is filed or (ii) file an answer or other pleading within such 60-day period admitting or failing to deny the material allegations of such a petition or seeking, consenting to or acquiescing in the relief therein provided or (iii) have entered against it an order for relief in any involuntary case commenced under the Bankruptcy Code;

(c) seek relief as a debtor under any applicable law, other than the Bankruptcy Code, of any jurisdiction relating to the liquidation or reorganization of debtors or to the modification or alteration of the rights of creditors, or consent to or acquiesce in such relief;

(d) have entered against it an order by a court of competent jurisdiction (i) finding it to be bankrupt or insolvent, (ii) ordering or approving its liquidation or reorganization as a debtor or any modification or alteration of the rights of its creditors or (iii) assuming custody of, or appointing a receiver or other custodian for, all or a substantial portion of its property; or

(e) make an assignment for the benefit of, or enter into a composition with, its creditors, or appoint, or consent to the appointment of, or suffer to exist a receiver or other custodian for, all or a substantial portion of its property.

9.1.11. Bankruptcy Cases.

(a) Any Bankruptcy Case shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or the Borrower or any of its Subsidiaries shall file an application for an order converting any Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code;

(b) a trustee under chapter 7 or chapter 11 of the Bankruptcy Code shall be appointed in any Bankruptcy Case;

(c) an application shall be filed by the Borrower or any of its Subsidiaries in any Bankruptcy Case for the approval of any Superpriority Claim (other than the Carve-Out) in such Bankruptcy Case which is pari passu with or senior to the claims of the Lenders and the Administrative Agent against the Borrower and the other Obligors under this Agreement and the other Credit Documents, or there shall arise any such pari passu or senior Superpriority Claim;

(d) the Bankruptcy Court shall fail to enter the Final Order within 30 days after the date on which the Bankruptcy Court enters the Interim Order;

(e) the Bankruptcy Court shall enter any order that reverses, vacates, stays, amends or otherwise modifies any Order without the written consent of the Required Lenders;

(f) the Bankruptcy Court shall enter any order in any Bankruptcy Case that grants relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) in any assets of the Borrower or any of its Subsidiaries which have a value in excess of \$100,000 in the aggregate;

(g) the Bankruptcy Court shall enter any order in any Bankruptcy Case that is not stayed pending appeal that grants relief from the automatic stay to any creditor of the Borrower or any of its Subsidiaries other than the Lenders and the Administrative Agent in their capacities as such with respect to any claims equal to or exceeding \$200,000 in the aggregate; provided, however, that it shall not be an Event of Default if relief from the automatic stay is lifted solely for the purpose of (i) allowing such creditor to determine the liquidated amount of its claim against the Borrower or any of its Subsidiaries, (ii) seeking a payment from a collateral source other than the Borrower or any of its Subsidiaries or (iii) granting a deed in lieu of foreclosure to the extent permitted under Section 9.1.11(f);

(h) the Bankruptcy Court shall enter an order in any Bankruptcy Case that appoints an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code, and such order shall not be reversed or vacated within 30 days after the entry thereof;

(i) the Bankruptcy Court shall enter an order in any Bankruptcy Case that confirms a plan of reorganization in such Bankruptcy Case that does not require a provision for (i) the termination of the Commitments and (ii) the payment in full in



United States Funds of all Credit Obligations on or prior to the effective date of such plan of reorganization;

(j) the Bankruptcy Court shall enter, or the Borrower or any of its Subsidiaries shall file an application for, an order in any Bankruptcy Case that (i) dismisses any Bankruptcy Case and (ii) does not require a provision for (A) the termination of the Commitments and (B) the payment in full in United States Funds of all Credit Obligations on or prior to the effective date of such dismissal;

(k) any Person (i) shall obtain an order which grants such Person a claim against any of the Lenders and/or the Administrative Agent pursuant to section 506(c) of the Bankruptcy Code or (ii) shall obtain an order which is adverse to any of the Lenders, the Administrative Agent or any of their respective rights and remedies under this Agreement, any other Credit Document or any Order, or the Borrower or any of its Subsidiaries shall commence any action which is adverse to any of the Lenders, the Administrative Agent or any of their respective rights and remedies under this Agreement, any other Credit Document or any Order.

9.2. Certain Actions Following an Event of Default. If any one or more Events of Default shall occur and be continuing, then in each and every such case:

9.2.1. Terminate Obligation to Extend Credit. Upon the written request of the Required Lenders, the Agent shall terminate the obligations of the Lenders to make any further extensions of credit under the Credit Documents by furnishing notice of such termination to the Borrower; provided, however, that if a Bankruptcy Default shall have occurred, the obligations of the Lenders to make any further extensions of credit under the Credit Documents shall automatically terminate.

9.2.2. Specific Performance; Exercise of Rights. Upon the written request of the Required Lenders, the Agent shall proceed to protect and enforce the Lenders' rights by suit in equity, action at law and/or other appropriate proceeding, either for specific performance of any covenant or condition contained in this Agreement or any other Credit Document (other than Hedge Agreements) or in any instrument or assignment delivered to the Lenders pursuant to this Agreement or any other Credit Document (other than Hedge Agreements), or in aid of the exercise of any power granted in this Agreement or any other Credit Document (other than Hedge Agreements) or any such instrument or assignment.

9.2.3. Acceleration. Upon the written request of the Required Lenders, the Agent shall by notice in writing to the Borrower declare all or any part of the unpaid balance of the Credit Obligations (other than amounts under Hedge Agreements) then outstanding to be immediately due and payable, and thereupon such unpaid balance or part thereof shall become so due and payable without presentation, protest or further demand or notice of any kind, all of which are hereby expressly waived; provided, however, that if a Bankruptcy Default shall have occurred, the unpaid balance of the Credit Obligations (other than amounts under Hedge Agreements) shall automatically become immediately due and payable.

9.2.4. Enforcement of Payment; Credit Security; Setoff. Upon the written request of the Required Lenders, the Agent shall proceed to enforce payment of the Credit Obligations in such manner as it may elect, to instruct any Letter of Credit Issuer to cancel any outstanding Letters of Credit which permit the cancellation thereof and to realize upon any and all rights in the Credit Security. The Lenders may offset and apply toward the payment of the Credit Obligations (and/or toward the curing of any Event of Default) any Indebtedness from the Lenders to the respective Obligors, including any Indebtedness represented by deposits in any account maintained with the Lenders, regardless of the adequacy of any security for the Credit Obligations. The Lenders shall have no duty to determine the adequacy of any such security in connection with any such offset.

9.2.5. Cumulative Remedies. To the extent not prohibited by applicable law which cannot be waived, all of the Lenders' rights hereunder and under each other Credit Document shall be cumulative. -

9.3. Annulment of Defaults. Once an Event of Default has occurred, such Event of Default shall be deemed to exist and be continuing for all purposes of the Credit Documents (other than Hedge Agreements) until the Required Lenders or the Administrative Agent shall have waived such Event of Default in writing, stated in writing that the same has been cured to such reasonable satisfaction of such Lenders or the Administrative Agent, as the case may be, or entered into an amendment to this Agreement which by its express terms cures such Event of Default, at which time such Event of Default shall no longer be deemed to exist or to have continued. No such action by the Lenders shall extend to or affect any subsequent Event of Default or impair any rights of the Lenders upon the occurrence thereof. The making of any extension of credit during the existence of any Default or Event of Default shall not constitute a waiver thereof.

9.4. Waivers. To the extent that such waiver is not prohibited by the provisions of applicable law that cannot be waived, each of the Borrower and its Subsidiaries waives:

- (a) all presentments, demands for performance, notices of nonperformance (except to the extent required by this Agreement or any other Credit Document), protests, notices of protest and notices of dishonor;

- (b) any requirement of diligence or promptness on the part of any Lender or the Administrative Agent in the enforcement of its rights under this Agreement or any other Credit Document;

- (c) any right it may have to claim or recover from any Lender or the Administrative Agent any special, exemplary, punitive or consequential damages;

- (d) any and all notices of every kind and description which may be required to be given by any statute or rule of law; and

- (e) any defense (other than indefeasible payment in full) which it may now or hereafter have with respect to its liability under this Agreement or any other Credit Document or with respect to the Credit Obligations.

## 10. EXPENSES; INDEMNITY.

10.1. Expenses. Whether or not the transactions contemplated hereby shall be consummated, the Borrower will pay:

(a) all reasonable expenses of the Lenders and the Administrative Agent (including the out-of-pocket expenses reasonable fees and disbursements of counsel to the Lenders and the Administrative Agent) in connection with:

(i) the negotiation, preparation and duplication of this Agreement and each other Credit Document, examinations by, and reports of, the Administrative Agent's commercial financial examiners, fixed asset appraisers and environmental consultants, the transactions contemplated hereby and thereby and amendments, waivers, consents and other operations hereunder and thereunder; and

(ii) any review of pleadings and documents related to the Bankruptcy Cases, attendance at meetings or court hearings related to the Bankruptcy Cases and general monitoring of the Bankruptcy Cases and any subsequent bankruptcy cases of the Borrower or any of its Subsidiaries under chapter 7 of the Bankruptcy Code;

(b) all recording and filing fees and transfer and documentary stamp and similar taxes at any time payable in respect of this Agreement, any other Credit Document, any Credit Security or the incurrence of the Credit Obligations; and

(c) all other reasonable expenses incurred by any Lender, any holder of any Credit Obligation or the Administrative Agent in connection with the enforcement of any rights hereunder or under any other Credit Document or any work-out negotiations relating to the Credit Obligations, including costs of collection and reasonable attorneys' fees (including a reasonable allowance for the hourly cost of attorneys employed by the Lenders on a salaried basis) and expenses.

10.2. General Indemnity. The Borrower shall indemnify the Lenders and the Administrative Agent and hold them harmless from any claim, liability, loss, damage or expense resulting from the violation by the Borrower of Section 2.3.3. In addition, the Borrower shall indemnify each Lender, the Administrative Agent and each of the Lenders' and the Administrative Agent's respective directors, officers, employees, agents, attorneys, accountants, consultants, investors, lenders and Affiliates (each Lender, the Administrative Agent and each of such directors, officers, employees, agents, attorneys, accountants, consultants and Affiliates is referred to as an "Indemnified Party") and hold each of them harmless from and against any and all claims, liabilities, losses, damages and reasonable expenses (including reasonable fees and disbursements of counsel with whom any Indemnified Party may consult in connection therewith and all reasonable expenses of litigation or preparation therefor) which any Indemnified Party may incur or which may be asserted against any Indemnified Party in connection with (a) the Indemnified Party's compliance with or contest of any subpoena or other process issued against it in any proceeding involving the Borrower or any of its Subsidiaries or their Affiliates, (b) any

litigation or investigation involving the Borrower, any of its Subsidiaries or their Affiliates, or any officer, director or employee thereof, (c) the existence or exercise of any security rights with respect to the Credit Security in accordance with the Credit Documents, (d) this Agreement, any other Credit Document or any transaction contemplated hereby or thereby or (e) in the case of the Administrative Agent, the appointment and performance of the Administrative Agent under this Agreement or any other Credit Document; provided, however, that the foregoing indemnity shall not apply to any Indemnified Party to the extent such claims, damages, liabilities and expenses are determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's own gross negligence or willful misconduct. THE BORROWER EXPRESSLY ACKNOWLEDGES THAT (I) IT MAY BE REQUIRED TO INDEMNIFY PERSONS AGAINST THEIR OWN NEGLIGENCE AND (II) THIS SECTION 10.2 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## 11. OPERATIONS; ADMINISTRATIVE AGENT.

11.1. Interests in Credits. The Percentage Interest of each Lender in the respective portions of the Loan, and the related Commitments, shall be computed based on the maximum principal amount for each Lender as set forth in the Register, as from time to time in effect. The current Percentage Interests are set forth in Exhibit 11.1, which may be updated by the Administrative Agent from time to time to conform to the Register.

11.2. Administrative Agent's Authority to Act, etc. Each of the Lenders appoints and authorizes GR Investment Holdings to act for the Lenders as the Administrative Agent for the Lenders in connection with the transactions contemplated by this Agreement and the other Credit Documents (other than Hedge Agreements) on the terms set forth herein. All action in connection with the enforcement of, or the exercise of any remedies (other than the Lenders' rights of set-off as provided in Section 9.2.4 or in any Credit Document) in respect of the Credit Obligations and Credit Documents shall be taken by the Administrative Agent.

11.3. Borrower to Pay Administrative Agent, etc. The Borrower and each other Obligor shall be fully protected in making all payments in respect of the Credit Obligations (other than payments under Hedge Agreements) to the Administrative Agent, in relying upon consents, modifications and amendments executed by the Administrative Agent purportedly on the Lenders' behalf, and in dealing with the Administrative Agent as herein provided. The Administrative Agent may charge the accounts of the Borrower, on the dates when the amounts thereof become due and payable, with the amounts of the principal of and interest on the Loan, any amounts paid by the Letter of Credit Issuers to third parties under Letters of Credit or drafts presented thereunder, commitment fees, Letter of Credit fees and all other fees and amounts owing under any Credit Document (other than Hedge Agreements).

### 11.4. Lender Operations.

11.4.1. Advances. Except as the Lenders otherwise agree for loans made in accordance with the Cash Management System, on each Closing Date, each Lender shall advance to the Administrative Agent by wire transfer of immediately available funds to an account specified in writing by the Administrative Agent such Lender's Percentage Interest in the portion of the Loan advanced on such Closing Date prior to 11:00 a.m.

(Colorado time). If such funds are not received at such time, but all applicable conditions set forth in Section 5 have been satisfied, each Lender authorizes and requests the Administrative Agent to advance for the Lender's account, pursuant to the terms hereof, the Lender's respective Percentage Interest in such portion of the Loan and agrees to reimburse the Administrative Agent in immediately available funds for the amount thereof prior to 2:00 p.m. (Colorado time) on the day any portion of the Loan is advanced hereunder; provided, however, that the Administrative Agent is not authorized to make any such advance for the account of any Lender who has previously notified the Administrative Agent in writing that such Lender will not be performing its obligations to make further advances hereunder; and provided, further, that the Administrative Agent shall be under no obligation to make any such advance.

11.4.2. Administrative Agent to Allocate Payments, etc. All payments of principal and interest in respect of the extensions of credit made pursuant to this Agreement, reimbursement of amounts paid by any Letter of Credit Issuer to third parties under Letters of Credit or drafts presented thereunder, commitment fees, Letter of Credit fees and other fees under this Agreement shall, as a matter of convenience, be made by the Borrower and the other Obligor to the Administrative Agent in immediately available funds by 11:00 a.m. (Colorado time) on any Business Day. Except as the Lenders otherwise agree for loans made in accordance with the Cash Management System, the share of each Lender shall be paid by the Administrative Agent to such Lender by wire transfer of immediately available funds to an account specified in writing by such Lender by 2:00 p.m. (New York time) on such Business Day in such manner that the principal amount of the Credit Obligations to be paid shall be paid proportionately in accordance with the Lenders' respective Percentage Interests in such Credit Obligations, except as otherwise provided in this Agreement. Under no circumstances shall any Lender be required to produce or present its Notes as evidence of its interests in the Credit Obligations in any action or proceeding relating to the Credit Obligations.

11.4.3. Nonperforming Lenders. In the event that any Lender fails to reimburse the Agent pursuant to Sections 11.4.1 (or in such manner as the Lenders otherwise agree for loans made in accordance with the Cash Management System) for the Percentage Interest of such Lender (a "Nonperforming Lender") in any credit advanced by the Administrative Agent pursuant hereto, overdue amounts (the "Delinquent Payment") due from the Nonperforming Lender to the Administrative Agent shall bear interest, payable by the Nonperforming Lender on demand, at a per annum rate equal to the Applicable Rate. Such interest shall be payable to the Administrative Agent for its own account for the period commencing on the date of the Delinquent Payment and ending on the date the Nonperforming Lender reimburses the Administrative Agent on account of the Delinquent Payment (to the extent not paid by any Obligor as provided below) and the accrued interest thereon (the "Delinquency Period"), whether pursuant to the assignments referred to below or otherwise. Upon notice by the Administrative Agent, the Borrower will pay to the Administrative Agent the principal (but not the interest) portion of the Delinquent Payment. During the Delinquency Period, in order to make reimbursements for the Delinquent Payment and accrued interest thereon, the Nonperforming Lender shall be deemed to have assigned to the Administrative Agent all interest, commitment fees and other payments made by the Borrower under Section 3 that would have thereafter