

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 10-Q

☒ QUARTERLY REPORT UNDER SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

For Quarter Ended December 1, 2007

Commission File No. 001-15141

HERMAN MILLER, INC.

A Michigan Corporation

ID No. 38-0837640

855 East Main Avenue, Zeeland, MI 49464-0302

Phone (616) 654 3000

Indicate by check mark whether the registrant:

(1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

Common Stock Outstanding at January 7, 2008 – 56,610,065 shares

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FOR THE QUARTER ENDED DECEMBER 1, 2007  
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HERMAN MILLER, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(Dollars in Millions Except Share Data)  
(Unaudited)

	<b>December 1, 2007</b>	<b>June 2, 2007</b>
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 74.2	\$ 76.4
Short-term investments	17.7	15.9
Accounts receivable, net	200.7	188.1
Inventories:		
Finished goods	38.6	27.6
Work in process	19.3	14.3
Raw materials	15.8	14.1
	<hr/>	<hr/>
Total inventories	73.7	56.0
Prepaid expenses and other	50.5	48.3
	<hr/>	<hr/>
<b>Total current assets</b>	<b>416.8</b>	<b>384.7</b>
Property and Equipment, at cost	719.0	717.0
Less - accumulated depreciation	(524.5)	(520.4)
	<hr/>	<hr/>
<b>Net property and equipment</b>	<b>194.5</b>	<b>196.6</b>
Other Assets:		
Notes receivable, net	2.2	2.0
Goodwill	39.1	39.1
Intangible assets, net	8.8	9.4
Other noncurrent assets	36.0	34.4
	<hr/>	<hr/>
<b>Total other assets</b>	<b>86.1</b>	<b>84.9</b>
	<hr/>	<hr/>
<b>Total Assets</b>	<b>\$ 697.4</b>	<b>\$ 666.2</b>
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<b>LIABILITIES &amp; SHAREHOLDERS' EQUITY</b>		
Current Liabilities:		
Unfunded checks	\$ 7.0	\$ 7.4
Current maturities of long-term debt	3.0	3.0
Accounts payable	124.9	110.5
Accrued compensation and benefits	75.8	95.0
Unearned revenue	23.2	13.3
Other accrued liabilities	60.4	55.3
	<hr/>	<hr/>
<b>Total current liabilities</b>	<b>294.3</b>	<b>284.5</b>
Long-term Liabilities:		
Long-term debt, less current maturities	175.8	173.2
Pension and post-retirement benefits	23.0	22.4
Income tax liabilities	8.6	—
Other liabilities	31.9	30.5
	<hr/>	<hr/>
<b>Total Liabilities</b>	<b>533.6</b>	<b>510.6</b>
<b>Minority Interest</b>	<b>0.2</b>	<b>0.3</b>
Shareholders' Equity:		
Preferred stock, no par value (10,000,000 shares authorized, none issued)	—	—
Common stock, \$0.20 par value (240,000,000 shares authorized)	12.2	12.6
Retained earnings	202.4	197.8
Accumulated other comprehensive loss	(46.6)	(51.6)
Key executive deferred compensation plans	(4.4)	(3.5)
	<hr/>	<hr/>
<b>Total Shareholders' Equity</b>	<b>163.6</b>	<b>155.3</b>
	<hr/>	<hr/>
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$ 697.4</b>	<b>\$ 666.2</b>
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See accompanying notes to condensed consolidated financial statements

HERMAN MILLER, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(Dollars in Millions, Except Per Share Data)  
(Unaudited)

	Three Months Ended		Six Months Ended	
	December 1, 2007	December 2, 2006	December 1, 2007	December 2, 2006
Net Sales	\$ 505.9	\$ 499.1	\$ 997.6	\$ 948.8
Cost of Sales	325.8	328.7	649.9	626.1
<b>Gross Margin</b>	<b>180.1</b>	<b>170.4</b>	<b>347.7</b>	<b>322.7</b>
Operating Expenses	109.7	111.7	223.6	218.3
Restructuring Expenses	5.2	—	5.2	—
<b>Operating Earnings</b>	<b>65.2</b>	<b>58.7</b>	<b>118.9</b>	<b>104.4</b>
Other Expenses (Income):				
Interest expense	3.9	3.5	7.6	6.9
Other, net	(0.8)	(0.7)	(1.1)	(1.2)
Earnings Before Income Taxes and Minority Interest	62.1	55.9	112.4	98.7
Income Tax Expense	21.1	19.3	38.0	33.6
Earnings Before Minority Interest	41.0	36.6	74.4	65.1
Minority Interest, net of income taxes	—	—	—	—
<b>Net Earnings</b>	<b>\$ 41.0</b>	<b>\$ 36.6</b>	<b>\$ 74.4</b>	<b>\$ 65.1</b>
Earnings Per Share - Basic	\$ 0.67	\$ 0.57	\$ 1.21	\$ 1.00
Earnings Per Share - Diluted	\$ 0.67	\$ 0.56	\$ 1.20	\$ 0.99
Dividends Declared, per share	\$ 0.0880	\$ 0.0800	\$ 0.1760	\$ 0.1600

*See accompanying notes to condensed consolidated financial statements*

HERMAN MILLER, INC.  
CONDENSED CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY  
(Dollars in Millions Except Share Data)

(Unaudited)

	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Key Exec. Deferred Comp.	Total Shareholders' Equity
<b>Balance, June 2, 2007</b>	<b>62,919,425</b>	<b>\$ 12.6</b>	<b>\$ —</b>	<b>\$ 197.8</b>	<b>\$ (51.6)</b>	<b>\$ (3.5)</b>	<b>\$ 155.3</b>
Net earnings	—	—	—	74.4	—	—	74.4
Foreign currency translation adjustment	—	—	—	—	5.2	—	5.2
Pension and post-retirement liability adjustments	—	—	—	—	(0.4)	—	(0.4)
Unrealized holding gain on available-for-sale securities	—	—	—	—	0.2	—	0.2
<b>Total comprehensive income</b>							<b>79.4</b>
Cash dividends declared	—	—	—	(10.7)	—	—	(10.7)
Exercise of stock options	76,636	—	1.7	—	—	—	1.7
Employee stock purchase plan	59,571	—	1.7	—	—	—	1.7
Tax benefit related to stock-based compensation	—	—	0.1	—	—	—	0.1
Repurchase and retirement of common stock	(2,072,967)	(0.4)	(7.6)	(58.1)	—	—	(66.1)
Restricted stock units compensation expense	—	—	0.3	—	—	—	0.3
Restricted stock units released	1,220	—	—	—	—	—	—
Stock grants compensation expense	—	—	0.3	—	—	—	0.3
Stock grants issued	11,422	—	—	—	—	—	—
Stock option compensation expense	—	—	1.6	—	—	—	1.6
Deferred compensation plan	—	—	0.9	—	—	(0.9)	—
Performance share units compensation expense	—	—	1.0	—	—	—	1.0
Cumulative effect of adopting FIN 48, net of tax	—	—	—	(1.0)	—	—	(1.0)
<b>Balance, December 1, 2007</b>	<b>60,995,307</b>	<b>\$ 12.2</b>	<b>\$ —</b>	<b>\$ 202.4</b>	<b>\$ (46.6)</b>	<b>\$ (4.4)</b>	<b>\$ 163.6</b>

See accompanying notes to condensed consolidated financial statements

HERMAN MILLER, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF  
CASH FLOWS(Dollars in Millions)(Unaudited)

	<b>Six Months Ended</b>	
	<b>December 1, 2007</b>	<b>December 2, 2006</b>
Cash Flows from Operating Activities:		
Net earnings	\$ 74.4	\$ 65.1
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>		
Depreciation and amortization	22.1	20.5
Stock-based compensation	3.5	2.5
Excess tax benefits from stock-based compensation	(0.1)	(2.5)
Pension benefits	2.6	0.9
Gain on sale of dealership	(0.6)	—
Restructuring expenses	5.2	—
Cash payments related to restructuring	(0.5)	—
Other, net	4.0	2.4
Increase in current assets	(34.0)	(56.4)
Increase (decrease) in current liabilities	11.1	(8.3)
<b>Net Cash Provided by Operating Activities</b>	<b>87.7</b>	<b>24.2</b>
Cash Flows from Investing Activities:		
Changes in notes receivable, net	—	0.4
Short-term investment purchases	(6.7)	(2.5)
Short-term investment sales	5.1	4.0
Capital expenditures	(19.0)	(18.8)
Proceeds from sales of property and equipment	—	0.2
Proceeds from sale of dealership	0.6	—
Other, net	0.3	(0.1)
<b>Net Cash Used for Investing Activities</b>	<b>(19.7)</b>	<b>(16.8)</b>
Cash Flows from Financing Activities:		
Dividends paid	(10.9)	(10.4)
Common stock issued	3.2	23.5
Common stock repurchased and retired	(66.1)	(77.1)
Excess tax benefits from stock-based compensation	0.1	2.5
<b>Net Cash Used for Financing Activities</b>	<b>(73.7)</b>	<b>(61.5)</b>
Effect of Exchange Rate Changes on Cash and Cash Equivalents	3.5	—
Net Decrease in Cash and Cash Equivalents	(2.2)	(54.1)
Cash and Cash Equivalents, Beginning of Period	76.4	106.8
<b>Cash and Cash Equivalents, End of Period</b>	<b>\$ 74.2</b>	<b>\$ 52.7</b>

*See accompanying notes to condensed consolidated financial statements.*

**1. BASIS OF PRESENTATION**

The condensed consolidated financial statements have been prepared by Herman Miller, Inc. ("the company"), without audit, in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. Management believes the disclosures made in this document are adequate so as not to make the information presented misleading.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements, taken as a whole, contain all adjustments which are of a normal recurring nature necessary to present fairly the financial position of the company as of December 1, 2007, and the results of its operations and cash flows for the interim periods presented. Operating results for the six-month period ended December 1, 2007, are not necessarily indicative of the results that may be expected for the year ending May 31, 2008. It is suggested that these condensed consolidated financial statements be read in conjunction with the financial statements and notes thereto included in the company's Form 10-K filing for the year ended June 2, 2007.

**2. FISCAL YEAR**

The company's fiscal year ends on the Saturday closest to May 31. Fiscal 2008, the year ending May 31, 2008, contains 52 weeks. Fiscal 2007, the year ended June 2, 2007, contained 52 weeks. The first six months of fiscal 2007 and 2006 each contained 26 weeks. The three-month periods ended December 1, 2007, and December 2, 2006, each contained 13 weeks.

**3. FOREIGN CURRENCY TRANSLATION**

The functional currency for foreign subsidiaries is the local currency. The cumulative effects of translating the balance sheet accounts from the functional currency into the United States dollar using period-end exchange rates and translating revenue and expense accounts using average exchange rates for the period is reflected as a component of "Accumulated other comprehensive loss" in the Condensed Consolidated Balance Sheets. The financial statement impact resulting from remeasuring all foreign currency transactions into the appropriate functional currency, which was included in "Other Expenses (Income)" in the Condensed Consolidated Statements of Operations was a net gain of \$0.5 million for the three months ended December 1, 2007 and a net gain of \$0.2 million for the six months ended December 1, 2007. For the three and six-month periods ended December 2, 2006, the financial statement impact was a net loss of \$0.1 million and a negligible net loss, respectively.

**4. COMPREHENSIVE INCOME (LOSS)**

Comprehensive income (loss) consists of net earnings, foreign currency translation adjustments, pension and post-retirement liability adjustments and unrealized holding gain (loss) on "available-for-sale" securities. Comprehensive income was \$45.0 million and \$37.5 million for the three months ended December 1, 2007, and December 2, 2006, respectively. For the six months ended December 1, 2007, and December 2, 2006, comprehensive income was \$79.4 million and \$66.8 million, respectively. The following presents the components of "Accumulated other comprehensive loss" for the period indicated.

(In Millions)

	Foreign Currency Translation Adjustments	Pension and Post- Retirement Liability Adjustments (net of tax)	Unrealized Holding Period Gain (Loss) (net of tax)	Total Accumulated Other Comprehensive Income (Loss)
Balance, June 2, 2007	\$ 0.5	\$ (51.9)	\$ (0.2)	\$ (51.6)
Other comprehensive income (loss) for the six months ended December 1, 2007	5.2	(0.4)	0.2	5.0
Balance, December 1, 2007	\$ 5.7	\$ (52.3)	\$ —	\$ (46.6)

## 5. COMMON STOCK AND EARNINGS PER SHARE

The following table reconciles the numerators and denominators used in the calculations of basic and diluted earnings per share (EPS).

	Three Months Ended		Six Months Ended	
	December 1, 2007	December 2, 2006	December 1, 2007	December 2, 2006
<b>Numerators:</b>				
Numerator for both basic and diluted EPS, net earnings (In Millions)	\$ 41.0	\$ 36.6	\$ 74.4	\$ 65.1
<b>Denominators:</b>				
Denominator for basic EPS, weighted-average common shares outstanding	60,859,633	64,570,365	61,320,532	64,837,361
Potentially dilutive shares resulting from stock plans	404,467	989,564	491,911	752,544
Denominator for diluted EPS	61,264,100	65,559,929	61,812,443	65,589,905

Options to purchase 1,715,555 and 745,551 shares of common stock for the three months ended December 1, 2007 and December 2, 2006, respectively, have not been included in the denominator for the computation of diluted earnings per share because they were anti-dilutive. Options to purchase 1,229,340 and 644,544 shares of common stock for the six months ended December 1, 2007 and December 2, 2006, respectively, have not been included in the denominator for the computation of diluted earnings per share because they were anti-dilutive.

Subsequent to the end of the second quarter, on January 3, 2008, the company entered into two Accelerated Share Repurchase (ASR) agreements to repurchase \$200 million of its outstanding common stock.

## 6. STOCK-BASED COMPENSATION

The company adopted the fair value recognition provisions of SFAS No. 123(R), "Share-Based Payment" (SFAS 123(R)), at the beginning of fiscal 2007, using the modified prospective transition method. Compensation costs related to the company's stock-based compensation plans were \$1.4 million and \$1.1 million for the three months ended December 1, 2007 and December 2, 2006, respectively. The related income tax benefits for the respective three-month periods were \$0.5 million and \$0.4 million. For the six months ended December 1, 2007 and December 2, 2006, compensation costs were \$3.5 million and \$2.5 million, respectively. The related income tax benefits for the respective six-month periods were \$1.2 million and \$0.8 million.



Stock-based compensation expense recognized in the Condensed Consolidated Statements of Operations for the three months ended December 1, 2007 and December 2, 2006 has been reduced for estimated forfeitures, as it is based on awards ultimately expected to vest. SFAS 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures were estimated based on historical experience.

#### *Stock Option Plans*

The company has stock option plans under which options to purchase the company's stock are granted to employees and non-employee directors and officers at a price not less than the market price of the company's common stock on the date of grant. All options become exercisable between one year and three years from date of grant and expire two to ten years from date of grant. The options are subject to graded vesting with the related compensation expense recognized on a straight-line basis over the requisite service period

The company estimated the fair value of employee stock options on the date of grant using the Black-Scholes model. In determining these values, the following weighted-average assumptions were used for the periods indicated.

	Three Months Ended		Six Months Ended	
	December 1, 2007	December 2, 2006	December 1, 2007	December 2, 2006
Risk-free interest rates <sup>(1)</sup>	3.5 - 3.7%	4.3 - 4.7%	3.5 - 4.8%	4.3 - 5.0%
Expected term of options <sup>(2)</sup>	2 - 4 years	2 - 5 years	2 - 6 years	2 - 5 years
Expected volatility <sup>(3)</sup>	28%	28%	28%	28%
Dividend yield <sup>(4)</sup>	1.0%	1.0%	1.0%	1.0%
Weighted-average grant-date fair value of stock options:				
Granted with exercise prices equal to the fair market value of the stock on the date of grant	\$4.74	\$9.20	\$9.65	\$9.17
Granted with exercise prices greater than the fair market value of the stock on the date of grant	\$ —	\$ —	\$ —	\$7.48

(1) Represents the U.S. Treasury yield over the same period as the expected option term.

(2) Represents the period of time that options granted are expected to be outstanding. Based on analysis of historical option exercise activity, the company has determined that all employee groups exhibit similar exercise and post-vesting termination behavior.

(3) Amount is determined based on analysis of historical price volatility of the company's common stock over a period equal to the expected term of the options. The company also utilizes a market-based or "implied volatility" measure, on exchange-traded options in the company's common stock, as a reference in determining this assumption.

(4) Represents the company's estimated cash dividend yield over the expected term of options.

#### *Restricted Stock Grants*

The company grants restricted common stock to certain key employees. Shares are granted in the name of the employee, who has all rights of a shareholder, subject to certain restrictions on transferability and risk of forfeiture. The grants are subject to either cliff-based or graded vesting over a period not to exceed five years, subject to forfeiture if the employee ceases to be employed by the company for certain reasons. After the vesting period, the restrictions on transferability lapse. The company recognizes the related compensation expense on a straight-line basis over the requisite service period.

#### *Restricted Stock Units*

The company has previously granted restricted stock units to certain key employees. This program provided that the actual number of restricted stock units awarded was tied in part to the company's annual financial performance for the year on which the grant was based. The awards generally cliff-vest after a five year service period, with prorated vesting for certain circumstances and continued vesting into retirement. Each restricted stock unit represents one equivalent share of the company's common stock to be awarded, free of restrictions, after the vesting period. Compensation expense related to these awards is recognized over the requisite service period, which includes any applicable performance period. Dividend equivalent awards are granted quarterly.

#### *Performance Share Units*

The company grants performance share units to certain key employees. The number of units initially awarded is based on the value of a portion of the participant's long-term incentive compensation, divided by the fair value of the company's common stock on the date of grant. Each unit represents one equivalent share of the company's common stock. The number of common shares ultimately issued in connection with these performance share units is determined based on the company's financial performance over the related three-year service period. Compensation expense is determined based on the grant-date fair value and the number of common shares projected to be issued, and is recognized over the requisite service period.

#### *Employee Stock Purchase Program*

Under the terms of the company's Employee Stock Purchase Plan, 4 million shares of authorized common stock were reserved for purchase by plan participants at 85.0 percent of the market price. The company recognizes pre-tax compensation expense related to the market value discount.

### 7. SUPPLEMENTAL CASH FLOW INFORMATION

The company holds cash equivalents as part of its cash management function. Cash equivalents include money market funds, time deposit investments and treasury bills with original maturities of less than three months. All cash equivalents are high-credit quality financial instruments and the amount of credit exposure to any one financial institution or instrument is limited.

Cash payments for income taxes and interest were as follows.

(In Millions)	Three Months Ended		Six Months Ended	
	December 1,	December 2,	December 1,	December 2,
	2007	2006	2007	2006
Income taxes paid, net	\$ 32.9	\$ 25.1	\$ 34.6	\$ 29.4
Interest paid	\$ 7.1	\$ 6.8	\$ 7.2	\$ 6.8

### 8. SHORT-TERM INVESTMENTS

The company maintains a portfolio of short-term investments comprised of investment grade fixed-income securities. These investments are held by the company's wholly-owned insurance captive and are considered "available-for-sale" as defined in SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities." Accordingly, they have been recorded at fair market value based on quoted market prices, with the resulting net unrealized holding gains or losses reflected, net of tax, as a component of "Accumulated other comprehensive loss" in the Condensed Consolidated Balance Sheets (see Note 4).

Net investment income recognized in the Condensed Consolidated Statements of Operations resulting from these investments totaled approximately \$0.2 million for each of the three-month periods ended December 1, 2007, and December 2, 2006. Net investment income totaled approximately \$0.3 million for each of the six-month periods ended December 1, 2007, and December 2, 2006.

The following is a summary of the carrying and market values of the company's short-term investments as of the respective dates.

December 1, 2007				
(In Millions)	Cost	Unrealized Gain	Unrealized Loss	Market Value
U.S. Government & Agency Debt	\$ 4.0	\$ —	\$ —	\$ 4.0
Corporate Bonds	7.9	—	—	7.9
Mortgage-Backed	5.0	—	—	5.0
Other Debt	0.8	—	—	0.8
Total	\$ 17.7	\$ —	\$ —	\$ 17.7

The following is a summary of the carrying and market values of the company's short-term investments as of the respective dates.

June 2, 2007				
(In Millions)	Cost	Unrealized Gain	Unrealized Loss	Market Value
U.S. Government & Agency Debt	\$ 3.9	\$ —	\$ (0.1)	\$ 3.8
Corporate Bonds	6.0	—	(0.1)	5.9
Mortgage-Backed	5.5	—	(0.1)	5.4
Other Debt	0.8	—	—	0.8
Total	\$ 16.2	\$ —	\$ (0.3)	\$ 15.9

## 9. OPERATING SEGMENTS

The company is comprised of two primary reportable operating segments as defined in SFAS 131, "Disclosures about Segments of an Enterprise and Related Information" (SFAS 131); North American Furniture Solutions and Non-North American Furniture Solutions.

The North American Furniture Solutions segment includes the operations associated with the design, manufacture and sale of furniture products for work-related settings, including office, healthcare and educational environments, throughout the United States, Canada and Mexico. The business associated with the company's owned contract furniture dealers is also included in the North American Furniture Solutions segment. The Non-North American Furniture Solutions segment includes the operations associated with the design, manufacture and sale of furniture products primarily for work-related settings outside of North America.

The company also reports an "Other" category consisting primarily of its North American Home and start-up businesses, and certain unallocated corporate expenses, if any. North American Home includes the operations associated with the design, manufacture and sale of furniture products for residential settings in the United States, Canada and Mexico. The start-up businesses are discrete operations, such as Convia, Inc., or activities aimed at developing innovative products to serve current and new markets.

The performance of the operating segments is evaluated by the company's management using various financial measures. The following is a summary of certain key financial measures for the respective fiscal periods indicated.

(In Millions)	Three Months Ended		Six Months Ended	
	December 1, 2007	December 2, 2006	December 1, 2007	December 2, 2006
Net Sales:				
North American Furniture Solutions	\$ 407.6	\$ 407.6	\$ 813.9	\$ 780.0
Non-North American Furniture Solutions	83.7	71.2	157.0	133.8
Other	14.6	20.3	26.7	35.0
Total	<u>\$ 505.9</u>	<u>\$ 499.1</u>	<u>\$ 997.6</u>	<u>\$ 948.8</u>
Depreciation and Amortization:				
North American Furniture Solutions	\$ 9.4	\$ 9.0	\$ 18.7	\$ 17.9
Non-North American Furniture Solutions	1.2	1.1	2.4	2.2
Other	0.5	0.2	1.0	0.4
Total	<u>\$ 11.1</u>	<u>\$ 10.3</u>	<u>\$ 22.1</u>	<u>\$ 20.5</u>
Operating Earnings:				
North American Furniture Solutions	\$ 53.7	\$ 49.7	\$ 95.7	\$ 88.1
Non-North American Furniture Solutions	13.5	7.2	23.4	13.3
Other	(2.0)	1.8	(0.2)	3.0
Total	<u>\$ 65.2</u>	<u>\$ 58.7</u>	<u>\$ 118.9</u>	<u>\$ 104.4</u>
Capital Expenditures:				
North American Furniture Solutions	\$ 7.5	\$ 8.3	\$ 15.1	\$ 15.7
Non-North American Furniture Solutions	1.9	1.2	2.9	1.7
Other	0.7	0.7	1.0	1.4
Total	<u>\$ 10.1</u>	<u>\$ 10.2</u>	<u>\$ 19.0</u>	<u>\$ 18.8</u>

(In Millions)	December 1, 2007	June 2, 2007
Total Assets:		
North American Furniture Solutions	\$ 511.4	\$ 507.0
Non-North American Furniture Solutions	159.0	133.1
Other	27.0	26.1
Total	<u>\$ 697.4</u>	<u>\$ 666.2</u>

The accounting policies of the reportable operating segments are the same as those of the company. Additionally, the company employs a methodology for allocating corporate costs and assets to the operating segments. The underlying objective of this methodology is to allocate corporate costs according to the relative usage of the underlying resources and to allocate corporate assets according to the relative expected benefit. The company has determined that allocation based on relative net sales is most appropriate for all expenses. The majority of corporate costs are allocated to the operating segments, however, certain costs that are generally considered the result of isolated business decisions are not subject to allocation and are evaluated separately from the rest of the regular ongoing business operations. The restructuring charges of \$5.2 million recorded in the second fiscal quarter of 2008 and discussed in Note 16 were allocated to the “Other” category.

#### 10. NEW ACCOUNTING STANDARDS

In June 2006, the FASB issued FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109” (FIN 48), which clarifies the accounting for uncertainty in tax positions. Under FIN 48, the tax effects of a position should be recognized only if it is “more-likely-than-not” to be sustained based solely on its technical merits as of the reporting date. FIN 48 also requires significant new annual disclosures in the notes to the financial statements. The effect of adjustments at adoption is required to be recorded directly to beginning retaining earnings in the period of adoption and reported as a change in accounting principle. Retroactive application is prohibited under FIN 48. The company adopted the provisions of FIN 48 at the beginning of fiscal 2008. Further information regarding the adoption of FIN 48 is provided in Note 14.

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements” (SFAS 157). This new standard establishes a framework for measuring the fair value of assets and liabilities. This framework is intended to provide increased consistency in how fair value determinations are made under various existing accounting standards which permit, or in some cases require, estimates of fair value market value. SFAS 157 also expands financial statement disclosure requirements about a company’s use of fair value measurements, including the effect of such measures on earnings. The company is required to adopt this new accounting guidance at the beginning of fiscal 2009. In November 2007, the FASB deferred the effective date until fiscal 2010 for nonfinancial assets and liabilities except those items recognized or disclosed at fair value on an annual or more frequently recurring basis. While the company is currently evaluating the provisions of SFAS 157, the adoption is not expected to have a material impact on its consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159 “The Fair Value Option for Financial Assets and Financial Liabilities” (SFAS 159). SFAS 159 expands the use of fair value measurement by permitting entities to choose to measure at fair value, many financial instruments and certain other items that are not currently required to be measured at fair value. The company is required to adopt SFAS 159 at the beginning of fiscal 2009 and is in the process of evaluating the applicability and potential impact to its financial statements.

Subsequent to the end of the company’s second fiscal quarter, the FASB issued a revised version of SFAS No. 141 “Business Combinations (revised 2007)” (SFAS 141(R)). The revision is intended to simplify existing guidance, and partially converge reporting under U.S. Generally Accepted Accounting Principles (GAAP) with international accounting rules.

The FASB also issued SFAS No. 160 “Noncontrolling Interests in Consolidated Financial Statements-An Amendment of ARB No. 51” (SFAS 160) at the same time it issued SFAS 141(R). SFAS 160 requires all entities to report noncontrolling (minority) interests in subsidiaries as equity in the consolidated financial statements. Its intention is to eliminate the diversity in practice regarding the accounting for transactions between an entity and noncontrolling interests.

The company is required to adopt the provisions of both SFAS 141(R) and SFAS 160 simultaneously at the beginning of fiscal 2010. Earlier adoption is prohibited. The company is currently evaluating the provisions of these pronouncements, and the potential impact on its consolidated financial statements.

#### 11. OTHER INTANGIBLE ASSETS

Other intangible assets are comprised of patents, trademarks and intellectual property rights. As of December 1, 2007, the combined gross carrying value and accumulated amortization was \$15.2 million and \$6.4 million, respectively. As of June 2, 2007, these amounts totaled \$14.9 million and \$5.5 million, respectively. The company amortizes its intangible assets over periods ranging from 5 to 17 years.

Amortization expense related to intangible assets totaled approximately \$0.4 million and \$0.2 million for the three-month periods ended December 1, 2007, and December 2, 2006, respectively. For the six months ended December 1, 2007, and December 2, 2006, amortization expense related to intangible assets totaled approximately \$0.9 million and \$0.5 million, respectively.

Estimated amortization expense for intangible assets as of December 1, 2007, for each of the succeeding fiscal years is as follows:

(In Millions)	Remaining 2008	\$0.9
	2009	\$1.7
	2010	\$1.3
	2011	\$1.3
	2012	\$1.2

## 12. LONG TERM DEBT

On March 6, 2001, the company sold publicly registered debt securities totaling \$175.0 million. These notes mature on March 15, 2011 and bear an annual interest rate of 7.125 percent, with interest payments due semi-annually.

The company previously issued \$100.0 million of senior notes in a private placement to seven insurance companies of which \$3.0 million was outstanding at December 1, 2007 and June 2, 2007.

As of December 1, 2007, the company had available, an unsecured revolving credit facility that provided for \$150.0 million of borrowings, expiring in October 2009. The agreement had an accordion feature enabling the credit facility to be increased by an additional \$50.0 million, subject to certain conditions. Outstanding borrowings under the agreement bore interest at rates based on the prime, certificates of deposit, LIBOR, or negotiated rates as outlined in the agreement. Interest was payable periodically throughout the period a borrowing was outstanding. As of December 1, 2007 and June 2, 2007, there were no outstanding borrowings against the revolving credit facility. Usage against this facility related to outstanding standby letters of credit at December 1, 2007 and June 2, 2007 totaled approximately \$13.1 million at each date.

In November 2003, the company entered into two fixed-to-floating interest rate swap agreements. The first agreement, which expires March 15, 2011, effectively converts \$50.0 million of fixed-rate debt securities to a floating-rate basis. The fair value of this swap instrument, which is based upon expected LIBOR rates over the remaining term of the instrument, was approximately \$0.8 million at December 1, 2007, and is reflected as an addition to long-term debt and an offsetting addition to other long-term assets in the Condensed Consolidated Balance Sheet. As of June 2, 2007, the fair value of approximately \$(1.7) million is reflected as a reduction to long-term debt and an offsetting addition to other long-term liabilities. The floating interest rate for this agreement is based on the six-month LIBOR, set in-arrears at the end of each semi-annual period, which is estimated to be approximately 6.6 percent at December 1, 2007, and 8.0 percent at June 2, 2007. The next scheduled interest rate reset date is in March 2008.

The second agreement, which expires March 5, 2008, effectively converts \$3.0 million of fixed-rate private placement debt to a floating-rate basis. The fair value of this swap instrument, which is based upon expected LIBOR rates over the remaining term of the instrument, was approximately zero at December 1, 2007. As of June 2, 2007, the fair value of approximately \$(0.1) million is reflected as a reduction to long-term debt and an offsetting addition to other long-term liabilities. The floating interest rate for this agreement is based on the six-month LIBOR, set in-arrears at the end of each semi-annual period, which is estimated to be approximately 7.8 percent at December 1, 2007, and 8.7 percent at June 2, 2007. The next scheduled interest rate reset date is in March 2008.

As of December 1, 2007, a total of \$53.0 million of the company's outstanding debt was effectively converted to a variable-rate basis as a result of these interest rate swap arrangements. These swaps are fair-value hedges and qualify for hedge-accounting treatment using the "short-cut" method under the provisions of Statement of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." Under this accounting treatment, the change in the fair value of the interest rate swap is equal to the change in value of the related hedged debt and, as a result, there is no net effect on earnings. These agreements require the company to pay floating-rate interest payments in return for receiving fixed-rate interest payments that coincide with the semi-annual payments to the debt holders at the same date.

The counterparties to these swap instruments are large financial institutions which the company believes are of high-quality creditworthiness. While the company may be exposed to potential losses due to the credit risk of non-performance by these counterparties, such losses are not anticipated. The impact of these swap arrangements on interest expense was an addition of approximately \$0.1 million in each the three-month periods ended December 1, 2007 and December 2, 2006. The impact on interest expense due to the swap arrangements for the six months ended December 1, 2007 and December 2, 2006, was an increase of \$0.2 million and \$0.3 million, respectively.

Subsequent to the end of the second quarter, the company completed a series of debt financing transactions involving both the issuance of new debt securities and the entry into a new revolving credit facility. On December 18, 2007, the company entered into an agreement to issue a total of \$200 million in senior unsecured private placement notes. \$150 million of these notes bear interest at 6.42 percent and are due in January 2018. The remaining \$50 million in private placement notes bear interest at 5.94 percent and are due in January 2015. The proceeds from these notes will be used for share repurchases. In addition to the issuance of this debt, the company entered into a new \$250 million unsecured revolving credit facility which replaces its existing \$150 million facility. This variable interest credit facility has a five-year term and includes an option to increase the available line of credit by an additional \$100 million subject to customary conditions.

### 13. GUARANTEES, INDEMNIFICATIONS, AND CONTINGENCIES

#### Product Warranties

The company provides warranty coverage to the end-user for parts and labor on products sold. The standard length of warranty is 12 years; however, this varies depending on the product classification. The company does not sell or otherwise issue warranties or warranty extensions as stand-alone products. Reserves have been established for the various costs associated with the company's warranty program. General warranty reserves are based on historical claims experience and other currently available information and are periodically adjusted for business levels and other factors. Specific reserves are established once an issue is identified with the amounts for such reserves based on the estimated cost to correct the problem. Changes in the warranty reserves for the stated periods were as follows.

(In Millions)

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>December 1, 2007</b>	<b>December 2, 2006</b>	<b>December 1, 2007</b>	<b>December 2, 2006</b>
Accrual Balance - beginning	\$ 14.7	\$ 15.6	\$ 14.6	\$ 14.9
Accrual for warranty matters	3.5	2.4	7.2	6.6
Settlements and adjustments	(3.3)	(3.0)	(6.9)	(6.5)
Accrual Balance - ending	<u>\$ 14.9</u>	<u>\$ 15.0</u>	<u>\$ 14.9</u>	<u>\$ 15.0</u>

#### Other Guarantees

The company is periodically required to provide performance bonds in order to do business with certain customers. These arrangements are common and generally have terms ranging between one and three years. The bonds are required to provide assurances to customers that the products and services they have purchased will be installed and/or provided properly and without damage to their facilities. The bonds are provided by various bonding agencies, however, the company is ultimately liable for claims that may occur against them. As of December 1, 2007 the company had a maximum financial exposure related to performance bonds totaling approximately \$10.2 million. The company has had no history of claims, nor is it aware of circumstances that would require it to perform under any of these arrangements and believes that the resolution of any claims that might arise in the future, either individually or in the aggregate, would not materially affect the company's financial statements. Accordingly, no liability has been recorded as of December 1, 2007 and June 2, 2007.

The company previously entered into an agreement with a third-party leasing company to guarantee, in certain limited circumstances, the residual value of leased product. This lease expired in March 2007. As of December 1, 2007 the maximum financial exposure regarding the guarantee totaled approximately \$2.0 million. As of December 1, 2007 and June 2, 2007, the estimated fair value of this guarantee is zero, and accordingly, is not reflected on the company's Condensed Consolidated Balance Sheets at these dates.

The company has entered into standby letter of credit arrangements for the purpose of protecting various insurance companies against default on the payment of certain premiums and claims. A majority of these arrangements are related to the company's wholly-owned captive insurance company. As of December 1, 2007, the company had a maximum financial exposure from these standby letters of credit totaling approximately \$13.1 million. The company has had no history of claims, nor is it aware of circumstances that would require it to perform under any of these arrangements and believes that the resolution of any claims that might arise in the future, either individually or in the aggregate, would not materially affect the company's financial statements. Accordingly, no liability has been recorded as of December 1, 2007 and June 2, 2007.

### Contingencies

As previously reported, the company has received a subpoena from the New York Attorney General's office requesting certain information relating to the minimum advertised price program maintained by the Herman Miller for the Home division. In connection with this matter, the New York Attorney General's office has taken depositions of current and former employees of the company and certain dealers. The company and the New York Attorney General's office have had preliminary discussions regarding possible methods of resolving the matter. The company has reserved its best estimate of a potential amount to resolve this matter. The accrued amount is not material to the company's consolidated financial position.

The company leases a facility in the UK under an agreement that expires in March 2008. Under the terms of the lease, the company is required to perform the maintenance and repairs necessary to address the general dilapidation of the facility over the lease term. The ultimate cost of this provision to the company is dependent on a number of factors including, but not limited to, the future use of the facility by the lessor and whether the company chooses and is permitted to renew the lease term. The company has estimated the cost of these maintenance and repairs to be between \$0 and \$3 million, depending on the outcome of future plans and negotiations. As a result, the estimated liability of \$0.9 million and \$0.5 million has been recorded as a liability reflected under the caption "Other Liabilities" in the Condensed Consolidated Balance Sheets at December 1, 2007, and June 2, 2007, respectively.

The company has a lease obligation in the UK until May 2014 for a facility that it previously exited. The company believes it will be able to assign or sublet the lease for the majority of the remaining lease term to another tenant at current market rates. However, current market rates for comparable office space are lower than the rental payments owed under the lease agreement. As such, the company would remain liable to pay the difference. As a result, the estimated liability of \$1.5 million and \$1.4 is reflected under the caption "Other Liabilities" in the Condensed Consolidated Balance Sheets at December 1, 2007 and June 2, 2007, respectively.

The company, for a number of years, has sold various products to the United States Government under General Services Administration ("GSA") multiple award schedule contracts. Under the terms of these contracts, the GSA is permitted to audit the company's compliance with the GSA contracts. The company has occasionally noted errors in complying with contract provisions. From time to time the company has notified the GSA of known instances of non-compliance (whether favorable or unfavorable to the GSA) once such circumstances are identified and investigated. The company does not believe that any of the errors brought to the GSA's attention will adversely affect its relationship with the GSA. Currently there are no GSA post-award audits either scheduled or in process. Management does not expect resolution of potential future audits to have a material adverse effect on the company's consolidated financial statements.

The company has been made aware of a potential issue related to the actuarial valuation of liabilities under its primary international pension plan and the definition of eligible compensation. The company is currently in the process of correcting and clarifying the definition and believes any resulting adjustments would be immaterial to its financial statements.

The company is also involved in legal proceedings and litigation arising in the ordinary course of business. In the opinion of management, the outcome of such proceedings and litigation currently pending will not materially affect the company's consolidated financial statements.



#### 14. INCOME TAXES

The effective tax rates for the three months ended December 1, 2007 and December 2, 2006, were 34.0 percent and 34.6 percent, respectively. For the six months ended December 1, 2007 and December 2, 2006, the effective tax rates were 33.8 percent and 34.1 percent, respectively. The company's United States federal statutory rate is 35.0 percent. The current year effective rate was below the statutory rate primarily due to the manufacturing deduction under the American Jobs Creation Act of 2004. The effective rate in the prior year was below the statutory rate primarily due to the manufacturing deduction under the American Jobs Creation Act of 2004, the release of federal tax reserves relating to the closure of an Internal Revenue Service review for fiscal years 1997 through 2003 and other accrual adjustments related to the company's foreign captive insurance company.

The company adopted the provisions of FIN 48 on June 3, 2007. Prior to the adoption of FIN 48, the company had income tax accruals of \$6.6 million associated with tax benefits taken in tax returns but not recognized for financial statement purposes ("unrecognized tax benefits"). As a result of the adoption of FIN 48, the company recorded an increase in liabilities for unrecognized tax benefits of \$0.8 million, which was recorded as a reduction to beginning retained earnings in fiscal 2008. Including this cumulative effect adjustment, the company had income tax accruals associated with unrecognized tax benefits totaling \$7.7 million as of December 1, 2007. The company's effective tax rate would have been affected by this amount had the unrecognized tax benefits been recognized as a reduction to income tax expense.

The company recognizes interest and penalties related to unrecognized tax benefits through income tax expense in its statement of operations. The company has reserved approximately \$0.2 million for interest and penalties related to the adoption of FIN 48, which is also recorded as a reduction to beginning retained earnings in fiscal 2008. Interest and penalties recognized in the company's Condensed Consolidated Statements of Operations during the quarterly and six-month periods ended December 1, 2007 and December 2, 2006 were negligible. As of December 1, 2007, the company's recorded liability for interest and penalties related to unrecognized tax benefits totaled \$0.9 million.

The company is subject to periodic audits by domestic and foreign tax authorities. Currently, the company is undergoing routine periodic audits in both domestic and foreign tax jurisdictions. It is reasonably possible that the amounts of unrecognized tax benefits could change in the next 12 months as a result of the audits, however, tax payments related to these audits, if any, are not expected to be material to the company's Condensed Consolidated Statements of Operations.

For the majority of tax jurisdictions, the company is no longer subject to U.S. federal, state and local, or non-U.S. income tax examinations by tax authorities for fiscal years before 2004.

**15. EMPLOYEE BENEFIT PLANS**

The following tables summarize the costs of the company's employee pension and other post-retirement plans for the periods indicated.

(In Millions)

	Three Months Ended			
	Pension Benefits		Other Post-Retirement Benefits	
	December 1, 2007	December 2, 2006	December 1, 2007	December 2, 2006
Domestic:				
Service cost	\$ 1.7	\$ 2.2	\$ —	\$ —
Interest cost	4.0	4.0	0.2	0.2
Expected return on plan assets	(5.4)	(5.3)	—	—
Net amortization loss	0.9	0.7	0.1	0.1
Net periodic benefit cost	<u>\$ 1.2</u>	<u>\$ 1.6</u>	<u>\$ 0.3</u>	<u>\$ 0.3</u>
International:				
Service cost	\$ 0.6	\$ 0.6		
Interest cost	1.1	0.9		
Expected return on plan assets	(1.3)	(1.1)		
Net amortization loss	0.1	0.4		
Net periodic benefit cost	<u>\$ 0.5</u>	<u>\$ 0.8</u>		

(In Millions)

	Six Months Ended			
	Pension Benefits		Other Post-Retirement Benefits	
	December 1, 2007	December 2, 2006	December 1, 2007	December 2, 2006
Domestic:				
Service cost	\$ 4.0	\$ 4.4	\$ —	\$ —
Interest cost	8.0	8.0	0.5	0.5
Expected return on plan assets	(10.8)	(10.6)	—	—
Net amortization loss	1.6	1.2	0.2	0.2
Net periodic benefit cost	<u>\$ 2.8</u>	<u>\$ 3.0</u>	<u>\$ 0.7</u>	<u>\$ 0.7</u>
International:				
Service cost	\$ 1.2	\$ 1.1		
Interest cost	2.2	1.8		
Expected return on plan assets	(2.6)	(2.1)		
Net amortization loss	0.2	0.8		
Net periodic benefit cost	<u>\$ 1.0</u>	<u>\$ 1.6</u>		

During the second quarter of fiscal 2007, the company made a voluntary contribution of \$0.8 million to one of its domestic pension plans. The company made a voluntary contribution of \$2.0 million to its international pension plan during the first quarter of fiscal 2007. The company is currently evaluating what additional voluntary contributions, if any, will be made to its various employee retirement plans in fiscal 2008. Actual contributions will be dependent upon investment returns, changes in pension obligations and other economic and regulatory factors.

#### 16. RESTRUCTURING PLAN

During the second quarter of fiscal 2008, the company executed a restructuring plan (“the Plan”) to reduce operating expenses in order to improve operating performance, improve profitability and further enhance productivity and efficiencies through a targeted restructuring of operations. The Plan eliminated approximately 150 full-time positions, primarily in West Michigan. In connection with the Plan, the company recorded \$5.2 million of pre-tax charges during the quarter for employee severance and outplacement costs. It is anticipated that the payments in connection with the Plan will be substantially completed by the end of the current fiscal year.

The following is a summary of changes in restructuring accruals during the second quarter of fiscal 2008.

(In Millions)	Severance and Outplacement Costs
Balance as of September 1, 2007	\$ —
Restructuring expenses	5.2
Cash payments	(0.5)
Balance as of December 1, 2007	\$ 4.7

The charges above have been reflected separately as restructuring expenses in the Condensed Consolidated Statements of Operations. Refer to Note 9 for a discussion relative to the impact of the Plan on the company’s reportable business segments.

#### 17. ACQUISITIONS AND DIVESTITURES

During the second quarter of fiscal 2008, the company received a payment totaling \$0.6 million associated with the previous sale of a furniture dealership. The contractual terms of this sale were completed in the first quarter of fiscal 2006, and included an “earn-out” provision requiring the buyer to provide to the company additional purchase consideration based upon the future profitability of the dealership. These additional proceeds relate to this provision, and were recorded as a pre-tax gain within consolidated operating earnings.

On December 19, 2007, subsequent to the end of the second quarter, the company entered into a Stock Purchase Agreement to acquire the stock of Brandrud Furniture, Inc., a Seattle-based manufacturer of healthcare furnishings, with an emphasis on seating products for patient rooms, patient treatment areas, and public spaces such as lobbies and waiting areas. The closing of this transaction is anticipated to be on or before February 1, 2008, subject to customary conditions including the successful completion of due-diligence.

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

The following is management's discussion and analysis of certain significant factors that affected the company's financial condition, earnings and cash flow during the periods included in the accompanying condensed consolidated financial statements. References to "Notes" are to the footnote disclosures included in the condensed consolidated financial statements.

### Discussion of Current Business Conditions

Notwithstanding an increasingly overall negative U.S. macro-economic outlook, we saw marked improvement in order entry rates throughout the second quarter of fiscal 2008 compared to the first quarter. Average weekly orders during the first quarter of this year were \$37.2 million. In September the pace of orders increased to an average of \$43.5 million per week, and stayed at roughly that level throughout the entire quarter. In total, orders in the second quarter were 18.3% higher than the first quarter; an amount that exceeded the 7% to 8% we normally expect as a result of seasonal growth from sales to the U.S. federal government.

Strong order pacing, especially early in the second quarter, drove modest sales growth in the quarter on a year-over-year basis. Our gross margin in the second quarter improved significantly from the prior year due to improved price-yield, lower direct material costs, and a favorable shift in product sales mix. This solid improvement in gross margin combined with reduced operating expenses drove our consolidated operating income percentage to 12.9% — an improvement of 110 basis points from the same quarter last year. We also set an all-time record for our company in quarterly diluted earnings per share at \$0.67 in the period.

During the second quarter we announced our intent to initiate a number of actions aimed at improving operating profitability and enabling greater and faster investment in our strategic growth initiatives. One of these initiatives effected during the second quarter, a workforce restructuring plan, eliminated approximately 150 full-time positions. Subsequent to the end of the second quarter, we entered into a series of capital structure transactions, including an agreement to issue \$200 million in private placement notes, the proceeds of which will be used to repurchase our stock through an accelerated share repurchase agreement. We also increased our syndicated revolving line of credit to \$250 million. Also, in December we announced the acquisition of Brandrud Furniture, Inc; a strategic move that we are confident will enhance our already growing position as a provider of furniture solutions within the healthcare industry.

Our operating performance in the second quarter is encouraging, particularly when viewed in the context of the near-term strategic plans we have yet to complete. As our opening comment to this report suggests, however, we are faced with a cautious macro-economic outlook for our industry and the national economy as a whole. The Business Institutional Furniture Manufacturer's Association (BIFMA) issued its most recent domestic industry forecast in November 2007. The report outlines an expectation that office furniture sales and shipment levels in the U.S. will decline between calendar years 2007 and 2008. This represents a downward revision to its August 2007 forecast, which anticipated growth, albeit at low levels, in industry orders and shipments over that same period. An expected softening in employment growth, consumer spending, and business investment were cited as drivers of the revised forecast.

**Analysis of Second Quarter Results**

The quarters ended December 1, 2007 and December 2, 2006 each included 13 weeks of operations. The six-month periods ended December 1, 2007 and December 2, 2006 included 26 weeks of operations. The following table presents certain key highlights from the results of operations for the periods indicated.

In millions, except per share data

	<b>Three Months Ended</b>			<b>Six Months Ended</b>		
	<b>December 1, 2007</b>	<b>December 2, 2006</b>	<b>Percent Change</b>	<b>December 1, 2007</b>	<b>December 2, 2006</b>	<b>Percent Change</b>
Net Sales	\$505.9	\$499.1	1.4%	\$997.6	\$948.8	5.1%
Gross Margin	180.1	170.4	5.7%	347.7	322.7	7.7%
Operating Expenses	109.7	111.7	(1.8)%	223.6	218.3	2.4%
Restructuring Expenses	5.2	—	NA	5.2	—	NA
Operating Earnings	65.2	58.7	11.1%	118.9	104.4	13.9%
Net Earnings	41.0	36.6	12.0%	74.4	65.1	14.3%
Earnings per share - diluted	0.67	0.56	19.6%	1.20	0.99	21.2%
Orders	572.5	529.1	8.2%	1,056.3	1,032.3	2.3%
Backlog	346.5	323.9	7.0%	346.5	323.9	7.0%

The following table presents, for the periods indicated, the components of the company's Condensed Consolidated Statements of Operations as a percentage of net sales.

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>December 1, 2007</b>	<b>December 2, 2006</b>	<b>December 1, 2007</b>	<b>December 2, 2006</b>
Net Sales	100.0%	100.0%	100.0%	100.0%
Cost of Sales	64.4	65.9	65.1	66.0
Gross Margin	35.6	34.1	34.9	34.0
Operating Expenses	21.7	22.4	22.4	23.0
Restructuring Expenses	1.0	—	0.5	—
Operating Margin	12.9	11.8	11.9	11.0
Other Expense, net	0.6	0.6	0.7	0.6
Earnings Before Income Taxes	12.3	11.2	11.3	10.4
Income Tax Expense	4.2	3.9	3.8	3.5
Net Earnings	8.1%	7.3%	7.5%	6.9%

**Consolidated Sales, Orders, and Backlog.**

Net sales in the second quarter of \$505.9 million were \$6.8 million higher than the same period in fiscal 2007. The general price increase we implemented in February 2007 has continued to drive year-over-year growth in sales dollars. We estimate this price increase drove between \$8.5 million and \$9.5 million in additional net sales compared to the prior year second quarter. The amount of the price increase that we have captured as additional net sales has been between 30% and 50% of the total list price increase. This capture rate is similar to our experience with general price increases implemented in recent years. The competitive pricing environment within our industry generally precludes us from capturing the full benefit of a list price increase.

Currency exchange rate fluctuations from the prior year second quarter had a positive impact on our consolidated net sales in the period. The general weakening of the U.S. Dollar relative to non-U.S. currencies drove an estimated \$7 million increase in our second quarter net sales relative to the prior year period.

The net sales increase resulting from the price change and currency rates was partially offset in the quarter by a year-over-year reduction of non-furniture product sales (OEM sales). In the second quarter of last year, we recognized approximately \$6.0 million in net sales under this OEM contract, which expired at the end of fiscal 2007. Accordingly, there were no related sales recorded in the first half of this fiscal year.

For the six-month period ended December 1, 2007, net sales were \$997.6 million. This represents an increase of 5.1% or \$48.8 million from the prior year period. We estimate between \$16 million and \$17 million of this amount was driven by the February 2007 price increase. Currency exchange rate fluctuations drove an estimated \$12 million increase in our consolidated net sales relative to the prior year six-month period. Partially offsetting these factors were sales in the prior year-to-date period of \$9.1 million under the previously referenced OEM contract.

On a sequential-quarter basis, net sales in the period increased \$14.2 million or 2.9% from the first quarter of fiscal year 2008. This percentage is considerably lower than the 11.0% increase we reported last fiscal year between the first and second quarters. This relative decline in sequential-quarter sales growth was driven by lower order-entry rates in the first quarter of this year.

Orders in the second quarter of fiscal 2008 increased 8.2% and 18.3% on a year-over-year and sequential-quarter basis, respectively. Consolidated orders of \$572.5 million in the second quarter were the highest level we have reported in seven years. This represents a sharp contrast to our experience in the first quarter of this fiscal year, when we reported the first year-over-year decline in consolidated orders in 15 consecutive quarters. The increase in order rates between the first and second quarters of this year was driven primarily by an improvement in North American order entry levels.

Through the first six months of fiscal 2008, orders of \$1,056.3 million were up \$24.0 million, or 2.3% versus the prior year.

The backlog of unfilled orders as of December 1, 2007 was \$346.5 million. This amount is up \$22.6 million or 7.0% from our December 2, 2006 backlog of \$323.9 million. The increase in the backlog compared to the prior year was driven by a significant improvement in order activity in our North American business segment in the second quarter. On a sequential-quarter basis, the ending backlog increased \$66.7 million or 23.8% from the first quarter of this fiscal year.

#### Performance versus the Domestic Contract Furniture Industry

Net sales at our U.S. operations, excluding the impact of OEM sales in fiscal 2007, decreased 1.1% during the second quarter of fiscal 2008 compared to the same quarter last year. Conversely, over the same period our domestic orders increased 5.1%. By comparison, BIFMA reported an estimated year-over-year increase in U.S. office furniture shipments of 5.6% for the three-months ended November 2007. Industry orders for the quarter as reported by BIFMA grew 4.7% from the same period last year.

We remain cautious about reaching conclusions regarding changes in market share based on analysis of data on a short term basis. Instead, we believe such conclusions should only be reached by analyzing comparative data over several quarters.

While the sales and order data for our U.S. operations provide a relative comparison to BIFMA, it is not intended to be an exact comparison. The actual data we report to BIFMA is done so in a manner consistent with the BIFMA definition of office furniture "consumption." This definition differs slightly from the categorization we have presented in this report. Notwithstanding this difference, we believe our presentation provides the reader with a more relevant comparison.

### Consolidated Gross Margin

Consolidated gross margin in the second quarter was 35.6%, representing a 150 basis-point improvement over the same quarter last year. The improvement resulted primarily from favorable price discounting and the benefit realized from the February 2007 price increase. We also benefited from an overall shift in the sales mix this quarter toward a higher percentage of seating relative to last year and we achieved margin improvement in one of our newest system furniture lines. Additionally, direct material expenses in the second quarter decreased from the prior year primarily due to lower steel and aluminum component costs. These positive factors were partially offset by increased overhead expenses associated with service sales, the implementation of annual salary and wage increases at the beginning of the fiscal year, and continued inefficiencies associated with the production of one of our newest lines of systems furniture. Despite the increased payroll costs and specific production inefficiencies, total direct labor expenses in the second quarter improved, as a percent of net sales, by 60 basis-points from the prior year. Part of this improvement in the labor percentage is attributable to the mix shift toward seating in the quarter.

Manufacturing overhead expenses in the second quarter were higher than the same period last year, both in terms of dollars and as a percent of net sales. Costs related to increased sales of services and purchased-complete products, particularly in our Non-North American business segment, were among the more significant drivers of this increase. These sales generally have lower margins than sales of Herman Miller products. Overhead expenses also increased in the quarter relative to the prior year due to higher costs for depreciation and employee benefits, including medical and prescription drug coverage, and salaries for indirect production labor.

On a percent-of-sales basis, direct material expenses decreased 170 basis points from the second quarter of fiscal 2007. A significant amount of this reduction is attributable to the impact of the February 2007 price increase and the relative increase in service sales, both of which increased net sales without a corresponding increase in direct material expenses. We also benefited in the quarter from a favorable shift in the market price of steel and aluminum components relative to the prior-year period. We estimate the change in commodity pricing reduced our second quarter direct material costs in the range of \$1.5 million to \$2.5 million compared to the same period last year. Despite this improvement, we believe it is likely that going forward, we will see continued volatility in market pricing for key commodities. Our product pricing strategy, combined with our commitment to lean manufacturing principles under the Herman Miller Production System (HMPS), continue to be our primary means of addressing the financial impact of this volatility.

On a sequential-quarter basis, the gross margin percentage in the second quarter increased 150 basis points from the first quarter of this fiscal year. During the first quarter we incurred expenses related to services on a large project within our North American Furniture Solutions business segment. Due to the level of uncertainty associated with our ability to be reimbursed for these services, we recognized the expenses, which totaled approximately \$5.0 million, without recording any associated service revenue. These expenses reduced our first quarter gross margin by approximately 100 basis points. Higher net sales and improved production leverage in the second quarter also contributed to the sequential improvement in gross margin. Partially offsetting these factors were incentive compensation expenses, which were \$1.9 million higher than the first quarter.

Gross margin in the first six months of fiscal 2008 was 34.9 % versus 34.0% in the prior year. The improvement was driven mainly by leverage gained on increased net sales and savings from lower market prices for key manufacturing components. On a year-to-date basis, we estimate the savings on these commodity-based components to be between \$3.0 million and \$4.5 million as compared to same period last year.

### Restructuring.

During the second quarter we announced a business restructuring plan designed to reduce operating expenses and improve profitability. The restructuring actions included the elimination of approximately 150 full-time positions, the majority of which were located within our West Michigan operations. The positions that were eliminated represented a variety of functional areas, and the individuals affected were offered one-time termination benefits, including severance and outplacement services. In connection with these actions, we recognized pre-tax restructuring expenses in the quarter totaling \$5.2 million. This restructuring charge reduced diluted earnings per share by \$0.05 in the quarter. Cash payments for the related termination benefits totaled \$0.5 million in the second quarter. The remaining \$4.7 million in termination benefits are recorded within "Other accrued liabilities" in the Condensed Consolidated Balance Sheet at December 1, 2007. For further discussion regarding the restructuring plan, refer to Note 16.

### Operating Expenses and Operating Earnings.

Operating expenses in the second quarter were \$109.7 million or 21.7% of net sales. This compares to operating expenses of \$111.7 million or 22.4% of net sales in the same quarter last year. Contributing to this \$2.0 million decrease was a reduction in research and development (R&D) spending and a set of focused initiatives in the quarter aimed at controlling business expenses. R&D expenses in the second quarter were \$1.3 million lower than the prior year period. This reduction was not driven by a deliberate change in our approach to new product development. Rather, it related purely to the timing of specific R&D projects between periods. In addition, we realized expense reductions across a range of categories, including salaries and benefits, travel and entertainment, and charitable donations.

Increased operating expense spending in other areas partially offset these factors in the second quarter relative to the prior year. We incurred approximately \$0.8 million in higher compensation-related expenses, including those for annual merit increases and stock-based compensation. Variable selling expenses for categories such as commissions and designer royalties were higher in the current year second quarter. We also recognized \$0.8 million in higher expense associated with adjustments to our calculated accounts receivable reserves. Finally, we recognized a \$1.2 million expense at one of our international subsidiaries related to the adjustment of a value added tax liability.

On a sequential-quarter comparison, operating expenses in the second quarter decreased from the first quarter of this year both as a percentage of net sales and in total dollars. Our first quarter operating expenses were \$113.8 million or 23.1% of net sales. A large portion of the \$4.1 million expense decrease relates to reduced spending for travel and entertainment and lower accruals for charitable donations. Much of the higher travel and entertainment spending in the first quarter related to Neocon, our annual industry tradeshow held in June. Incentive bonus expenses in the current year second quarter were \$1.1 million higher than the first quarter.

During the second quarter, we received a payment totaling \$0.6 million associated with the previous sale of a furniture dealership. The contractual terms of this sale were completed in the first quarter of fiscal year 2006, and included an "earn-out" provision requiring the buyer to provide additional purchase consideration based upon the future profitability of the dealership. The payment we received this quarter relates to this provision, and was recorded as a pre-tax gain within consolidated operating earnings.

Through the first six months of fiscal 2008, operating expenses totaled \$223.6 million or 22.4% of sales. This compares to \$218.3 million or 23.0% of sales in the same period last year. This represents an expense increase in the current year-to-date period of \$5.3 million. Approximately \$3.5 million of this increase came from higher compensation-related expenses, including those for accrued incentive bonuses, annual merit increases, and stock-based compensation. Additionally, variable selling expenses in the current year period contributed significantly to the year-over-year increase.

Our investment in R&D, excluding royalties, totaled \$9.4 million and \$10.7 million for the quarterly periods ended December 1, 2007 and December 2, 2006, respectively. Through the first six months of fiscal 2008, R&D expenses were \$19.1 million. This compares to \$20.4 million in the same period last fiscal year.

Operating earnings in the second quarter were \$65.2 million compared to \$58.7 million last year, representing an increase of 11.1%. As a percentage of net sales, operating earnings were 12.9%; up from 11.8% in the prior year. On a year-to-date basis, operating earnings in the current year of \$118.9 million were up 13.9% from \$104.4 million last year. As a percentage of net sales, operating earnings through six months were 11.9% versus 11.0% last year.



#### Other Income/Expense and Income Taxes

Net other expenses for the three and six-months ended December 1, 2007 totaled \$3.1 million and \$6.5 million, respectively. This compares to \$2.8 million and \$5.7 million, respectively, in the same periods last year. The increase in expense over both comparative periods was driven primarily by higher interest costs related to borrowings against our revolving credit facility.

We incurred a net foreign currency transaction gain of \$0.5 million in the current quarter compared to a loss of \$0.1 million last year. On a year-to-date basis, we recorded a net currency transaction gain of \$0.2 million as compared to a loss of less than \$0.1 million in the first six months of last year.

The effective tax rates for the three months ended December 1, 2007 and December 2, 2006, were 34.0% and 34.6%, respectively. The effective tax rates were 33.8% and 34.1% for the six months ended December 1, 2007, and December 2, 2006, respectively. The current quarter and year-to-date effective rates were below the United States federal statutory rate of 35% primarily due to the manufacturing deduction under the American Jobs Creation Act of 2004 (AJCA).

The effective rate in the prior year second quarter was below the statutory rate primarily due to foreign tax credits and the manufacturing deduction under the AJCA, and accrual adjustments related to our foreign captive insurance company. In addition, the prior year-to-date effective tax rate benefited from the release of federal tax reserves relating to the closure of an Internal Revenue Service review for fiscal years 1997 through 2003. We expect our full-year effective tax rate for fiscal 2008 to be between 32% and 34%.

At the beginning of fiscal year 2008, we adopted the provisions of Financial Accounting Standards Board Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" (FIN 48). Upon adoption, we recognized an increase in accrued liabilities associated with unrecognized tax benefits. We also recognized an increase in accruals for estimated interest and penalties associated with those unrecognized tax benefits. These accrual adjustments were recorded as a \$1.0 million reduction, net of tax, to the June 3, 2007 balance of retained earnings. This adjustment, which did not impact net earnings, is considered a Cumulative Effect of a Change in Accounting Principle as required by FIN 48. In addition, in the first quarter of this year we reclassified \$8.7 million from current accrued income taxes payable into non-current liabilities. This reclassification was made to match the anticipated timing of future income tax payments.

#### Reportable Operating Segments

Our business comprises various operating segments as defined by generally accepted accounting principles in the United States. These operating segments are determined on the basis of how we internally report and evaluate financial information used to make operating decisions. For external reporting purposes, we aggregate these operating segments as follows:

- o *North American Furniture Solutions* – Includes the business associated with the design, manufacture and sale of furniture products for office, healthcare and educational environments, throughout the United States, Canada and Mexico.
- o *Non-North American Furniture Solution* – Includes the business associated with the design, manufacture and sale of furniture products, primarily for work-related settings, outside North America.
- o *Other*—Includes our North American residential furniture business as well as other business activities, including Convia, and activities associated with the Herman Miller Creative Office. Convia is our subsidiary aimed at providing programmable electrical and data infrastructure for building interiors. The "other" category also includes unallocated corporate expenses such as those associated with corporate restructuring actions.

Further information regarding our reportable operating segments can be found in Note 9.

Net sales in the second quarter within our North American Furniture Solutions segment were \$407.6 million. This performance was flat with the prior year, reflecting the impact of soft order pacing in the first quarter of this year. Our U.S. domestic operations reported a decrease in sales relative to the prior year of approximately 1%. Included in this overall decline was a reduction in sales within the healthcare industry; a market which in recent quarters has shown substantial year-over-year percentage growth. In contrast to our domestic U.S. results, sales in Canada and Mexico were strong this quarter, each posting increases over the prior year second quarter. While the decline in sales within the core U.S. contract furniture business was primarily the result of the order pacing in the first quarter, which improved in the second quarter, driving growth in the ending backlog. Through six months of operations, our North American Furniture Solutions segment reported net sales of \$813.9 million. This is an increase of 4.3% from the prior year total of \$780.0 million.

Operating earnings in the second quarter within the North American Furniture Solutions segment were \$53.7 million, or 13.2% of net sales. This compares to \$49.7 million or 12.2% in the same period last year. On a year-to-date basis, operating earnings in the current year were \$95.7 million or 11.8% of net sales, compared to \$88.1 million or 11.3% last year. As previously discussed in the context of gross margin performance, in the first quarter of this year we recognized service-related expenses of approximately \$5.0 million, without an associated benefit from service revenue. These expenses reduced the year-to-date operating income percentage within our North American business segment by approximately 60 basis points.

Net sales within our Non-North American Furniture Solutions segment totaled \$83.7 million in the second quarter, marking a 17.6% increase over prior year second quarter sales of \$71.2 million. Our U.K. operation, which represents the segment's largest contributor to net sales, reported particularly strong sales growth in the period. Though our Asian operations remain relatively small in dollar terms when compared to the consolidated total, sales this quarter again showed double-digit growth over the prior year period. Our manufacturing facility in China has been in operation since February 2007 and we are pleased with how the startup has progressed. The growth of our presence in Asia remains a key focus of our long-term business strategy. For the six-month period ended December 1, 2007, net sales for the Non-North American segment were \$157.0 million, representing an increase of 17.3% over the prior year total of \$133.8 million.

Operating earnings in the second quarter for the Non-North American segment were \$13.5 million, or 16.1% of net sales. This compares to \$7.2 million or 10.1% in the same period last year. On a year-to-date basis, operating earnings were \$23.4 million or 14.9% of net sales. In the same period last year we reported operating earnings of \$13.3 million or 9.9%.

Net sales within the "Other" category were \$14.6 million in the second quarter of this year, compared to \$20.3 million last year. For the six-month period, net sales were \$26.7 million compared to \$35.0 million last year. The prior year second quarter and six-month results included OEM sales of \$6.0 million and \$9.1 million, respectively. That OEM contract has since expired and we are no longer manufacturing and selling the related components. The elimination of these sales is the primary driver of the year-over-year decrease in net sales within the category.

We reported an operating loss of \$2.0 million for the second quarter within the "Other" segment category. This compares to operating income of \$1.8 million last year. The loss in the current quarter was driven primarily by the restructuring expenses recorded in connection with employment reductions. On a year-to-date basis, we reported an operating loss of \$0.2 million in the current period compared to income of \$3.0 million in fiscal 2007.

Changes in currency exchange rates from the prior year affected the U.S. dollar value of net sales within both primary operating segments. We estimate these changes effectively increased second quarter net sales within the North American segment by approximately \$3.1 million. This was largely driven by the weakening in the average U.S. dollar / Canadian dollar exchange rate during the period. Within the Non-North American segment, exchange rate changes increased second quarter net sales by an estimated \$4.0 million. This increase was mainly driven by movement in the U.S. dollar / British Pound Sterling and U.S. dollar / Euro exchange rates as compared to last year. On a year-to-date basis, exchange rate changes from prior year levels increased net sales within our North American and Non-North American segments by an estimated \$4.7 million and \$7.3 million, respectively. It is important to note that period-to-period changes in exchange rates have a directionally similar impact on our international expenses as measured in U.S. dollars.

Financial Condition, Liquidity, and Capital Resources

The table below presents certain key cash flow and capital highlights for the periods indicated.

(In Millions)

	Six Months Ended	
	December 1, 2007	December 2, 2006
Cash and cash equivalents, end of period	\$ 74.2	\$ 52.7
Short-term investments, end of period	17.7	14.0
Cash generated from operating activities	87.7	24.2
Cash used for investing activities	(19.7)	(16.8)
Cash used for financing activities	(73.7)	(61.5)
Capital expenditures	(19.0)	(18.8)
Stock repurchased and retired	(66.1)	(77.1)
Interest-bearing debt, end of period (1)(3)	178.8	180.4
Available unsecured credit facility, end of period (2)(3)	136.9	136.9

(1) Amounts shown include the fair market values of the company's interest rate swap arrangements. The net fair value of these arrangements totaled approximately \$0.8 million and \$(0.6) million at December 1, 2007 and December 2, 2006, respectively.

(2) Amounts shown are net of outstanding letters of credit, which are applied against the company's unsecured credit facility.

(3) On December 18, 2007, the company entered into an agreement to issue new senior unsecured private placement notes and replaced its unsecured revolving credit facility. Refer to Note 12 for additional information.

Cash Flow –Operating Activities

Cash generated from operating activities in the second quarter was \$55.9 million compared to \$30.6 million in the prior year. For the first six months of fiscal 2008, cash generated from operations totaled \$87.7 million. This compares to cash flows generated from operating activities of \$24.2 million in the same period in fiscal 2007.

*Quarter and Six-Months Ended December 1, 2007*

Changes in working capital balances resulted in a net cash use of \$4.7 million in the second quarter. Volume-driven increases in accounts receivable and inventory were partially offset by increased accrued liability and accounts payable balances. The largest increase within accrued liabilities related to employee compensation and benefits.

Through the first six months of the year, changes in working capital balances accounted for a net \$22.9 million use of cash. Included in this amount were increases in accounts receivable and inventories totaling \$30.3 million. We also experienced a net reduction of \$19.2 million in compensation and benefit accruals in the six-month period, due largely to the payout of incentive bonuses earned during fiscal 2007. Partially offsetting these working capital investments were volume-driven increases in accounts payable of \$14.4 million and unearned revenue liabilities of \$9.9 million. Accruals for income taxes also increased from the prior year-end, further offsetting the investment in working capital in the year-to-date period.

The significant increases in accounts receivable and inventories in both the three and six-month periods were driven by the general increase in sales and production levels. A contributing factor to these balance increases continues to be the ramp-up of direct business with the U.S. federal government as well as certain non-government accounts. In these arrangements, we sell products and services directly to the end customer without first selling to a dealer intermediary. Sales of this type generally require a longer cash collection cycle than do sales to independent contract furniture dealers. Accordingly, we have experienced a related increase in accounts receivable. Our inventory levels have also been affected by the increase of this form of selling as we are generally required to hold the inventory longer and do not recognize revenue until installation is substantially complete. Similarly, the growth we have experienced in our Non-North American Furniture Solutions business segment drove increases in both accounts receivable and inventory, as sales within this segment generally have a longer cash collection cycle than in North America.

Under HMPS, we continue to strive to enhance efficiencies and cost savings by minimizing the amount of inventory on-hand. Accordingly, production is order-driven with raw materials purchased as needed to meet order demands. The standard lead-time for the majority of our products is 10 to 20 days. As a result, the velocity of our inventory turns is high. Despite the increase in inventory levels in the current year three and six-month periods, these factors can cause our inventory levels to appear relatively low in relation to sales volume.

#### *Quarter and Six-Months Ended December 2, 2006*

We made a net investment in working capital of \$17.1 million in the second quarter of last fiscal year. This resulted largely from increases in accounts receivable and inventories, which on a combined basis totaled approximately \$32 million. A \$21.4 million increase in employee compensation and benefit accruals in the period partially offset this use of cash.

Through the first six months of the year, changes in working capital balances accounted for a net \$64.7 million use of cash. Included in this amount were increases in accounts receivable and inventories of \$50.1 million as well as the payment of previously accrued compensation and benefits of \$25.9 million. These year-to-date cash outflows were partially offset by increases in trade accounts payable and other accrued liabilities.

Increases in accounts receivable and inventories in both the three and six-month periods of last year were driven by the general increase in sales and production levels. Inventory levels at December 2, 2006 were also affected by weather-related constraints as we had certain scheduled shipments that could not be picked up by our carriers on the last day of the quarter.

During the first half of last year, we made two separate voluntary cash contributions to our employee pension plans. The first of these related to our primary international plan, and totaled \$2.0 million in the first quarter. This was followed by a second quarter contribution in the amount of \$0.8 million to one of our domestic employee retirement plans. These contributions are reflected as reductions to fiscal 2007 operating cash flows.

#### *Cash Flow –Investing Activities*

Capital asset purchases comprised the majority of investing cash outflows in both the current and prior year. Capital expenditures were \$10.1 million in the second quarter of fiscal 2008 and \$19.0 million year-to-date. This compares to \$10.2 million and \$18.8 million, respectively in the prior year.

At the end of the second quarter, we had outstanding commitments for future capital purchases of approximately \$11 million. We expect full-year capital expenditures for fiscal 2008 to be approximately \$50 million. By comparison, fiscal year 2007 capital expenditures were \$41.3 million.

As previously discussed, we received a payment of \$0.6 million in the second quarter related to the fiscal 2006 sale of a contract furniture dealership. We have reflected this payment as an increase to Cash Flows from Investing Activities in the Condensed Consolidated Statement of Cash Flows for the six-months ended December 1, 2007.

Subsequent to the end of the second quarter, on December 19, 2007, we entered into a Stock Purchase Agreement to acquire the stock of Brandrud Furniture, Inc., a Seattle-based manufacturer of healthcare furnishings, with an emphasis on seating products for patient rooms, patient treatment areas, and public spaces such as lobbies and waiting areas. The closing of the transaction is anticipated to be on or before February 1, 2008, subject to customary conditions including the successful completion of due-diligence.

#### Cash Flow –Financing Activities

During the second quarter, we repurchased approximately 195,000 shares for \$5.3 million or an average of \$26.98 per share. By comparison approximately 910,000 shares were repurchased for \$30.7 million or an average of \$33.77 per share during the same period last year. In the first six months of this year, share repurchases were approximately 2,075,000 shares for \$66.1 million or an average of \$31.87 per share. This compares to approximately 2,610,000 shares for \$77.1 million or an average of \$29.56 per share in the first six months of fiscal 2007. During the second quarter of this year, our Board of Directors expanded our stock repurchase program by authorizing additional share repurchases up to \$300 million. As of December 1, 2007, we had approximately \$372 million available for future share repurchases under this program.

New share issuances in connection with our various employee benefit plans partially offset the cash outflows associated with share repurchase activity. During the second quarter, we received \$1.4 million for the issuance of approximately 60,000 shares. This compares to cash received of \$22.5 million in the prior year second quarter for the issuance of approximately 885,000 shares. The larger volume of share issuances last year was due to a higher volume of stock option exercises during that period. On a year-to-date basis, cash received and the number of shares issued totaled \$3.2 million and approximately 150,000 shares. In the first six months of fiscal 2007, these amounts were \$23.5 million and approximately 930,000 shares.

Dividend payments in the current year were \$5.4 million in the second quarter and \$10.9 million year-to-date through November. For the same periods last year, dividend payments totaled \$5.1 million and \$10.4 million, respectively.

Interest-bearing debt at the end of the second quarter increased \$2.6 million from \$176.2 million at the end of fiscal 2007. This change resulted from a net increase in the fair value of our interest rate swap arrangements. Further disclosure regarding our interest rate swap arrangements is provided in Note 12. The next scheduled debt repayment of \$3.0 million on our private placement notes will be made in the fourth quarter of this fiscal year.

During the second quarter, activity on our unsecured revolving credit facility resulted in a net cash outflow of \$30.0 million. There were no outstanding borrowings against this credit facility as of December 1, 2007. Outstanding standby letters of credit totaling \$13.1 million were considered additional usage against this credit facility at the end of the first quarter. The provisions of our private placement notes and unsecured credit facility require that we adhere to certain covenant restrictions and maintain certain performance ratios. We were in compliance with all such restrictions and performance ratios again this quarter and expect to remain in compliance in the future.

Subsequent to the end of the second quarter we completed a series of debt financing transactions involving both an agreement to issue new debt securities and the entry into a new revolving credit facility. On December 18, 2007, we entered into an agreement to issue a total of \$200 million in senior unsecured private placement notes. \$150 million of these notes bear interest at 6.42% and are due in January 2018. The remaining \$50 million in private placement notes bear interest at 5.94% and are due in January 2015. The proceeds from these notes will be used for share repurchases. In addition to the issuance of this debt, we entered into a new \$250 million unsecured revolving credit facility which replaces our existing \$150 million revolver. This variable interest credit facility has a five-year term and includes an option to increase the available line of credit by an additional \$100 million subject to customary conditions.

Concurrent with the announcement of these debt-related transactions, we announced our intent to utilize an Accelerated Share Repurchase program (ASR). On January 3, 2008, we entered into two ASR agreements to repurchase \$200 million of our outstanding stock.

We believe cash on hand, cash generated from operations and our borrowing capacity will provide adequate liquidity to fund near term and future business operations and capital needs.

### **Contractual Obligations**

Contractual obligations associated with our ongoing business and financing activities will result in cash payments in future periods. A table summarizing the amounts and estimated timing of these future cash payments was provided in the company's Form 10-K filing for the year ended June 2, 2007. During the first six months of fiscal 2008, there were no material changes outside the ordinary course of business in the company's contractual obligations or the estimated timing of future cash payments.

### **Off-Balance Sheet Arrangements**

#### **Guarantees**

We provide certain guarantees to third parties under various arrangements in the form of product warranties, loan guarantees, standby letters of credit, lease guarantees, performance bonds and indemnification provisions. These arrangements are accounted for and/or disclosed in accordance with FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirement for Guarantees, Including Indirect Guarantees of Indebtedness of Others" as described in Note 13.

#### **Variable Interest Entities**

On occasion, we provide financial support to certain independent dealers in the form of term loans, lines of credit, and/or loan guarantees which may represent variable interests in such entities. At December 1, 2007, we were not considered the primary beneficiary of any such dealer relationships under FASB Interpretation No. 46, "Consolidation of Variable Interest Entities." Accordingly, we were not required to consolidate the financial statements of any of these entities during the first quarter.

The risks and rewards associated with our interests in these dealerships are primarily limited to our outstanding loans and guarantee amounts. As of December 1, 2007, our maximum exposure to potential losses related to outstanding loans to these other entities totaled \$4.0 million.

### **Contingencies**

See Note 13 to the condensed consolidated financial statements.

### **Critical Accounting Policies**

We strive to report our financial results clearly and understandably. We follow accounting principles generally accepted in the United States in preparing our consolidated financial statements, which require us to make certain estimates and apply judgments that affect our financial position and results of operations. We continually review our accounting policies and financial information disclosures. A summary of our more significant accounting policies that require the use of estimates and judgments in preparing the financial statements is provided in our Form 10-K filing for the year ended June 2, 2007. During the first six months of fiscal 2008, there was no material change in the accounting policies and assumptions previously disclosed.

## **New Accounting Standards**

See Note 10 to the condensed consolidated financial statements.

## **Safe Harbor Provisions**

Certain statements in this filing are not historical facts but are “forward-looking statements” as defined under Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act, as amended. Such statements are based on management’s beliefs, assumptions, current expectations, estimates and projections about the office furniture industry, the economy and the company itself. Words like “anticipates,” “believes,” “confident,” “estimates,” “expects,” “forecasts,” “likely,” “plans,” “projects,” “should,” variations of such words, and similar expressions identify such forward-looking statements. These statements do not guarantee future performance and involve certain risks, uncertainties, and assumptions that are difficult to predict with regard to timing, extent, likelihood, and degree of occurrence. These risks include, without limitation, employment and general economic conditions, the pace of economic activity in the U.S. and in our international markets, the increase in white collar employment, the willingness of customers to undertake capital expenditures, the types of products purchased by customers, competitive pricing pressures, the availability and pricing of raw materials, our reliance on a limited number of suppliers, currency fluctuations, the ability to increase prices to absorb the additional costs of raw materials, the financial strength of our dealers, the financial strength of our customers, the mix of our products purchased by customers, our ability to attract and retain key executives and other qualified employees, our ability to continue to make product innovations, the success of newly introduced products, our ability to obtain targeted margins from new products, our ability to serve all of our markets, possible acquisitions, divestitures or alliances, the outcome of pending litigation or governmental audits or investigations, political risk in the international markets we serve, and other risks identified in our filings with the Securities and Exchange Commission. Therefore, actual results and outcomes may materially differ from what we express or forecast. Furthermore, Herman Miller, Inc. undertakes no obligation to update, amend, or clarify forward-looking statements.

### Item 3: Quantitative and Qualitative Disclosures About Market Risk

#### Direct Material Costs

The company is exposed to risks arising from market price changes for certain direct materials used in its manufacturing processes. The largest direct material costs incurred by the company are for steel, plastic/textiles, wood particleboard and aluminum components. The market price of plastics and textiles are sensitive to the cost of oil and natural gas. The cost of wood particleboard has been impacted by continual downsizing of production capacity in the wood market. Aluminum component prices are sensitive to changes in energy costs associated with the conversion of raw materials to aluminum ingots.

#### Foreign Exchange Risk

The company manufactures its products in the United States, United Kingdom and China. It also sources completed products and product components from outside the United States. The company's completed products are sold in numerous countries around the world. Sales in foreign countries as well as certain expenses related to those sales are transacted in currencies other than the company's reporting currency, the U.S. dollar. Accordingly, production costs and profit margins related to these sales are affected by the currency exchange relationship between the countries where the sales take place and the countries where the products are sourced or manufactured. These currency exchange relationships can also affect the company's competitive positions within these markets.

In the normal course of business, the company enters into contracts denominated in foreign currencies. The principal foreign currencies in which the company conducts its business are the British Pound Sterling, Euro, Canadian dollar, Japanese Yen, Mexican Peso, and Chinese Renminbi. As of December 1, 2007, the company had outstanding two forward currency instruments designed to offset €3.5 million of its net asset exposure denominated in a non-functional currency. At June 2, 2007, the company had outstanding three forward currency instruments designed to offset €4 million in non-functional currency exposure. These forward currency instruments are marked to market at the end of the period, with changes in fair value reflected in net earnings. At December 1, 2007 and June 2, 2007, the related fair values of these forward currency instruments were negligible.

#### Interest Rate Risk

Interest-bearing debt as of the end of the second quarter, excluding the fair market values of our interest rate swap arrangements, totaled \$178.0 million. This amount includes obligations associated with the company's long-term debt securities and private placement notes, as well as any outstanding borrowings against its unsecured revolving credit facility. The company is subject to interest rate variability on \$53.0 million of this debt. Accordingly, the cost of servicing this variable-rate debt may increase or decrease in the future as market interest rates change.

As of December 1, 2007, the weighted-average interest rate on the company's variable-rate debt was approximately 6.7%. Based on the level of variable-rate debt outstanding as of that date, a 1 percentage-point increase in the weighted-average interest rate would increase the company's estimated annual pre-tax interest expense by approximately \$0.5 million.



#### Item 4: Controls and Procedures

##### Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of management, the company's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the company's disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 1, 2007, and have concluded that as of that date, the company's disclosure controls and procedures are effective.

##### Changes in Internal Control Over Financial Reporting

There were no changes in the company's internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) during the quarterly period ended December 1, 2007, that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.

Item 1: Legal Proceedings

Referred to in Note 13 of the condensed consolidated financial statements.

Item 1A: Risk Factors

There have been no material changes from the information provided in the Company's Annual Report on Form 10-K for the year ended June 2, 2007.

Item 2: Unregistered Sales of Equity Securities and Use of Proceeds

(C) Issuer Purchases of Equity Securities

The following is a summary of share repurchase activity during the second quarter ended December 1, 2007.

<b>Period</b>	<b>(a) Total Number of Shares (or (Units) Purchased<sup>(1)</sup></b>	<b>(b) Average price Paid per Share or Unit</b>	<b>(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs<sup>(1)</sup></b>	<b>(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that may yet be Purchased Under the Plans or Programs</b>
9/2/07 - 9/29/07	191,969	\$ 26.96	191,969	\$ 372,101,539
9/30/07 - 10/27/07	2,742	\$ 28.57	2,742	\$ 372,023,214
10/28/07 - 12/1/07	27	\$ 26.05	27	\$ 372,022,508
<b>Total</b>	<b>194,738</b>	<b>\$ 26.98</b>	<b>194,738</b>	

(1) No shares were purchased outside of a publicly announced plan or program.

The company repurchased shares under previously announced plans authorized by the Board of Directors as follows.

- Plan announced on April 24, 2007, providing share repurchase authorization of \$100,000,000 with no specified expiration date.
- Plan announced on September 28, 2007, providing share repurchase authorization of \$300,000,000 with no specified expiration date.

No repurchase plans expired or were terminated during the second quarter of fiscal 2008, nor do any plans exist under which the company does not intend to make further purchases.

During the period covered by this report, the company did not sell any of its equity shares that were not registered under the Securities Act of 1933.

The annual meeting of the shareholders of the company was held on October 2, 2007, at which:

- (a) The following nominees were elected to serve three-year terms on the company's Board of Directors by the following votes:

	<b>Dorothy A. Terrell</b>	<b>David O. Ulrich</b>
For	49,066,369	48,904,966
Against	—	—
Withheld	682,907	844,310
Broker Non-Votes	—	—

The following nominee was elected to serve a one-year term on the company's Board of Directors by the following votes:

	<b>C. William Pollard</b>
For	48,684,088
Against	—
Withheld	1,065,188
Broker Non-Votes	—

The following individuals continued their service as Directors of the company: Paget L. Alves, Mary Vermeer Andringa, Lord Brian Griffiths of Fforestfach, Douglas D. French, J. Barry Griswell, John R. Hoke III, James R. Kackley, Michael A. Volkema, and Brian C. Walker.

- (b) Ernst & Young LLP was approved as the Company's independent auditors for the fiscal year ended May 31, 2008, by the following votes:

	<b>Ratification of Independent Auditors</b>
For	49,522,941
Against	221,993
Withheld	4,341
Broker Non-Votes	—

- (c) Proposal to transact other business as may properly come before the meeting was defeated by the following votes:

	<b>Other Matters</b>
For	18,280,133
Against	30,728,053
Withheld	741,088
Broker Non-Votes	—

Item 6: Exhibits

The following exhibits (listed by number corresponding to the Exhibit table as Item 601 in Regulation S-K) are filed with this Report:

- 3.1 Herman Miller, Inc. Amended and Restated Bylaws dated September 25, 2007
- 10.1 Integrated Metal Technology, Inc. Bargaining Unit Retirement Plan (second amendment) dated December 17, 2007
- 10.2 Herman Miller, Inc. Note Purchase Agreement dated December 18, 2007
- 10.3 Herman Miller, Inc. Credit Agreement dated December 18, 2007
- 10.4 Herman Miller, Inc. Nonemployee Officer and Director Stock Option Plan (amended and restated) dated December 18, 2007
- 31.1 Certificate of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certificate of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certificate of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certificate of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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 hereto duly authorized.

HERMAN MILLER, INC.

January 9, 2008

/s/ Brian C. Walker

\_\_\_\_\_  
Brian C. Walker  
Chief Executive Officer

January 9, 2008

/s/ Curtis S. Pullen

\_\_\_\_\_  
Curtis S. Pullen  
Chief Financial Officer

**AMENDED AND RESTATED BYLAWS****of****HERMAN MILLER, INC.****A Michigan Corporation****ARTICLE I****OFFICES**

**Section 1. Registered Office.** The registered office of the Corporation shall be as specified in the Articles of Incorporation or such other place as determined by the Board of Directors upon filing proper notice thereof with the State of Michigan. The Corporation shall keep records containing the names and addresses of all shareholders, the number, class and series of shares held by each, and the dates when they respectively became holders of record thereof, at its registered office or at the office of its transfer agent.

**Section 2. Other Offices.** The business of the Corporation may be transacted in such locations other than the registered office, within or outside the State of Michigan, as the Board of Directors may from time to time determine, or as the business of the Corporation may require.

**ARTICLE II****CAPITAL STOCK**

**Section 1. Issuance of Stock and Stock Certificates.** The Board of Directors, in its sole discretion and as necessary, may authorize the issuance of some or all of any class or series of the Corporation's shares without certificates representing such shares. Such authorization shall not affect shares already represented by certificates until such certificates are surrendered to the Corporation. After the issuance of shares without certificates and within a reasonable time, the Corporation shall send the shareholder a written statement of the information normally required on certificates as mandated under the Michigan Business Corporation Act. Certificates, if specifically requested by a shareholder, representing shares of the Corporation may be issued and shall be in such form as is approved by the Chief Executive Officer and the Vice President of Legal Affairs. Certificates shall be signed by the chairman of the Board of Directors, vice chairman of the Board of Directors, president or a vice president, and may also be signed by another officer of the Corporation. The certificate may be sealed with the seal of the Corporation, or a facsimile thereof. The signatures of the officers may be facsimiles. If an officer who has signed, or whose facsimile signature has been placed upon, a certificate ceases to be such officer before the certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer at the date of issue. The Corporation's records containing the names and addresses of all shareholders, the number, class and series of shares held by each, and the date when they respectively became holders of record thereof, shall be final and binding upon the shareholders and their successors and assigns for purposes of determining the identity and location of each shareholder and the number, class and series of shares held by each shareholder.

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Section 2. Replacement of Lost or Destroyed Certificates. If a stock certificate is lost or destroyed, no new certificate shall be issued in place thereof until the Corporation has received from the registered holder such assurances, representations, warranties and/or guarantees as the Board of Directors, in its sole discretion, shall deem advisable, and until the Corporation receives sufficient indemnification protecting it against any claim that may be made on account of such lost or destroyed certificate, or the issuance of any new certificate in place thereof, including an indemnity bond in such amount and with sureties, if any, as the Board of Directors, in its sole discretion, deems advisable.

Section 3. Transfer of Shares. Shares of stock of the Corporation shall be transferable only upon the books of the Corporation. The old certificates, if any, shall be surrendered to the Corporation by delivery thereof to the person in charge of the stock transfer books of the Corporation or to such other person as the Board of Directors may designate, properly endorsed for transfer, and such certificates shall be canceled if certificates are being used. If the Board has authorized the issuance of shares without certificates, after the transfer of shares and within a reasonable time, the Corporation rather than issue a certificate, may send the transferee shareholder a written statement of the information normally required on certificates as mandated under the Michigan Business Corporation Act. The Board of Directors may issue a new certificate if the transferred shareholder specifically requests it. The Corporation shall keep records containing the names and addresses of all shareholders, the number, class, and series of Shares held by each, and the date when they respectively became holders of record thereof, at its registered office. The Corporation shall be entitled to treat the person in whose name any share, right or option is registered as the owner thereof for all purposes, and shall not be bound to recognize any equitable or other claim with respect thereto, regardless of any notice thereof, except as may be specifically required by the laws of the State of Michigan.

Section 4. Rules Governing Stock Certificates. The Board of Directors shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration of certificates of stock, and may appoint a transfer agent and/or a registrar of transfer, and may require all such certificates to bear the signature of such transfer agent and/or of such registrar of transfers.

Section 5. Record Date for Share Dividends, Distributions and Other Actions. For the purpose of determining shareholders entitled to receive payment of a share dividend or distribution, or allotment of a right, or for the purpose of any other action, the Board of Directors may fix a record date which shall not precede the date on which the resolution fixing the record date is adopted by the Board. The date shall not be more than sixty (60) days before the payment of the share dividend or distribution or allotment of a right or other action. If a record date is not fixed, the record date shall be the close of business on the day on which the resolution of the Board relating to the corporate action is adopted. Only shareholders of record on the date so fixed shall be entitled to receive payment of such dividend or other distribution or allotment of rights or exercise such rights, as the case may be, notwithstanding the transfer of any Shares on the books of the Corporation after such record date.

**Section 6. Dividends.** The Board of Directors, in its discretion, may from time to time declare and make a distribution to shareholders in respect of the Corporation's outstanding shares, payable in cash, the Corporation's shares or indebtedness, or the Corporation's other property, including the shares or indebtedness of other corporations; provided, however, no such distribution shall be made if, after giving effect to the distribution, the Corporation would not be able to pay its debts as they become due in the usual course of business, or the Corporation's total assets would be less than its total liabilities plus the amount that would be needed if the Corporation were to be dissolved at the time of the distribution to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distributions.

In addition, the Board of Directors, in its discretion, from time to time may declare and direct the payment of a share dividend of the Corporation's shares, issued pro rata and without consideration, to the Corporation's shareholders or to the shareholders of one or more classes or series; provided, however, shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (a) the Articles of Incorporation so authorize, (b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

**Section 7. Acquisition of Shares.** Subject to the limitations of the Michigan Business Corporation Act, the Board of Directors may authorize the Corporation to acquire its own shares, and shares so acquired shall constitute authorized but unissued shares, except that shares of the Corporation acquired by it may be pledged as security for the payment of the purchase price of the shares and, until the purchase price is paid by the Corporation, such shares are not canceled and do not constitute authorized but unissued shares. In such event, the acquired and pledged shares shall not be voted directly or indirectly at any meeting or otherwise, shall not be counted in determining the total number of issued shares entitled to vote at any given time, and, upon payment of the purchase price, are canceled and constitute authorized but unissued shares.

**Section 8. Redemption of Control Shares.** Control shares acquired in a control share acquisition, with respect to which no acquiring person statement has been filed with the Corporation, shall, at any time during the period ending sixty (60) days after the last acquisition of control shares or the power to direct the exercise of voting power of control shares by the acquiring person, be subject to redemption by the Corporation. After an acquiring person statement has been filed with the Corporation and after the meeting at which the voting rights of the control shares acquired in a control share acquisition are submitted to the shareholders, the shares shall be subject to redemption by the Corporation unless the shares are accorded full voting rights by the shareholders as provided in Section 798 of the Michigan Business Corporation Act. Redemptions of shares pursuant to this bylaw shall be at the fair value of the shares pursuant to procedures adopted by the Board of Directors of the Corporation.

The terms "control shares," "control share acquisition," "acquiring person statement," "acquiring person," and "fair value," as used in this bylaw, shall have the meanings ascribed to them, respectively, in Chapter 7B (known as the Stacey, Bennett and Randall shareholder equity act) of the Michigan Business Corporation Act.



**ARTICLE III**  
**SHAREHOLDERS**

**Section 1. Place of Meetings.** Meetings of shareholders shall be held at the registered office of the Corporation or at such other place, within or outside the State of Michigan, as may be determined from time to time by the Board of Directors, provided however, if a meeting of shareholders is to be held at a place other than the registered office of the Corporation, the notice of the meeting shall designate such place.

**Section 2. Annual Meeting.** Annual meetings of shareholders for election of directors and for such other business as may come before the meeting shall be held at a date designated by the Board of Directors within five months after the end of each fiscal year of the Corporation. If the annual meeting is not held on the date so designated, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient.

**Section 3. Special Meetings.** Special meetings of shareholders may be called by the chairman or vice chairman of the Board, the president or the secretary and shall be called by one of them pursuant to resolution therefor by the Board of Directors, or upon receipt by them of a request in writing, stating the purpose or purposes thereof, and signed by more than half of the non-employee directors.

**Section 4. Record Date for Notice and Vote.** For the purpose of determining shareholders entitled to notice of and to vote at a meeting of shareholders or an adjournment of a meeting, the Board of Directors may fix a record date which shall not precede the date on which the resolution fixing the record date is adopted by the Board. The date shall be not more than sixty (60) nor less than ten (10) days before the date of the meeting. If a record date is not fixed, the record date for determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be the close of business on the day next preceding the day on which notice is given or, if no notice is given, the day next preceding the day on which the meeting is held. When a determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders has been made as provided in this Section 4, the determination applies to any adjournment of the meeting, unless the Board fixes a new record date under this section for the adjourned meeting.

For the purpose of determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, the Board of Directors may fix a record date which shall not precede the date on which the resolution fixing the record date is adopted by the Board and shall be not more than ten (10) days after the Board resolution. If a record date is not fixed and prior action by the Board is required with respect to the corporate action to be taken without a meeting, the record date shall be the close of business on the day on which the resolution of the Board is adopted. If a record date is not fixed and prior action by the Board is not required, the record date shall be the first date on which a signed written consent is delivered to the Corporation as provided in Section 407 of the Michigan Business Corporation Act.

**Section 5. Notice of Shareholder Meetings.** Written notice of the time, place and purposes of any meeting of shareholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder of record entitled to vote at the meeting. Such notice may be given either by delivery in person to such shareholders or by mailing such notice to shareholders at their addresses as the same appear on the stock books of the Corporation.

A shareholder’s attendance at a meeting, in person or by proxy, constitutes a waiver of the shareholder’s objection to lack of notice or defective notice of the meeting unless, at the beginning of the meeting, the shareholder objects to holding the meeting or transacting business at the meeting, and constitutes a waiver of the shareholder’s objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Section 6. Voting Lists. The Corporation’s officer or agent having charge of its stock transfer books shall prepare and certify a complete list of the shareholders entitled to vote at a shareholders’ meeting or any adjournment thereof, which list shall be arranged alphabetically within each class and series, and shall show the address of and number of shares held by each shareholder. The list shall be produced at the time and place of the meeting of shareholders and be subject to inspection by any shareholder at any time during the meeting. The list shall be prima facie evidence as to who are the shareholders entitled to examine the list or to vote at the meeting. If for any reason the requirements with respect to the shareholder list specified in this Section 6 of Article III have not been complied with, any shareholder, either in person or by proxy, who in good faith challenges the existence of sufficient votes to carry any action at the meeting, may demand that the meeting be adjourned and the same shall be adjourned until the requirements are complied with, provided however, that failure to comply with such requirements does not affect the validity of any action taken at the meeting before such demand is made.

Section 7. Voting. Except as may otherwise be provided in the Articles of Incorporation or bylaws of the Corporation, each shareholder entitled to vote at a meeting of shareholders, or to express consent or dissent without a meeting, shall be entitled to one (1) vote, in person or by proxy, for each share of stock entitled to vote held by such shareholder, provided however, no proxy shall be voted after three (3) years from its date unless such proxy provides for a longer period. For purposes of this section, without limiting the manner in which a shareholder may authorize another person or persons to act as proxy, a proxy granted by execution of a writing, facsimile, or other means of electronic or digital transmission to the person or persons who will hold the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent fully authorized by the person who will hold the proxy to receive that transmission, shall constitute valid means of granting proxy authority. A vote may be cast either orally or in writing as announced or directed by the chairperson of the meeting prior to the taking of the vote. When an action other than the election of directors is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote thereon, unless a greater vote is required by express requirement of the Michigan Business Corporation Act or of the Articles of Incorporation, in which case such express provision shall govern and control the decision of such question. Except as otherwise expressly required by the Articles of Incorporation, directors shall be elected by a plurality of the votes cast at an election.

**Section 8. Quorum.** Except as may otherwise be provided in the Articles of Incorporation, shares entitled to cast a majority of the votes at a meeting constitute a quorum. Meetings at which less than a quorum is represented may be adjourned by a vote of a majority of the shares present to a further date without further notice other than the announcement at such meeting, and, when the quorum shall be present upon such adjourned date, any business may be transacted which might have been transacted at the meeting as originally called. Shareholders present in person or by proxy at any meeting of shareholders may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

**Section 9. Conduct of Meetings.** The chairman of the Board of Directors or the chairman's designee shall call meetings of the shareholders to order and shall act as chairman of such meetings. The secretary of the Corporation shall act as secretary of all meetings of shareholders but, in the absence of the secretary at any meeting of shareholders or the secretary's inability or election not to act as secretary, the presiding officer may appoint any person to act as secretary of the meeting.

**Section 10. Inspector of Elections.** The Board of Directors may, in advance of a meeting of shareholders, appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, or an appointed inspector fails to appear or act, the person presiding at the meeting of shareholders may and, on request of a shareholder entitled to vote thereat, shall appoint one or more persons to fill such vacancy or vacancies, or to act as inspector. The inspector(s) shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine challenges and questions arising in connection with the right to vote, count and tabulate votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all shareholders.

**Section 11. Notification of Nominations.** Nominations for the election of directors may be made by the Board of Directors or by a shareholder entitled to vote in the election of directors. A shareholder entitled to vote in the election of directors, however, may make such a nomination only if written notice of such shareholder's intent to do so has been given, either by personal delivery or by United States mail, postage prepaid, and received by the Corporation (a) with respect to an election to be held at an annual meeting of shareholders, not later than sixty (60) days in advance of the date of such meeting, and (b) with respect to an election to be held at a special meeting of shareholders called for that purpose, not later than the close of business on the tenth (10th) day following the date on which notice of the special meeting was first mailed to the shareholders by the Corporation.

Each shareholder's notice of intent to make a nomination shall set forth: (a) the names and addresses of the shareholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the shareholder (i) is a holder of record of stock of the Corporation entitled to vote at such meeting; (ii) will continue to hold such stock through the date on which the meeting is held, and (iii) intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination is to be made by the shareholder; (d) such other information regarding each nominee proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated by the Board of Directors; and (e) the consent of each nominee to serve as a director of the Corporation if so elected. The chairman of the meeting may refuse to acknowledge the nomination of any person nominated by a shareholder whose nomination is not made in compliance with the foregoing procedure.

Section 12. Notification of Other Shareholder Proposals. The Board of Directors of the Corporation shall submit for consideration and vote by the shareholders, at any meeting of the shareholders, only those proposals that are first brought before the meeting by or at the direction of the Board of Directors, or by any shareholder entitled to vote at such meeting (a) who submits to the Corporation a timely Notice of Proposal, in accordance with the requirements of this Section 12 and the proposal is a proper subject for action by shareholders under Michigan law, or (b) whose proposal is included in the Corporation's proxy materials in compliance with all the requirements set forth in the applicable rules and regulations of the Securities and Exchange Commission.

Each shareholder's Notice of Proposal shall at a minimum set forth the following information:

- (a) The name and address of the shareholder submitting the proposal, as they appear on the Corporation's books and records;
- (b) A representation that the shareholder (i) is a holder of record of stock of the Corporation entitled to vote at such meeting, (ii) will continue to hold such stock through the date on which the meeting is held, and (iii) intends to appear in person or by proxy at the meeting to submit the proposal for shareholder vote;
- (c) A brief description of the proposal desired to be submitted to the meeting for shareholder vote and the reasons for conducting such business at the meeting; and
- (d) A description of any financial or other interest of such shareholder in the proposal.

A Notice of Proposal must be given, either by personal delivery or by United States mail, postage prepaid, and received by the Corporation not less than thirty (30) days prior to the date of the originally scheduled meeting, regardless of any adjournments thereof to a later date; provided that, if less than forty (40) days' notice of the shareholder meeting is given by the Corporation, the Notice of Proposal must be received by the Corporation not later than the close of business on the tenth (10th) day following the date on which the notice of the scheduled meeting was first mailed to the shareholders. No Notice of Proposal may be in excess of five hundred (500) words. The secretary of the Corporation shall notify a shareholder in writing whether his or her Notice of Proposal has been made in accordance with all the requirements of this Section 12. The chairman of the meeting may refuse to acknowledge the proposal of any shareholder not made in compliance with all such requirements.

**ARTICLE IV**  
**DIRECTORS**

**Section 1. Authority and Size of Board.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors of the Corporation (exclusive of directors to be elected by the holders of any one or more series of the preferred stock voting separately as a class or classes) that shall constitute the Board of Directors shall be that number determined by the Board of Directors from time to time, but not less than nine (9) directors nor more than thirteen (13) directors.

**Section 2. Classification of Board and Filling of Vacancies.** Subject to applicable law, the directors shall be divided into three (3) classes, each class to be as nearly equal in number as possible. The directors of the first class shall hold office until the annual meeting of stockholders to be held in 1984 and until their respective successors are duly elected and qualified or their resignation or removal. The directors of the second class shall hold office until the annual meeting of stockholders to be held in 1985 and until their respective successors are duly elected and qualified or their resignation or removal. The directors of the third class shall hold office until the annual meeting of stockholders to be held in 1986 and until their respective successors are duly elected and qualified or their resignation or removal. Subject to the foregoing and to the last sentence of this first paragraph of Section 2 of Article IV, at each annual meeting of stockholders, commencing at the annual meeting to be held in 1984, the successors to the class of directors whose term shall then expire shall be elected to hold office until the third succeeding annual meeting and until their successors shall be duly elected and qualified or their resignation or removal. Any vacancies in any class of the Board of Directors for any reason, and any newly created directorships resulting from any increase in the number of directors, may be filled only by the Board of Directors, acting by vote of a majority of the Continuing Directors and at least eighty percent (80%) of the Board of Directors, and any directors so chosen shall hold office for the remaining term of the class of directors into which he or she has been appointed and until their respective successors shall be duly elected and qualified or their resignation or removal. No decrease in the number of directors shall shorten the term of any incumbent director. No person shall be elected as a director (a) after he or she attains age seventy (70) or (b) for a term which expires later than the annual meeting of stockholders at or immediately after which such person attains age seventy (70).

Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of preferred stock shall have the right, voting separately as a class, to elect one or more directors of the Corporation (a) the terms of the director or directors elected by such holders shall expire at the next succeeding annual meeting of stockholders and vacancies created with respect to any directorship of the directors so elected may be filled in the manner specified by such preferred stock, and (b) this Section 2 of Article IV shall be deemed to be construed and/or modified so as to permit the full implementation of the terms and conditions relating to election of directors of any series of preferred stock that has been or may be designated by the Board of Directors.

**Section 3. Resignation and Removal of Directors.** A director may resign by written notice to the Corporation, which resignation is effective upon its receipt by the Corporation or at a subsequent time as set forth in the written notice of resignation. Notwithstanding any other provisions of the Articles of Incorporation or the Bylaws of the Corporation, any one or more directors of the Corporation may be removed at any time, with or without cause, but only by either (a) the affirmative vote of a majority of the Continuing Directors and at least eighty percent (80%) of the Board of Directors, or (b) the affirmative vote, at a meeting of the stockholders called for that purpose, of the holders of at least eighty percent (80%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors voting together as a single class.

Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of preferred stock shall have the right, voting separately as a class, to elect one or more directors of the Corporation, the provision of this Section 3 of Article IV shall not apply with respect to the director or directors elected by such holders of preferred stock.

**Section 4. Place of Meetings and Records.** The directors shall hold their meetings and maintain the minutes of the proceedings of meetings of shareholders, Board of Directors, and committees, if any, and keep the books and records of account for the Corporation in such place or places, within or outside the State of Michigan, as the Board may from time to time determine.

**Section 5. Annual Meetings of Directors.** The newly elected directors shall hold their first meeting, without notice other than this bylaw, at the same place and immediately after the annual meeting of the shareholders at which they are elected, or the time and place of such meeting may be fixed by consent in writing of all the directors.

**Section 6. Regular Meetings of the Board.** Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board or by the chairman or vice chairman of the Board of Directors, or the president. Any notice given of a regular meeting need not specify the business to be transacted or the purpose of the meeting.

**Section 7. Special Meetings of the Board.** Special meetings of the Board may be called by the chairman or vice chairman of the Board of Directors or the president on at least two (2) days' notice to each director by mail or overnight courier or twenty-four (24) hours' notice either personally, by telephone, by telegram, by facsimile or by electronic or digital transmission. Special meetings shall be called by any one of them in like manner and on like notice on the written request of any two (2) directors. The notice need not specify the business to be transacted or the purpose of the special meeting. The notice shall specify the place of the special meeting.

**Section 8. Meeting Attendance or Participation as Waiver of Notice.** A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

Section 9. Meeting Participation by Means of Communication Equipment. Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or of such committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can communicate with the other participants, and participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

Section 10. Quorum and Vote. At all meetings of the Board or a committee thereof, a majority of the members of the Board of Directors then in office or members of such committee, but not less than two (2) (if there are at least two members of the Board or such committee) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which there is a quorum shall be the act of the Board of Directors or the committee. If a quorum shall not be present at any meeting of the Board of Directors or a committee, the members present may adjourn the meeting from time to time and to another place without notice other than announcement at the meeting until a quorum shall be present.

Section 11. Action Without Meeting. Any action required or permitted to be taken pursuant to authorization voted at a meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if, before or after the action, all members of the Board of Directors then in office or of such committee consent thereto in writing. Such written consent shall be filed with the minutes of the proceedings of the Board of Directors or committee. The consent has the same effect as a vote of the Board of Directors or such committee for all purposes.

Section 12. Committees. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member of any committee. In the absence or in the event of the disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. A committee and each member thereof shall serve at the pleasure of the Board.

Any committee, to the extent provided in the resolution of the Board or in these Bylaws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. No committee, however, shall have the power or authority to amend the Articles of Incorporation or Bylaws of the Corporation, adopt an agreement of merger or share exchange, recommend to the shareholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommend to the shareholders a dissolution of the Corporation or a revocation of a dissolution, or fill vacancies in the Board of Directors. The committee shall not have the power or authority to declare a distribution, dividend or authorize the issuance of shares unless such power is granted to such committee by specific resolution of the Board of Directors. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The committees shall keep regular minutes of their proceedings and report the same to the Board when required. If a committee is designated as an Executive Committee, its members shall consist of the Chairman and/or the Chief Executive Officer and such other directors as shall be designated by the Board of Directors.

Section 13. Compensation. By affirmative vote of a majority of directors in office, and irrespective of the personal interest of any of them, the Board of Directors may establish reasonable compensation for directors for services to the Corporation as directors, officer, or members of committees. Directors may be paid a fixed sum for attendance at each meeting of the Board or of a committee, or an annual salary or retainer, or issued shares of company common stock or any combination of the above. Directors may also be reimbursed for reasonable expenses incurred in attending each meeting of the Board or meeting of a committee.

Section 14. Directors Emeritus. A director who has served the Corporation with distinction and who has retired from the Board may be elected a Director Emeritus by the affirmative vote of a majority of the full Board of Directors. A Director Emeritus shall be elected for life, subject only to his or her resignation or removal by vote of a majority of the full Board of Directors. A Director Emeritus shall not have any of the responsibilities or liabilities of a director, or any of a director's rights, powers, privileges or compensation. Reference in these Bylaws to "directors" shall not mean or include Directors Emeritus.

Section 15. Evaluation of Certain Offers. The Board of Directors shall not approve, adopt or recommend any offer of any person or entity, other than the Corporation, to make a tender or exchange offer for any capital stock of the Corporation, to merge or consolidate the Corporation with any other entity or to purchase or otherwise acquire all or substantially all of the assets or business of the Corporation unless and until the Board of Directors shall have first evaluated the offer and determined that the offer would be in compliance with all applicable laws and that the offer is in the best interests of the Corporation and its stockholders. In connection with its evaluation as to compliance with laws, the Board of Directors may seek and rely upon an opinion of legal counsel independent from the offeror and it may test such compliance with laws in any state or federal court or before any state or federal administrative agency which may have appropriate jurisdiction. In connection with its evaluation as to the best interests of the Corporation and its stockholders, the Board of Directors shall consider all factors which it deems relevant, including without limitation:

- (a) The adequacy and fairness of the consideration to be received by the Corporation and/or its stockholders under the offer considering historical trading prices of the Corporation's stock, the price that might be achieved in a negotiated sale of the Corporation as a whole, premiums over trading prices which have been proposed or offered with respect to the securities of other companies in the past in connection with similar offers and the future prospects for this Corporation and its business;
- (b) The potential social and economic impact of the offer and its consummation on this Corporation, its employees, customers and vendors; and
- (c) The potential social and economic impact of the offer and its consummation on the communities in which the Corporation and any subsidiaries operate or are located.



**ARTICLE V**  
**OFFICERS**

**Section 1. Officers.** The officers of the Corporation shall consist of a president, a treasurer, and a secretary, all of whom shall be elected by the Board of Directors. In addition, the Board of Directors may elect a chairman of the Board of Directors, a vice chairman of the Board of Directors, one or more vice presidents (the number thereof to be determined by the Board of Directors) and such assistant secretaries and assistant treasurers as desired. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. None of the officers of the Corporation, other than the chairman, the vice chairman, and the president need be directors. The officers shall be elected at the first meeting of the Board of Directors after each annual meeting of Shareholders and may be elected at any other meeting. Any two or more offices may be held by the same person, but an officer shall not execute, acknowledge or verify any instrument in more than one capacity if the instrument is required by law to be executed, acknowledged or verified by two or more officers.

**Section 2. Other Officers and Agents.** The Board of Directors may appoint such other officers and agents as it may deem advisable, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. The Board may, by specific resolution, empower the chairman, the president or the Executive Committee, if such a committee has been designated by the Board, to appoint such officers or agents and to determine their powers and duties.

**Section 3. Removal.** The chairman, vice chairman and president may be removed at any time, with or without cause, but only by the affirmative vote of a majority of the whole Board of Directors. All vice presidents, the secretary and the treasurer may be removed at any time, with or without cause, by the president or by majority vote of directors present at any meeting. Any assistant secretary or assistant treasurer, or subordinate officer or agent appointed pursuant to Section 2 of this Article, may be removed at any time, with or without cause, by majority vote of directors present at any meeting, by the president, or by any committee or other officer empowered so to do by resolution of the Board.

**Section 4. Chairman and Vice Chairman.** The chairman of the Board of Directors shall preside at all meetings of the Board of Directors and at all meetings of shareholders. The chairman shall also perform such other duties as from time to time may be assigned to him or her by the Board of Directors.

If the chairman dies or is unable to perform the duties of the chairman for any other reason, the vice chairman shall preside at all meetings of the shareholders and at all meetings of the Board of Directors. The vice chairman shall not succeed to any of the other rights, powers or duties of the chairman. The vice chairman shall also perform such other duties as from time to time may be assigned to him or her by the Board of Directors.

**Section 5. President.** The president shall be the chief executive officer of the corporation, shall have general supervision, direction and control of the business of the Corporation and shall have the general powers and duties of management usually vested in or incident to the office of the president and chief executive officer of a corporation. The president shall be a member of the Executive Committee, if such a committee is designated by the Board of Directors. In the absence or inability to act of the chairman and vice chairman of the Corporation, the president shall preside at all meetings of the shareholders and all meetings of the Board of Directors. The president shall also have such other powers and duties as from time to time may be assigned to him or her by the Board of Directors. Except as the Board of Directors shall authorize the execution thereof in some other manner, the president shall execute bonds, mortgages and other contracts in behalf of the Corporation and shall cause the seal to be affixed to any instrument requiring it. If the president dies or becomes unable to perform the duties of this office for any other reason, the Board of Directors shall appoint a successor to be the president of the Corporation.

**Section 6. Vice Presidents.** Each vice president shall have such powers and shall perform such duties as shall be assigned to him or her by the Board of Directors, and may be designated by such special title as the Board of Directors shall approve.

**Section 7. Treasurer.** The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. The treasurer shall deposit all monies and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the president, taking proper vouchers for such disbursements. The treasurer shall render to the president and Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all his or her transactions as treasurer and of the financial condition of the financial condition of the Corporation. In general, the treasurer shall perform all the duties incident to the office of treasurer and such other duties as may be assigned to him or her by the Board of Directors of the president.

**Section 8. Secretary.** The secretary shall give, or cause to be given, notice of all meetings of shareholders and directors required by law or by these Bylaws, and all other notices so required. If the secretary is absent or refuses or neglects, so to do, any such notice may be given by any person directed to do so by the chairman or vice chairman of the Board of Directors, the president, or by the directors upon whose written request the meeting is called as provided in these Bylaws. Unless otherwise directed by the Board of Directors, the secretary shall record all the proceedings of the meetings of the Corporation and of the directors in one or more books to be kept for that purpose, and shall perform all duties incident to the office of the secretary and such other duties as may be assigned to him or her by the directors, the chairman of the Board of Directors, or the president. The secretary shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the directors, the chairman of the Board of Directors, or the president, and attest the same.

**Section 9. Assistant Treasurers and Assistant Secretaries.** Assistant treasurers and assistant secretaries, if any shall be elected, shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the treasurer or the secretary, respectively, or by the president or the Board of Directors.

Section 10. Salaries. The salaries and other compensations of the officers shall be fixed from time to time by or under the direction of the Board of Directors. No officer shall be prevented from receiving a salary or other compensation by reason of the fact that he or she is also a director of the Corporation.

Section 11. Bonds. If the Board of Directors shall so require, the treasurer, any assistant treasurer and any other officer or agent of the Corporation shall give bond to the Corporation in such amount and with such surety as the Board of Directors may deem sufficient, conditioned upon the faithful performance of their respective duties and offices and any other conditions approved by the Board of Directors.

## **ARTICLE VI**

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and delivery any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name, unless authorized by a resolution of the Board of Directors. Such authorization may be general or confined to specific instances.

Section 3. Checks. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

## **ARTICLE VII**

### **MISCELLANEOUS**

Section 1. Fiscal Year. The fiscal year of this Corporation shall end on the Saturday nearest the 31st day of May in each year.

Section 2. Notices. Whenever any written notice is required to be given under the provisions of any law, the Articles of Incorporation for this Corporation, or by these Bylaws, it shall not be construed or interpreted to mean personal notice, unless expressly so stated, and any notice so required shall be deemed to be sufficient if given in writing by facsimile or electronic or digital transmission with confirmation, overnight courier or first class mail, by depositing the same in a United States Post Office box, postage prepaid, addressed to the person entitled thereto at his address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Shareholders not entitled to vote shall not be entitled to receive notice of any meetings, except as otherwise provided by law or these Bylaws.

**Section 3. Waiver of Notice.** Whenever any notice is required to be given under the provisions of any law, or the Articles of Incorporation for this Corporation, or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

**Section 4. Voting of Securities.** Securities of another corporation, foreign or domestic, standing in the name of this Corporation, which are entitled to vote shall be voted, in person or by proxy, by the chairman of the Board or the president of this Corporation or by such other or additional persons as may be designated by the Board of Directors.

**Section 5. Seal.** The corporate seal of the Corporation shall be in such form as may be authorized and adopted by the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## **ARTICLE VIII**

### **INDEMNIFICATION**

Directors and officers of the Corporation shall be indemnified as of right to the fullest extent now or hereafter permitted by law in connection with any threatened, pending or completed civil, criminal, administrative or investigative action, suit or proceeding (whether brought by or in the name of the Corporation, a subsidiary or otherwise and whether formal or informal) in which a director or officer is a witness or which is brought against a director or officer in his or her capacity as a director, officer, employee, agent or fiduciary of the Corporation or of any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which the director or officer was serving at the request of the Corporation. Persons who are not directors or officers of the Corporation may be similarly indemnified in respect of such service to the extent authorized at any time by the Board of Directors of the Corporation. The Corporation may purchase and maintain insurance to protect itself and any such director, officer or other person against any liability asserted against him or her and incurred by him or her in respect of such service whether or not the Corporation would have the power to indemnify him or her against such liability by law or under the provisions of this Article. The provisions of this Article shall be applicable to actions, suits or proceedings, whether arising from acts or omissions occurring before or after the adoption hereof, and to directors, officers and other persons who have ceased to render such service, and shall inure to the benefit of the heirs, executors and administrators of the directors, officers and other persons referred to in this Article. The right of indemnity provided pursuant to this Article shall not be exclusive and the Corporation may provide indemnification to any person, by agreement or otherwise, on such terms and conditions as the Board of Directors may approve. Any agreement for indemnification of any director, officer, employee or other person may provide indemnification rights which are broader or otherwise different from those set forth in, or provided pursuant to, or in accordance with, this Article. Any amendment, alteration, modification, repeal or adoption of any provision in these Bylaws inconsistent with this Article VIII shall not adversely affect any indemnification right or protection of a director, officer, employee or other person of the Corporation existing at the time of such amendment, alteration, modification, repeal or adoption. In addition, in connection with an action or suit brought by or in the right of the Corporation as described in Section 562 of the Michigan Business Corporation Act, a director shall be indemnified as of right to the fullest extent permitted by law for expenses, including attorneys' fees, actually and reasonably incurred.

**ARTICLE IX**  
**AMENDMENTS**

Except as otherwise provided below, these Bylaws may be added to, altered, amended or repealed and new and other bylaws may be made, altered or added to by a vote of a majority of the members of the Board of Directors then in office at any regular or special meeting of the Board, and without prior notices of intent to do so, except that neither Section 2 or 3 of Article IV shall be amended unless such amendment is adopted by the affirmative vote of a majority of the Continuing Directors and at least eighty percent (80%) of the Board of Directors, and these Bylaws may also be added to, altered, amended or repealed and new or other bylaws made and adopted by vote of the holders of a majority of the voting shares of capital stock issued and outstanding at any annual or special meeting, unless a greater plurality is required by law or by the Articles of Incorporation, if notice of the proposed alteration or repeal of the bylaw to be made is contained in the notice of such meeting. Notwithstanding the foregoing, Section 1 of Article IV may not be modified except by the affirmative vote of the holders of the majority of the voting shares of capital stock issued and outstanding at any annual or special meeting.

The foregoing Bylaws, adopted by the Board of Directors of Herman Miller, Inc. on March 18, 1986, have been restated in their entirety to incorporate amendments adopted by the Board of Directors on November 17, 1987, December 22, 1987, May 10, 1988, July 11, 1990, and October 4, 1990, January 6, 1997, October 1, 2002, January 13, 2004, April 25, 2005, and September 24, 2007.

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Secretary to the Board

**SECOND AMENDMENT TO THE  
INTEGRATED METAL TECHNOLOGY, INC.  
BARGAINING UNIT RETIREMENT PLAN  
(October 1, 2001 Restatement)**

THIS SECOND AMENDMENT to the October 1, 2001 Restatement of the Integrated Metal Technology, Inc. Bargaining Unit Retirement Plan (the "Plan") is adopted by Integrated Metal Technology, Inc. (the "Employer") with reference to the following:

A. The Employer and its predecessors have maintained the Plan since October 1, 1966 to provide retirement benefits to Employees who are in the bargaining unit represented by Local 6-0410 of the Paper, Allied Industrial, Chemical and Energy Workers International Union, AFL-CIO, Canadian Labour Congress (the "Union"); and

B. The Employer wishes to amend the Plan further to provide make technical changes requested to comply with the law.

NOW, THEREFORE, the Plan is amended as follows:

**1. Section 10.6(a) of the Plan is amended in its entirety to read as follows:**

(a) General Rule. The distributions under this Article shall satisfy the minimum required distributions requirements of Section 401(a)(9) of the Code and its regulations, including the incidental benefit requirements.

**2. This Amendment will be effective as of January 1, 2006.**

IN WITNESS WHEREOF, the Employer has caused this Second Amendment to be executed this \_\_\_\_ day of \_\_\_\_\_, 2007.

**INTEGRATED METAL TECHNOLOGY, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_

HERMAN MILLER, INC.

\$50,000,000 5.94% Series A Senior Notes  
due January 3, 2015

and

\$150,000,000 6.42% Series B Senior Notes  
due January 3, 2018

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NOTE PURCHASE AGREEMENT

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DATED AS OF DECEMBER 18, 2007

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HERMAN MILLER, INC.  
855 EAST MAIN AVENUE  
ZEELAND, MICHIGAN 49464-0302

\$50,000,000 5.94% SERIES A SENIOR NOTES DUE JANUARY 3, 2015  
\$150,000,000 6.42% SERIES B SENIOR NOTES DUE JANUARY 3, 2018

Dated as of  
December 18, 2007

TO THE PURCHASERS LISTED IN  
THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

HERMAN MILLER, INC., a Michigan corporation (the "Company"), agrees with the Purchasers listed in the attached Schedule A (the "Purchasers") to this Note Purchase Agreement (this "Agreement") as follows:

SECTION 1. AUTHORIZATION OF NOTES.

*Section 1.1. Description of Notes.* The Company will authorize the issue and sale of the following Senior Notes:

Issue	Series and/or Tranche	Aggregate Principal Amount	Interest Rate	Maturity Date
Senior Notes	Series A	\$50,000,000	5.94%	January 3, 2015
Senior Notes	Series B	\$150,000,000	6.42%	January 3, 2018

The Series A Senior Notes (the “*Series A Notes*”) and the Series B Senior Notes (the “*Series B Notes*”) described above are collectively referred to as the “*Notes*” (such term shall also include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement). The Notes shall be substantially in the form set out in Exhibit 1(a) and Exhibit 1(b) respectively, with such changes therefrom, if any, as may be approved by the Purchasers and the Company. Certain capitalized terms used in this Agreement are defined in Schedule B; references to a “Schedule” or an “Exhibit” are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.

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*Section 1.2. Interest Rate.* (a) The Notes shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid principal thereof from the date of issuance at their respective stated rates of interest payable semi-annually in arrears on the 3rd day of January and July in each year and at maturity, commencing on July 3, 2008, until such principal sum shall have become due and payable (whether at maturity, upon notice of prepayment or otherwise) and interest (so computed) on any overdue principal, interest or Make-Whole Amount from the due date thereof (whether by acceleration or otherwise) and, during the continuance of an Event of Default, on the unpaid balance thereof, at the applicable Default Rate until paid.

(b) *Additional Interest.* If the Debt Ratio at any time exceeds 3.5 to 1.00, as evidenced by an Officer's Certificate delivered pursuant to Section 7.2(a), the interest rate payable on the Notes shall be increased by 0.75% (the "*Additional Interest*"), commencing on the first day of the first fiscal quarter following the fiscal quarter in respect of which such Certificate was delivered and continuing until the Company has provided an Officer's Certificate pursuant to Section 7.2(a) demonstrating that, as of the end of the fiscal quarter in respect of which such Certificate is delivered, the Debt Ratio is not more than 3.5 to 1.0. Following delivery of an Officer's Certificate demonstrating that the Debt Ratio did not exceed 3.5 to 1.0, the additional 0.75% interest shall cease to accrue or be payable for any fiscal quarter subsequent to the fiscal quarter in respect of which such Officer's Certificate is delivered.

## SECTION 2. SALE AND PURCHASE OF NOTES.

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, the Notes in the principal amount specified opposite such Purchaser's name in Schedule A at the purchase price of 100% of the principal amount thereof. The obligations of each Purchaser hereunder are several and not joint obligations and each Purchaser shall have no obligation and no liability to any Person for the performance or nonperformance by any other Purchaser hereunder.

## SECTION 3. CLOSING.

The execution and delivery of this Agreement will be made at the offices of Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603 on December 18, 2007 (the "*Execution Date*").

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Chapman and Cutler, LLP, 111 West Monroe Street, Chicago, Illinois 60603 at 10:00 a.m. Central time, at a closing (the "*Closing*") on January 3, 2008 or on such other Business Day thereafter on or prior to January 3, 2008 as may be agreed upon by the Company and the Purchasers. On the Closing Date, the Company will deliver to each Purchaser the Notes to be purchased by such Purchaser in the form of a single Note (or such greater number of Notes in denominations of at least \$100,000 as such Purchaser may request) dated as of the Closing Date and registered in such Purchaser's name (or in the name of such Purchaser's nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to Account Number 1033539, at JP Morgan Chase Bank, Chicago, Illinois, ABA Number 071000013, in the Account Name of "Herman Miller, Inc." If, on the Closing Date, the Company shall fail to tender such Notes to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to any Purchaser's satisfaction, such Purchaser shall, at such Purchaser's election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure or such nonfulfillment.

## SECTION 4. CONDITIONS TO CLOSING.

Each Purchaser's obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions applicable to the Closing Date:

*Section 4.1. Representations and Warranties.* The representations and warranties of the Company in this Agreement shall be correct when made and at the time of the Closing.

*Section 4.2. Performance; No Default.* The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by the Company prior to or at the Closing, and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14), no Default or Event of Default shall have occurred and be continuing. Neither the Company nor any Restricted Subsidiary shall have entered into any transaction since the date of the Memorandum that would have been prohibited by Section 10 hereof had such Section applied since such date.

*Section 4.3. Compliance Certificates.*

(a) *Officer's Certificate of the Company.* The Company shall have delivered to such Purchaser an Officer's Certificate, dated the Closing Date, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) *Secretary's Certificate of the Company.* The Company shall have delivered to such Purchaser a certificate, dated the Closing Date, certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and this Agreement.

*Section 4.4. Opinions of Counsel.* Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the Closing Date (a) from James E. Christenson, General Counsel of the Company, covering the matters set forth in Exhibit 4.4(a) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers), and (b) from Chapman and Cutler, LLP, the Purchasers' special counsel in connection with such transactions, substantially in the form set forth in Exhibit 4.4(b) and covering such other matters incident to such transactions as such Purchaser may reasonably request.

*Section 4.5. Purchase Permitted By Applicable Law, Etc.* On the date of the Closing such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

*Section 4.6. Sale of Other Notes.* Contemporaneously with the Closing the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Notes to be purchased by it at the Closing as specified in Schedule A.

*Section 4.7. Payment of Special Counsel Fees.* Without limiting the provisions of Section 15.1, the Company shall have paid on or before the Closing Date, the reasonable fees, reasonable charges and reasonable disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the Closing Date.

*Section 4.8. Private Placement Number.* A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the Securities Valuation Office of the National Association of Insurance Commissioners) shall have been obtained for each Series of the Notes.

*Section 4.9. Changes in Corporate Structure.* Neither the Company nor any Restricted Subsidiary shall have changed its jurisdiction of organization or, except as reflected in Schedule 4.9, been a party to any merger or consolidation that would have been prohibited in Section 10 hereof had such Section applied since such date, or shall have succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

*Section 4.10. Funding Instructions.* At least three Business Days prior to the date of the Closing, each Purchaser shall have received written instructions signed by a Responsible Officer on letterhead of the Company confirming the information specified in Section 3 including (i) the name and address of the transferee bank, (ii) such transferee bank's ABA number and (iii) the account name and number into which the purchase price for the Notes is to be deposited.

*Section 4.11. Proceedings and Documents.* All corporate and other organizational proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.



## SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Purchaser that:

*Section 5.1. Organization; Power and Authority.* The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the Notes and to perform the provisions hereof and thereof.

*Section 5.2. Authorization, Etc.* This Agreement and the Notes to be issued on the Closing Date have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes, and upon execution and delivery thereof each such Note will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

*Section 5.3. Disclosure.* The Company, through its agents, Banc of America Securities LLC and JP Morgan Securities, has delivered to you and each other purchaser a copy of a Private Placement Memorandum, dated November 2007 (the "*Memorandum*"), relating to the transactions contemplated hereby. The Memorandum fairly describes, in all material respects, the general nature of the business and principal properties of the Company and its Restricted Subsidiaries. This Agreement, the Memorandum, the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company in connection with the transactions contemplated hereby and the financial statements listed in Schedule 5.5, in each case, delivered to the Purchasers prior to December 5, 2007 (this Agreement, the Memorandum and such documents, certificates or other writings and such financial statements being referred to, collectively, as the "**Disclosure Documents**"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since June 2, 2007, there has been no change in the financial condition, operations, business or properties of the Company or any of its Restricted Subsidiaries except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company that would reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

*Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates.* (a) Schedule 5.4 contains (except as noted therein) complete and correct lists (i) of the Company's Restricted and Unrestricted Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary, (ii) of the Company's Affiliates, other than Subsidiaries, and (iii) of the Company's directors and senior officers.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by the Company and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Company or another Subsidiary free and clear of any Lien (except as otherwise disclosed in Schedule 5.4).

(c) Each Subsidiary identified in Schedule 5.4 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) No Subsidiary is a party to, or otherwise subject to, any legal restriction or any agreement (other than this Agreement, the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Company or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

*Section 5.5. Financial Statements; Material Liabilities.* The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Company and its Subsidiaries do not have any material liabilities that are not disclosed on such financial statements or otherwise disclosed in the Disclosure Documents.

*Section 5.6. Compliance with Laws, Other Instruments, Etc.* The execution, delivery and performance by the Company of this Agreement and the Notes will not (a) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected, (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Subsidiary, or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary.

*Section 5.7. Governmental Authorizations, Etc.* No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement or the Notes.

*Section 5.8. Litigation; Observance of Agreements, Statutes and Orders.* (a) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any Restricted Subsidiary or any property of the Company or any Restricted Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any Restricted Subsidiary is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws or the USA Patriot Act) of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

*Section 5.9. Taxes.* The Company and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which is not individually or in the aggregate material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Company knows of no basis for any other tax or assessment that would reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of federal, state or other taxes for all fiscal periods are adequate. The federal income tax liabilities of the Company and its Subsidiaries have been finally determined (whether by reason of completed audits or the statute of limitations having run) for all fiscal years up to and including the fiscal year ended June 2, 2001.

*Section 5.10. Title to Property; Leases.* The Company and its Restricted Subsidiaries have good and sufficient title to their respective properties which the Company and its Restricted Subsidiaries own or purport to own that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Restricted Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

*Section 5.11. Licenses, Permits, Etc.* Except as disclosed in Schedule 5.11,

- (a) the Company and its Restricted Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;
- (b) to the best knowledge of the Company, no product of the Company or any of its Restricted Subsidiaries infringes in any Material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person; and
- (c) to the best knowledge of the Company, there is no Material violation by any Person of any right of the Company or any of its Restricted Subsidiaries with respect to any patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Company or any of its Restricted Subsidiaries.

*Section 5.12. Compliance with ERISA.* (a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and would not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that would reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to section 401(a) (29) or 412 of the Code or section 4068 of ERISA, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "*benefit liabilities*" has the meaning specified in section 4001 of ERISA and the terms "*current value*" and "*present value*" have the meaning specified in section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred any withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected post-retirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax would be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code. The representation by the Company in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of each Purchaser's representation in Section 6.3 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

*Section 5.13. Private Offering by the Company.* Neither the Company nor anyone acting on the Company's behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than 50 other Institutional Investors, each of which has been offered the Notes in connection with a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act or to the registration requirements of any securities or blue sky laws of any applicable jurisdiction.

*Section 5.14. Use of Proceeds; Margin Regulations.* The Company will apply the proceeds of the sale of the Notes for general corporate purposes of the Company, including without limitation to refinance existing indebtedness, acquisitions, stock dividends and repurchases of shares of capital stock of the Company, provided that if any repurchases of the shares of capital stock of the Company are made, such shares shall be retired and cancelled upon receipt and shall not be held as treasury stock. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 5% of the value of such assets. As used in this Section, the terms "*margin stock*" and "*purpose of buying or carrying*" shall have the meanings assigned to them in said Regulation U.

*Section 5.15. Existing Debt; Future Liens.* (a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Debt of the Company and its Restricted Subsidiaries as of December 10, 2007, since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Debt of the Company or its Restricted Subsidiaries. Neither the Company nor any Restricted Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Debt of the Company or such Restricted Subsidiary, and no event or condition exists with respect to any Debt of the Company or any Restricted Subsidiary, that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Debt to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15, neither the Company nor any Restricted Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 10.3.

(c) Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Debt of the Company or such Subsidiary, any agreement relating thereto or any other agreement (including, but not limited to, its charter or other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Debt of the Company, except as specifically indicated in Schedule 5.15.

*Section 5.16. Foreign Assets Control Regulations, Etc.* (a) Neither the sale of the Notes by the Company hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

(b) Neither the Company nor any Subsidiary is a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in Section 1 of the Anti-Terrorism Order or, to the knowledge of the Company, engages in any dealings or transactions with any such Person. The Company and its Subsidiaries are in compliance, in all material respects, with the USA Patriot Act.

(c) No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, assuming in all cases that such Act applies to the Company.

*Section 5.17. Status under Certain Statutes.* Neither the Company nor any Restricted Subsidiary is an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or is subject to regulation under the Public Utility Holding Company Act of 2005, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

*Section 5.18. Environmental Matters.* (a) Neither the Company nor any Restricted Subsidiary has knowledge of any liability or has received any notice of any liability, and no proceeding has been instituted raising any liability against the Company or any of its Restricted Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them, or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any Restricted Subsidiary has knowledge of any facts which would give rise to any liability, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect.

(c) Neither the Company nor any of its Restricted Subsidiaries has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or has disposed of any Hazardous Materials in each case in a manner contrary to any Environmental Laws in each case in any manner that would reasonably be expected to result in a Material Adverse Effect.

(d) All buildings on all real properties now owned, leased or operated by the Company or any of its Restricted Subsidiaries are in compliance with applicable Environmental Laws, except where failure to comply would not reasonably be expected to result in a Material Adverse Effect.

*Section 5.19. Notes Rank Pari Passu.* The obligations of the Company under this Agreement and the Notes rank *pari passu* in right of payment with all other senior unsecured Debt (actual or contingent) of the Company, including, without limitation, all senior unsecured Debt of the Company described in Schedule 5.15 hereto.

## SECTION 6. REPRESENTATIONS OF THE PURCHASER.

*Section 6.1. Purchase for Investment.* Each Purchaser severally represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by it or for the account of one or more pension or trust funds and not with a view to the distribution thereof (other than any Notes purchased by Banc of America Securities LLC on the Closing Date which are intended to be resold to a “qualified institutional buyer” pursuant to Rule 144A of the Securities Act), *provided* that the disposition of such Purchaser’s or such pension or trust funds’ property shall at all times be within such Purchaser’s or such pension or trust funds’ control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

*Section 6.2. Accredited Investor.* Each Purchaser represents that it is an “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act acting for its own account (and not for the account of others) or as a fiduciary or agent for others (which others are also “accredited investors”). Each Purchaser further represents that such Purchaser has had the opportunity to ask questions of the Company and received answers concerning the terms and conditions of the sale of the Notes.

**Section 6.3. Source of Funds.** Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a “Source”) to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

- (a) the Source is an “insurance company general account” (as the term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“PTE”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the “NAIC Annual Statement”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or
- (b) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or
- (c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or
- (d) the Source constitutes assets of an investment fund (within the meaning of Part V of PTE 84-14 (the “QPAM Exemption”)) managed by a qualified professional asset manager or QPAM (within the meaning of Part V of the QPAM Exemption), no employee benefit plan’s assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, as of the last day of its most recent calendar quarter, the QPAM does not own a 10% or more interest in the Company and no person controlling or controlled by the QPAM (applying the definition of “control” in Section V(e) of the QPAM Exemption) owns a 20% or more interest in the Company (or less than 20% but greater than 10%, if such person exercises control over the management or policies of the Company by reason of its ownership interest) and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (d); or



(e) the Source constitutes assets of a “plan(s)” (within the meaning of Section IV of PTE 96-23 (the “*INHAM Exemption*”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV of the INHAM exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Section IV(d) of the INHAM Exemption) owns a 5% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.3, the terms “*employee benefit plan*,” “*governmental plan*,” and “*separate account*” shall have the respective meanings assigned to such terms in section 3 of ERISA.

## SECTION 7. INFORMATION AS TO COMPANY.

*Section 7.1. Financial and Business Information.* The Company shall deliver either by paper or electronic means (in accordance with Section 18) at the Company’s option to each holder of Notes that is an Institutional Investor:

(a) *Quarterly Statements* — within 60 days after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year),

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income, changes in shareholders’ equity and cash flows of the Company and its Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, *provided* that filing with the Securities and Exchange Commission within the time period specified above the Company's Quarterly Report on Form 10-Q prepared in compliance with the requirements therefor shall be deemed to satisfy the requirements of this Section 7.1(a), *provided further* that the Company shall have given each Purchaser timely notice of such filings by electronic mail,

- (b) *Annual Statements* — within 105 days after the end of each fiscal year of the Company,
  - (i) a consolidated balance sheet of the Company and its Subsidiaries, as at the end of such year, and
  - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Company and its Subsidiaries, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, *provided* that filing with the Securities and Exchange Commission within the time period specified above of the Company's Annual Report on Form 10-K for such fiscal year (together with the Company's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor shall be deemed to satisfy the requirements of this Section 7.1(b), *provided further* that the Company shall have given each Purchaser timely notice of such filings by electronic mail;

(c) *Unrestricted Subsidiaries* — In the event that one or more Unrestricted Subsidiaries shall either (i) own more than 10% of the total consolidated assets of the Company and its Subsidiaries, or (ii) account for more than 10% of the consolidated gross revenues of the Company and its Subsidiaries, determined in each case in accordance with GAAP, then, within the respective periods provided in Section 7.1(a) and (b) above, the Company shall deliver to each holder of Notes that is an Institutional Investor, unaudited financial statements of the character and for the dates and periods as in said Sections 7.1(a) and (b) covering such group of Unrestricted Subsidiaries (on a consolidated basis), together with a consolidating statement reflecting eliminations or adjustments required to reconcile the financial statements of such group of Unrestricted Subsidiaries to the financial statements delivered pursuant to Sections 7.1(a) and (b);

(d) *SEC and Other Reports* — except for filings referred to in Section 7.1(a) and (b) above, promptly upon their becoming available and, to the extent applicable, one copy of (i) each financial statement, report, notice or proxy statement sent by the Company or any Subsidiary to public securities holders generally, and (ii) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the Securities and Exchange Commission and of all press releases and other statements made available generally by the Company or any Subsidiary to the public concerning developments that are Material;

(e) *Notice of Default or Event of Default* — promptly, and in any event within five Business Days after a Responsible Officer becomes aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in Section 11(e), a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(f) *ERISA Matters* — promptly, and in any event within five Business Days after a Responsible Officer becomes aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in Section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date thereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that would result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the imposition of a penalty or excise tax under the provisions of the Code relating to employee benefit plans, or the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect;

(g) *Notices from Governmental Authority* — promptly, and in any event within 30 days of receipt thereof, copies of any notice to the Company or any Subsidiary from any federal or state Governmental Authority relating to any order, ruling, statute or other law or regulation that would reasonably be expected to have a Material Adverse Effect; and

(h) *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such holder of Notes or such information regarding the Company required to satisfy the requirements of 17 C.F.R. §230.144A, as amended from time to time, in connection with any contemplated transfer of the Notes.

*Section 7.2. Officer's Certificate.* Each set of financial statements delivered to a holder of Notes pursuant to Section 7.1(a) or Section 7.1(b) hereof shall be accompanied by a certificate of a Senior Financial Officer setting forth:

(a) *Covenant Compliance* — the information (including detailed calculations) required in order to establish whether the Company was in compliance with the requirements of Section 10.1 through Section 10.5 hereof, inclusive, during the quarterly or annual period covered by the statements then being furnished (including with respect to each such Section, where applicable, the calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Sections, and the calculation of the amount, ratio or percentage then in existence); and

(b) *Event of Default* — a statement that such officer has reviewed the relevant terms hereof and such review has not have disclosed the existence during the quarterly or annual period covered by the statements then being furnished of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

*Section 7.3. Visitation.* The Company shall permit the representatives of each holder of Notes that is an Institutional Investor:

(a) *No Default* — if no Default or Event of Default then exists, at the expense of such holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) *Default* — if a Default or Event of Default then exists, at the expense of the Company, to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

#### SECTION 8. PAYMENT OF THE NOTES.

*Section 8.1. Maturity.* (a) The entire unpaid principal amount of the Series A Notes shall become due and payable on January 3, 2015.

(b) The entire unpaid principal amount of the Series B Notes shall become due and payable on January 3, 2018.

*Section 8.2. Optional Prepayments with Make-Whole Amount.* The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in an amount not less than 10% of the original aggregate principal amount of the Notes to be prepaid in the case of a partial prepayment (or such lesser amount as shall be required to effect a partial prepayment resulting from an offer of prepayment pursuant to Section 10.4), at 100% of the principal amount so prepaid, together with interest accrued thereon to the date of such prepayment, plus the Make-Whole Amount determined for the prepayment date with respect to such principal amount of each Note then outstanding. The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.2 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated respective Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder a certificate of a Senior Financial Officer specifying the calculation of each such Make-Whole Amount as of the specified prepayment date.

*Section 8.3. Allocation of Partial Prepayments.* In the case of each partial prepayment of the Notes, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof.

**Section 8.4. Maturity; Surrender, Etc.** In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment (which shall be a Business Day), together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

**Section 8.5. Purchase of Notes.** The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except (a) upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes, or (b) pursuant to a written offer to purchase any outstanding Notes made by the Company or an Affiliate pro rata to the holders of the Notes upon the same terms and conditions. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

**Section 8.6. Make-Whole Amount for the Notes.** The term “Make-Whole Amount” means with respect to any Note an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note, *minus* the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings with respect to the Called Principal of such Note:

“Called Principal” means, the principal of any Note that is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

“Discounted Value” means, the amount obtained by discounting all Remaining Scheduled Payments from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on such Note is payable) equal to the Reinvestment Yield.

“Reinvestment Yield” means, 0.50% plus the yield to maturity calculated by using (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date on screen “PX-1” on the Bloomberg Financial Market Service (or such other information service as may replace Bloomberg) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. In either case, the yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly on a straight line basis between (1) the actively traded U.S. Treasury security with the maturity closest to and greater than the Remaining Average Life and (2) the actively traded U.S. Treasury security with the maturity closest to and less than the Remaining Average Life.

*“Remaining Average Life”* means, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date and the scheduled due date of such Remaining Scheduled Payment.

*“Remaining Scheduled Payments”* means, all payments of such Called Principal and interest thereon that would be due after the Settlement Date if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of such Note, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or 12.1.

*“Settlement Date”* means, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

*Section 8.7. Change in Control.* (a) *Notice of Change in Control or Control Event.* The Company will, within 15 Business Days after any Responsible Officer has knowledge of the occurrence of any Change in Control or Control Event, give written notice of such Change in Control or Control Event to each holder of Notes. Such notice shall contain and constitute an offer to prepay Notes as described in subparagraph (b) of this Section 8.7 and shall be accompanied by the certificate described in subparagraph (e) of this Section 8.7.

(b) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by subparagraph (a) of this Section 8.7 shall be an offer to prepay, in accordance with and subject to this Section 8.7, all, but not less than all, the Notes held by each holder (in this case only, *“holder”* in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the *“Proposed Prepayment Date”*). The Proposed Prepayment Date shall be not less than 20 days and not more than 30 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 20th day after the date of such offer).

(c) *Acceptance; Rejection.* A holder of Notes may accept or reject the offer to prepay made pursuant to this Section 8.7 by causing a notice of such acceptance or rejection to be delivered to the Company at least 5 Business Days prior to the Proposed Prepayment Date. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.7 shall be deemed to constitute a rejection of such offer by such holder.

(d) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.7 shall be at 100% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment and without the payment of any Make-Whole Amount. The prepayment shall be made on the Proposed Prepayment Date.

(e) *Officer's Certificate.* Each offer to prepay the Notes pursuant to this Section 8.7 shall be accompanied by a certificate, executed by a Senior Financial Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.7; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.7 have been fulfilled; and (vi) in reasonable detail, the nature and date or proposed date of the Change in Control.

(f) *"Change in Control" Defined.* "Change in Control" means any of the following events or circumstances:

if any Person or Persons acting in concert (other than the Persons who own voting stock of the Company on the date hereof), together with Affiliates thereof, shall in the aggregate, directly or indirectly, control or own (beneficially or otherwise) more than 50% (by number of shares) of the issued and outstanding voting stock of the Company; or

(g) *"Control Event" Defined.* "Control Event" means:

(i) the execution by the Company or any of its Subsidiaries or Affiliates of any agreement or letter of intent with respect to any proposed transaction or event or series of transactions or events which, individually or in the aggregate, may reasonably be expected to result in a Change in Control,

(ii) the execution of any written agreement which, when fully performed by the parties thereto, would result in a Change in Control, or

(iii) the making of any written offer by any person (as such term is used in section 13(d) and section 14(d)(2) of the Exchange Act as in effect on the date of the Closing) or related persons constituting a group (as such term is used in Rule 13d-5 under the Exchange Act as in effect on the date of the Closing) to the holders of the common stock of the Company, which offer, if accepted by the requisite number of holders, would result in a Change in Control.



## SECTION 9. AFFIRMATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

*Section 9.1. Compliance with Law.* Without limiting Section 10.8, the Company will, and will cause each of its Subsidiaries to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, ERISA, the USA Patriot Act and Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

*Section 9.2. Insurance.* The Company will, and will cause each of its Restricted Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated except for any non-maintenance that would not reasonably be expected to have a Material Adverse Effect.

*Section 9.3. Maintenance of Properties.* The Company will, and will cause each of its Restricted Subsidiaries to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section shall not prevent the Company or any Restricted Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

*Section 9.4. Payment of Taxes and Claims.* The Company will, and will cause each of its Subsidiaries to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Company or any Subsidiary not permitted by Section 10.3, *provided* that neither the Company nor any Subsidiary need pay any such tax or assessment or claims if (i) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (ii) the non-filing or nonpayment, as the case may be, of all such taxes and assessments in the aggregate would not reasonably be expected to have a Material Adverse Effect.

**Section 9.5. Corporate Existence, Etc.** Subject to Sections 10.4 and 10.5, the Company will at all times preserve and keep in full force and effect its corporate existence, and will at all times preserve and keep in full force and effect the corporate existence of each of its Restricted Subsidiaries (unless merged into the Company or a Restricted Subsidiary) and all rights and franchises of the Company and its Restricted Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise would not, individually or in the aggregate, to have a Material Adverse Effect.

**Section 9.6. Designation of Subsidiaries.** The Company may from time to time cause any Subsidiary (other than a Subsidiary Guarantor) to be designated as an Unrestricted Subsidiary or any Unrestricted Subsidiary to be designated a Restricted Subsidiary; *provided, however*, that at the time of such designation and immediately after giving effect thereto, (a) no Default or Event of Default would exist under the terms of this Agreement, and (b) the Company and its Restricted Subsidiaries would be in compliance with all of the covenants set forth in this Section 9 and Section 10 if tested on the date of such action and *provided, further*, that once a Subsidiary has been designated an Unrestricted Subsidiary, it shall not thereafter be redesignated as a Restricted Subsidiary on more than one occasion and once a Subsidiary has been designated a Restricted Subsidiary, it shall not thereafter be redesignated as an Unrestricted Subsidiary on more than one occasion. Within ten (10) days following any designation described above, the Company will deliver to you a notice of such designation accompanied by a certificate signed by a Senior Financial Officer of the Company certifying compliance with all requirements of this Section 9.6 and setting forth all information required in order to establish such compliance.

**Section 9.7. Notes to Rank Pari Passu.** The Notes and all other obligations under this Agreement of the Company are and at all times shall remain direct and unsecured obligations of the Company ranking *pari passu* as against the assets of the Company with all Debt outstanding under the Bank Credit Agreement and all other present and future unsecured Debt (actual or contingent) of the Company which is not expressed to be subordinate or junior in rank to any other unsecured Debt of the Company.

**Section 9.8. Subsidiary Guarantors.** (a) The Company will cause any Subsidiary which is required by the terms of the Bank Credit Agreement to become obligated for, or otherwise guarantee, Debt in respect of the Bank Credit Agreement, to deliver to each of the Holders of the Notes (concurrently with the incurrence of any such obligation) the following items:

- (i) a duly executed guaranty agreement (the “*Subsidiary Guaranty*”) in scope, form and substance satisfactory to the Required Holders;
- (ii) a certificate signed by an authorized Responsible Officer of the Company making representations and warranties to the effect of those contained in Sections 5.4, 5.6 and 5.7, with respect to such Subsidiary and the Subsidiary Guaranty, as applicable; and

(iii) an opinion of counsel (who may be in-house counsel for the Company) addressed to each of the Holders of the Notes satisfactory to the Required Holders, to the effect that the Subsidiary Guaranty by such Person has been duly authorized, executed and delivered and that the Subsidiary Guaranty constitutes the legal, valid and binding contract and agreement of such Person enforceable in accordance with its terms, except as an enforcement of such terms may be limited by bankruptcy, insolvency, fraudulent conveyance and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(b) The holders of the Notes agree to discharge and release any Subsidiary Guarantor from the Subsidiary Guaranty upon the written request of the Company, *provided* that (i) such Subsidiary Guarantor has been released and discharged (or will be released and discharged concurrently with the release of such Subsidiary Guarantor under the Subsidiary Guaranty) as an obligor and guarantor under and in respect of the Bank Credit Agreement and the Company so certifies to the holders of the Notes in a certificate of a Responsible Officer, (ii) at the time of such release and discharge, the Company shall deliver a certificate of a Responsible Officer to the holders of the Notes stating that no Default or Event of Default exists, and (iii) if any fee or other form of consideration is given to any holder of Debt of the Company for the purpose of such release, holders of the Notes shall receive equivalent consideration.

*Section 9.9. Books and Records.* The Company will, and will cause each of its Restricted Subsidiaries to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company or such Restricted Subsidiary, as the case may be.

## SECTION 10. NEGATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

*Section 10.1. Consolidated Adjusted Debt to Consolidated EBITDA.* The Company will not at any time permit the ratio of Consolidated Adjusted Debt to Consolidated EBITDA (Consolidated EBITDA to be calculated as at the end of each fiscal quarter for the four consecutive fiscal quarters then ended, such ratio being referred to as the "*Debt Ratio*") to exceed 3.50 to 1.00; *provided, however*, that for any period of not more than four successive fiscal quarters, such Debt Ratio may be greater than 3.5 to 1.0, but in no event greater than 4.0 to 1.0, if the Company pays the Additional Interest provided for in Section 1.2(b)

*Section 10.2. Priority Debt.* The Company will not at any time permit the aggregate amount of all Priority Debt to exceed 15% of Consolidated Total Assets (Consolidated Total Assets to be determined as of the end of the then most recently ended fiscal quarter of the Company).

*Section 10.3. Limitation on Liens.* The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset (including, without limitation, any document or instrument in respect of goods or accounts receivable) of the Company or any such Restricted Subsidiary, whether now owned or held or hereafter acquired, or any income or profits therefrom, or assign or otherwise convey any right to receive income or profits (unless it makes, or causes to be made, effective provision whereby the Notes will be equally and ratably secured with any and all other obligations thereby secured, such security to be pursuant to agreements reasonably satisfactory to the Required Holders and, in any such case, the Notes shall have the benefit, to the fullest extent that, and with such priority as, the holders of the Notes may be entitled under applicable law, of an equitable Lien on such property), except:

- (a) Liens for taxes, assessments or other governmental charges that are not yet due and payable or the payment of which is not at the time required by Section 9.4;
- (b) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;
- (c) Liens incidental to the conduct of business or the ownership of properties and assets (including landlords', carriers', warehousemen's, mechanics', materialmen's and other similar Liens for sums not yet due and payable) and Liens to secure the performance of bids, tenders, leases, or trade contracts, or to secure statutory obligations (including obligations under workers compensation, unemployment insurance and other social security legislation), surety or appeal bonds or other Liens incurred in the ordinary course of business and not in connection with the borrowing of money;
- (d) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to the ownership of property or assets or the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries, or Liens incidental to minor survey exceptions and the like, *provided* that such Liens do not, in the aggregate, materially detract from the value of such property;
- (e) Liens securing Debt of a Restricted Subsidiary to the Company or to a Restricted Subsidiary;
- (f) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided that (i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Company or the applicable Restricted Subsidiary in excess of those set forth by regulations promulgated by the Federal Reserve Board, and (ii) such deposit account is not intended by the Company or any Restricted Subsidiary to provide collateral to such depository institution;
- (g) Liens existing as of the Closing Date and reflected in Schedule 10.3;

(h) Liens incurred after the Closing Date given to secure the payment of the purchase price incurred in connection with the acquisition, construction or improvement of property (other than accounts receivable or inventory) useful and intended to be used in carrying on the business of the Company or a Restricted Subsidiary, including Liens existing on such property at the time of acquisition or construction thereof or Liens incurred within 365 days of such acquisition or completion of such construction or improvement, *provided* that (i) the Lien shall attach solely to the property acquired, purchased, constructed or improved; (ii) at the time of acquisition, construction or improvement of such property (or, in the case of any Lien incurred within three hundred sixty-five (365) days of such acquisition or completion of such construction or improvement, at the time of the incurrence of the Debt secured by such Lien), the aggregate amount remaining unpaid on all Debt secured by Liens on such property, whether or not assumed by the Company or a Restricted Subsidiary, shall not exceed the lesser of (y) the cost of such acquisition, construction or improvement or (z) the Fair Market Value of such property (as determined in good faith by one or more officers of the Company to whom authority to enter into the transaction has been delegated by the board of directors of the Company); and (iii) at the time of such incurrence and after giving effect thereto, no Default or Event of Default would exist;

(i) any Lien existing on property of a Person immediately prior to its being consolidated with or merged into the Company or a Restricted Subsidiary or its becoming a Restricted Subsidiary (other than pursuant to Section 9.6), or any Lien existing on any property acquired by the Company or any Restricted Subsidiary at the time such property is so acquired (whether or not the Debt secured thereby shall have been assumed), *provided* that (i) no such Lien shall have been created or assumed in contemplation of such consolidation or merger or such Person's becoming a Restricted Subsidiary or such acquisition of property, (ii) each such Lien shall extend solely to the item or items of property so acquired and, if required by the terms of the instrument originally creating such Lien, other property which is an improvement to or is acquired for specific use in connection with such acquired property, and (iii) at the time of such incurrence and after giving effect thereto, no Default or Event of Default would exist;

(j) any extensions, renewals or replacements of any Lien permitted by the preceding subparagraphs (g), (h) and (i) of this Section 10.3, *provided* that (i) no additional property shall be encumbered by such Liens, (ii) the unpaid principal amount of the Debt or other obligations secured thereby shall not be increased on or after the date of any extension, renewal or replacement, and (iii) at such time and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing;

(k) Liens on accounts receivable and related rights of the Company and its Restricted Subsidiaries to the extent such Liens arise solely by reason of the sale of such accounts receivable for cash to a special purpose entity (which may be a Subsidiary or Affiliate of the Company) in connection with Securitization Transactions; provided that no such Lien shall extend to or cover any property of the Company or any Restricted Subsidiary other than such accounts receivable and related rights subject to such Securitization Transaction; and

(l) Liens securing Priority Debt of the Company or any Restricted Subsidiary, *provided* that the aggregate principal amount of any such Priority Debt shall be permitted by Section 10.2, *provided however* that no such liens shall secure the obligations of the Company or any Subsidiary under the Bank Credit Agreement.

*Section 10.4. Sales of Assets.* The Company will not, and will not permit any Restricted Subsidiary to, sell, lease or otherwise dispose of any substantial part (as defined below) of the assets of the Company and its Restricted Subsidiaries; *provided, however*, that the Company or any Restricted Subsidiary may sell, lease or otherwise dispose of assets constituting a substantial part of the assets of the Company and its Restricted Subsidiaries if such assets are sold in an arms length transaction and, at such time and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing and an amount equal to the net proceeds received from such sale, lease or other disposition (but only with respect to that portion of such assets that exceeds the definition of “substantial part” set forth below) shall be used within 365 days of such sale, lease or disposition, in any combination:

(1) to acquire productive assets used or useful in carrying on the business of the Company and its Restricted Subsidiaries and having a value at least equal to the value of such assets sold, leased or otherwise disposed of; and/or

(2) to prepay or retire Senior Debt of the Company and/or its Restricted Subsidiaries, *provided* that, to the extent any such proceeds are used to prepay the outstanding principal amount of the Notes, such prepayment shall be made in accordance with the terms of Section 8.2.

As used in this Section 10.4, a sale, lease or other disposition of assets (including sales of accounts receivable pursuant to Securitization Transactions) shall be deemed to be a “*substantial part*” of the assets of the Company and its Restricted Subsidiaries if the book value of such assets, when added to the book value of all other assets sold, leased or otherwise disposed of by the Company and its Restricted Subsidiaries during the period of 12 consecutive months ending on the date of such sale, lease or other disposition, exceeds 15% of the book value of Consolidated Total Assets, determined as of the end of the fiscal quarter immediately preceding such sale, lease or other disposition; *provided* that there shall be excluded from any determination of a “substantial part” any (i) sale or disposition of assets in the ordinary course of business of the Company and its Restricted Subsidiaries, (ii) any transfer of assets from the Company to any Restricted Subsidiary or from any Restricted Subsidiary to the Company or a Restricted Subsidiary and (iii) any sale or transfer of property acquired by the Company or any Restricted Subsidiary after the date of this Agreement to any Person within 365 days following the acquisition or construction of such property by the Company or any Restricted Subsidiary if the Company or a Restricted Subsidiary shall concurrently with such sale or transfer, lease such property, as lessee.

*Section 10.5. Merger and Consolidation.* The Company will not, and will not permit any of its Restricted Subsidiaries to, consolidate with or merge with any other Person or convey, transfer or lease substantially all of its assets in a single transaction or series of transactions to any Person; provided that:

- (1) any Restricted Subsidiary of the Company may (x) consolidate with or merge with, or convey, transfer or lease substantially all of its assets in a single transaction or series of transactions to, (i) the Company or a Restricted Subsidiary so long as in any merger or consolidation involving the Company, the Company shall be the surviving or continuing corporation or (ii) any other Person so long as the survivor is the Restricted Subsidiary, or (y) convey, transfer or lease all of its assets in compliance with the provisions of Section 10.4; and
- (2) the foregoing restriction does not apply to the consolidation or merger of the Company with, or the conveyance, transfer or lease of substantially all of the assets of the Company in a single transaction or series of transactions to, any Person so long as:
  - (a) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease substantially all of the assets of the Company as an entirety, as the case may be (the “*Successor Corporation*”), shall be a solvent entity organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; and
  - (b) if the Company is not the Successor Corporation, such Successor Corporation shall have executed and delivered to each holder of Notes its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and the Notes (pursuant to such agreements and instruments as shall be reasonably satisfactory to the Required Holders), and the Successor Corporation shall have caused to be delivered to each holder of Notes an opinion of nationally recognized independent counsel, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms; and
  - (c) immediately after giving effect to such transaction no Default or Event of Default would exist.

*Section 10.6. Restricted Subsidiary Group.* The Company will at all times require that (i) Consolidated Total Assets equal at least 85% of the consolidated total assets of the Company and its Subsidiaries, determined in accordance with GAAP, and (ii) consolidated total revenues of the Company and its Restricted Subsidiaries for the fiscal quarter most recently ended equals at least 85% of the consolidated total revenues of the Company and its Subsidiaries during such fiscal quarter, determined in accordance with GAAP.

*Section 10.7. Transactions with Affiliates.* The Company will not and will not permit any Restricted Subsidiary to enter into directly or indirectly any Material transaction or Material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Restricted Subsidiary), except in the ordinary course and upon fair and reasonable terms that are not materially less favorable to the Company or such Restricted Subsidiary, taken as a whole, than would be obtainable in a comparable arm’s-length transaction with a Person not an Affiliate.

*Section 10.8. Terrorism Sanctions Regulations.* The Company will not and will not permit any Subsidiary to (a) become a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in Section 1 of the Anti-Terrorism Order or (b) engage in any dealings or transactions with any such Person.

#### SECTION 11. EVENTS OF DEFAULT.

An “*Event of Default*” shall exist if any of the following conditions or events shall occur and be continuing:

- (a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or
- (b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or
- (c) the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a) or (b) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default or (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (c) of Section 11); or
- (d) any representation or warranty made in writing by or on behalf of the Company in this Agreement or by any officer of the Company in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or
- (e) (i) the Company or any Restricted Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest (in the payment amount of at least \$100,000) on any Debt other than the Notes that is outstanding in an aggregate principal amount of at least \$50,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Restricted Subsidiary is in default in the performance of or compliance with any term of any instrument, mortgage, indenture or other agreement relating to any Debt other than the Notes in an aggregate principal amount of at least \$50,000,000 or any other condition exists, and as a consequence of such default or condition such Debt has become, or has been declared (or one or more Persons are entitled to declare such Debt to be), due and payable, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Debt to convert such Debt into equity interests), (x) the Company or any Restricted Subsidiary has become obligated to purchase or repay Debt other than the Notes before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$50,000,000, or (y) one or more Persons have the right to require the Company or any Restricted Subsidiary to purchase or repay such debt; or



(f) the Company or any Material Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(g) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Material Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Material Subsidiaries, or any such petition shall be filed against the Company, any of its Material Subsidiaries or any Subsidiary Guarantor and such petition shall not be dismissed within 60 days; or

(h) a final judgment or judgments at any one time outstanding for the payment of money aggregating in excess of \$50,000,000 are rendered against one or more of the Company, its Restricted Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(i) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under Section 4042 of ERISA to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of Section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed \$50,000,000, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that could increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.

As used in Section 11(i), the terms “*employee benefit plan*” and “*employee welfare benefit plan*” shall have the respective meanings assigned to such terms in Section 3 of ERISA.

## SECTION 12. REMEDIES ON DEFAULT, ETC.

*Section 12.1. Acceleration.* (a) If an Event of Default with respect to the Company described in paragraph (f) or (g) of Section 11 (other than an Event of Default described in clause (i) of paragraph (f) or described in clause (vi) of paragraph (f) by virtue of the fact that such clause encompasses clause (i) of paragraph (f)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, any holder or holders of more than 50% in aggregate principal amount of the Notes at the time outstanding may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in paragraph (a) or (b) of Section 11 has occurred and is continuing with respect to any Notes, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by such holder or holders to be immediately due and payable.

Upon any Note's becoming due and payable under this Section 12.1, whether automatically or by declaration, such Note will forthwith mature and the entire unpaid principal amount of such Note, plus (i) all accrued and unpaid interest thereon (including, but not limited to, interest accrued thereon at the Default Rate) and (ii) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

*Section 12.2. Other Remedies.* If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

*Section 12.3. Rescission.* At any time after the Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the holders of not less than 51% in aggregate principal amount of the Notes then outstanding, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to any Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

*Section 12.4. No Waivers or Election of Remedies, Expenses, Etc.* No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

#### SECTION 13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.

*Section 13.1. Registration of Notes.* The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

*Section 13.2. Transfer and Exchange of Notes.* Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)), for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within ten Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1(a) and Exhibit 1(b) as applicable. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.3, *provided*, that in lieu thereof such holder may (in reliance upon information provided by the Company, which shall not be unreasonably withheld) make a representation to the effect that the purchase by any holder of any Note will not constitute a non-exempt prohibited transaction under section 406(a) of ERISA.

The Notes have not been registered under the Securities Act or under the securities laws of any state and may not be transferred or resold unless registered under the Securities Act and all applicable state securities laws or unless an exemption from the requirement for such registration is available.

*Section 13.3. Replacement of Notes.* Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (*provided* that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$50,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver not more than five Business Days following satisfaction of such conditions, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

**SECTION 14. PAYMENTS ON NOTES.**

*Section 14.1. Place of Payment.* Subject to Section 14.2, payments of principal, Make-Whole Amount and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of Banc of America Securities LLC in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

*Section 14.2. Home Office Payment.* So long as any Purchaser or such Purchaser's nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount and interest by the method and at the address specified for such purpose for such Purchaser on Schedule A hereto or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by any Purchaser or such Person's nominee, such Person will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note.

**SECTION 15. EXPENSES, ETC.**

*Section 15.1. Transaction Expenses.* Whether or not the transactions contemplated hereby are consummated, the Company will pay all reasonable costs and expenses of a special counsel for the Purchasers. If the transactions contemplated hereby are consummated, the Company will pay all reasonable costs and expenses (including reasonable attorneys' fees) incurred by each Purchaser and each other holder of a Note in connection with enforcements of rights hereunder or any amendments, waivers or consents under or in respect of this Agreement or the Notes (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the reasonable costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes, or by reason of being a holder of any Note, and (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes. The Company will pay, and will save each Purchaser, and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes).

*Section 15.2. Survival.* The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

**SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any such Note or portion thereof or interest therein and the payment of any Note may be relied upon by any subsequent holder of any such Note, regardless of any investigation made at any time by or on behalf of any Purchaser or any other holder of any such Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between the Purchasers and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

**SECTION 17. AMENDMENT AND WAIVER.**

*Section 17.1. Requirements.* This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (i) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6 or 21 hereof or any defined term (as it is used therein) will be effective as to any holder of Notes unless consented to by such holder of Notes in writing, and (ii) no such amendment or waiver may, without the written consent of all of the holders of Notes at the time outstanding affected thereby, (A) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest (if such change results in a decrease in the interest rate) or of the Make-Whole Amount on, the Notes, (B) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (C) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

*Section 17.2. Solicitation of Holders of Notes.*

(a) *Solicitation.* The Company will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted or other credit support is concurrently provided, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer.* Any consent made pursuant to this Section 17 by a holder of Notes that has transferred or has agreed to transfer its Notes to the Company, any Subsidiary or any Affiliate of the Company and has provided or has agreed to provide such written consent as a condition to such transfer shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

*Section 17.3. Binding Effect, Etc.* Any amendment or waiver consented to as provided in this Section 17 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term “this Agreement” and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

*Section 17.4. Notes Held by Company, Etc.* Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

## SECTION 18. NOTICES.

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (b) by a recognized overnight delivery service (with charges prepaid), or (c) by posting to IntraLinks® or a similar service reasonably acceptable to the Required Holders if the sender on the same day sends or causes to be sent notice of such posting by email or in accordance with clause (a) or (b) above. Any such notice must be sent:

- (i) if to a Purchaser or such Purchaser's nominee, to such Purchaser or such Purchaser's nominee at the address or, in the case of clause (c) above, the email address, specified for such communications in Schedule A to this Agreement, or at such other address or email address as such Purchaser or such Purchaser's nominee shall have specified to the Company in writing pursuant to this Section 18;
- (ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or
- (iii) if to the Company, the Company at its address or email address set forth at the beginning hereof to the attention of Chief Financial Officer, with copies to the Treasurer, the Assistant Treasurer and the General Counsel, or at such other address or email address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed given only when actually received.

#### SECTION 19. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

#### SECTION 20. CONFIDENTIAL INFORMATION.

For the purposes of this Section 20, "*Confidential Information*" means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser's behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available.



Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, *provided* that such Purchaser may deliver or disclose Confidential Information to (i) such Purchaser's directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by such Purchaser's Notes), (ii) such Purchaser's financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which such Purchaser sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which such Purchaser offers to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes, the Subsidiary Guaranty and this Agreement. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this Section 20.

#### SECTION 21. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of its Affiliates as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Affiliate, shall contain such Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 21), shall be deemed to refer to such Affiliate in lieu of such original Purchaser. In the event that such Affiliate is so substituted as a Purchaser hereunder and such Affiliate thereafter transfers to such original Purchaser all of the Notes then held by such Affiliate, upon receipt by the Company of notice of such transfer, any reference to such Affiliate as a "Purchaser" in this Agreement (other than in this Section 21), shall no longer be deemed to refer to such Affiliate, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

## SECTION 22. MISCELLANEOUS.

*Section 22.1. Successors and Assigns.* All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

*Section 22.2. Payments Due on Non-Business Days.* Anything in this Agreement or the Notes to the contrary notwithstanding (but without limiting the requirement in Section 8.4 that the notice of any optional prepayment specify a Business Day as the date fixed for such prepayment), any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; provided that if the maturity date of any Note is a date other than a Business Day, the payment otherwise due on such maturity date shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

*Section 22.3. Accounting Terms.* All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (ii) all financial statements shall be prepared in accordance with GAAP.

*Section 22.4. Severability.* Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 22.5. Construction.* Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

For the avoidance of doubt, all Schedules and Exhibits attached to this Agreement shall be deemed to be a part hereof.

*Section 22.6. Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

*Section 22.7. Governing Law.* This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of Illinois excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

*Section 22.8. Jurisdiction and Process; Waiver of Jury Trial.* (a) The Company irrevocably submits to the non-exclusive jurisdiction of any Illinois State or federal court sitting in Cook County, in the City of Chicago, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 22.8(a) by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(c) Nothing in this Section 22.8 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(d) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE NOTES OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

\* \* \* \* \*

The execution hereof by the Purchasers shall constitute a contract among the Company and the Purchasers for the uses and purposes hereinabove set forth. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Very truly yours,

HERMAN MILLER, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted as of the date first written above.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By \_\_\_\_\_  
Vice President

PRUDENTIAL RETIREMENT INSURANCE AND ANNUITY COMPANY

By: Prudential Investment Management, Inc., as investment manager

By \_\_\_\_\_  
Vice President

UNIVERSAL PRUDENTIAL ARIZONA REINSURANCE COMPANY

By: Prudential Investment Management, Inc., as investment manager

By \_\_\_\_\_  
Vice President

GATEWAY RECOVERY TRUST

By: Prudential Investment Management, Inc., as Asset Manager

By \_\_\_\_\_  
Vice President

MEDICA HEALTH PLANS

By: Prudential Private Placement Investors, L.P. (as Investment Advisor)

By: Prudential Private Placement Investors, Inc. (as its General Partner)

By \_\_\_\_\_  
Vice President

HARTFORD INSURANCE COMPANY OF ILLINOIS

By: Hartford Investment Management Company, its Agent and Attorney-In-Fact

By \_\_\_\_\_  
Name:  
Title:

HARTFORD FIRE INSURANCE COMPANY

By: Hartford Investment Management Company, its Agent and Attorney-In-Fact

By \_\_\_\_\_  
Name:  
Title:

PHYSICIANS LIFE INSURANCE COMPANY

By: Hartford Investment Management Company, its Agent and Attorney-In-Fact

By \_\_\_\_\_  
Name:  
Title:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY

By: Babson Capital Management LLC, as Investment Adviser

By \_\_\_\_\_  
Name:  
Title:

HAKONE FUND II LLC

By: Babson Capital Management LLC, as Investment Manager

By \_\_\_\_\_  
Name:  
Title:

REASSURE AMERICA LIFE INSURANCE COMPANY

By: Conning Asset Management Company, as Investment Manager

By \_\_\_\_\_  
Name: Felicisimo G. Falcon, Jr.  
Title: Vice President

SWISS RE LIFE & HEALTH AMERICA INC.

By: Conning Asset Management Company, as Investment Manager

By

\_\_\_\_\_  
Name: Felicisimo G. Falcon, Jr.  
Title: Vice President

PRIMERICA LIFE INSURANCE COMPANY

By: Conning Asset Management Company, as Investment Manager

By

\_\_\_\_\_  
Name: Felicisimo G. Falcon, Jr.  
Title: Vice President

AMERICAN HEALTH AND LIFE INSURANCE COMPANY

By: Conning Asset Management Company, as Investment Manager

By

\_\_\_\_\_  
Name: Felicisimo G. Falcon, Jr.  
Title: Vice President



THE GREAT-WEST LIFE ASSURANCE COMPANY

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

LONDON LIFE AND GENERAL REINSURANCE COMPANY LIMITED

By: Great-West Life & Annuity Insurance Company, as Investment Advisor

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA

By: Allianz of America, Inc. as the authorized signatory and investment manager

By \_\_\_\_\_  
Name:  
Title:

RGA REINSURANCE COMPANY, a Missouri corporation

By: Principal Global Investors, LLC, a Delaware limited liability company,  
its authorized signatory

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

VANTISLIFE INSURANCE COMPANY, a Connecticut company

By: Principal Global Investors, LLC, a Delaware limited liability company,  
its authorized signatory

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

AMERICAN FAMILY LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Name: Phillip Hannifan  
Title: Investment Director

AMERICAN FAMILY MUTUAL INSURANCE COMPANY

By \_\_\_\_\_  
Name: Phillip Hannifan  
Title: Investment Director

FARM BUREAU LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Name: Herman L. Riva  
Title: Vice President

EQUITRUST LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Name: Herman L. Riva  
Title: Vice President

NATIONAL LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Name:  
Title:

LIFE INSURANCE COMPANY OF THE SOUTHWEST

By \_\_\_\_\_  
Name:  
Title:

SOUTHERN FARM BUREAU LIFE INSURANCE COMPANY

By

\_\_\_\_\_

Name: Carol Robertson, CFA  
Title: Senior Portfolio Manager

COUNTRY LIFE INSURANCE COMPANY

By

\_\_\_\_\_

Name:  
Title:

MODERN WOODMEN OF AMERICA

By

\_\_\_\_\_

Name:  
Title:

AMERITAS LIFE INSURANCE CORP.

By: Summit Investment Advisors, Inc., as Agent

By

\_\_\_\_\_

Name: Andrew S. White  
Title: Managing Director-Private Placements

THE UNION CENTRAL LIFE INSURANCE COMPANY

By: Summit Investment Advisors, Inc., as Agent

By

\_\_\_\_\_  
Name: Andrew S. White

Title: Managing Director-Private Placements

## DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“*Additional Interest*” is defined in Section 1.2(b).

“*Administrative Agent*” means Wells Fargo Bank, N.A. in its capacity as administrative agent under the Bank Credit Agreement, together with its successors and assigns in such capacity.

“*Affiliate*” means, at any time, and with respect to any Person, (a) any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Company or any Subsidiary or any Person of which the Company and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. As used in this definition, “*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an “*Affiliate*” is a reference to an Affiliate of the Company.

“*Anti-Terrorism Order*” means Executive Order No. 13,224 of September 24, 2001, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, 66 U.S. Fed. Reg. 49, 079 (2001), as amended.

“*Bank Credit Agreement*” means the Credit Agreement dated as of December 18, 2007 by and among the Company, certain Subsidiaries of the Company named therein, Wells Fargo, N.A., as administrative agent, and the other financial institutions party thereto, as amended, restated, joined, supplemented or otherwise modified from time to time, and any renewals, extensions or replacements thereof, which constitute the primary bank credit facility of the Company and its Subsidiaries.

“*Bank Lenders*” means the banks and financial institutions party to the Bank Credit Agreement.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

“*Capital Lease*” means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

Exhibit 4.4(c)  
(to Note Purchase Agreement)

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“*Capital Lease Obligation*” means, with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person.

“*Closing*” is defined in Section 3.

“*Closing Date*” means the date of the Closing.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“*Company*” means Herman Miller, Inc., a Michigan corporation.

“*Confidential Information*” is defined in Section 20.

“*Consolidated Adjusted Debt*” means as of any date of determination the total amount of all Consolidated Debt less any non-recourse Debt associated with Securitization Transactions.

“*Consolidated Debt*” means as of any date of determination the total amount of all Debt of the Company and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP.

“*Consolidated EBITDA*” shall mean, for any period, Consolidated Net Income for such period, plus, to the extent deducted in computing such Consolidated Net Income and without duplication, (a) depreciation, depletion, if any, and amortization expense for such period, (b) Consolidated Interest Expense for such period, (c) income tax expense for such period, and (d) other non cash or restructuring charges for such period, minus to the extent included in Consolidated Net Income for such period, non-cash or restructuring gains all as determined in accordance with GAAP. For purposes of calculating Consolidated EBITDA for any period of four consecutive quarters, if during such period the Company or any Restricted Subsidiary shall have acquired or disposed of any Person or acquired or disposed of all or substantially all of the operating assets of any Person, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such transaction occurred on the first day of such period.

“*Consolidated Interest Expense*” shall mean, for any period, the gross interest expense of the Company and its Restricted Subsidiaries deducted in the calculation of Consolidated Net Income for such period, determined on a consolidated basis in accordance with GAAP.

“*Consolidated Net Income*” shall mean, for any period, the consolidated net income (or loss) of the Company and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“*Consolidated Total Assets*” means, as of any date of determination, the total amount of all assets of the Company and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“*Debt*” means, with respect to any Person, without duplication,

- (a) its liabilities for borrowed money;
- (b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable and other accrued liabilities arising in the ordinary course of business but including, without limitation, all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);
- (c) its Capital Lease Obligations;
- (d) its liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities); and
- (e) Guarantees by such Person with respect to liabilities of a type described in any of clauses (a) through (d) hereof.

Debt of any Person shall include all obligations of such Person of the character described in clauses (a) through (e) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

“*Debt Ratio*” is defined in Section 10.1.

“*Default*” means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

“*Default Rate*” means with respect to the Notes that rate of interest that is 2% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes.

“*Environmental Laws*” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“*ERISA Affiliate*” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

“*Event of Default*” is defined in Section 11.



“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Fair Market Value*” means, at any time and with respect to any property, the sale value of such property that would be realized in an arm’s-length sale at such time between an informed and willing buyer and an informed and willing seller (neither being under a compulsion to buy or sell), as reasonably determined in the good faith opinion of the Company’s board of directors.

“*GAAP*” means those generally accepted accounting principles as in effect from time to time in the United States of America; provided that, if the Company notifies the Required Holders that the Company wishes to amend any negative covenants (or any definition hereof) to eliminate the effect of any change in generally accepted accounting principles on the operation of such covenant or definition, then the Company’s compliance with such covenant or the meaning of such definition shall be determined on the basis of generally accepted accounting principles in effect immediately before the relevant change in generally accepted accounting principles became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Company and the Required Holders.

“*Governmental Authority*” means

- (a) the government of
  - (i) the United States of America or any state or other political subdivision thereof, or
  - (ii) any jurisdiction in which the Company or any Restricted Subsidiary conducts all or any part of its business, or which has jurisdiction over any properties of the Company or any Restricted Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“*Government Obligations*” shall mean direct obligations of the United States of America or any agency or instrumentality of the United States of America, the payment or guarantee of which constitutes a full faith and credit obligation of the United States of America.

“*Guaranty*” means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any Debt, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such Debt or obligation or any property constituting security therefor primarily for the purpose of assuring the owner of such Debt or obligation of the ability of any other Person to make payment of the Debt or obligation;

- (b) to advance or supply funds (i) for the purchase or payment of such Debt or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such Debt or obligation;
- (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such Debt or obligation of the ability of any other Person to make payment of the Debt or obligation; or
- (d) otherwise to assure the owner of such Debt or obligation against loss in respect thereof.

In any computation of the Debt or other liabilities of the obligor under any Guaranty, the Debt or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

*“Hazardous Material”* means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law including, but not limited to, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

*“holder”* means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

*“Institutional Investor”* means (a) any original purchaser of a Note, (b) any holder of more than \$2,000,000 of the aggregate principal amount of the Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

*“Lien”* means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement (other than an operating lease) or Capital Lease, upon or with respect to any property or asset of such Person (including, in the case of stock, shareholder agreements, voting trust agreements and all similar arrangements).

*“Make-Whole Amount”* shall have the meaning set forth in Section 8.6 with respect to any Note.

*“Material”* means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Restricted Subsidiaries taken as a whole.

“*Material Adverse Effect*” means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Restricted Subsidiaries taken as a whole, or (b) the ability of the Company to perform its obligations under this Agreement and the Notes, or (c) the validity or enforceability of this Agreement or the Notes.

“*Material Subsidiary*” means, at any time, any Restricted Subsidiary of the Company which, together with all other Restricted Subsidiaries of such Restricted Subsidiary, accounts for more than (i) 5% of the consolidated assets of the Company and its Restricted Subsidiaries or (ii) 5% of consolidated revenue of the Company and its Restricted Subsidiaries.

“*Memorandum*” is defined in Section 5.3.

“*Moody’s*” shall mean Moody Investors Service, Inc.

“*Multiemployer Plan*” means any Plan that is a “multiemployer plan” (as such term is defined in Section 4001(a)(3) of ERISA).

“*Notes*” is defined in Section 1.

“*Officer’s Certificate*” means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“*PBGC*” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

“*Person*” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“*Plan*” means an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

“*Priority Debt*” means (without duplication), as of the date of any determination thereof, the sum of (i) all unsecured Debt of Restricted Subsidiaries (including all Guaranties of Debt of the Company but excluding (x) Debt owing to the Company or any other Restricted Subsidiary, (y) Debt outstanding at the time such Person became a Restricted Subsidiary (other than an Unrestricted Subsidiary which is designated as a Restricted Subsidiary pursuant to Section 9.6 hereof), provided that such Debt shall have not been incurred in contemplation of such person becoming a Restricted Subsidiary, and (z) all Subsidiary Guaranties, and all Guaranties of Debt of the Company by any Restricted Subsidiary which has also guaranteed the Notes, and (ii) all Debt of the Company and its Restricted Subsidiaries secured by Liens other than Debt secured by Liens permitted by subparagraphs (a) through (k), inclusive, of Section 10.3.

“*property*” or “*properties*” means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

“*Purchasers*” means the purchasers of the Notes named in Schedule A hereto.

“*QPAM Exemption*” means Prohibited Transaction Class Exemption 84-14 issued by the United States Department of Labor.

“*Qualified Institutional Buyer*” means any Person who is a qualified institutional buyer within the meaning of such term as set forth in Rule 144(a)(1) under the Securities Act.

“*Required Holders*” means, at any time, the holders of not less than 51% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates and any Notes held by parties who are contractually required to abstain from voting with respect to matters affecting the holders of the Notes).

“*Responsible Officer*” means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

“*Restricted Subsidiary*” means any Subsidiary in which: (i) at least a majority of the voting securities are owned by the Company and/or one or more Restricted Subsidiaries and (ii) the Company has not designated an Unrestricted Subsidiary by notice in writing given to the holders of the Notes under Section 9.6.

“*S&P*” means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc.

“*Securities Act*” means the Securities Act of 1933, as amended from time to time.

“*Securitization Transaction*” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, on a non-recourse basis any accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person, provided that (a) such sale, conveyance or other transfer qualifies as a “true sale” under GAAP, and (b) the Debt of the Company or any Restricted Subsidiary associated with such transaction is non-recourse to the Company and its Restricted Subsidiaries.

“*Senior Debt*” means, as of the date of any determination thereof, all Consolidated Debt, other than Subordinated Debt.

“*Senior Financial Officer*” means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

“*Series A Notes*” is defined in Section 1 of this Agreement.

“*Series B Notes*” is defined in Section 1 of this Agreement.

“*Subordinated Debt*” means all unsecured Debt of the Company which shall contain or have applicable thereto subordination provisions providing for the subordination thereof to other Debt of the Company (including, without limitation, the obligations of the Company under this Agreement or the Notes).

“*Subsidiary*” means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

“*Subsidiary Guarantor*” means each Subsidiary which is party to the Subsidiary Guaranty.

“*Subsidiary Guaranty*” is defined in Section 9.8 of this Agreement.

“*Unrestricted Subsidiary*” means any Subsidiary so designated by the Company in accordance with Section 9.6.

“*USA Patriot Act*” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

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CREDIT AGREEMENT

dated as of

December 18, 2007

among

HERMAN MILLER, INC.,

THE SUBSIDIARY BORROWERS PARTY HERETO,

THE LENDERS PARTY HERETO,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent,

WACHOVIA BANK, NATIONAL ASSOCIATION,

as Syndication Agent

and

BANK OF AMERICA, N.A. and  
JPMORGAN CHASE BANK,

as Documentation Agents

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WELLS FARGO BANK, NATIONAL ASSOCIATION

and

WACHOVIA BANK, NATIONAL ASSOCIATION,

as Joint Lead Arrangers

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This CREDIT AGREEMENT (this “Agreement”), dated as of December 18, 2007, is among Herman Miller, Inc., the Subsidiary Borrowers party hereto, the Lenders party hereto, Wells Fargo Bank, National Association, as Administrative Agent, Wachovia Bank, National Association, as Syndication Agent, and Bank of America, N.A. and JPMorgan Chase Bank, N.A., as Documentation Agents.

The parties hereto agree 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 comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which the U.S. Borrower or any of its Subsidiaries (a) acquires any going business or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person.

“Adjusted LIBO Rate” means, with respect to any Eurocurrency Borrowing for any 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.

“Administrative Agent” means Wells Fargo, in its capacity as administrative agent for the Lenders hereunder.

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

“Advance” means any Loan or any Letter of Credit.

“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.

“Agents” means the Administrative Agent, the Syndication Agent and the Documentation Agents.

“Aggregate Ancillary Commitments” means, at any time, the aggregate amount of the Ancillary Commitments of all Lenders at such time.

“Aggregate Ancillary Facility Exposure” means, at any time, the aggregate amount of the Ancillary Facility Exposures of all Lenders at such time.

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“Aggregate Commitments” means, at any time, the aggregate amount of the Commitments of all Lenders at such time.

“Aggregate Competitive Loan Exposure” means, at any time, the aggregate amount of the Competitive Loan Exposures of all Lenders at such time.

“Aggregate Revolving Credit Exposure” means, at any time, the aggregate amount of the Revolving Credit Exposures of all Lenders at such time.

“Aggregate Total Exposure” means, at any time, the sum of the Aggregate Revolving Credit Exposure, the Aggregate Ancillary Facility Exposure and the Aggregate Competitive Loan Exposure at such time.

“Agreement Currency” has the meaning assigned to such term in Section 9.15(b).

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day or (b) the Federal Funds Effective Rate in effect on such day plus ½ 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.

“Ancillary Commitment” means, with respect to any Ancillary Lender and Ancillary Facility, the maximum amount that such Ancillary Lender has agreed to make available from time to time during the Availability Period under such Ancillary Facility created pursuant to Section 2.22 by such Ancillary Lender; provided that at no time shall (a) all Ancillary Commitments of such Ancillary Lender and the Revolving Credit Exposure of such Ancillary Lender exceed (b) the Commitment of such Ancillary Lender.

“Ancillary Facility” means any facility made available for a Subsidiary Borrower by a Lender pursuant to Section 2.22.

“Ancillary Facility Document” means, with respect to any Ancillary Facility, the agreements between the applicable Subsidiary Borrower and the Ancillary Lender(s) thereunder providing such Ancillary Facility.

“Ancillary Facility Exposure” means, with respect to any Lender at any time, the Dollar Equivalent of the outstanding principal amount of such Lender’s Ancillary Loans at such time.

“Ancillary Facility Termination Date” has the meaning assigned to such term in Section 2.22(e)(i).

“Ancillary Lender” means, with respect to any Ancillary Facility, the Lender that has made such Ancillary Facility available under Section 2.22.

“Ancillary Loan” means, at any time, a loan under an Ancillary Facility in respect of which the applicable Ancillary Lender has advanced funds to the Subsidiary Borrower thereunder.

“Anti-Terrorism Law” means each of: (a) the Executive Order; (b) the Patriot Act; (c) the Money Laundering Control Act of 1986, 18 U.S.C. Sect. 1956; and (d) any other governmental rule now or hereafter enacted to monitor, deter or otherwise prevent terrorism or the funding or support of terrorism.

“Applicable Agent” means (a) with respect to a Loan or Borrowing denominated in Dollars or with respect to any payment that does not relate to any Loan or Borrowing, the Administrative Agent and (b) with respect to a Loan or Borrowing denominated in a Foreign Currency, the Administrative Agent or an Affiliate thereof designated pursuant to Section 8.07.

“Applicable Creditor” has the meaning assigned to such term in Section 9.15(b).

“Applicable Adjusted Percentage” means, with respect to any Lender, the percentage of (a) the Aggregate Commitments minus the Aggregate Ancillary Commitments, represented by (b) such Lender’s Commitment minus such Lender’s Ancillary Commitments. If the Commitments have terminated or expired, the Applicable Adjusted Percentage shall be determined based upon the Commitments and Ancillary Commitments most recently in effect, giving effect to any assignments.

“Applicable Percentage” means, with respect to any Lender, the percentage of the Aggregate Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Applicable Rate” means, for any day, with respect to any Eurocurrency Loan, Swingline Loan bearing interest at the Overnight LIBOR Rate or with respect to the facility fees payable hereunder, as the case may be, the applicable rate per annum set forth below based upon the Leverage Ratio as of the most recent determination date:

Level	Leverage Ratio	Eurocurrency or Overnight LIBOR Spread	Facility Fee Rate
1	< 1.00	32.00 bps	8.00 bps
2	>= 1.00 < 1.50	36.00 bps	9.00 bps
3	>= 1.50 < 2.00	40.00 bps	10.00 bps
4	>= 2.00 < 2.50	50.00 bps	12.50 bps
5	>= 2.50	60.00 bps	15.00 bps

The Applicable Rate shall be determined in accordance with the foregoing table based on the Leverage Ratio as of the end of each fiscal quarter, as calculated for the four most recently ended consecutive fiscal quarters of the U.S. Borrower. Adjustments, if any, to the Applicable Rate shall be effective five Business Days after the Administrative Agent is scheduled to receive the applicable financials under Section 5.01(a) or (b) and certificate under Section 5.01(c). If the U.S. Borrower fails to deliver the financials to the Administrative Agent at the time required hereunder, then the Applicable Rate shall be set at Level 5 until five Business Days after such financials are so delivered. Notwithstanding anything herein to the contrary, the Applicable Rate shall be set at Level 1 as of the Effective Date hereof and shall be adjusted for the first time based on the Leverage Ratio as of the second fiscal quarter of 2008; provided, however, that for purposes of calculating such Leverage Ratio, Consolidated Indebtedness shall be as of the date the Administrative Agent is scheduled to receive the financials under Section 5.01(b) and certificate under Section 5.01(c) with respect to such quarter.

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Available Unused Commitment” means, with respect to a Lender at any time, an amount equal to the amount by which (a) the Commitment of such Lender at such time exceeds (b) the sum of (i) the Revolving Credit Exposure of such Lender at such time and (ii) the Ancillary Commitments (if any) of such Lender at such time.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

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

“Board of Directors” means: (a) with respect to a corporation, the board of directors of the corporation or such directors or committee serving a similar function; (b) with respect to a limited liability company, the board of managers of the company or such managers or committee serving a similar function; (c) with respect to a partnership, the Board of Directors of the general partner of the partnership; and (d) with respect to any other Person, the managers, directors, trustees, board or committee of such Person or its owners serving a similar function.

“Borrowers” means the U.S. Borrower and the Subsidiary Borrowers.

“Borrowing” means (a) Revolving Loans of the same 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, (b) Ancillary Loans of the same Type, made, converted or continued on the same date and made with respect to the same Ancillary Facility, (c) a Competitive Loan or group of Competitive Loans of the same Type made on the same date and as to which a single Interest Period is in effect or (d) a Swingline Loan.

“Borrowing Minimum” means (a) in the case of a Revolving Borrowing denominated in Dollars, \$3,000,000, (b) in the case of a Revolving Borrowing denominated in a Foreign Currency, the smallest amount of such Foreign Currency that is a multiple of 1,000,000 units of such Foreign Currency and has a Dollar Equivalent in excess of \$3,000,000, (c) in the case of a Competitive Loan denominated in Dollars, \$5,000,000, (d) in the case of a Competitive Loan denominated in a Foreign Currency, the smallest amount of such Foreign Currency that is a multiple of 1,000,000 units of such Foreign Currency and has a Dollar Equivalent in excess of \$5,000,000, (e) in the case of an Ancillary Borrowing, such amount agreed upon in the relevant Ancillary Facility Document, (f) in the case of a Swingline Borrowing denominated in Dollars, \$500,000 or such other amount agreed to by the Swingline Lender, and (g) in the case of a Swingline Borrowing denominated in a Foreign Currency, the smallest amount of such Foreign Currency that is a multiple of 100,000 units of such Foreign Currency and has a Dollar Equivalent in excess of \$500,000 or such other amount agreed to by the Swingline Lender.

“Borrowing Multiple” means (a) in the case of a Revolving Borrowing denominated in Dollars, \$500,000, (b) in the case of a Revolving Borrowing denominated in a Foreign Currency, 500,000 units of such Foreign Currency, (c) in the case of a Competitive Loan denominated in Dollars, \$1,000,000, (d) in the case of a Competitive Loan denominated in a Foreign Currency, 1,000,000 units of such Foreign Currency, (e) in the case of an Ancillary Borrowing, such amount agreed upon in the relevant Ancillary Facility Document, (f) in the case of a Swingline Borrowing denominated in Dollars, \$100,000 or such other amount agreed to by the Swingline Lender, and (g) in the case of a Swingline Borrowing denominated in a Foreign Currency, 100,000 units of such Foreign Currency or such other amount agreed to by the Swingline Lender.

“Borrowing Request” means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco, California are authorized or required by law to remain closed; provided that, when used in connection with a Eurocurrency Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in deposits in the currency in which such Eurocurrency Loan is denominated in the London interbank market.

“CAM” means the mechanism for the allocation and exchange of interests in the Loans and participations in Letters of Credit and collections thereunder established under Article X.

“CAM Exchange” means the exchange of the Lenders’ interests provided for in Section 10.01.

“CAM Exchange Date” means the first date after the Effective Date on which there shall occur (a) any event described in paragraph (h) or (i) of Section 7.01 with respect to any Borrower or (b) an acceleration of Advances pursuant to Article VII.

“CAM Percentage” means, as to each Lender, the Applicable Percentage calculated immediately prior to the CAM Exchange Date.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under 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 capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Change in Control” means (a) the membership of the U.S. Borrower’s Board of Directors changes by more than 50% during any 12-month period, or the number of members on the U.S. Borrower’s Board of Directors either increases or decreases by more than 50% during any 12 month period, (b) any person or group or persons (within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended) shall obtain ownership or control in one or more series of transactions of more than 33% of the common Equity Interests or 33% of the voting power of the Equity Interests of the U.S. Borrower entitled to vote in the election of members of the Board of Directors of the U.S. Borrower, or (c) there shall have occurred under any credit agreement, indenture or other instrument evidencing any Indebtedness in excess of \$10,000,000 any “change in control” or similar term (as defined in such credit agreement, indenture or other evidence of Indebtedness) obligating, or permitting the holders of such Indebtedness to obligate, the U.S. Borrower or any of its Subsidiaries to repurchase, redeem or repay all or any part of the Indebtedness or Equity Interests provided for therein.

“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 the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’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 comprising such Borrowing, are Revolving Loans, Competitive Loans or Swingline Loans.

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

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to Section 2.09 or 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$250,000,000. Notwithstanding the foregoing, any Competitive Loans made by a Lender shall not reduce such Lender’s Commitment or its obligation to lend its pro rata share of the undrawn portion of the Aggregate Commitment.

“Competitive Bid” means an offer by a Lender to make a Competitive Loan in accordance with Section 2.04.

“Competitive Bid Rate” means, with respect to any Competitive Bid, the Margin or the Fixed Rate, as applicable, offered by the Lender making such Competitive Bid.

“Competitive Bid Request” means a request by the U.S. Borrower for Competitive Bids in accordance with Section 2.04.

“Competitive Loan” means a Loan made pursuant to Section 2.04.

“Competitive Loan Exposure” means, with respect to any Lender at any time, the outstanding principal amount of such Lender’s Competitive Loans at such time.

“Consolidated EBITDA” means, with reference to any period, the net income (or loss) of the U.S. Borrower and its Subsidiaries for such period, *plus*, to the extent deducted from revenues in determining such net income, (a) Consolidated Interest Expense, (b) expense for income taxes paid or accrued, (c) depreciation, (d) amortization, (e) other non-cash expenses, including non-cash, share-based compensation deducted from net income in accordance with SFAS 123(R), (f) non-recurring costs or expenses incurred in connection with a restructuring or permitted merger or acquisition (in each case, with the written consent of the Administrative Agent, which shall not be unreasonably withheld) and (g) extraordinary non-cash losses incurred other than in the ordinary course of business, *minus*, to the extent included in such net income, extraordinary gains realized other than in the ordinary course of business, all as determined in accordance with GAAP and calculated for the U.S. Borrower and its Subsidiaries on a consolidated basis.

“Consolidated Indebtedness” means at any time the Indebtedness of the U.S. Borrower and its Subsidiaries calculated on a consolidated basis.

“Consolidated Interest Expense” means, with reference to any period, the Interest Expense of the U.S. Borrower and its Subsidiaries calculated on a consolidated basis for such period.

“Consolidated Total Assets” means, as of any date, the total assets of the U.S. Borrower and the consolidated Subsidiaries, determined in accordance with GAAP, as set forth on the consolidated balance sheet of the U.S. Borrower as of such date.



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

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

“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.

“Defaulting Lender” means any Lender with respect to which a Lender Default is in effect.

“Designated Person” means any Person who (a) is named on the list of Specially Designated Nationals or Blocked Persons maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control and/or any other similar lists maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control pursuant to authorizing statute, executive order or regulation, (b) (i) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of the Executive Order or any related legislation or any other similar executive order(s) or (ii) engages in any dealings or transactions prohibited by Section 2 of the Executive Order or is otherwise associated with any such Person in any manner violative of Section 2 of the Executive Order or (c) (i) is an agency of the government of a country, (ii) an organization controlled by a country, or (iii) a Person resident in a country that is subject to a sanctions program identified on the list maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control, or as otherwise published from time to time, as such program may be applicable to such agency, organization or Person.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

“Disqualified Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, 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.

“Documentation Agents” means Bank of America, N.A. and JPMorgan Chase Bank, N.A., in their capacity as documentation agents for the Lenders hereunder.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Dollar Equivalent” means, on any date of determination (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in any Foreign Currency, the equivalent in Dollars of such amount, determined by the Administrative Agent pursuant to Section 1.05 using the Exchange Rate with respect to such Foreign Currency at the time in effect under the provisions of such Section.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“EMU Legislation” means the legislative measures of the European Union for the introduction of, changeover to or operation of the euro in one or more member states of the European Union.

“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 the U.S. 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 Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“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 U.S. 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 (or, for years in which funding requirements are governed by the PPA, any failure to satisfy the applicable minimum funding standards under Section 412(a)(2) of the Code or Section 302(a)(2) of ERISA, whether or not waived); (c) the filing pursuant to Section 412(d) of the Code or Section 303 of ERISA (or, for years in which the PPA applies to any Plan, Section 412(c) of the Code or Section 302(c) of ERISA) of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the U.S. 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 U.S. 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 U.S. 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 U.S. Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the U.S. 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.

“Euro” or “€” means the single currency of the European Union as constituted by the treaty establishing the European Community being the Treaty of Rome, as amended from time to time and as referred to in the EMU Legislation.

“Eurocurrency”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate (or, in the case of a Competitive Loan, the LIBO Rate).

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Rate” means on any day, for purposes of determining the Dollar Equivalent of any other currency, the rate at which such other currency may be exchanged into Dollars at the time of determination on such day on the Reuters WRLD Page for such currency. In the event that such rate does not appear on any Reuters WRLD Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrowers, or, in the absence of such an agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

“Exchange Rate Date” means, if on such date any outstanding Loan is (or any Loan that has been requested at such time would be) denominated in a currency other than Dollars, each of:

- (a) the last Business Day of each calendar month,
- (b) if an Event of Default has occurred and is continuing, the CAM Exchange Date and any other Business Day designated as an Exchange Rate Date by the Administrative Agent in its sole discretion, and
- (c) each date (with such date to be reasonably determined by the Administrative Agent) that is on or about the date of (i) a Borrowing Request or an Interest Election Request with respect to any Revolving Borrowing or (ii) each request for the issuance, amendment, renewal or extension of any Ancillary Loan, Letter of Credit or Swingline Loan.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the U.S. Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the State of the United States of America or other 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 U.S. Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the U.S. Borrower under Section 2.19(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 designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 2.17(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the U.S. Borrower with respect to such withholding tax pursuant to Section 2.17(a).

“Executive Order” means Executive Order No. 13224 on Terrorist Financings: — Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism issued on 23rd September, 2001, as amended by Order No. 13268 and as further amended after the date hereof.

“Existing Credit Agreement” means the Credit Agreement among the U.S. Borrower, the foreign subsidiaries and lenders thereto, Bank One, NA, as Administrative Agent, Wells Fargo, as Syndication Agent, and J.P. Morgan Securities Inc. and Wells Fargo, as Co-Lead Arrangers, dated as of October 18, 2004, as amended.

“Existing Letters of Credit” has the meaning assigned to such term in Section 2.06(n).

“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 the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a 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 or controller of the U.S. Borrower.

“Fixed Rate” means, with respect to any Competitive Loan (other than a Eurocurrency Competitive Loan), the fixed rate of interest per annum specified by the Lender making such Competitive Loan in its related Competitive Bid.

“Fixed Rate Loan” means a Competitive Loan bearing interest at a Fixed Rate.

“Foreign Currency” means (a) with respect to an Ancillary Facility, any currency acceptable to the Administrative Agent that is freely available, freely transferable and freely convertible into Dollars and in which dealings in deposits are carried on in the London interbank market and (b) otherwise, Euros and Sterling.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the U.S. 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 Subsidiary” means any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“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 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.

“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.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (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 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, (k) all Off-Balance Sheet Liabilities of such Person, (l) all obligations under any Disqualified Stock of such Person and (m) the Net Mark-to-Market Exposure of such Person under Swap Agreements. 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. Indebtedness of any Person shall not include (i) leases under which such Person is lessee that are true operating leases or (ii) such Person’s obligations under performance bonds.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Index Debt” means senior, unsecured, long-term indebtedness for borrowed money of the U.S. Borrower that is not guaranteed by any other Person or subject to any other credit enhancement.

“Information Memorandum” means the Confidential Information Memorandum dated November, 2007 relating to the U.S. Borrower and the Transactions.

“Interest Coverage Ratio” means, as of the end of any fiscal quarter of the U.S. Borrower, the ratio of Consolidated EBITDA to Consolidated Interest Expense, as calculated for the four consecutive fiscal quarters of the U.S. Borrower then ending.

**“Interest Election Request”** means a request by the U.S. Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08.

**“Interest Expense”** means, with respect to any person for any period, the sum of (a) gross interest expense of such person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees (including fees with respect to Swap Agreements) payable in connection with the incurrence of Indebtedness to the extent included in interest expense, (iii) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (iv) commissions, discounts, yield and other fees and charges incurred in connection with the asset securitization or similar transaction which are payable to any person other than the U.S. Borrower or a Wholly-Owned Subsidiary and (b) capitalized interest of such person. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received by the U.S. Borrower and the Subsidiaries with respect to Swap Agreements.

**“Interest Payment Date”** means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December, (b) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part 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, (c) with respect to any Fixed Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Fixed Rate Borrowing with an Interest Period of more than 90 days’ duration (unless otherwise specified in the applicable Competitive Bid Request), each day prior to the last day of such Interest Period that occurs at intervals of 90 days’ duration after the first day of such Interest Period, and any other dates that are specified in the applicable Competitive Bid Request as Interest Payment Dates with respect to such Borrowing and (d) with respect to any Swingline Loan, the 15th and last day of each month.

**“Interest Period”** means (a) with respect to any Eurocurrency Revolving 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 or six months (or, with the consent of each Lender, such other period requested by a Borrower) thereafter, as a Borrower may elect, and (b) with respect to any Fixed Rate Borrowing, the period (which shall not be less than 1 day or more than 270 days) commencing on the date of such Borrowing and ending on the date specified in the applicable Competitive Bid Request; 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. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**“Issuing Bank”** means Wells Fargo (or Trade Bank, as agent for Wells Fargo), in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i) or, with respect to the Existing Letters of Credit, Bank One or its successor until the expiration of such Existing Letters of Credit. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank or another Lender, in which case the term “Issuing Bank” shall include any such Affiliate or other Lender with respect to Letters of Credit issued by such Affiliate or other Lender.

“Judgment Currency” has the meaning assigned to such term in Section 9.15(b).

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the U.S. Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Adjusted Percentage of the total LC Exposure at such time.

“Lender Addition and Acknowledgement Agreement” means an agreement in substantially the form of Exhibit D hereto, with such changes thereto as approved by the Administrative Agent.

“Lender Default” means (a) the refusal (which has not been retracted) of a Lender to make available its portion of any Borrowing, to acquire participations in a Swingline Loan pursuant to Section 2.05 or to fund its portion of any unreimbursed payment under Section 2.06(e), (b) a Lender having notified in writing the applicable Borrower and/or the Applicable Agent that it does not intend to comply with its obligations under Section 2.05, 2.06 or 2.07 or (c) the refusal of an Ancillary Lender to extend credit under an Ancillary Facility other than a refusal in accordance with the terms of the applicable Ancillary Facility Document and the terms hereof.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Leverage Ratio” means, as of the end of any fiscal quarter of the U.S. Borrower, the ratio of (a) Consolidated Indebtedness at such time to (b) Consolidated EBITDA, as calculated for the four consecutive fiscal quarters of the U.S. Borrower then ending.

“LIBO Rate” means, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum determined by the Applicable Agent at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period by reference to the British Bankers’ Association Interest Settlement Rates for deposits in the currency of such Borrowing (as reflected on the applicable Telerate screen page), for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “LIBO Rate” shall be the average (rounded upward, if necessary, to the next 1/100 of 1%) of the respective interest rates per annum at which deposits in the currency of such Borrowing are offered for such Interest Period to major banks in the London interbank market by Wells Fargo at approximately 11:00 a.m., London time, on the Quotation Day for 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 Documents” means this Agreement, the U.S. Borrower Guaranty, each Ancillary Facility Document and all instruments, agreements or other documents executed in connection herewith at any time.

“Loans” means any Competitive Loan, Ancillary Loan, Swingline Loan or Revolving Loan.

“Local Time” means (a) with respect to a Loan or Borrowing denominated in Dollars, Minneapolis time, and (b) with respect to a Loan or Borrowing denominated in any Foreign Currency, London time.

“Margin” means, with respect to any Competitive Loan bearing interest at a rate based on the LIBO Rate, the marginal rate of interest, if any, to be added to or subtracted from the LIBO Rate to determine the rate of interest applicable to such Loan, as specified by the Lender making such Loan in its related Competitive Bid.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the U.S. Borrower and its Subsidiaries taken as a whole, (b) the ability of any Borrower to perform any of its obligations under any Loan Document or (c) the rights of or benefits available to the Lenders under any Loan Document.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the U.S. Borrower and its Subsidiaries in an aggregate principal amount exceeding the Dollar Equivalent of \$10,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the U.S. Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the U.S. Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means December 17, 2012 or such earlier or later date as may be determined pursuant to Section 2.09.

“Moody’s” means Moody’s Investors Service, Inc.

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

“Net Mark-to-Market Exposure” of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Swap Agreements. “Unrealized losses” means the fair market value of the cost to such Person of replacing such Swap Agreements as of the date of determination (assuming the Swap Agreements were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Swap Agreements as of the date of determination (assuming such Swap Agreements were to be terminated as of that date).

“Notice of Termination” has the meaning assigned to such term in Section 2.22(e)(ii).

“Obligations” means all unpaid principal of, accrued and unpaid interest and fees and reimbursement obligations on the Advances, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Borrowers or any of them to the Lenders, the Agents, any indemnified party or any of them arising under the Loan Documents.



“Off-Balance Sheet Liability” of a Person means (a) any obligation under a sale and leaseback transaction which is not a Capital Lease Obligation, (b) any so-called “synthetic lease” or “tax ownership operating lease” transaction entered into by such Person, (c) the amount of obligations outstanding under the legal documents entered into as part of any asset securitization or similar transaction on any date of determination that would be characterized as principal if such asset securitization or similar transaction were structured as a secured lending transaction rather than as a purchase or (d) any other transaction (excluding operating leases for purposes of this clause (d)) which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person; in all of the foregoing cases, calculated based on the aggregate outstanding amount of obligations outstanding under the legal documents entered into as part of any such transaction on any date of determination that would be characterized as principal if such transaction were structured as a secured lending transaction, whether or not shown as a liability on a consolidated balance sheet of such Person, in a manner reasonably satisfactory to the Administrative Agent.

“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 hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

“Overnight LIBOR Rate” with respect to any Swingline Loans, means the per annum rate of interest most recently announced within Wells Fargo at its principal office in San Francisco, California as its Overnight LIBOR Rate, with the understanding that Wells Fargo’s Overnight LIBOR Rate is one of its base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate. Wells Fargo shall base its determination of the Overnight LIBOR Rate upon such offers for deposits on or other market indicators of the interbank market as Wells Fargo in its discretion deems appropriate, and the Overnight LIBOR Rate available to the Borrower hereunder shall be adjusted by Wells Fargo to take into account the Statutory Reserve Rate. Any change in the Overnight LIBOR Rate shall become effective on the date on which each such change in the Overnight LIBOR Rate is announced within Wells Fargo.

“Participant” has the meaning set forth in Section 9.04. “Patriot Act” has the meaning assigned to such term in Section 9.14.

“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 delinquent or are being contested in compliance with Section 5.04;
- (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 30 days or are being contested in compliance with Section 5.04;
- (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) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance 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 VII; and

(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 U.S. Borrower or any Subsidiary;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness.

“Permitted Investments” means any investment that would qualify as cash equivalents under GAAP and any other investments permitted by U.S. Borrower’s investment policy as of the Effective Date.

“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 U.S. 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.

“PPA” means the Pension Protection Act of 2006.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by Wells Fargo as its prime rate in effect at its principal office in San Francisco (the Prime Rate not being intended to be the lowest rate of interest charged by Wells Fargo in connection with extensions of credit to borrowers); each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Quotation Day” means, with respect to any Eurocurrency Borrowing or Swingline Foreign Currency Borrowing and any Interest Period, the day on which it is market practice in the relevant interbank market for prime banks to give quotations for deposits in the currency of such Borrowing for delivery on the first day of such Interest Period. If such quotations would normally be given by prime banks on more than one day, the Quotation Day will be the last of such days.

“Register” has the meaning set forth in Section 9.04.

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

“Requirement of Law” means, as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserve Account” has the meaning assigned to such term in Section 10.02(a).

“Required Lenders” means, at any time, Lenders having Commitments representing more than 50% of the sum of the total Commitments of all Lenders at such time; provided that, for purposes of declaring the Advances to be due and payable pursuant to Article VII, and for all purposes after the Advances become due and payable pursuant to Article VII or the Commitments expire or terminate, Required Lenders means Lenders having a share of the Aggregate Total Exposure representing more than 50% of the Aggregate Total Exposure. The Commitment and share of the Aggregate Total Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the U.S. Borrower or any Subsidiary, 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 Equity Interests in the U.S. Borrower or any option, warrant or other right to acquire any such Equity Interests in the U.S. Borrower.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the Dollar Equivalent of the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure and Swingline Exposure at such time.

“Revolving Loan” means a loan made pursuant to Section 2.01.

“SEC” means the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“S&P” means *Standard & Poor’s*.

“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, with respect to the Adjusted LIBO Rate or Overnight LIBOR Rate, 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.

“Sterling” or “£” means the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

“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.

“Subsidiary” means any subsidiary of the U.S. Borrower.

“Subsidiary Borrower” means, at any time, each Subsidiary that has been designated as a Subsidiary Borrower by the U.S. Borrower pursuant to Section 2.20, other than a Subsidiary Borrower that has ceased to be a Subsidiary Borrower as provided in Section 2.20.

“Subsidiary Borrower Agreement” means a Subsidiary Borrower Agreement substantially in the form of Exhibit B.

“Subsidiary Borrower Termination” means a Subsidiary Borrower Termination substantially in the form of Exhibit C.

“Syndication Agent” means Wachovia, in its capacity as syndication agent for the Lenders hereunder.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the U.S. Borrower or the Subsidiaries shall be a Swap Agreement.

“Swingline Dollar Loan” means a Swingline Loan denominated in Dollars.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Adjusted Percentage of the total Swingline Exposure at such time.

“Swingline Foreign Currency Loan” means a Swingline Loan denominated in a Foreign Currency.

“Swingline Lender” means Wells Fargo, in its capacity as lender of Swingline Loans hereunder and its successors in such capacity. The Swingline Lender may, in its discretion, arrange for one or more Swingline Loans to be made by Affiliates of the Swingline Lender, in which case the term “Swingline Lender” shall include any such Affiliate with respect to Swingline Loans made by such Affiliate.

“Swingline Loan” means a Loan made pursuant to Section 2.05.

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

“Trade Bank” means Wells Fargo HSBC Trade Bank, N.A.

“Transactions” means the execution, delivery and performance by the Borrowers of each Loan Document, the borrowing of Loans, the use of the proceeds thereof 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 comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Alternate Base Rate or, in the case of a Competitive Loan or Borrowing, the LIBO Rate or a Fixed Rate.

“U.S. Borrower” means Herman Miller, Inc., a Michigan corporation, and its successors.

“U.S. Borrower Guaranty” means the Guarantee, as amended, supplemented or otherwise modified from time to time, in the form of Exhibit E, by the U.S. Borrower in favor of the Lenders and the Administrative Agent.

“Wachovia” means Wachovia Bank, National Association, a national banking association, and its successors.

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association, and its successors.

“Wholly-Owned Subsidiary” means, as to any Person, a subsidiary all of the Equity Interests of which (except directors’ qualifying Equity Interests) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary 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 “Eurocurrency Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurocurrency Borrowing”) or by Class and Type (e.g., a “Eurocurrency Revolving Borrowing”).

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; Pro Forma Treatment. Unless otherwise indicated in this Agreement or any other Loan Document, all accounting terms used in this Agreement or any other Loan Document shall be construed, and all accounting and financial computations hereunder or thereunder shall be computed, in accordance with GAAP. If (a) the U.S. Borrower elects to change its accounting practices during the term of this Agreement from those used in the preparation of the Financial Statements referred to in Section 3.04, or (b) GAAP changes during the term of this Agreement such that any covenants contained herein would then be calculated in a materially different manner or with materially different components, the U.S. Borrower, the Lenders and the Administrative Agent agree to negotiate in good faith to amend this Agreement in such respects as are necessary to conform those covenants as criteria for evaluating the U.S. Borrower's financial condition to substantially the same criteria as were effective prior to such change by the U.S. Borrower or in GAAP; provided, however, that, until the U.S. Borrower, the Lenders and the Administrative Agent so amend this Agreement, all such covenants shall be calculated in accordance with the accounting practices or GAAP as in effect immediately prior to such change. For purposes of calculating the Leverage Ratio (as used in Section 6.10 and in determining the Applicable Rate) and the Interest Coverage Ratio, any Acquisition or any sale or other disposition outside the ordinary course of business by the U.S. Borrower or any of the Subsidiaries of any asset or group of related assets in one or a series of related transactions, the net proceeds from which exceed \$1,000,000, including the incurrence of any Indebtedness and any related financing or other transactions in connection with any of the foregoing, occurring during the period for which such ratios are calculated shall be deemed to have occurred on the first day of the relevant period for which such ratios were calculated on a pro forma basis acceptable to the Administrative Agent.

SECTION 1.05. Foreign Currency Calculations. (a) For purposes of determining the Dollar Equivalent of any Advance denominated in a Foreign Currency or any related amount, the Administrative Agent shall determine the Exchange Rate as of the applicable Exchange Rate Date with respect to each Foreign Currency in which any requested or outstanding Advance is denominated and shall apply such Exchange Rates to determine such amount (in each case after giving effect to any Advance to be made or repaid on or prior to the applicable date for such calculation).

(b) For purposes of any determination under Section 6.01, 6.02, 6.04 or 6.09 or under Article VII, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at the currency exchange rates in effect on the date of such determination; provided that no Default shall arise as a result of any limitation set forth in Dollars in Section 6.01 or 6.02 being exceeded solely as a result of changes in currency exchange rates from those rates applicable at the time or times Indebtedness or Liens were initially consummated in reliance on the exceptions under such Sections. For purposes of any determination under Section 6.04 or 6.09, the amount of each investment, asset disposition or other applicable transaction denominated in a currency other than Dollars shall be translated into Dollars at the currency exchange rate in effect on the date such investment, disposition or other transaction is consummated. Such currency exchange rates shall be determined in good faith by the Borrowers.

SECTION 1.06. Redenomination of Certain Foreign Currencies. (a) Each obligation of any party to this Agreement to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the Effective Date shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London Interbank Market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Without prejudice and in addition to any method of conversion or rounding prescribed by any EMU Legislation and (i) without limiting the liability of any Borrower for any amount due under this Agreement and (ii) without increasing any Commitment of any Lender, all references in this Agreement to minimum amounts (or integral multiples thereof) denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the Effective Date shall, immediately upon such adoption, be replaced by references to such minimum amounts (or integral multiples thereof) as shall be specified herein with respect to Borrowings denominated in Euros.

(c) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro or any other Foreign Currency.

## ARTICLE II

### The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans denominated in Dollars and Foreign Currencies to the U.S. Borrower and to Subsidiary Borrowers (other than any Subsidiary Borrower for which an Ancillary Commitment has been established under Section 2.22) from time to time during the Availability Period in an aggregate principal amount that will not result in any of following:

- (a) such Lender's Revolving Credit Exposure exceeding (i) such Lender's Commitment minus (ii) such Lender's Ancillary Commitments;
- (b) (i) the Aggregate Revolving Credit Exposure plus the Aggregate Competitive Loans exceeding (ii) the Aggregate Commitments minus the Aggregate Ancillary Commitments;
- (c) the Dollar Equivalent of the aggregate amount of all Revolving Loans and Swingline Loans denominated in any Foreign Currency exceeding \$100,000,000.

Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Applicable Adjusted Percentage on the date such Loans are made hereunder (or, in the case of Swingline Loans, in accordance with Section 2.05). Each Ancillary Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the applicable Ancillary Lenders with an Ancillary Commitment for such Ancillary Loan ratably in accordance with such Ancillary Commitments on the date such Ancillary Loans and otherwise in accordance with the applicable Ancillary Facility Document. Each Competitive Loan shall be made in accordance with the procedures set forth in Section 2.04. 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, the Ancillary Commitments and Competitive Bids of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, (i) each Revolving Borrowing denominated in Dollars shall be comprised entirely of ABR Loans or Eurocurrency Loans as the applicable Borrower may request in accordance herewith, (ii) each Revolving Borrowing denominated in a Foreign Currency and each Ancillary Borrowing shall be comprised entirely of Eurocurrency Loans and (iii) each Competitive Borrowing shall be comprised entirely of Eurocurrency Loans or Fixed Rate Loans as the U.S. Borrower may request in accordance herewith. Each Swingline Borrowing shall be comprised of the Types of Loans set forth in Section 2.05. Each Lender at its option may make any ABR Loan or 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 applicable Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.15, 2.17 or 2.21 solely in respect of increased costs resulting from such exercise.

(c) Each Borrowing shall be in an aggregate amount that is an integral multiple of the applicable Borrowing Multiple and not less than the applicable Borrowing Minimum, provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of eight Eurocurrency Borrowings outstanding.

(d) Each Lender may, at its option, make any Loan available to any Foreign Subsidiary Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; provided, that (i) any exercise of such option shall not affect the obligation of such Foreign Subsidiary Borrower to repay such Loan in accordance with the terms of this Agreement, and (ii) for all purposes of voting or consenting with respect to (x) any amendment, supplementation or modification of any Loan Document, (y) any waiver of any requirements of any Loan Document or any Default or Event of Default and its consequences, or (z) any other matter as to which a Lender may vote or consent related to the Loan Documents, such Lender shall so vote or consent, not such foreign or domestic branch or Affiliate of such Lender.

(e) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Revolving Borrowings. To request a Revolving Borrowing, the applicable Borrower shall notify the Applicable Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing, not later than 2:00 p.m., Local Time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 2:00 p.m., Local Time, one Business Day before the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e) may be given not later than 10:00 a.m., Local Time, on the date of the proposed Borrowing. Notwithstanding the foregoing, in the case of a Loan denominated in a Foreign Currency, the applicable Borrower shall notify the Applicable Agent of such request by telephone not later than 2:00 p.m., Local Time, four Business Days before the date of the proposed Borrowing. Each such 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 the Applicable Agent and signed by the applicable Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the Borrower requesting such Borrowing;
- (ii) in the case of a Revolving Borrowing in a Foreign Currency requested by a Subsidiary Borrower, the Foreign Currency in which such Borrowing is to be denominated;
- (iii) the aggregate amount of the requested Borrowing (expressed in Dollars or the applicable Foreign Currency);



- (iv) the date of such Borrowing, which shall be a Business Day;
- (v) in the case of a Borrowing denominated in Dollars, whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing;
- (vi) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by clause (a) of the definition of the term "Interest Period"; and
- (vii) the location and number of the applicable Borrower's account to which funds are to be disbursed.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing, unless such Revolving Borrowing is denominated in a Foreign Currency, in which case such Revolving Borrowing shall be a Eurocurrency Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the applicable 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 Applicable 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. Requests for Ancillary Loans shall be made in accordance with the applicable Ancillary Facility Document.

SECTION 2.04. Competitive Bid Procedure. (a) Subject to the terms and conditions set forth herein, from time to time during the Availability Period the U.S. Borrower may request Competitive Bids and may (but shall not have any obligation to) accept Competitive Bids and borrow Competitive Loans; provided that the borrowing of any such Competitive Loan will not result in (i) the (A) Aggregate Revolving Credit Exposure plus the Aggregate Competitive Loans exceeding (B) the Aggregate Commitments minus the Aggregate Ancillary Commitments or (ii) the Aggregate Total Exposure exceeding the Aggregate Commitments. To request Competitive Bids, the U.S. Borrower shall notify the Administrative Agent of such request by telephone, in the case of a Eurocurrency Borrowing, not later than 11:00 a.m., Local Time, four Business Days before the date of the proposed Borrowing and, in the case of a Fixed Rate Borrowing, not later than 10:00 a.m., Local Time, two Business Days before the date of the proposed Borrowing; provided that the U.S. Borrower may not submit more than one Competitive Bid Request on the same day, and a Competitive Bid Request shall not be made within five (5) Business Days after the date of any previous Competitive Bid Request, unless any and all such previous Competitive Bid Requests shall have been withdrawn or all Competitive Bids received in response thereto rejected. Further, a Competitive Bid Request may not contain a request for (i) more than one Type of loan, or (ii) Loans having more than three (3) different Interest Periods. Each such telephonic Competitive Bid Request shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Competitive Bid Request in a form approved by the Administrative Agent and signed by the U.S. Borrower. Each such telephonic and written Competitive Bid Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a Eurocurrency Borrowing or a Fixed Rate Borrowing;

(iv) the Interest Period to be applicable to such Borrowing, which shall be a period contemplated by the definition of the term “Interest Period”; and

(v) the location and number of the U.S. Borrower’s account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

Promptly following receipt of a Competitive Bid Request in accordance with this Section, the Administrative Agent shall notify the Lenders of the details thereof by telecopy, inviting the Lenders to submit Competitive Bids.

(b) Each Lender may (but shall not have any obligation to) make one or more Competitive Bids to the U.S. Borrower in response to a Competitive Bid Request. Each Competitive Bid by a Lender must be in a form approved by the Administrative Agent and must be received by the Administrative Agent by telecopy, in the case of a Eurocurrency Competitive Borrowing, not later than 9:30 a.m., Local Time, three Business Days before the proposed date of such Competitive Borrowing, and in the case of a Fixed Rate Borrowing, not later than 9:30 a.m., Local Time, one Business Day before the date of such Competitive Borrowing. Competitive Bids that do not conform substantially to the form approved by the Administrative Agent may be rejected by the Administrative Agent, and the Administrative Agent shall notify the applicable Lender as promptly as practicable. Each Competitive Bid shall specify (i) the principal amount (which shall be a minimum of \$5,000,000 and an integral multiple of \$1,000,000 and which may equal the entire principal amount of the Competitive Borrowing requested by the U.S. Borrower) of the Competitive Loan or Loans that the Lender is willing to make, (ii) the Competitive Bid Rate or Rates at which the Lender is prepared to make such Loan or Loans (expressed as a percentage rate per annum in the form of a decimal to no more than four decimal places) and (iii) the Interest Period applicable to each such Loan and the last day thereof.

(c) The Administrative Agent shall promptly notify the U.S. Borrower by telecopy of the Competitive Bid Rate and the principal amount specified in each Competitive Bid and the identity of the Lender that shall have made such Competitive Bid.

(d) Subject only to the provisions of this paragraph, the U.S. Borrower may accept or reject any Competitive Bid. The U.S. Borrower shall notify the Administrative Agent by telephone, confirmed by telecopy in a form approved by the Administrative Agent, whether and to what extent it has decided to accept or reject each Competitive Bid, in the case of a Eurocurrency Competitive Borrowing, not later than 10:30 a.m., Local Time, three Business Days before the date of the proposed Competitive Borrowing, and in the case of a Fixed Rate Borrowing, not later than 10:30 a.m., Local Time, one Business Day before the date of the Competitive Borrowing; provided that (i) the failure of the U.S. Borrower to give such notice shall be deemed to be a rejection of each Competitive Bid, (ii) the U.S. Borrower shall not accept a Competitive Bid made at a particular Competitive Bid Rate if the U.S. Borrower rejects a Competitive Bid made at a lower Competitive Bid Rate, (iii) the aggregate amount of the Competitive Bids accepted by the U.S. Borrower shall not exceed the aggregate amount of the requested Competitive Borrowing specified in the related Competitive Bid Request, (iv) to the extent necessary to comply with clause (iii) above, the U.S. Borrower may accept Competitive Bids at the same Competitive Bid Rate in part, which acceptance, in the case of multiple Competitive Bids at such Competitive Bid Rate, shall be made pro rata in accordance with the amount of each such Competitive Bid, and (v) except pursuant to clause (iv) above, no Competitive Bid shall be accepted for a Competitive Loan unless such Competitive Loan is in a minimum principal amount of the Borrowing Minimum and an integral multiple of the Borrowing Multiple; provided further that if a Competitive Loan must be in an amount less than the Borrowing Minimum because of the provisions of clause (iv) above, such Competitive Loan may be for a minimum of \$1,000,000 or any integral multiple thereof, and in calculating the pro rata allocation of acceptances of portions of multiple Competitive Bids at a particular Competitive Bid Rate pursuant to clause (iv) the amounts shall be rounded to integral multiples of \$1,000,000 in a manner determined by the U.S. Borrower. A notice given by the U.S. Borrower pursuant to this paragraph shall be irrevocable.

(e) The Administrative Agent shall promptly notify each bidding Lender by telecopy whether or not its Competitive Bid has been accepted (and, if so, the amount and Competitive Bid Rate so accepted), and each successful bidder will thereupon become bound, subject to the terms and conditions hereof, to make the Competitive Loan in respect of which its Competitive Bid has been accepted.

(f) If the Administrative Agent shall elect to submit a Competitive Bid in its capacity as a Lender, it shall submit such Competitive Bid directly to the U.S. Borrower at least one quarter of an hour earlier than the time by which the other Lenders are required to submit their Competitive Bids to the Administrative Agent pursuant to paragraph (b) of this Section.

SECTION 2.05. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender may make Swingline Loans in Dollars to the U.S. Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$30,000,000, (ii) the (A) Aggregate Revolving Credit Exposure plus the Aggregate Competitive Loans exceeding (B) the Aggregate Commitments minus the Aggregate Ancillary Commitments or (iii) the Aggregate Total Exposure exceeding the Aggregate Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the U.S. Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Borrowing, the U.S. Borrower shall notify the Applicable Agent of such request by telephone (confirmed in a writing acceptable to the Applicable Agent if requested by the Applicable Agent), not later than 12:00 noon, Local Time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify (i) the requested date (which shall be a Business Day) and (ii) the amount of the requested Swingline Borrowing. The Applicable Agent shall promptly advise the Swingline Lender of any such notice received from the U.S. Borrower. The Swingline Lender and the U.S. Borrower shall agree upon the interest rate applicable to such Swingline Loan, provided that if such agreement cannot be reached prior to 2:00 p.m., Local Time, on the day of such proposed Swingline Loan then such Swingline Loan shall bear interest at the Overnight LIBOR Rate plus the Applicable Rate. Any funding of a Swingline Loan by the Swingline Lender shall be made in accordance with Section 2.02(a) on the proposed date thereof by wire transfer of immediately available funds by 3:00 p.m., Local Time, to the account of the Applicable Agent most recently designated by it for such purpose by notice to the Swingline Lender. The Applicable Agent will make such Swingline Loan available to the U.S. Borrower by promptly crediting the amounts so received, in like funds, to the general deposit account of the U.S. Borrower with the Applicable Agent (or, in the case of a Swingline Borrowing made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e), by remittance to the applicable Issuing Bank).

(c) The Swingline Lender may by written notice given to the Applicable Agent not later than 1:00 p.m., Local Time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the outstanding Swingline Loans. Such notice shall specify the aggregate amount of such Swingline Loans in which the Lenders will participate. Promptly upon receipt of such notice, the Applicable Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Adjusted Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Applicable Agent, for the account of the Swingline Lender, such Lender's Applicable Adjusted Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its respective 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 Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Applicable Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Applicable Agent shall notify the U.S. Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph (c), and thereafter payments in respect of such Swingline Loan shall be made to the Applicable Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the U.S. Borrower (or other party on behalf of such Borrower) in respect of a Swingline Loan after receipt by such Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Applicable Agent; any such amounts received by the Applicable Agent shall be promptly remitted by the Applicable Agent to the Lenders that shall have made their payments pursuant to this paragraph and to such Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to such Swingline Lender or to the Applicable Agent, as applicable, if and to the extent such payment is required to be refunded to the U.S. Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the U.S. Borrower of any default in the payment thereof.

SECTION 2.06. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the U.S. Borrower may request the issuance of Letters of Credit denominated in Dollars for its own account or the account of a Domestic Subsidiary, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. 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 U.S. Borrower to, or entered into by the U.S. Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the U.S. Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the 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 Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the account party thereof (which shall be the U.S. Borrower or a Domestic Subsidiary, and if a Domestic Subsidiary then the U.S. Borrower and such Domestic Subsidiary shall be jointly and severally liable with respect to all Obligations relating to such 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 Letter of Credit. If requested by the Issuing Bank, the U.S. Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. 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 U.S. Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$40,000,000, (ii) the (A) Aggregate Revolving Credit Exposure plus the Aggregate Competitive Loans shall not exceed (B) the Aggregate Commitments minus the Aggregate Ancillary Commitments and (iii) the sum of the Aggregate Total Exposure shall not exceed the Aggregate Commitments.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (provided that any Letter of Credit may provide for additional one year renewals thereof subject to the approval of the Administrative Agent prior to the time of such renewal) and (ii) the date that is ten Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Adjusted Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Adjusted Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the U.S. Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the U.S. Borrower for any reason. Each 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 Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the U.S. Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, Local Time, on the date that such LC Disbursement is made, if the U.S. Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Local Time, on such date, or, if such notice has not been received by the U.S. Borrower prior to such time on such date, then not later than 12:00 noon, Local Time, on (i) the Business Day that the U.S. Borrower receives such notice, if such notice is received prior to 10:00 a.m., Local Time, on the day of receipt, or (ii) the Business Day immediately following the day that the U.S. Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the U.S. Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the U.S. Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the U.S. Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the U.S. Borrower in respect thereof and such Lender's Applicable Adjusted Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Adjusted Percentage of the payment then due from the U.S. Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the U.S. Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the U.S. Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The U.S. Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) 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 this Agreement, or any term or provision therein, (ii) any draft or other document 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 Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the U.S. Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, 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 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 Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the U.S. Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the U.S. Borrower to the extent permitted by applicable law) suffered by the U.S. Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the U.S. Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank 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 U.S. Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the U.S. 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 U.S. Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the U.S. Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(e) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the U.S. Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the U.S. Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the U.S. 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 greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the U.S. Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that 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 U.S. Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the U.S. Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the U.S. Borrower’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the U.S. Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other obligations of the U.S. Borrower under this Agreement. If the U.S. Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the U.S. Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Additional Issuing Banks. From time to time, the Administrative Agent may designate other Lenders (in addition to Wells Fargo) that agree (in their sole discretion) to act in such capacity and are satisfactory to the Administrative Agent and the U.S. Borrower as Issuing Banks. Each such additional Issuing Bank shall execute such agreements requested by the Administrative Agent and shall thereafter be an Issuing Bank hereunder for all purposes, provided that any such additional Issuing Bank shall only issue such Letters of Credit as approved by the Administrative Agent.

(l) Reporting. Unless otherwise requested by the Administrative Agent, each Issuing Bank shall report in writing to the Administrative Agent (i) on the first Business Day of each week and the first Business Day of each fiscal quarter, the aggregate face amount of Letters of Credit issued by it and outstanding as of the last Business Day of the preceding week or the preceding fiscal quarter, as applicable, (ii) on or prior to each Business Day on which such Issuing Bank expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension occurred (and whether the amount thereof changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date of such LC Disbursement and the amount of such LC Disbursement and (iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request.

(m) Trade Bank as Issuing Bank. The parties hereto acknowledge and agree that, at its option, Wells Fargo, as Issuing Bank, may arrange for Letters of Credit to be issued by Trade Bank as agent for Wells Fargo. All parties hereto understand and agree that, to the extent any Letters of Credit are issued by Trade Bank as agent for Wells Fargo, (i) Trade Bank is agent only to Wells Fargo and not to the U.S. Borrower and has no obligations to the U.S. Borrower, (ii) the Letters of Credit issued by Trade Bank will be deemed Letters of Credit issued by the Issuing Bank for all purposes hereunder and (iii) any of the obligations performed or rights exercised pursuant to or in connection with the issuance of any Letter of Credit by Trade Bank shall be deemed obligations performed or rights exercised by Wells Fargo as Issuing Bank. To the extent that the Issuing Bank is required to provide any notices to, or take any other actions for the benefit of, the Administrative Agent hereunder, with respect to any Letter of Credit issued by Trade Bank, no such notice or action shall be required.

(n) Existing Letters of Credit. All existing letters of credit issued by Bank One or its successor pursuant to the Existing Credit Agreement and listed on Schedule 2.06 (the “Existing Letters of Credit”) shall be deemed (i) Letters of Credit issued under this Agreement and shall be subject to the terms of this Agreement and (ii) issued on the Effective Date for purposes of determining fees payable under Section 2.12(b).

SECTION 2.07. Funding of Borrowings. (a) 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, Local 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 2.05. The Applicable Agent will make such Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, to an account of the applicable Borrower maintained with the Applicable Agent (i) in such location determined by the Administrative Agent, in the case of Loans denominated in Dollars, or (ii) in London, in the case of Loans denominated in a Foreign Currency and designated by the applicable Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans and Swingline Dollar Borrowings made to finance the reimbursement of a LC Disbursement and reimbursements as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) 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 applicable 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 applicable Borrower severally agree to pay to the Applicable Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Applicable Agent, at (i) in the case of such Lender, (x) the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (in the case of a Borrowing denominated in Dollars) or (y) the rate reasonably determined by the Applicable Agent to be the cost to it of funding such amount (in the case of a Borrowing denominated in a Foreign Currency) or (ii) in the case of the applicable Borrower, the interest rate applicable to ABR Loans (in the case of a Borrowing denominated in Dollars) or the rate reasonably determined by the Applicable Agent to be the cost to it of funding such amount (in the case of a Borrowing denominated in a Foreign Currency). If such Lender pays such amount to the Applicable Agent, then such amount shall constitute such Lender’s Loan included in such Borrowing.



SECTION 2.08. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the applicable Borrower may elect to convert such Borrowing to a different Type, in the case of Borrowings denominated in Dollars, or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section. The applicable 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 comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Foreign Currency Borrowings or Swingline Dollar Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the applicable 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 such Borrower were requesting a Borrowing of the Type and denominated in the Foreign Currency 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 applicable Borrower.

(c) 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 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) below 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) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; provided that the resulting Borrowing is required to be a Eurocurrency Borrowing in the case of a Borrowing denominated in a Foreign Currency; and

(iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by clause (a) of 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 applicable Borrower shall be deemed to have selected an Interest Period of one month's duration.

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

(e) If the applicable Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency 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 such Borrowing shall be converted to an ABR Borrowing (unless such Borrowing is denominated in a Foreign Currency, in which case such Borrowing shall be continued as a Eurocurrency Borrowing with an Interest Period of one month's duration commencing on the last day of such Interest Period). Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the applicable 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, (ii) unless repaid, each Eurocurrency Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (iii) unless repaid, each Eurocurrency Borrowing denominated in a Foreign Currency shall be continued as a Eurocurrency Borrowing with an Interest Period of one month's duration.

SECTION 2.09. Termination and Reduction/Increases of Commitments; Extension of Maturity Date.

(a) Unless previously terminated or extended pursuant this section, the Commitments shall terminate on the Maturity Date.

(b) The U.S. Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$10,000,000 and not less than \$10,000,000 and (ii) the U.S. Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the Aggregate Total Exposure would exceed the Aggregate Commitments.

(c) The U.S. Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments 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 U.S. Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the U.S. 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 U.S. Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

(d) Subject to the conditions set forth below, the U.S. Borrower may, upon at least ten (10) days (or such other period of time agreed to between the Administrative Agent and the U.S. Borrower) prior written notice to the Administrative Agent and the Lenders, increase the Aggregate Commitments from time to time, either by designating a lender not theretofore a Lender to become a Lender (such designation to be effective only with the prior written consent (such consent not to be unreasonably withheld) of the Administrative Agent) or by agreeing with an existing Lender that such Lender's Commitment shall be increased (an "Increasing Lender") (thus increasing the Aggregate Commitments); provided that:

(i) no Default shall have occurred and be continuing hereunder as of the effective date of such increase;

(ii) the representations and warranties made by the Borrowers and contained in Article III shall be true and correct on and as of the effective date with the same effect as if made on and as of such date (other than those representations and warranties that by their terms speak as of a particular date, which representations and warranties shall be true and correct as of such particular date);

(iii) the amount of such increase in the Aggregate Commitments shall not be less than \$10,000,000, and in increments of \$5,000,000 in excess thereof, and shall not cause the Aggregate Commitments to exceed \$350,000,000;

(iv) The Borrowers and the Lender or lender not theretofore a Lender, shall execute and deliver to the Administrative Agent, a Lender Addition and Acknowledgement Agreement, in form and substance satisfactory to the Administrative Agent and acknowledged by the Administrative Agent and each Borrower;

(v) no existing Lender shall be obligated in any way to increase its Commitment; and

(vi) the Administrative Agent shall consent (such consent not to be unreasonably withheld) to such increase and the U.S. Borrower shall have complied with such other conditions in connection with such increase as may be required by the Administrative Agent.

(e) Upon the execution, delivery, acceptance and recording of the Lender Addition and Acknowledgement Agreement, from and after the effective date specified in a Lender Addition and Acknowledgement Agreement (the "Increase Effective Date"), such existing Lender shall have a Commitment as therein set forth or such other Lender shall become a Lender with a Commitment as therein set forth and all the rights and obligations of a Lender with such a Commitment hereunder.

(f) Upon its receipt of a Lender Addition and Acknowledgement Agreement together with any Note or Notes, if requested, subject to such addition and assumption and the written consent to such addition and assumption, the Administrative Agent shall, if such Lender Addition and Acknowledgement Agreement has been completed and the other conditions described in this Section 2.09 have been satisfied:

(i) accept such Lender Addition and Acknowledgement Agreement;

(ii) record the information contained therein in the Register; and

(iii) give prompt notice thereof to the Lenders and the U.S. Borrower and deliver to the Lenders a schedule reflecting the new Commitments.

(g) On or prior to Increase Effective Date, the Administrative Agent shall notify each Lender of the amount required to be paid by or to such Lender so that the Loans held by the Lenders on the Increase Effective Date (after giving effect to any new Loans made on such date) shall be held by each Lender pro rata in accordance with the Commitments of the Lenders as of the Increase Effective Date. Each Lender which is required to reduce the amount of Loans held by it (each such Lender, a “Decreasing Lender”) shall irrevocably assign, without recourse or warranty of any kind whatsoever (except that each Decreasing Lender warrants that it is the legal and beneficial owner of the Loans assigned by it under this Section 2.09(g) and that such Loans are held by such Decreasing Lender free and clear of adverse claims), to each Increasing Lender and new Lender, and each Increasing Lender and new Lender shall irrevocably acquire from the Decreasing Lenders, a portion of the principal amount of the Loans of each Decreasing Lender (collectively, the “Acquired Portion”) outstanding on the Increase Effective Date (before giving effect to any new Loans made on such date) in an amount such that the principal amount of the Revolving Loans held by each Increasing Lender, new Lender and Decreasing Lender as of the Increase Effective Date shall be held in accordance with each such Lender’s proportionate share of the Aggregate Commitments (if any) as of such date. Except as set forth herein, such assignment and acquisition shall be effective on the Increase Effective Date automatically and without any action required on the part of any party other than the payment by the Increasing Lenders and new Lenders to the Administrative Agent for the account of the Decreasing Lenders of an aggregate amount equal to the Acquired Portion, which amount shall be allocated and paid by the Administrative Agent at or before 12:00 p.m., Local Time, on the Increase Effective Date to the Decreasing Lenders *pro rata* based upon the respective reductions in the principal amount of the Loans held by such Lenders on the Increase Effective Date (before giving effect to any new Loans made on such date). The payment to be made in respect of the Acquired Portion shall be made by the Increasing Lenders and new Lenders to the Administrative Agent in Dollars in immediately available funds at or before 11:00 a.m., Local Time, on the Increase Effective Date, such payment to be made by the Increasing Lenders and new Lenders *pro rata* based upon the respective increases in the amount of the Revolving Loan Commitments held by such Lenders on the Increase Effective Date.

(h) To the extent any of the Revolving Loans acquired by the Increasing Lenders and new Lenders from the Decreasing Lenders pursuant to Section 2.09(g) above are Eurocurrency Loans and the Increase Effective Date is not the last day of an Interest Period for such Eurocurrency Loans, the Decreasing Lenders shall be entitled to compensation from the Borrower as provided in Section 2.16 (as if the Borrower had prepaid such Eurocurrency Loans in an amount equal to the Acquired Portion on the Increase Effective Date).

(i) The U.S. Borrower may, by written notice to the Administrative Agent (such notice being an “Extension Notice”) not earlier than 90 days, but not later than 30 days, prior to any or all of the first, second and/or third anniversaries of the Effective Date, request the Lenders to consider an extension of the then applicable Maturity Date of their Commitment for additional one-year periods. The Administrative Agent shall promptly transmit any Extension Notice to each Lender. Each Lender shall notify the Administrative Agent whether it wishes to extend the then applicable Maturity Date not later than 10 days prior to the applicable anniversary date of the Effective Date, and any such notice given by a Lender to the Administrative Agent, once given, shall be irrevocable as to such Lender. Any Lender which does not expressly notify the Administrative Agent prior to the expiration of such ten-day period that it wishes to so extend the then applicable Maturity Date shall be deemed to have rejected the U.S. Borrower’s request for extension of such Maturity Date. Lenders consenting to extend the then applicable Maturity Date are hereinafter referred to as “Extending Lenders”, and Lenders declining to consent to extend such Maturity Date (or Lenders deemed to have so declined) are hereinafter referred to as “Non-Extending Lenders”. The Administrative Agent shall notify the U.S. Borrower in writing of each Lender’s decision whether to extend the then applicable Maturity Date. The Maturity Date of the Extending Lenders’ Commitments will be extended for an additional one-year period from the then existing Maturity Date, provided that more than 50% of the Aggregate Commitments are extended or otherwise committed to by the Extending Lenders. Upon the delivery of an Extension Notice and upon the extension of the Maturity Date pursuant to this Section, the Borrowers shall be deemed to have represented and warranted on and as of the date of such Extension Notice and the effective date of such extension, as the case may be, that no Default or Event of Default has occurred and is continuing. Notwithstanding anything contained in this Agreement to the contrary, no Lender shall have any obligation to extend the Maturity Date, and each Lender may in its sole and absolute discretion, unconditionally and without cause, decline to extend the Maturity Date. If the Maturity Date shall have been extended in accordance with this Section, all references herein to the “Maturity Date” (except with respect to any Non-Extending Lender) shall refer to the Maturity Date as so extended.

(j) If any Lender shall determine (or be deemed to have determined) not to extend the Maturity Date as requested by any Extension Notice given by the U.S. Borrower pursuant to this Section, the Commitment of such Non-Extending Lender shall terminate on the Maturity Date without giving any effect to such proposed extension, and the U.S. Borrower shall on such date pay to the Administrative Agent, for the account of such Non-Extending Lender, the principal amount of, and accrued interest on, such Non-Extending Lender's Loans, together with any and all fees or other amounts owing to such Non-Extending Lender under this Agreement; provided that if the U.S. Borrower has replaced such Non-Extending Lender pursuant to paragraph (k) below then the provisions of such paragraph shall apply. The Aggregate Commitments shall be reduced by the amount of the Commitment of such Non-Extending Lender to the extent the Commitment of such Non-Extending Lender has not been transferred to one or more Extending Lenders or new Lenders pursuant to paragraph (k) below.

(k) A Non-Extending Lender shall be obligated, at the request of the U.S. Borrower and subject to (a) payment by the successor Lender described below to the Administrative Agent for the account of such Non-Extending Lender of the principal amount of, and accrued interest on, such Non-Extending Lender's Loans, and (b) payment by the U.S. Borrower to such Non-Extending Lender of any amounts payable to such Non-Extending Lender pursuant to Section 2.16 (as if the purchase of such Non-Extending Lender's Loans constituted a prepayment thereof) and any and all fees or other amounts owing to such Non-Extending Lender under this Agreement, to transfer without recourse, representation, warranty (other than a representation that such Lender has not created an adverse claim on its Loans) or expense to such Non-Extending Lender, at any time prior to the Maturity Date applicable to such Non-Extending Lender, all of such Non-Extending Lender's rights and obligations hereunder to another financial institution or group of financial institutions nominated by the U.S. Borrower and willing to participate as a successor Lender in the place of such Non-Extending Lender; provided that, if such transferee is not already a Lender, (1) such transferee satisfies all the requirements of this Agreement, and (2) the Administrative Agent and U.S. Borrower approve such transferee. Each such transferee successor Lender shall be deemed to be an Extending Lender hereunder in replacement of the transferor Non-Extending Lender and shall enjoy all rights and assume all obligations on the part of such Non-Extending Lender set forth in this Agreement. Each such transfer shall be effected pursuant to an Assignment and Assumption.

(l) If the Maturity Date shall have been extended in respect of Extending Lenders in accordance with this Section, any notice of borrowing pursuant to Section 2.03, 2.04 or 2.06 specifying a date of borrowing occurring after the Maturity Date applicable to a Non-Extending Lender or requesting an Interest Period extending beyond such date shall (i) have no effect in respect of such Non-Extending Lender and (ii) not specify a requested aggregate principal amount exceeding the aggregate Available Unused Commitments (calculated on the basis of the Commitments of the Extending Lenders).

SECTION 2.10. Repayment of Loans; Evidence of Debt. (a) The U.S. Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Competitive Loan on the last day of the Interest Period applicable to such Loan and (iii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month; provided, however, subject to the terms and conditions herein, new Swingline Loans may be made on either of those mandatory repayment dates. Each Subsidiary Borrower hereby unconditionally promises to pay to the Applicable Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan and Ancillary Loan to such Subsidiary Borrower on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each 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.

(c) Each Applicable Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Facility and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) any amount received by such Applicable Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) 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 an Applicable Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the applicable 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 Applicable Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) 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 2.11. Prepayment of Loans. (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section; provided that the U.S. Borrower shall not have the right to prepay any Competitive Loan without the prior consent of the Lender thereof.

(b) The applicable Borrower shall notify the Administrative 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 Revolving Borrowing, not later than 11:00 a.m., Local Time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., Local Time, one Business Day before the date of prepayment, (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, Local Time, on the date of prepayment, (iv) in the case of prepayment of a Eurocurrency Revolving Borrowing in a Foreign Currency, not later than 11:00 a.m., Local Time, four Business Days before the date of prepayment or (v) in the case of prepayment of an Ancillary Loan, as specified in the applicable Ancillary Facility Document. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving 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 2.13.

(c) In the event and on such occasion that (i) (A) the sum of (1) the Aggregate Revolving Credit Exposure, (2) the Aggregate Competitive Loan Exposure and (3) the Aggregate Ancillary Commitments exceeds (B) (x) 105% of the Aggregate Commitments solely as a result of currency fluctuations or (y) the Aggregate Commitments (other than as a result of currency fluctuations), the Borrowers shall prepay Aggregate Revolving Credit Exposure owing by such Borrowers, or reduce Aggregate Ancillary Commitments, in an aggregate amount equal to the amount by which (A) the sum of (1) the Aggregate Revolving Credit Exposure, (2) the Aggregate Competitive Loan Exposure and (3) the Aggregate Ancillary Commitments exceeds the Aggregate Commitments.

(d) The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on or prior to the date that is the earlier of (i) the 15th and last day of each month and (ii) the Maturity Date.

SECTION 2.12. Fees. (a) The U.S. Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue at the Applicable Rate on the daily amount of the Commitment of such Lender (whether used or unused) during the period from and including the Effective Date to but excluding the date on which such Commitment terminates; provided that, if such Lender continues to have any Revolving Credit Exposure or Ancillary Facility Exposure after its Commitment terminates, then such facility fee shall continue to accrue on the daily amount of such Lender's Revolving Credit Exposure and Ancillary Facility Exposure from and including the date on which its Commitment terminates to but excluding the date on which such Lender ceases to have any Revolving Credit Exposure or Ancillary Facility Exposure. Accrued facility fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any facility fees accruing after the date on which the Commitments terminate shall be payable on demand. All facility 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) The U.S. Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurocurrency 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 Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate or rates per annum separately agreed upon between the U.S. Borrower and the Issuing Bank on the average daily amount of the 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 of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank'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 the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, 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 Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank 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).

(c) The U.S. 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 U.S. Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest. (a) The Loans comprising each ABR Borrowing (including each applicable Swingline Loan) shall bear interest at the Alternate Base Rate.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest (i) in the case of a Eurocurrency Revolving Loan, at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate, or (ii) in the case of a Eurocurrency Competitive Loan, at the LIBO Rate for the Interest Period in effect for such Borrowing plus (or minus, as applicable) the Margin applicable to such Loan.

(c) Each Fixed Rate Loan shall bear interest at the Fixed Rate applicable to such Loan.

(d) Each Swingline Loan shall bear interest as determined in Section 2.05.

(e) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration 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 in the preceding paragraphs of this Section 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.

(f) 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, upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (e) 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 an ABR Revolving Loan prior to the end of the Availability Period), 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 Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(g) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest on Borrowings denominated in Sterling or in any other Foreign Currency for which it is required by applicable law or customary to compute interest on the basis of a year of 365 days (or 366 days in a leap year), and (ii) 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 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing denominated in any currency:

(a) the Applicable 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 Applicable 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 of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Applicable Agent shall give notice thereof to the Borrowers and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Applicable Agent notifies the Borrowers 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 such currency shall be ineffective and such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto (A) if such Borrowing is denominated in Dollars, an ABR Borrowing or (B) if such Borrowing is denominated in a Foreign Currency, as a Borrowing bearing interest at such rate as the Administrative Agent determines adequately reflects the costs to the Lenders of making or maintaining such Borrowing, and (ii) if any Borrowing Request requests a Eurocurrency Borrowing in such currency, such Borrowing shall be made as an ABR Borrowing (if such Borrowing is requested to be made in Dollars) or shall be made as a Borrowing bearing interest at such rate as the Administrative Agent determines adequately reflects the costs to the Lenders of making or maintaining such Borrowing.

SECTION 2.15. Increased Costs. (a) 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 the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or any Advance made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan or Fixed Rate Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank 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 the Issuing Bank hereunder (whether of principal, interest or otherwise), then the applicable Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the U.S. Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the U.S. Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the U.S. Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank'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 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing provisions of this Section, a Lender shall not be entitled to compensation pursuant to this Section in respect of any Competitive Loan if the Change in Law that would otherwise entitle it to such compensation shall have been publicly announced prior to submission of the Competitive Bid pursuant to which such Loan was made.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Loan or Fixed Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurocurrency Loan or Fixed Rate Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith), (d) the failure to borrow any Competitive Loan after accepting the Competitive Bid to make such Loan, or (e) the assignment of any Eurocurrency Loan or Fixed Rate Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the U.S. Borrower pursuant to Section 2.19, then, in any such event, the applicable Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market. 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 applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17. Taxes. (a) Any and all payments by or on account of any obligation of any Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the any Borrower 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 Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

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

(c) Each Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of such Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) 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 U.S. Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Borrower to a Governmental Authority, such Borrower 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) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the U.S. Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the U.S. Borrower as will permit such payments to be made without withholding or at a reduced rate.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by a Borrower or with respect to which a Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 2.17 with respect to the 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 such Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Borrower (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 any Borrower or any other Person.

SECTION 2.18. Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) Unless otherwise specified, each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16, 2.17 or 2.21, or otherwise) prior to 1:00 p.m., Local Time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Applicable 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 Applicable Agent to the applicable account designated to the U.S. Borrower by each Applicable Agent, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17, 2.21 and 9.05 shall be made directly to the persons entitled thereto. The Applicable Agent shall distribute any such payments received by it for the 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 of (i) principal or interest in respect of any Loan shall be made in the currency in which such Loan is denominated, (ii) reimbursement obligations shall, subject to Sections 2.06(e) and 2.06(k), be made in the currency in which the Letter of Credit in respect of which such reimbursement obligation exists is denominated or (iii) any other amount due hereunder or under another Loan Document (other than an Ancillary Facility Document) shall be made in Dollars. Any payment required to be made by an Applicable Agent hereunder shall be deemed to have been made by the time required if such Applicable Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Applicable Agent to make such payment.

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

(c) 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 Ancillary Loans, Revolving 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 Ancillary Loans, Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon 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 Ancillary Loans, Revolving 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 Ancillary Loans, Revolving 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 (c) shall not be construed to apply to any payment made by a Borrower 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 such Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (c) shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Applicable Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Applicable Agent for the account of the Lenders or the applicable Issuing Bank hereunder that such Borrower will not make such payment, the Applicable Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as applicable, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Applicable Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank 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 (i) the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (in the case of an amount denominated in Dollars) and (ii) the rate reasonably determined by the Applicable Agent to be the cost to it of funding such amount (in the case of an amount denominated in a Foreign Currency).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), then the Applicable Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Applicable Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, 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 2.15 or 2.17, 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. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if a Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender defaults in its obligation to fund Loans hereunder, then such 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 9.04), all its interests, rights and obligations under this Agreement (other than any outstanding Competitive Loans held by it) to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Bank), 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 (other than Competitive 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 such 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 2.15 or payments required to be made pursuant to Section 2.17, 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 such Borrower to require such assignment and delegation cease to apply.

SECTION 2.20. Subsidiary Borrowers. On or after the Effective Date, the U.S. Borrower may designate any Wholly-Owned Subsidiary as a Subsidiary Borrower by delivery to the Administrative Agent of a Subsidiary Borrower Agreement executed by such Subsidiary and the U.S. Borrower. Each such designation shall specify whether such Subsidiary shall be entitled (i) to obtain Revolving Loans and/or (ii) to request the creation of Ancillary Facilities under Section 2.22, and each such designation shall be subject to the consent of the Administrative Agent (which consent shall not unreasonably be withheld). Upon the execution by the U.S. Borrower and delivery to the Administrative Agent of a Subsidiary Borrower Termination with respect to any Subsidiary Borrower, such Subsidiary shall cease to be a Subsidiary Borrower and a party to this Agreement; provided that no Subsidiary Borrower Termination will become effective as to any Subsidiary Borrower (other than to terminate such Subsidiary Borrower's right to make further Borrowings under this Agreement) at a time when any principal of or interest on any Loan to such Subsidiary Borrower shall be outstanding hereunder or any Ancillary Facility under which Ancillary Loans may be made available to such Subsidiary Borrower has not been previously terminated. Promptly following receipt of any Subsidiary Borrower Agreement or Subsidiary Borrower Termination, the Administrative Agent shall send a copy thereof to each Lender.

SECTION 2.21. Additional Reserve Costs. (a) For so long as any Lender is required to make special deposits with the Bank of England or comply with reserve assets, liquidity, cash margin or other requirements of the Bank of England, to maintain reserve asset ratios or to pay fees, in each case in respect of such Lender's Eurocurrency Loans or Swingline Foreign Currency Loans, such Lender shall be entitled to require the applicable Borrower to pay, contemporaneously with each payment of interest on each of such Loans, additional interest on such Loan at a rate per annum equal to the Mandatory Costs Rate calculated in accordance with the formula and in the manner set forth in Exhibit F hereto.

(b) For so long as any Lender is required to comply with reserve assets, liquidity, cash margin or other requirements of any monetary or other authority (including any such requirement imposed by the European Central Bank or the European System of Central Banks, but excluding requirements reflected in the Statutory Reserves or the Mandatory Costs Rate) in respect of any of such Lender's Eurocurrency Loans and Swingline Foreign Currency Loans, such Lender shall be entitled to require the applicable Borrower to pay, contemporaneously with each payment of interest on each of such Lender's Loans subject to such requirements, additional interest on such Loan at a rate per annum specified by such Lender to be the cost to such Lender of complying with such requirements in relation to such Loan.

(c) Any additional interest owed pursuant to paragraph (a) or (b) above shall be determined by the applicable Lender, which determination shall be conclusive absent manifest error, and notified to the applicable Borrower (with a copy to the Administrative Agent) at least five Business Days before each date on which interest is payable for the applicable Loan, and such additional interest so notified to the applicable Borrower by such Lender shall be payable to the Administrative Agent for the account of such Lender on each date on which interest is payable for such Loan.

SECTION 2.22. Ancillary Facilities. (a) General. If a Subsidiary Borrower and a Lender or Lenders agree, subject to (i) compliance with the requirements set forth in this Section 2.22 and (ii) such Subsidiary Borrower having complied with Sections 2.20 and 4.03, such Lenders shall be permitted to provide an Ancillary Facility to such Subsidiary Borrower. The Aggregate Ancillary Commitments shall not at any time exceed \$20,000,000.

(b) Creation of Ancillary Facilities. To request the creation of an Ancillary Facility, a Subsidiary Borrower shall deliver to the Administrative Agent not later than 10 Business Days (or such shorter period agreed to by the Administrative Agent) prior to the first date on which such Ancillary Facility is proposed to be made available:

(i) notice in writing specifying:

(A) the Subsidiary Borrower to which extensions of credit will be made available thereunder;

(B) the first date on which such Ancillary Facility shall be made available and the expiration date of such Ancillary Facility (which shall be no later than the Maturity Date);

(C) the type of Ancillary Facility being provided;

(D) the identity of the Ancillary Lender(s) (which shall be acceptable to the Administrative Agent); and

(E) the amount of the Ancillary Commitment with respect to such Ancillary Facility (which shall be expressed in Dollars and shall not (x) exceed the Available Unused Commitment of each such Ancillary Lender on the first date on which such Ancillary Facility shall be made available or (y) when combined with all Ancillary Commitments of the Ancillary Lenders, exceed \$20,000,000) and, if applicable, the Foreign Currencies in which such Ancillary Facilities shall be made available.

(ii) a copy of the Ancillary Facility Document with respect to such Ancillary Facility (which shall be reasonably acceptable to the Administrative Agent), together with a certificate of a Financial Officer certifying that the terms of such Ancillary Facility satisfy the requirements set forth in clauses (i)(B) and (i)(E) above and in paragraph (d) of this Section; and

(iii) such other information that the Administrative Agent may reasonably request in connection with such Ancillary Facility.

The Administrative Agent shall give notice to each Lender of such matters.

(c) Amendment of Ancillary Facilities. To request an amendment of an Ancillary Facility, the applicable Subsidiary Borrower shall deliver to the Administrative Agent, not later than five Business Days (or such shorter period agreed to by the Administrative Agent) prior to the effective date of such amendment, (i) a notice in writing (A) identifying the Ancillary Facility to be amended, (B) the effective date of such Amendment and (C) the documentation relating to such proposed amendment (which shall be reasonably satisfactory to the Administrative Agent) and (ii) a certificate of a Financial Officer certifying that the terms of such Ancillary Facility, after giving effect to such proposed amendment, satisfy the requirements set forth in clauses (i)(B) and (i)(E) of paragraph (b) of this Section and in paragraph (d) of this Section. The Administrative Agent shall give notice to each Lender of such matters.

(d) Terms of Ancillary Facility. Each Ancillary Facility shall contain terms and conditions acceptable to the applicable Ancillary Lenders and the applicable Subsidiary Borrower thereunder; provided that such terms shall at all times: (i) be based upon normal commercial terms at the time of the creation of such Ancillary Facility pursuant to paragraph (b) of this Section; (ii) permit extensions of credit thereunder to be made only to such Subsidiary Borrower; (iii) provide that the Ancillary Commitment of the applicable Ancillary Lenders under such Ancillary Facility shall not exceed such Ancillary Lender's Available Unused Commitment and that, in the event and on such occasion that such Ancillary Commitment exceeds such Available Unused Commitment, such Ancillary Commitment shall be automatically reduced by the amount of such excess; (iv) provide that the Ancillary Commitment under such Ancillary Facility be canceled, and that all extensions of credit under such Ancillary Facility be repaid, not later than the Maturity Date; (v) provide that the conditions set forth in Article IV shall be conditions to each extension of credit under such Ancillary Facility; and (vi) not provide for the payment of commitment fees in respect of the Ancillary Commitment for such Ancillary Facility.

(e) Termination and Demand for Repayment.

(i) Any Ancillary Facility shall be permitted to be terminated by the applicable Ancillary Lenders in accordance with the terms of such Ancillary Facility and, upon the effective date of such termination (an "Ancillary Facility Termination Date"), all Ancillary Loans under such Ancillary Facility shall be repaid in full.

(ii) Notwithstanding anything to the contrary set forth in the Ancillary Facility Document relating to the Ancillary Facility to be terminated, the Ancillary Lenders seeking to terminate an Ancillary Facility shall deliver to the Applicable Agent, with a copy to the applicable Subsidiary Borrower, a written notice of termination (a "Notice of Termination") not later than five Business Days prior to the Ancillary Facility Termination Date specified in such Notice of Termination for such Ancillary Facility. Each such Notice of Termination shall specify:

- (A) the names of the applicable Subsidiary Borrower and Ancillary Lenders;
- (B) the aggregate amount of Ancillary Loans under the applicable Ancillary Facility (which shall not exceed the Ancillary Commitment in respect of such Ancillary Facility); and
- (C) the applicable Ancillary Facility Termination Date.

(f) Cancellation by Subsidiary Borrower. The Subsidiary Borrower to which an Ancillary Facility has been made available shall be permitted at any time to request the cancellation of all or a portion of such Ancillary Facility by delivery of a notice in writing to the Administrative Agent and the applicable Ancillary Lenders, specifying the Ancillary Facility to be canceled and the proposed cancellation date. Such notice shall be delivered not less than five Business Days prior to the proposed cancellation date. Such cancellation shall be effective as of the proposed cancellation date unless the Ancillary Facility Exposure under such Ancillary Facility has not been reduced to zero as of such date.

(g) Additional Information. Each Ancillary Lender shall report in writing to the Administrative Agent (i) on the last Business Day of each month and of each fiscal quarter of the U.S. Borrower the Ancillary Facility Exposure for each day during the preceding month or fiscal quarter, as the case may be, for each Ancillary Facility under which it is an Ancillary Lender and (ii) on any other Business Day requested by the Administrative Agent, the Ancillary Facility Exposure for such day for each Ancillary Facility under which it is an Ancillary Lender. In addition, each Subsidiary Borrower to which an Ancillary Facility has been made available and each Ancillary Lender shall, upon request by the Administrative Agent, promptly supply the Administrative Agent with any information relating to the operation of such Ancillary Facility (including the Ancillary Facility Exposure) as the Administrative Agent may reasonably request.



(h) Conflict with Loan Documents. In the event of any conflict between the terms of an Ancillary Facility Document and any other Loan Document (other than an Ancillary Facility Document), the terms of such other Loan Document shall govern.

(i) Termination and Expiration of Ancillary Commitments. On each date on which an Ancillary Facility expires, is terminated or is canceled (in whole or in part), the Available Unused Commitment of the Ancillary Lender under such Ancillary Facility shall be increased by an amount equal to the portion of such Ancillary Facility that has expired or been canceled, unless the Commitments shall have been previously terminated.

SECTION 2.23. U.S. Borrower Guaranty. The U.S. Borrower shall absolutely and unconditionally guarantee all Obligations of each Subsidiary Borrower pursuant to the U.S. Borrower Guaranty. The U.S. Borrower agrees to execute and deliver such agreements and documents requested by the Administrative Agent in connection with the U.S. Borrower Guaranty and such guarantee obligation.

### ARTICLE III

#### Representations and Warranties

The Borrowers represent and warrant to the Lenders and the Administrative Agent that:

SECTION 3.01. Organization; Powers. Each of the U.S. Borrower and its Subsidiaries is duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) 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 result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Borrower's corporate powers and have been duly authorized by all necessary corporate, stockholder and other action. Each Loan Document has been duly executed and delivered by each Borrower party thereto and constitutes a legal, valid and binding obligation of each Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. 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 such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the U.S. 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 U.S. Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the U.S. Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the U.S. Borrower or any of its Subsidiaries.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The U.S. Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended June 2, 2007, reported on by Ernst & Young LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended June 2, 2007, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the U.S. Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since June 2, 2007, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the U.S. Borrower and its Subsidiaries, taken as a whole.

SECTION 3.05. Properties. (a) Each of the U.S. Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the U.S. 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 U.S. Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the U.S. Borrower, threatened against or affecting the U.S. 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 result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the U.S. Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) 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 3.07. Compliance with Requirements of Law and Contractual Obligations. Each of the U.S. Borrower and its Subsidiaries is in compliance with all Requirements of Law and Contractual Obligations applicable to it or its property and all indentures, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. Neither the U.S. Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each of the U.S. 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 the U.S. Borrower or such Subsidiary, as applicable, 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 result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11. Disclosure. The U.S. 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. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other information furnished by or on behalf of the U.S. Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (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 U.S. Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12. Use of Advances. Each Borrower will use the proceeds of the Advances for refinancing existing indebtedness, working capital, its general corporate purposes and acquisitions. No Borrower nor any of their respective Subsidiaries extends or maintains, in the ordinary course of business, credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock (within the meaning of Regulations T, U or X of the Board), and no part of the proceeds of any Advance will be used for the purpose, whether immediate, incidental, or ultimate, of buying or carrying any such margin stock or maintaining or extending credit to others for such purpose or in violation of any applicable law or regulation (including without limitation Regulations T, U or X of the Board). After applying the proceeds of each Advance, such margin stock will not constitute more than 25% of the value of the assets (either of any Borrower alone or of the Borrowers and their respective Subsidiaries on a consolidated basis) that are subject to any provisions of this Agreement that may cause the Advances to be deemed secured, directly or indirectly, by such margin stock.

SECTION 3.13. Labor Matters. There are no labor controversies pending or, to the best of the U.S. Borrower's knowledge, threatened against the U.S. Borrower or any Subsidiary, which could have a Material Adverse Effect.

SECTION 3.14. Foreign Assets Control, Etc.

(a) No Borrower (i) is, or is controlled by, a Designated Person; (ii) to its knowledge, has received funds or other property from a Designated Person; and (iii) is in breach, or to its knowledge, the subject, of any action or investigation under any Anti-Terrorism Law. To its knowledge, (i) no Borrower engages nor will it knowingly engage in any dealings or transactions with any Designated Person, and (ii) no Borrower is, nor will it knowingly be otherwise associated, with any Designated Person. Each Borrower and each Subsidiary is in compliance, in all material respects, with the Patriot Act. Each Borrower has taken reasonable measures to ensure compliance with the Anti-Terrorism Laws.

(b) No portion of the proceeds of any Loan made hereunder has been or will be used, directly or indirectly for, and no fee, commission, rebate or other value has been or will be paid to, or for the benefit of, any governmental official, political party, official of a political party or any other Person acting in an official capacity in violation of any applicable law, including the U.S. Foreign Corrupt Practices Act of 1977, as amended.

## ARTICLE IV

### Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received 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 of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received the favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of counsel for the U.S. Borrower and the Subsidiary Borrowers, if any, substantially in the form of Exhibit G-1, and covering such other matters relating to the Borrowers, this Agreement or the Transactions as the Required Lenders shall reasonably request. The Borrowers hereby request such counsel to deliver such opinion.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrowers, the authorization of the Transactions and any other legal matters relating to the Borrowers, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel.

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the U.S. Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(e) The Administrative Agent shall have received evidence that the Existing Credit Agreement has been terminated and all indebtedness under obligations outstanding thereunder have been paid in full.

(f) The Administrative Agent shall have received (i) satisfactory audited consolidated financial statements of the U.S. Borrower and its Subsidiaries for the two most recent fiscal years ended prior to the Effective Date, (ii) satisfactory unaudited interim consolidated financial statements of the U.S. Borrower and its Subsidiaries for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph, and (iii) five year projections, each satisfactory to the Administrative Agent.

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the U.S. Borrower hereunder.

The Administrative Agent shall notify the Borrowers and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank 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 Borrowers set forth in the Loan Documents 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, provided that the representations and warranties in Section 3.04(b) shall be excluded from the representations and warranties made under this Section 4.02(a).

(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 and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

SECTION 4.03. Credit Events Relating to Subsidiary Borrowers. The obligations of (x) the Lenders to make Loans to any Subsidiary that becomes a Subsidiary Borrower after the Effective Date and (y) any Ancillary Lender to make available an Ancillary Facility to such Subsidiary Borrower, in each case to the extent designated in accordance with Section 2.20, are subject to the satisfaction of the following conditions (which are in addition to the conditions contained in Sections 4.01 and 4.02):

(a) the Administrative Agent (or its counsel) shall have received a Subsidiary Borrower Agreement with respect to such Subsidiary Borrower duly executed by all parties thereto; and

(b) the Administrative Agent shall have received such documents (including a legal opinion substantially in the form of Exhibit G-2 if such Subsidiary Borrower is a Domestic Subsidiary, or a legal opinion in form and substance acceptable to the Administrative Agent if such Subsidiary Borrower is a Foreign Subsidiary) and certificates as the Administrative Agent or its counsel may reasonably request relating to the formation, existence and good standing of such Subsidiary Borrower, the authorization of Borrowings as they relate to such Subsidiary Borrower and any other legal matters relating to such Subsidiary Borrower or its Subsidiary Borrower Agreement, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

## ARTICLE V

### 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 U.S. Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements; Ratings Change and Other Information. The U.S. Borrower will furnish to the Administrative Agent and each Lender:

(a) A copy of the U.S. Borrower's audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young 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 U.S. Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, as soon as available, but in any event within the earlier of (i) 90 days after the end of each fiscal year of the U.S. Borrower or (ii) five (5) Business Days after the filing of such financial statements with the SEC;

(b) A copy of the U.S. Borrower's consolidated balance sheet and related statements of operations and cash flows as of the end of and for such fiscal quarter 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 (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the U.S. 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, as soon as available, but in any event within the earlier of (i) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the U.S. Borrower or (ii) five (5) Business Days after the filing of such financial statements with the SEC;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the U.S. Borrower, in a form acceptable to the Administrative Agent, (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 reasonably detailed calculations demonstrating compliance with Sections 6.10 and 6.11 and (iii) 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 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate; and

(d) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the U.S. Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

All financial statements referred to in Section 5.01(a) and (b) shall be deemed to have been delivered upon the filing of such financial statements by the Borrower through the SEC's EDGAR system or publication by the Borrower of such financial statements on its website and the receipt by the Administrative Agent of electronic notice from the Borrower with a link to such financial statements.

SECTION 5.02. Notices of Material Events. The U.S. 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 U.S. Borrower or any Affiliate thereof 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 U.S. Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000; and

(d) 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 U.S. 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 5.03. Existence; Conduct of Business. The U.S. 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 material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. The U.S. Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in 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 U.S. 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 result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. The U.S. Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, 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, which may include self-insurance, if determined by the Borrower to be reasonably prudent.

SECTION 5.06. Books and Records; Inspection Rights. The U.S. 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 U.S. 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 5.07. Compliance. The U.S. Borrower will, and will cause each of its Subsidiaries to, comply with all Contractual Obligations and Requirements of Law applicable to 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.

SECTION 5.08. Use of Proceeds and Letters of Credit. The proceeds of the Loans and Letters of Credit will be used only to (i) refinance certain existing indebtedness of the U.S. Borrower, (ii) provide for working capital and general corporate purposes of the U.S. Borrower and its Subsidiaries in the ordinary course of business, and (iii) provide for Permitted Acquisitions (as defined below). No part of the proceeds of any Loan nor any Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 5.09. Additional Covenants. If at any time the U.S. Borrower or any of its Subsidiaries shall enter into or be a party to any instrument or agreement, including all such instruments or agreements in existence as of the date hereof and all such instruments or agreements entered into after the date hereof, relating to or amending any provisions applicable to any of its Indebtedness which in the aggregate, together with any related Indebtedness, exceeds \$25,000,000, which includes covenants or defaults not substantially provided for in this Agreement or more favorable to the lender or lenders thereunder than those provided for in this Agreement, then the U.S. Borrower shall promptly so advise the Administrative Agent and the Lenders. Thereupon, if the Administrative Agent or the Required Lenders shall request, upon notice to the U.S. Borrower, the Administrative Agent and the Lenders shall enter into an amendment to this Agreement or an additional agreement (as the Administrative Agent may request), providing for substantially the same covenants and defaults as those provided for in such instrument or agreement to the extent required and as may be selected by the Administrative Agent.

## ARTICLE VI

### 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 U.S. Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Subsidiary Indebtedness. The U.S. Borrower will not permit any Subsidiary 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 Schedule 6.01 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;
- (c) Indebtedness owing to the U.S. Borrower;
- (d) Guarantees of Indebtedness of the U.S. Borrower, provided that such Guarantees are also delivered with respect to the Obligations and all agreements, opinions and other documents in connection therewith, as requested by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, are delivered to the Administrative Agent; and
- (e) Indebtedness not otherwise permitted by this Section 6.01 and Liens permitted by Section 6.02(f) not in excess of fifteen percent (15%) of Consolidated Total Assets in the aggregate at any time outstanding.

SECTION 6.02. Liens. The U.S. Borrower will not, and will not permit any Subsidiary 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) Permitted Encumbrances;



- (b) Liens on any property or asset of the U.S. Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the U.S. Borrower or any Subsidiary and (ii) 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;
- (c) Liens on any asset existing at the time of the purchase or other acquisition thereof by the U.S. Borrower or any Subsidiary, provided that (i) any such Lien was not created in contemplation of such purchase or other acquisition and does not extend to any asset other than the asset so purchased or otherwise acquired and proceeds thereof, (ii) such purchase or other acquisition thereof and the Indebtedness secured by any such Lien is otherwise permitted hereunder and (iii) the outstanding principal amount of the Indebtedness secured thereby is not increased at any time;
- (d) Liens on any asset of the U.S. Borrower or any Subsidiary securing Indebtedness permitted hereunder which is incurred to finance the acquisition of such asset, provided that (i) each such Lien shall be created substantially simultaneously with the acquisition of the related asset; (ii) each such Lien does not at any time encumber any asset other than the related asset financed by such Indebtedness; (iii) the principal amount of Indebtedness secured by each such Lien is not increased; and (iv) the principal amount of Indebtedness secured by each such Lien shall at no time exceed 100% of the original purchase price of such related asset at the time acquired;
- (e) Liens on assets of Subsidiaries solely in favor of the U.S. Borrower as secured party and securing Indebtedness owing by a Subsidiary to the U.S. Borrower; and
- (f) Liens not otherwise permitted by this Section 6.02 securing Indebtedness and Indebtedness permitted by Section 6.01(e) not in excess of fifteen percent (15%) of Consolidated Total Assets in the aggregate at any time outstanding.
- SECTION 6.03. Fundamental Changes. The U.S. Borrower will not, and will not permit any Subsidiary to, merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it, acquire any Person as a new Subsidiary, sell all or substantially all of its assets or acquire all or substantially all of the assets of any other Person, except for the following (each, a “Permitted Acquisition”):
- (a) the U.S. Borrower and its Wholly-Owned Subsidiaries may merge with each other and the U.S. Borrower’s Wholly-Owned Subsidiaries may sell all or substantially all of their assets to each other, provided that in any such merger involving the U.S. Borrower, the U.S. Borrower is the surviving Person; and
- (b) the U.S. Borrower or any of its Subsidiaries may acquire (by merger or otherwise) any Person as a new Subsidiary or acquire all or substantially all the assets of any other Person (each, a “Proposed Target”); provided that:
- (i) no Default or Event of Default exists or will result after giving effect to any such acquisition;
- (ii) the Proposed Target is engaged in a business or activity reasonably related to the business of the Borrower and its Subsidiaries;

(iii) after giving effect to such acquisition, the Proposed Target shall be owned directly by the U.S. Borrower or shall become a Wholly-Owned Subsidiary, directly or indirectly, of the U.S. Borrower;

(iv) on a pro forma basis, as if the Proposed Target had been a Subsidiary of the U.S. Borrower, the U.S. Borrower would have been in compliance with the terms and conditions of this Agreement, which pro forma compliance for a Permitted Acquisition with a total purchase price (including assumed debt) exceeding \$20,000,000 shall be evidenced by a certificate of a Financial Officer of the U.S. Borrower setting forth reasonably detailed calculations demonstrating pro forma compliance with Sections 6.10 and 6.11; and

(v) the board of directors or other governing body of the Proposed Target shall have approved the acquisition and such acquisition shall be completed as a result of an arm's length negotiation (*i.e.*, on a non-hostile basis).

SECTION 6.04. Investments, Loans, Advances and Acquisitions. The U.S. Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Wholly-Owned Subsidiary prior to such merger) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other Person, or make any Acquisition, except:

(a) Permitted Investments;

(b) Investments, loans or advances made by the U.S. Borrower to any Wholly-Owned Subsidiary and made by any Subsidiary to the U.S. Borrower or any Wholly-Owned Subsidiary;

(c) Permitted Acquisitions; and

(d) Investments, loans or advances not otherwise permitted by this Section 6.04 not in excess of ten percent (10%) of Consolidated Total Assets in the aggregate.

SECTION 6.05. Swap Agreements. The U.S. Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the U.S. Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the U.S. Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the U.S. Borrower or any Subsidiary.

SECTION 6.06. Restricted Payments. The U.S. Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) the U.S. Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock, (b) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, and (c) the U.S. Borrower may make Restricted Payments with respect to its Equity Interests so long as no Default exists or would be caused thereby.

SECTION 6.07. Transactions with Affiliates. The U.S. Borrower will not, and will not 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, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the U.S. Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the U.S. Borrower and its Wholly-Owned Subsidiaries not involving any other Affiliate and (c) any Restricted Payment permitted by Section 6.06.

SECTION 6.08. Restrictive Agreements. The U.S. Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the U.S. Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its Equity Interests or to make or repay loans or advances to the U.S. Borrower or any other Subsidiary or to Guarantee Indebtedness of the U.S. Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) clause (a) of the foregoing shall not apply to restrictions and conditions contained in any Indebtedness in excess of \$25,000,000 in aggregate amount and permitted hereunder, (iv) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (v) clause (a) of 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, and (vi) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

SECTION 6.09. Disposition of Assets; Etc. The U.S. Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, license, transfer, assign or otherwise dispose of any of its business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, whether in one or a series of transactions, other than inventory sold in the ordinary course of business upon customary credit terms, sales of scrap or obsolete material or equipment and sales of fixed assets the proceeds of which are used to purchase other property of a similar nature of at least equivalent value within 180 days of such sale, provided, however, that this Section 6.09 shall not prohibit any such sale, lease, license, transfer, assignment or other disposition if (i) the aggregate book value (disregarding any write-downs of such book value other than ordinary depreciation and amortization) of all of the business, assets, rights, revenues and property disposed of shall be less than, in any fiscal year of the U.S. Borrower, fifteen percent (15%) of the aggregate book value of the Consolidated Total Assets as of the end of the immediately preceding fiscal year, and (ii) immediately after such transaction, no Default shall exist or shall have occurred and be continuing.

SECTION 6.10. Change in Business. The U.S. Borrower shall not and shall not permit its Subsidiaries to engage, either directly or indirectly through Affiliates, in any business substantially different from the business of the U.S. Borrower or the applicable Subsidiary as of the Effective Date; provided, however, that the U.S. Borrower and its Subsidiaries may engage in any business reasonably related, ancillary or complimentary to the business in which they are engaged as of the Effective Date.

SECTION 6.11. Leverage Ratio. The U.S. Borrower will not permit the Leverage Ratio to exceed 3.25 to 1.0 as of the end of any fiscal quarter.

SECTION 6.12. Interest Coverage Ratio. The U.S. Borrower will not permit the Interest Coverage Ratio to be less than 4.0 to 1.0 as of the end of any fiscal quarter.

Events of Default

SECTION 7.01. Events of Default. If any of the following events ("Events of Default") shall occur:

- (a) any 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) any 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, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of the U.S. Borrower or any Subsidiary in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect in any material respect when made or deemed made;
- (d) any Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to any Borrower's existence) or 5.08 or in Article VI (other than Section 6.07);
- (e) any Borrower 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 30 days after notice thereof from the Administrative Agent to the U.S. Borrower (which notice will be given at the request of any Lender);
- (f) the U.S. Borrower or any Subsidiary 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 (after giving effect to any applicable grace periods); (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 permitted by this Agreement 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 U.S. Borrower or any Subsidiary 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, conservator or similar official for the U.S. Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the U.S. Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, 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, conservator or similar official for the U.S. Borrower or any Subsidiary 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 U.S. Borrower or any Subsidiary 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 Dollar Equivalent amount in excess of \$5,000,000 shall be rendered against the U.S. Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 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 U.S. Borrower or any Subsidiary to enforce any such judgment;

(l) (i) 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 result in a Material Adverse Effect; (ii) the U.S. Borrower or any Subsidiary shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan that, in the opinion of the Required Lenders, when taken together with all other such events or conditions, if any, could reasonably be expected to result in liability of the U.S. Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000; or (iii) there exists any fact or circumstance that could reasonably be expected to result in the imposition of a Lien or security interest under Section 412(n) of the Code (or, for years in which the PPA applies to any Plan, Section 430(k) of the Code) or under ERISA;

(m) Any Loan Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Loan Document, or any Borrower shall deny that it has any further liability under any Loan Document to which it is a party, or shall give notice to such effect; or

(n) a Change in Control shall occur;

then, and in every such event (other than an event with respect to any Borrower 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 U.S. 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 Borrowers 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 the Borrowers; and in case of any event with respect to any Borrower 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 Borrowers 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 the Borrowers.

The Agents

SECTION 8.01. Appointment. (a) In order to expedite the transactions contemplated by this Agreement, (i) Wells Fargo is hereby appointed to act as Administrative Agent and an Issuing Bank, (ii) Wachovia is hereby appointed to act as Syndication Agent and (iii) Bank of America, N.A. and JPMorgan Chase Bank, N.A., are hereby appointed to act as Documentation Agents. Each of the Lenders, each assignee of any such Lender and each Ancillary Lender hereby irrevocably authorizes the Administrative Agent to take such actions on behalf of such Lender, assignee or Ancillary Lender and to exercise such powers as are specifically delegated to the Administrative Agent by the terms and provisions hereof and of the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The Administrative Agent is hereby expressly authorized by the Lenders, each Ancillary Lender and each Issuing Bank, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and such Issuing Bank all payments of principal of and interest on the Loans, all payments in respect of LC Disbursements and all other amounts due to the Lenders and such Issuing Bank hereunder, and promptly to distribute to each Lender or such Issuing Bank its proper share of each payment so received; (b) to give notice on behalf of each of the Lenders and each of the Ancillary Lenders of any Event of Default specified in this Agreement of which the Administrative Agent has actual knowledge acquired in connection with the performance of its duties as Administrative Agent hereunder; and (c) to distribute to each Lender and each Ancillary Lender copies of all notices, financial statements and other materials delivered by any Borrower pursuant to this Agreement as received by the Administrative Agent.

(b) Neither the Agents nor any of their respective directors, officers, employees or agents shall be liable as such for any action taken or omitted by any of them except for its or his own gross negligence or willful misconduct, or be responsible for any statement, warranty or representation herein or the contents of any document delivered in connection herewith, or be required to ascertain or to make any inquiry concerning the performance or observance by the Borrowers or any other Borrower of any of the terms, conditions, covenants or agreements contained in any Loan Document. The Agents shall not be responsible to the Lenders or any Ancillary Lender for the due execution, genuineness, validity, enforceability or effectiveness of this Agreement or any other Loan Documents or other instruments or agreements. The Agents shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders and all the Ancillary Lenders. Each Agent shall, in the absence of knowledge to the contrary, be entitled to rely on any instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons. Neither the Agents nor any of their respective directors, officers, employees or agents shall have any responsibility to any Borrower or any other Borrower or any other party hereto on account of the failure, delay in performance or breach by, or as a result of information provided by, any Lender, Ancillary Lender or Issuing Bank of any of its obligations hereunder or to any Lender, Ancillary Lender or Issuing Bank on account of the failure of or delay in performance or breach by any other Lender, Ancillary Lender or Issuing Bank or any Borrower or any other Borrower of any of their respective obligations hereunder or under any other Loan Document or in connection herewith or therewith. Each Agent may execute any and all duties hereunder by or through agents or employees and shall be entitled to rely upon the advice of legal counsel selected by it with respect to all matters arising hereunder and shall not be liable for any action taken or suffered in good faith by it in accordance with the advice of such counsel.

SECTION 8.02. Nature of Duties. The Lenders and the Ancillary Lenders hereby acknowledge that no Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders. The Lenders and the Ancillary Lenders further acknowledge and agree that so long as an Agent shall make any determination to be made by it hereunder or under any other Loan Document in good faith, such Agent shall have no liability in respect of such determination to any person. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Loan Documents or otherwise exist against any Agent. Each Lender recognizes and agrees that any Lender designated as a Documentation Agent, co-agent or other similar title shall have no duties or responsibilities under this Agreement or any other Loan Document, or any fiduciary relationship with any Lender, and shall have no functions, responsibilities, duties, obligations or liabilities for acting as such hereunder.

SECTION 8.03. Resignation by the Agents. Subject to the appointment and acceptance of a successor Agent as provided below, any Agent may resign at any time by notifying the Lenders and the U.S. Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor with the consent of the U.S. Borrower (not to be unreasonably withheld or delayed). If no successor shall have been so appointed by the Required Lenders and approved by the U.S. Borrower and shall have accepted such appointment within 45 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders and the Ancillary Lenders with the consent of the U.S. Borrower (not to be unreasonably withheld or delayed), appoint a successor Agent which shall be a bank with an office in New York, New York and an office in London, England (or a bank having an Affiliate with such an office) having a combined capital and surplus having a Dollar Equivalent that is not less than \$500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Agent hereunder by a successor bank, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations hereunder. After the Agent's resignation hereunder, the provisions of this Article and Section 9.05 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

SECTION 8.04. Each Agent in its Individual Capacity. With respect to the Loans made by it hereunder and Ancillary Facilities made available by it, each Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Lender and may exercise the same as though it were not an Agent, and the Agents and their Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Borrower or any of the Subsidiaries or other Affiliates thereof as if it were not an Agent.

SECTION 8.05. Indemnification. Each Lender and each Ancillary Lender agrees (a) to reimburse the Agents, on demand, in the amount of its pro rata share (based on its Commitments hereunder (or if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of its applicable outstanding Loans or participations in LC Disbursements, as applicable)) of any reasonable expenses incurred for the benefit of the Lenders and Ancillary Lenders by the Agents, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders and Ancillary Lenders, which shall not have been reimbursed by the U.S. Borrower and (b) to indemnify and hold harmless each Agent and any of its directors, officers, employees or agents, on demand, in the amount of such pro rata share, from and against any and all liabilities, Taxes, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against it in its capacity as Agent or any of them in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by it or any of them under this Agreement or any other Loan Document, to the extent the same shall not have been reimbursed by the U.S. Borrower, provided that no Lender shall be liable to an Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or willful misconduct of such Agent or any of its directors, officers, employees or agents.

SECTION 8.06. Lack of Reliance on Agents. Each Lender and each Ancillary Lender acknowledges that it has, independently and without reliance upon the Agents, any Lender or any Ancillary 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 and each Ancillary Lender also acknowledges that it will, independently and without reliance upon the Agents, any other Lender or any Ancillary 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 or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

SECTION 8.07. Designation of Affiliates for Foreign Currency Loans. The Administrative Agent shall be permitted from time to time to designate one of its Affiliates to perform the duties to be performed by the Administrative Agent hereunder with respect to Loans and Borrowings denominated in Foreign Currencies. The provisions of this Article VIII shall apply to any such Affiliate mutatis mutandis.

## ARTICLE IX

### Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to a Borrower, to it at 855 East Main Street, P.O. Box 302, Zeeland, Michigan, 49464-0302, Attention of Joseph M. Nowicki, treasurer and vice president, investor relations (Telecopy No. 616-654-5044; e-mail: joe\_nowicki@hermanmiller.com);

(ii) if to the Administrative Agent, to Wells Fargo Bank, National Association, MAC C7300-035, 3<sup>rd</sup> Floor, 1700 Lincoln Street, Denver, CO 80203-4500, Attention: Kevin Rapp (Telecopy No. (303) 863-5531);

(iii) if to the Issuing Bank other than the Administrative Agent, to it at the address or telecopy number set forth separately in writing to the Administrative Agent; and

(iv) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) 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 the U.S. Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Additionally, if the Administrative Agent agrees to accept a notice pursuant to Article II, including any notice of borrowing, notice of interest period selection or notice of Revolving Loan conversion, made by e-mail transmission, such e-mail transmission shall be binding on the applicable Borrower whether or not written confirmation is sent by the applicable Borrower or requested by the Administrative Agent, and the Administrative Agent may act prior to the receipt of any requested written confirmation, without any liability whatsoever, based upon e-mail notice believed by the Administrative Agent in good faith to be from the applicable Borrower or its agents. The Administrative Agent's records of the terms of any e-mail notice pursuant to Article II shall be conclusive on the applicable Borrower in the absence of gross negligence or willful misconduct on the part of the Administrative Agent in connection therewith.



(c) The Borrowers agree that the Administrative Agent may make any material delivered by a Borrower to the Administrative Agent, as well as any amendments, waivers, consents, and other written information, documents, instruments and other materials relating to a Borrower or any of its Subsidiaries, or any other materials or matters relating to this Agreement, the other Loan Documents or any of the transactions contemplated hereby or thereby (collectively, the “Communications”) available to the Lenders by posting such notices on an electronic delivery system (which may be provided by the Administrative Agent, an Affiliate of the Administrative Agent, or any Person that is not an Affiliate of the Administrative Agent), such as IntraLinks, or a substantially similar electronic system that requires passwords for access and takes other customary measures with respect to confidentiality and security (the “Platform”). The U.S. Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided “as is” and “as available” and (iii) neither the Administrative Agent nor any of its Affiliates represents or warrants the accuracy, completeness, timeliness, sufficiency or sequencing of the Communications posted on the Platform. The Administrative Agent and its Affiliates expressly disclaim with respect to the Platform any liability for errors in transmission, incorrect or incomplete downloading, delays in posting or delivery, or problems accessing the Communications posted on the Platform (each, a “Platform Error”) and any liability for any losses, costs, expenses or liabilities that may be suffered or incurred in connection with the Platform, except to the extent any of the foregoing liabilities are caused by the gross negligence or willful misconduct of the Administrative Agent or any of its Affiliates. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Administrative Agent or any of its Affiliates in connection with the Platform. Notwithstanding anything herein to the contrary, the Borrowers shall not be in Default hereunder for failure to deliver any required notice, financial statements or other items if such failure was caused by a Platform Error.

(d) Each Lender agrees that notice to it (as provided in the next sentence) (a “Notification”) specifying that any Communication has been posted to the Platform shall for purposes of this Agreement constitute effective delivery to such Lender of such information, documents or other materials comprising such Communication. Each Lender agrees (i) to notify, on or before the date such Lender becomes a party to this Agreement, the Administrative Agent in writing of such Lender’s e-mail address to which a Notification may be sent (and from time to time thereafter to ensure that the Administrative Agent has on record an effective e-mail address for such Lender) and (ii) that any Notification may be sent to such e-mail address.

(e) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. 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.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by any Agent, Issuing Bank 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 Agents, the Issuing Banks 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 Borrower 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 Agent, Lender or Issuing Bank may have had notice or knowledge of such Default at the time.

(b) 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 Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender directly affected thereby (except that only the Lenders who are increasing their Commitments are required to consent to a request by the U.S. Borrower under Section 2.09 to increase the Aggregate Commitments), (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 directly 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 directly affected thereby, (iv) change Section 2.18(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender directly affected thereby, or (v) change any of the provisions of this Section or the definition of “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 all Lenders; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any other Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such other Agent, such Issuing Bank or the Swingline Lender, as the case may be.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The U.S. 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 or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Agents, the Issuing Banks or any Lender, including the fees, charges and disbursements of any counsel for any Agent, Issuing Bank or Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The U.S. Borrower shall indemnify each Agent, Issuing Bank and Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and 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 Indemnatee, incurred by or asserted against any Indemnatee 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 the Issuing Bank 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 U.S. Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the U.S. 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 Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, 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 Indemnatee.

(c) To the extent that the U.S. Borrower fails to pay any amount required to be paid by it to any Agent, Issuing Bank or Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to such Agent, Issuing Bank or 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 an Agent, Issuing Bank or Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, the Borrowers shall not assert, and hereby waives, any claim against any Indemnatee, 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) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrowers may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void), provided that any merger of any Subsidiary Borrower with other Subsidiaries shall not be deemed an assignment provided that the resulting entity assumes all Obligations of such Subsidiary Borrower in a manner acceptable to the Administrative Agent, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. 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 (including any Affiliate of any Issuing Bank that issues any Letter of Credit or Swingline Lender that makes any Swingline Loan), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(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 and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the U.S. Borrower, provided that no consent of the U.S. Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; and

(B) the Administrative Agent.

(ii) 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 assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the U.S. Borrower and the Administrative Agent otherwise consent, provided that no such consent of the U.S. Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

For the purposes of this Section 9.04(b), the term "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.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Issuing Bank 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 Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption 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 and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of any Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 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 U.S. 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 2.17 unless the U.S. Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.17(e) as though it were a Lender.

(d) 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 without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 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 pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrowers 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 Issuing Bank 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 2.15, 2.16, 2.17 and 9.03 and Article VIII 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 Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. 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 among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof 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 of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. 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 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates 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 obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Borrower against any of and all the obligations of such Borrower now or hereafter existing under this Agreement 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 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any court of the State of Illinois and any court of the United States District Courts sitting in Illinois, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, 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 Illinois State court 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 shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Borrower or its properties in the courts of any jurisdiction.

(c) Each Borrower 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 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) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. 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 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 9.11. 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 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations, (g) with the consent of the U.S. Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than a Borrower. For the purposes of this Section, "Information" means all information received from any Borrower relating to the U.S. Borrower or any of its Subsidiaries or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by a Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") hereby notifies each Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the Patriot Act.

SECTION 9.15. Conversion of Currencies. (a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto (including any Subsidiary Borrower) agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of each Borrower in respect of any sum due to any party hereto or any holder of the obligations owing hereunder (the "Applicable Creditor") shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which such sum is stated to be due hereunder (the "Agreement Currency"), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrowers contained in this Section 9.15 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.



(a) The covenants, agreements and obligations of each Borrower set forth herein are joint and several and shall be primary obligations of such Borrower, and, to the extent not prohibited by applicable law, such obligations shall be absolute and unconditional, shall not be subject to any counterclaim, set-off, deduction, diminution, abatement, recoupment, suspension, deferment, reduction or defense (other than full and strict compliance by each Borrower with its obligations hereunder) based upon any claim such Borrower, any other Borrower or any other Person may have against the Administrative Agent, the Lenders or any other Person, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever, foreseeable or unforeseeable and without regard to whether such Borrower, any other Borrower, the Administrative Agent or any Lender shall have any knowledge or notice thereof, including, without limitation:

(i) any termination, amendment, modification, addition, deletion or supplement to or other change to any of the terms of any Loan Document in accordance with its terms or any other instrument or agreement applicable to any of the parties hereto or thereto, or any assignment or transfer of any thereof, or any furnishing or acceptance or release of additional security for any Obligation or for the obligations of any Person under any Loan Document, or the failure of any security or the failure of any Person to perfect any interest in any collateral; any waiver of, or extension of time for the performance of, the payment, performance or observance of any of the obligations, conditions, covenants or agreements contained in any Loan Document, or any other waiver, forbearance, consent, extension, renewal, indulgence, compromise, release, settlement, refunding or other action or inaction under or in respect of any Loan Document or any other instrument or agreement, or under or in respect of any obligation or liability of each Borrower, or the Administrative Agent or any exercise or non-exercise of any right, remedy, power or privilege under or in respect of any such instrument of agreement or any such obligation or liability;

(ii) any failure, omission or delay on the part of the Administrative Agent to enforce, assert or exercise any right, power or remedy conferred on it in any Credit Document to give notice to any Borrower of the occurrence of an Event of Default;

(iii) any voluntary or involuntary bankruptcy, insolvency, reorganization, moratorium, assignment for the benefit of creditors, receivership, liquidation, marshaling of assets and liabilities or similar proceedings with respect to any Borrower or any other Person or any of their respective properties or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(iv) any limitation on the liability or obligations of any Borrower under any Loan Document or any other instrument or agreement, which may now or hereafter be imposed by law, or any discharge, termination, cancellation, frustration, irregularity, invalidity or unenforceability, in whole or in part, of any thereof; or

(v) any other occurrence, circumstance, happening or event whatsoever, whether similar or dissimilar to the foregoing, whether foreseen or unforeseen, and any other circumstance (other than full and irrevocable performance and payment of the Obligations) which might otherwise constitute a legal or equitable defense, release or discharge or which might otherwise limit recourse against each Borrower, whether or not such Borrower shall have notice or knowledge of the foregoing.

(b) Each Borrower hereby waives, to the fullest extent permitted by law, (i) all rights, if any, of marshalling of any collateral or security for the Obligations and (ii) any right (except as shall be required by applicable statute and cannot be waived) to require the Administrative Agent or any Lender to (A) proceed against the other Borrower or any other Person, (B) proceed against or exhaust any other collateral or security for any of the Obligations or (C) pursue any remedy in the Administrative Agent's or any Lender's power whatsoever. Each Borrower hereby waives any defense based on or arising out of any defense of the other Borrower or any other Person other than payment in full of the Obligations, including, without limitation, any defense based on or arising out of the disability of the other Borrower or any other Person, or the enforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the other Borrower other than payment in full of the Obligations. Subject to the terms of this Agreement, the Administrative Agent may, at its election, foreclose on any security held by the Administrative Agent by one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Administrative Agent may have against the other Borrower or any other Person, or any security, without affecting or impairing in any way the liability of any Borrower hereunder except to the extent the Obligations have been paid in full.

(c) Each Borrower waives any defense, right of set-off, claim or counterclaim whatsoever and any and all other rights, benefits, protections and other defenses available to it now or at any time hereafter.

(d) Each Borrower represents and warrants that it is fully aware of the financial condition of the other Borrowers, and each Borrower delivers this Agreement based solely upon its own independent investigation of the other Borrowers' financial condition and in no part upon any representation or statement of the Administrative Agent or any Lender with respect thereto. Each Borrower further represents and warrants that it is in a position to and hereby does assume full responsibility for obtaining such additional information concerning the other Borrowers' financial condition as each Borrower may deem material to its obligations hereunder, and each Borrower is not relying upon, nor expecting the Administrative Agent or any Lender to furnish it any information in the Administrative Agent's or any Lender's possession concerning the other Borrowers' financial condition or concerning any circumstances bearing on the existence or creation, or the risk of nonpayment or nonperformance of the Obligations. Each Borrower hereby waives any duty on the part of the Administrative Agent and the Lenders to disclose to each Borrower any facts the Administrative Agent or any Lender may now or hereafter know about the other Borrowers, regardless of whether the Administrative Agent or such Lender has reason to believe that any such facts materially increase the risk beyond that which each Borrower intended to assume or has reason to believe that such facts are unknown to such Borrower.

(e) In addition to any other waivers, agreements and covenants of the Borrowers set forth herein, each Borrower hereby further waives and releases all claims, causes of action, defenses and offsets for any act or omission of the Lenders or the Administrative Agent and each of their respective directors, officers, employees, representatives and agents in connection with administration of the Loans, except for any Lender's or the Administrative Agent's willful misconduct or gross negligence as determined by a final, non-appealable judgment of a court of competent jurisdiction.

Collection Allocation Mechanism

SECTION 10.01. Implementation of CAM. (a) On the CAM Exchange Date, (i) the Commitments and the Ancillary Commitments shall automatically and without further act be terminated as provided in Article VII, (ii) the principal amount of each Loan denominated in a Foreign Currency shall, automatically and with no further action required, be converted into the Dollar Equivalent, determined using the Exchange Rates calculated as of the CAM Exchange Date, of such amount and on and after such date all amounts accruing and owed to any Lender in respect of such Obligations shall accrue and be payable in Dollars at the rates otherwise applicable hereunder and (iii) each Lender shall automatically and without further act (and without regard to the provisions of Section 9.04) immediately be deemed to have acquired participations in the Swingline Loans, Revolving Loans, Ancillary Loans and Letters of Credit (including each Reserve Account established pursuant to Section 10.02 below, but excluding the Competitive Loans) in an amount equal to such Lender's CAM Percentage. Each Lender shall make payments to the Applicable Agent for such participations, and the Applicable Agent shall distribute such payments to the appropriate Lender, in such manner and pursuant to such procedures determined by the Administrative Agent. Each Lender and each Borrower hereby consents and agrees to the CAM Exchange, and each Lender agrees that the CAM Exchange shall be binding upon its successors and assigns and any person that acquires a participation in its interests in any Advance. Each Borrower agrees from time to time to execute and deliver to the Administrative Agent all such promissory notes and other instruments and documents as the Administrative Agent shall reasonably request to evidence and confirm the respective interests of the Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it in connection with its Loans (other than Competitive Loans) hereunder to the Administrative Agent against delivery of any promissory notes evidencing its interests in the Loans and Ancillary Loans so executed and delivered; provided, however, that the failure of any Borrower to execute or deliver or of any Lender to accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange.

(b) As a result of the CAM Exchange, upon and after the CAM Exchange Date, each payment received by the Applicable Agent pursuant to any Loan Document in respect of the Revolving Credit Exposures and the Ancillary Facility Exposures shall be distributed to the Lenders pro rata in accordance with their respective CAM Percentages. Any direct payment received by a Lender upon or after the CAM Exchange Date, including by way of set-off, in respect of any Revolving Credit Exposure or Ancillary Facility Exposure shall be paid over to the Applicable Agent for distribution to the Lenders in accordance herewith.

SECTION 10.02. Letters of Credit. (a) In the event that on the CAM Exchange Date any Letter of Credit shall be outstanding and undrawn in whole or in part, or any LC Disbursement shall not have been reimbursed either by the U.S. Borrower or with the proceeds of a Borrowing, each Lender shall promptly pay over to the Administrative Agent, in immediately available funds, an amount equal to such Lender's CAM Percentage of such undrawn face amount or (to the extent it has not already done so) such unreimbursed drawing, as applicable, together with interest thereon from the CAM Exchange Date to the date on which such amount shall be paid to the Administrative Agent at the rate that would be applicable at the time to an ABR Revolving Loan in a principal amount equal to such undrawn face amount or unreimbursed drawing, as applicable. The Administrative Agent shall establish a separate account (each, a "Reserve Account") or accounts for each Lender for the amounts received with respect to each such Letter of Credit pursuant to the preceding sentence. The Administrative Agent shall deposit in each Lender's Reserve Account such Lender's CAM Percentage of the amounts received from the Lenders as provided above. The Administrative Agent shall have sole dominion and control over each Reserve Account, and the amounts deposited in each Reserve Account shall be held in such Reserve Account until withdrawn as provided in paragraph (b), (c), (d) or (e) below. The Administrative Agent shall maintain records enabling it to determine the amounts paid over to it and deposited in the Reserve Accounts in respect of each Letter of Credit and the amounts on deposit in respect of each Letter of Credit attributable to each Lender's CAM Percentage. The amounts held in each Lender's Reserve Account shall be held as a reserve against the LC Exposures, shall be the property of such Lender, shall not constitute Loans to or give rise to any claim of or against any Borrower and shall not give rise to any obligation on the part of the U.S. Borrower to pay interest to such Lender, it being agreed that the reimbursement obligations in respect of Letters of Credit shall arise only at such times as drawings are made thereunder, as provided in Section 2.06.

(b) In the event that after the CAM Exchange Date any drawing shall be made in respect of a Letter of Credit, the Administrative Agent shall, at the request of the applicable Issuing Bank withdraw from the Reserve Account of each Lender any amounts, up to the amount of such Lender's CAM Percentage of such drawing deposited in respect of such Letter of Credit and remaining on deposit and deliver such amounts to such Issuing Bank in satisfaction of the reimbursement obligations of the Lenders under Section 2.06(d) (but not of the U.S. Borrower under Section 2.06(e)). In the event that any Lender shall default on its obligation to pay over any amount to the Administrative Agent as provided in this Section 10.02, the applicable Issuing Bank shall have a claim against such Lender to the same extent as if such Lender had defaulted on its obligations under Section 2.06(d), but shall have no claim against any other Lender in respect of such defaulted amount, notwithstanding the exchange of interests in the applicable Borrower's reimbursement obligations pursuant to Section 10.01. Each other Lender shall have a claim against such defaulting Lender for any damages sustained by it as a result of such default, including, in the event that such Letter of Credit shall expire undrawn, its CAM Percentage of the defaulted amount.

(c) In the event that after the CAM Exchange Date any Letter of Credit shall expire undrawn, the Administrative Agent shall withdraw from the Reserve Account of each Lender the amount remaining on deposit therein in respect of such Letter of Credit and distribute such amount to such Lender.

(d) With the prior written approval of the Administrative Agent (not to be unreasonably withheld), any Lender may withdraw the amount held in its Reserve Account in respect of the undrawn amount of any Letter of Credit. Any Lender making such a withdrawal shall be unconditionally obligated, in the event there shall subsequently be a drawing under such Letter of Credit, to pay over to the Administrative Agent, for the account of the Issuing Bank, on demand, its CAM Percentage of such drawing.

(e) Pending the withdrawal by any Lender of any amounts from its Reserve Account as contemplated by the above paragraphs, the Administrative Agent will, at the direction of such Lender and subject to such rules as the Administrative Agent may prescribe for the avoidance of inconvenience, invest such amounts in Permitted Investments. Each Lender that has not withdrawn its amounts in its Reserve Account as provided in paragraph (d) above shall have the right, at intervals reasonably specified by the Administrative Agent, to withdraw the earnings on investments so made by the Administrative Agent with amounts in its Reserve Account and to retain such earnings for its own account.

**[Signature Page Follows]**

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.

HERMAN MILLER, INC.

By \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO CREDIT AGREEMENT]

By \_\_\_\_\_

Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

By \_\_\_\_\_

Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

BANK OF AMERICA, N.A.,

as a Lender and a Documentation Agent

By \_\_\_\_\_

Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**



JPMORGAN CHASE BANK,

as a Lender and a Documentation Agent

By \_\_\_\_\_

Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

HUNTINGTON NATIONAL BANK,

as a Lender

By

\_\_\_\_\_  
Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

CITIBANK, N.A.,

as a Lender

By

\_\_\_\_\_  
Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

COMERICA BANK,

as a Lender

By

\_\_\_\_\_  
Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

HSBC BANK USA, N.A.,

as a Lender

By

\_\_\_\_\_  
Name:

Title:

**[SIGNATURE PAGE TO CREDIT AGREEMENT]**

HERMAN MILLER, INC.  
1994 NONEMPLOYEE OFFICER AND DIRECTOR STOCK OPTION PLAN  
(As Amended and Restated through December 18, 2007)

1. **Name and Purpose.** This plan shall be called the Herman Miller, Inc. Nonemployee Officer and Director Stock Option Plan (the “Plan”). The Plan is intended to encourage stock ownership by nonemployee officers and directors of Herman Miller, Inc. (the “Company”), to provide them with an additional incentive to manage the Company effectively and to contribute to its success, and to provide a form of compensation which will attract and retain highly qualified individuals as nonemployee officers and members of the Board of Directors of the Company.

2. **Effective Date and Term of the Plan.** The Plan shall become effective upon its approval by the shareholders of the Company. Options may not be granted under the Plan after October 5, 2014; provided, however, that all options outstanding as of that date shall remain or become exercisable pursuant to their terms and the terms of the Plan.

3. **Administration.** The Plan shall be administered by a committee designated by the Board of Directors (the “Committee”) consisting of not less than three (3) directors who shall be appointed from time to time by the Board, each of whom shall qualify as a Nonemployee Director, as defined in Rule 16b-3(b)(3) of the Securities Exchange Act of 1934, as amended.

The Committee may, from time to time, establish such regulations, provisions and procedures, within the terms of the Plan, as in the opinion of its members may be advisable in the administration of the Plan. The Committee shall keep minutes of its meetings. A majority of the Committee shall constitute a quorum, and the acts of a majority of a quorum at any meeting, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be the valid acts of the Committee.

The interpretation and construction by the Committee of any provisions of the Plan or of any option granted pursuant to the Plan shall be final and binding upon the Company, the Board of Directors of the Company and any optionee. No member of the Board of Directors of the Company or the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any option granted pursuant thereto.

4. **Participation.** Subject to the limitations contained in this Section 4, officers and directors of the Company, who are neither contractual nor common law employees of the Company or any of its subsidiaries, shall be granted options to purchase shares of the Company’s common stock in accordance with the provisions of Section 7 of the Plan and consistent with the terms and conditions of the Plan. An optionee or Permitted Transferee (as defined in Subsection 7(f) of this Plan) may hold more than one option, but only on the terms and subject to the restrictions hereafter set forth. Subject to adjustments consistent with the provisions of Subsection 7(h), no one nonemployee officer or director may be granted options covering more than a total of fifteen percent (15%) of the common stock originally reserved for issuance under the Plan, as defined in Section 5, plus such increases therein as may from time to time be approved by the Company’s shareholders.

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5. **Stock Available for Options.** Subject to the adjustments as promised in Subsection 7(h), the aggregate number of shares reserved for purposes of the Plan shall be 1,100,000 shares of the Company's common stock, par value \$.20 per share, either authorized and unissued shares or issued shares reacquired by the Company (the "Shares"). Determinations as to the number of Shares that remain available for issuance under the Plan shall be made in accordance with such rules and procedures as the Committee shall determine from time to time, which shall be consistent with the requirements of Rule 16b-3 of the Securities Exchange Act of 1934, as amended, and such interpretations thereof.

6. **Grant of Options.**

(a) **Power to Grant Options.** The Committee shall have the right and power to grant options to nonemployee officers and directors eligible to participate in the Plan, entitling each optionee to purchase common stock from the Company in such number of shares, at such price, and on such terms and conditions, consistent with the provisions of the Plan, as may be established by the Committee.

(b) **Date of Grant.** An option shall be deemed to have been granted on the date which the Committee designates as the date of grant at the time it approves the option, provided that the date of grant may not be earlier than the date on which the option is approved.

(c) **Option Terms.** The Committee shall have the power to determine the nonemployee officers and directors to whom options are granted, the number of shares granted to each optionee, and the date of the grant. Subject to the provisions of Section 7, the Committee shall also have the power to determine the purchase price per share, the method by which the purchase price will be determined, the period during which and the times at which the option may be exercised, limitations on the number of shares purchasable at any time, restrictions on resale of shares, conditions precedent to be satisfied before the options may be exercised, and other terms and conditions consistent with the provisions of the Plan.

(d) **Option Agreement.** No optionee or Permitted Transferee shall have any right with respect to the grant of an option unless and until the person to whom the option is granted has executed an agreement as contemplated by Section 7.

7. **Terms and Conditions of Option Agreement.** Options granted under this Plan shall be evidenced by agreements in such form as the Committee shall from time to time approve, which agreements shall comply with and be subject to the following conditions:

(a) **Option Agreement.** Each optionee shall agree to continue to serve as an officer or director of the Company, as the case may be, for the lesser of at least twelve (12) months from the date of the grant of the option or for the remainder of such optionee's term as an officer or director of the Company. Such agreement shall not impose upon the Company, its Board of Directors, or its shareholders any obligation to retain the optionee as an officer or director for any period.

(b) Number of Shares and Term of Options. The number of shares of common stock to be covered by each option and the term of each option shall be fixed by the Committee, but no Option shall be exercisable more than ten (10) years after the date the Option is granted.

(c) Option Price. The exercise price of each option shall equal to one hundred percent (100%) of the Fair Market Value of the shares of common stock on the date of the grant of the option. If the shares are traded in the over-the-counter market, the Fair Market Value per share shall be the closing price on the national market list as quoted in the National Association of Securities Dealers Automated Quotation System ("NASDAQ") on the day the option is granted or if no sale of shares is reflected in NASDAQ on that day, on the next preceding day on which there was a sale of shares reflected in NASDAQ. If the shares are not traded in the over-the-counter market but are listed upon an established stock exchange or exchanges, such Fair Market Value shall be deemed to be the closing price of the shares on such stock exchange or exchanges on the day the option is granted or if no sale of the shares shall have been made on any stock exchange on that day, on the next preceding day on which there was a sale of the shares.

(d) Medium of Payment. The option price shall be payable to the Company either (i) in United States dollars in cash or by check, bank draft, or money order payable to the order of the Company or (ii) through the delivery of shares of the Company's common stock with a Fair Market Value on the date of the exercise equal to the option price, provided such shares are utilized as payment to acquire at least 100 shares of common stock, or (iii) by a combination of (i) and (ii) above. Fair Market Value will be determined in the manner specified in Subsection 7(c) except as to the date of determination.

(e) Exercise of Options. Except as provided in Subsection 7(h) no option shall be exercisable, either in whole or in part, prior to the first anniversary of the date of grant of the option. Thereafter, an option shall be exercisable at any time or from time to time during the term of the option, upon written notice to the Company, as to any or all shares covered by the option, until its termination or expiration in accordance with the terms of the option or the provisions of the Plan. Notwithstanding the foregoing, an option shall not at any time be exercisable with respect to less than 100 shares unless the remaining shares covered by an option are less than 100 shares. The purchase price of the shares purchased pursuant to an option shall be paid in full upon delivery to the optionee of certificates for such shares.

(f) Transferability of Options. The Committee may, in its discretion, authorize all or a portion of the options to be granted to an optionee to be on terms which permit transfer by such optionee to (i) the spouse, children or grandchildren of the optionee ("Immediate Family Members"), (ii) a trust or trusts for the exclusive benefit of the optionee and/or one or more of such Immediate Family Members, or (iii) a partnership or limited liability company in which the optionee and/or one or more of such Immediate Family Members are the only partners or members (whereby the person or entities described in (i) through (iii) shall be referred to as "Permitted Transferees"), provided that (x) there may be no consideration for any such transfer (except for the receipt of an interest in a family partnership or limited liability company, (y) the stock option agreement pursuant to which such options are granted must be approved by the Committee, and must expressly provide for transferability in a manner consistent with this Subsection 7(f), and (z) subsequent transfers of transferred options shall be prohibited except those in accordance with Section 7(g). Following transfer, any such options shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer. The events of termination of service of Section 7(g) hereof and the tax withholding obligations of Section 10 shall continue to be applied with respect to the original optionee, following which the options shall be exercisable by the Permitted Transferee only to the extent, and for the periods specified at Section 7(g). The Company shall not be obligated to notify Permitted Transferees) of the expiration or termination of any option.



(g) Termination of Service as Nonemployee Officer or Director.

(i) Termination of Service for any Reason Other than Death. In the event an optionee shall cease to serve the Company as a nonemployee officer or director for any reason other than such optionee's death, each option held by such optionee or Permitted Transferee shall remain exercisable, subject to prior expiration according to its terms and other limitations imposed by the Plan, for a period of five (5) years following the optionee's cessation of service as a nonemployee officer or director of the Company. If the optionee dies after such retirement, the optionee's options shall be exercisable in accordance with Subsection 7(g)(ii) hereof.

(ii) Termination of Service for Death. If an optionee ceases to be a nonemployee officer or director by reason of death, each option held by such optionee or Permitted Transferee shall, to the extent rights to purchase shares under the option have been accrued at the time of death and shall not have been fully exercised, be exercisable, in whole or in part, by the personal representative of the estate of the Optionee or Permitted Transferee or by any person or persons who have acquired the option directly from the optionee or Permitted Transferee by bequest or inheritance or written designation during the shorter of the following periods: (i) the term of the option, or (ii) a period of five (5) years from the death of such optionee. If an optionee dies during the extended exercise period following termination of service for retirement or disability specified in Subsection 7(g)(i) above, such option maybe exercised any time within the longer of such extended period or one (1) year after death, subject to the prior expiration of the term of the option.

(h) Adjustment in Shares Covered by Option. The number of shares covered by each outstanding option, and the purchase price per share thereof, shall be proportionately adjusted for any increase or decrease in the number of issued and outstanding shares resulting from a split in or combination of shares or the payment of a stock dividend on the shares or any other increase or decrease in the number of such shares effected without receipt of consideration by the Company.

If the Company shall be the surviving corporation in any merger or consolidation or if the Company is merged into a wholly-owned subsidiary solely for purposes of changing the Company's state of incorporation, each outstanding option shall pertain to and apply to the securities to which a holder of the number of shares subject to the option would have been entitled. A dissolution or liquidation of the Company or a merger or consolidation in which the Company is not the surviving corporation, except as above provided, shall cause each outstanding option to terminate, provided, that each optionee or Permitted Transferee shall, in that event, have the right immediately prior to such dissolution or liquidation, or merger or consolidation in which the Company is not the surviving corporation, to exercise his or her option in whole or in part.

In the event of a change in the shares as presently constituted, which is limited to a change of all of its authorized shares with par value into the same number of shares with a different par value or without par value, the shares resulting from any such change shall be deemed to be the shares within the meaning of the Plan.

To the extent that the foregoing adjustments relate to stock or securities of the Company, such adjustments shall be made by the Committee, whose determination in that respect shall be final, binding and conclusive. Any such adjustment may provide for the elimination of any fractional share which might otherwise become subject to an option.

Except as hereinbefore expressly provided in this Subsection 7(h), the optionee or Permitted Transferee shall have no rights by reason of any split or combination of shares of stock of any class or the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class or by reason of any dissolution, liquidation, merger, or consolidation or spinoff of assets or stock of another corporation, and any issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of stock subject to the option.

The grant of an option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or to consolidate or to dissolve, liquidate or sell, or transfer all or any part of its business or assets.

(i) Rights of a Shareholder. An optionee or Permitted Transferee shall have no rights as a shareholder with respect to any shares covered by his or her option until the date on which the optionee or Permitted Transferee becomes the holder of record of such shares. No adjustment shall be made for dividends, distributions, or other rights for which the record date is prior to the date on which he or she shall have become the holder of record thereof, except as provided in Subsection 7(h).

(j) **Postponement of Delivery of Shares and Representations.** The Company, in its discretion, may postpone the issuance and/or delivery of shares upon any exercise of an option until completion of the registration or other qualification of such shares under any state and/or federal law, rule or regulation as the Company may consider appropriate, and may require any person exercising an option to make such representations, including a representation that it is the optionee's or Permitted Transferee's intention to acquire shares for investment and not with a view to distribution thereof, and furnish such information as it may consider appropriate in connection with the issuance or delivery of the shares in compliance with applicable laws, rules, and regulations. In such event no shares shall be issued to such holder unless and until the Company is satisfied with the accuracy of any such representations.

(k) **Other Provisions.** The option agreements authorized under the Plan shall contain such other provisions, including, without limitation, restrictions upon the exercise of the option, as the Committee shall deem advisable.

8. **Adjustments in Shares Available for Options.** The adjustments in number and kind of shares and the substitution of shares, affecting outstanding options in accordance with Subsection 7(h) hereof, shall also apply to the number and kind of shares reserved for issuance pursuant to the Plan, but not yet covered by options.

9. **Amendment of the Plan.** The Committee, insofar as permitted by law, shall have the right from time to time, with respect to any shares at the time not subject to options, to suspend or discontinue the Plan or revise or amend it in any respect whatsoever, except that, without approval of the shareholders of the Company, no such revision or amendment shall:

- (a) increase the maximum number of shares which may be subject to the Plan,
- (b) increase the maximum number of shares which may be optioned to any one nonemployee officer or director,
- (c) materially increase the benefits accruing to option holders under the Plan,
- (d) decrease the exercise price of options granted under the Plan,
- (e) remove the administration of the Plan from the Committee, or
- (f) permit the granting of options under the Plan after October 5, 2014.

10. **Withholding of Taxes.** The Company shall have the right to deduct from any payment to be made pursuant to this Plan, or to otherwise require, prior to the issuance or delivery of any shares of common stock, payment by the optionee of any federal, state, or local taxes required by law to be withheld. Unless otherwise prohibited by the Committee, an optionee may satisfy any such withholding tax obligation by any of the following means or by a combination of such means:

- (a) tendering a cash payment;
- (b) authorizing the Company to withhold from the shares otherwise issuable to the optionee a number of shares having a Fair Market Value as of the "Tax Date," less than or equal to the amount of withholding tax obligation; or
- (c) delivering to the Company unencumbered shares owned by the optionee having a Fair Market Value, as of the Tax Date, less than or equal to the amount of the withholding tax obligation.

The "Tax Date" shall be the date that the amount of tax to be withheld is determined. Fair Market Value shall be determined in the manner specified in Subsection 7(c), except as to the date of determination.

11. **Right of Shareholders to Terminate Director's Service.** Nothing in this Plan or in the grant of any option hereunder shall in any way limit or effect the right of the shareholders of the Company to remove any officer or director or otherwise terminate his or her service as an officer or director, pursuant to law, the Articles of Incorporation, or Bylaws of the Company.

12. **Application of Funds.** The proceeds received by the Company from the sale of stock pursuant to options will be used for general corporate purposes.

13. **No Obligation to Exercise Option.** The granting of an option shall impose no obligation upon the optionee or Permitted Transferee to exercise such option.

14. **Construction.** This Plan shall be construed under the laws of the State of Michigan, United States of America.

#### CERTIFICATION

The restatement of this Plan, as amended, was duly adopted by the Board of Directors of the Company the 20th day of December 2007.

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James E. Christenson, Secretary

CERTIFICATE OF THE CHIEF EXECUTIVE OFFICER  
OF HERMAN MILLER, INC. (THE "REGISTRANT")

I, Brian C. Walker, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended December 1, 2007, of Herman Miller, Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 9, 2008

/s/ Brian C. Walker

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Brian C. Walker  
Chief Executive Officer

CERTIFICATE OF THE CHIEF FINANCIAL OFFICER  
OF HERMAN MILLER, INC. (THE "REGISTRANT")

I, Curtis S. Pullen, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended December 1, 2007, of Herman Miller, Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 9, 2008

/s/ Curtis S. Pullen

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Curtis S. Pullen  
Chief Financial Officer

CERTIFICATE OF THE CHIEF EXECUTIVE OFFICER  
OF HERMAN MILLER, INC. (THE "COMPANY")

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002:

I, Brian C. Walker, Chief Executive Officer of the Company, certify to the best of my knowledge and belief pursuant to Section 906 of Sarbanes-Oxley Act of 2002 that:

- (1) The quarterly report on Form 10-Q for the period ended December 1, 2007, which this statement accompanies, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in this quarterly report on Form 10-Q for the quarterly period ended December 1, 2007 fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: January 9, 2008

/s/ Brian C. Walker

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Brian C. Walker  
Chief Executive Officer

The signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Herman Miller, Inc. and will be retained by Herman Miller, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATE OF THE CHIEF FINANCIAL OFFICER  
OF HERMAN MILLER, INC. (THE "COMPANY")

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002:

I, Curtis S. Pullen, Chief Financial Officer of the Company, certify to the best of my knowledge and belief pursuant to Section 906 of Sarbanes-Oxley Act of 2002 that:

- (1) The quarterly report on Form 10-Q for the period ended December 1, 2007, which this statement accompanies, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in this quarterly report on Form 10-Q for the quarterly period ended December 1, 2007 fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: January 9, 2008

/s/ Curtis S. Pullen

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Chief Financial Officer

The signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Herman Miller, Inc. and will be retained by Herman Miller, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.