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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**Amendment No. 1  
to  
FORM 8-K**

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

**Date of Report (Date of earliest event reported): May 14, 2015**

This report constitutes Amendment No. 1 to Registrant's Current Report on Form 8-K filed May 14, 2015

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**BERRY PLASTICS GROUP, INC.**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**1-35672**  
(Commission  
File Number)

**20-5234618**  
(I.R.S. Employer  
Identification No.)

**101 Oakley Street**  
**Evansville, Indiana 47710**  
(Address of principal executive offices/Zip Code)

**(812) 424-2904**  
(Registrant's telephone number, including area code)

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

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

Berry Plastics Group, Inc. is filing this Amendment No. 1 to its Current Report on Form 8-K filed May 14, 2015 to provide the exhibit filed herewith.

**Item 1.01 Entry into a Material Definitive Agreement**

The information set forth under Item 2.03 of this Current Report on Form 8-K is incorporated by reference into this Item 1.01.

**Item 2.03 Creation of a Direct Financial Obligation**

On May 14, 2015, Berry Plastics Group, Inc., its wholly owned subsidiary, Berry Plastics Corporation (“BPC”) and certain of its subsidiaries entered into an Amendment No. 4 to the Amended and Restated Revolving Credit Agreement (“Amendment No. 4”), which amended the existing Amended and Restated Revolving Credit Agreement, dated as of April 3, 2007 (as previously amended, the “Existing Revolving Credit Agreement,” and as amended by Amendment No. 4, the “Amended Revolving Credit Agreement”), with Bank of America, N.A. and certain other financial institutions, relating to BPC’s existing \$650 million secured, revolving credit facility (the “Revolving Facility”). Among other things, Amendment No. 4 amended the Existing Credit Agreement to extend the maturity date of the Revolving Facility to May 14, 2020 (subject to certain conditions) and to reduce interest margins and certain commitment fees.

Under the terms of the Amended Revolving Credit Agreement, the applicable interest rate margin on borrowings bearing interest at a prime-rate based rate is 0.50% until August 14, 2015, and ranges from 0.25% to 0.75% on and after such date. The applicable interest rate margin on borrowings bearing interest at a reserve-adjusted LIBOR-based rate is 1.50% until August 14, 2015, and ranges from 1.25% to 1.75% on or after such date. Adjustments in the applicable margins on and after August 14, 2015, are determined based on the quarterly average daily borrowing availability under the Revolving Facility. Commitment fees on the Revolving Facility from and after May 14, 2015, range from 0.25% to 0.325%, depending upon the quarterly average daily unused availability under the Revolving Facility.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

| <u>Exhibit No.</u> | <u>Description</u>  |
|--------------------|---|
| 10.1               | Amendment No. 4 to the Amended and Restated Credit Agreement, dated as of May 14, 2015, by and among Berry Plastics Group, Inc., Berry Plastics Corporation, certain domestic subsidiaries party thereto, Bank of America, N.A., as collateral agent and administrative agent, the lenders party thereto, and the financial institutions party thereto. |

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**SIGNATURE**

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

**BERRY PLASTICS GROUP, INC.**  
(Registrant)

Date: May 20, 2015

By: /s/ Jason K. Greene  
Jason K. Greene  
Executive Vice President and General Counsel

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**EXHIBIT INDEX**

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|-------------------------------|---|
| 10.1                          | Amendment No. 4 to the Amended and Restated Credit Agreement, dated as of May 14, 2015, by and among Berry Plastics Group, Inc., Berry Plastics Corporation, certain domestic subsidiaries party thereto, Bank of America, N.A., as collateral agent and administrative agent, the lenders party thereto, and the financial institutions party thereto. |

**AMENDMENT NO. 4 TO THE  
AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT**

This AMENDMENT NO. 4 TO THE AMENDED AND RESTATED CREDIT AGREEMENT, dated as of May 14, 2015 (this "Amendment"), is entered into by and among BERRY PLASTICS GROUP, INC., a Delaware corporation ("Holdings"), BERRY PLASTICS CORPORATION, a Delaware corporation (the "Company"), certain domestic subsidiaries of the Company party hereto as additional borrowers (together with the Company, the "Borrowers"), certain other subsidiaries of the Company party hereto, the financial institutions party hereto as lenders under the Unamended Credit Agreement (as defined below) (the "Consenting Lenders"), the financial institutions party hereto as new lenders under the Amended Credit Agreement (as defined below) (the "New Lenders" and together with the Consenting Lenders, the "Lenders"), and BANK OF AMERICA, N.A., as administrative agent (in such capacity, the "Administrative Agent") and collateral agent (in such capacity, the "Collateral Agent").

**PRELIMINARY STATEMENTS:**

(1) Holdings, the Company, the Borrowers, the lenders from time to time party thereto (the "Existing Lenders"), the Administrative Agent, the Collateral Agent and the other agents party thereto, entered into that certain Amended and Restated Revolving Credit Agreement, dated as of April 3, 2007 (as amended by Amendment No. 1 to the Amended and Restated Revolving Credit Agreement, dated as of December 14, 2007, Amendment No. 2 to the Amended and Restated Credit Agreement, dated as of January 11, 2008, the Incremental Assumption Agreement, dated as of December 23, 2009, and Amendment No. 3 to the Amended and Restated Credit Agreement, dated as of June 28, 2011, the "Unamended Credit Agreement");

(2) The Company has requested that the Lenders approve certain amendments to the Unamended Credit Agreement specified herein, and subsequently amend and restate the Unamended Credit Agreement in the form of the Second Amended and Restated Revolving Credit Agreement attached as Annex A hereto (the "Amended Credit Agreement");

(3) The Company has informed the Administrative Agent that certain of its calculations of the Borrowing Base prior to the date hereof have inadvertently included assets of certain Subsidiaries that it believed to have been Borrowers but which may not have been added as Other Borrowers in accordance with Section 9.24 of the Unamended Credit Agreement prior to the date hereof (the "Borrowing Base Inaccuracies"), and has requested that the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders waive any and all Defaults and Events of Default that have occurred or may have occurred as a direct or indirect result of the Borrowing Base Inaccuracies; and

(4) In accordance with Section 9.08 of the Unamended Credit Agreement, the Administrative Agent, the Lenders, the Company, the Collateral Agent, the Swingline Lender, the Issuing Bank and the other Loan Parties have each agreed, subject to the terms and conditions stated below, to the transactions described in the preceding paragraphs;

NOW, THEREFORE, in consideration of the premises and in order to induce the parties hereto to enter into the transactions described herein and the Lenders to extend credit and other financial accommodations to the Borrowers pursuant to the Amended Credit Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Administrative Agent, the Lenders, the Borrowers and the other Loan Parties hereby covenant and agree as follows:

SECTION 1. Definitions. Each capitalized term used herein shall have the meaning provided below or in the introduction hereto:

"Administrative Agent" has the meaning given to such term in the preamble hereof.

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“ALTA Policy” has the meaning given to such term in Section 6(ii) hereof.

“Amended Credit Agreement” has the meaning given to such term in the second recital hereof.

“Amendment” has the meaning given to such term in the preamble hereof.

“Amendment Effective Date” has the meaning given to such term in Section 5 hereof.

“Borrowers” has the meaning given to such term in the preamble hereof.

“Collateral Agent” has the meaning given to such term in the preamble hereof.

“Company” has the meaning given to such term in the preamble hereof.

“Consenting Lenders” has the meaning given to such term in the preamble hereof.

“Existing Lender” has the meaning given to such term in the first recital hereof.

“Flood Hazard Property” has the meaning given to such term in Section 5(i) hereof.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Holdings” has the meaning given to such term in the preamble hereof.

“Lenders” has the meaning given to such term in the preamble hereof.

“Modification Endorsements” has the meaning given to such term in Section 6(ii) hereof.

“Mortgage Amendment” has the meaning given to such term in Section 6(i) hereof.

“New York Courts” has the meaning given to such term in Section 10(a) hereof.

“Title Insurance” has the meaning given to such term in Section 6(ii) hereof.

“Title Policies” has the meaning given to such term in Section 6(ii) hereof.

“Unamended Credit Agreement” has the meaning given to such term in the first recital hereof.

All capitalized terms not otherwise defined herein shall have the meanings attributed thereto in the Amended Credit Agreement.

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SECTION 2. Amendments of Unamended Credit Agreement. The parties hereto hereby agree that the Unamended Credit Agreement, together with the schedules and exhibits thereto, is hereby amended and restated in its entirety as of the Amendment Effective Date in the form of Annex A hereto.

SECTION 3. Certain Waivers and Consents.

(a) Each Lender party hereto hereby waives its right under Section 9.04(g) of the Unamended Credit Agreement to receive three (3) Business Days' notice prior to the invocation of such Section 9.04(g) by the Company and the Administrative Agent.

(b) Each Lender party hereto hereby consents to the release of Liens granted prior to the Amendment Effective Date in favor of the Collateral Agent and/or the other Secured Parties encumbering any Real Property comprising Mortgaged Property, from time to time upon the Company's written request for such release, which Mortgaged Property does not individually have a fair market value in excess of \$10 million as of the Amendment Effective Date (each such Mortgaged Property being marked by asterisk on Schedule 1.01(c) to the Amended Credit Agreement as in effect on the Amendment Effective Date).

(c) Each Lender party hereto hereby agrees that each Subsidiary of the Company executing a counterpart hereto as a "Borrower" which Subsidiary has previously delivered a counterpart to the Collateral Agreement as either a Borrower or a Guarantor, shall be deemed to be a Borrower under the Amended Credit Agreement from and after the Amendment Effective Date, and waives the requirement of Section 9.24 of the Amended Credit Agreement to receive a Borrower Joinder Agreement, if any, and agrees that this Amendment shall satisfy any notice requirements otherwise required in lieu of such Borrower Joinder Agreement.

(d) The Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders hereby waives (the "Waiver") any and all Defaults and Events of Default under the Unamended Credit Agreement and the other Loan Documents, including but not limited to under Sections 7.01(a), (d) and (e) of the Unamended Credit Agreement, that have occurred or may have occurred as a direct or indirect result of the Borrowing Base Inaccuracies, and further waives any and all Defaults or Events of Default under the Unamended Credit Agreement and the other Loan Documents relating to any action taken (or omitted to be taken) prior to the Amendment Effective Date, or any transaction entered into prior the Amendment Effective Date, by the Loan Parties and their respective Subsidiaries that would have been permitted to be taken (or omitted to be taken, as the case may be) or entered into under the terms of the Unamended Credit Agreement or the other Loan Documents, but for the existence of the Borrowing Base Inaccuracies.

SECTION 4. Effect of Amendment.

(a) On and after the Amendment Effective Date, (i) each reference in the Loan Documents (other than the Amended Credit Agreement) to "the Revolving Credit Agreement," "therein," "thereunder," "thereof" or words of like import referring to the Unamended Credit Agreement, shall mean and be a reference to the Amended Credit Agreement, and (ii) all references to any Section (or subsection) of the Unamended Credit Agreement in any Loan Document (but not the Amended Credit Agreement) shall be amended to become, *mutatis mutandis*, references to the corresponding provisions of the Amended Credit Agreement.

(b) The Unamended Credit Agreement and each of the other Loan Documents, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The parties hereto acknowledge and agree that (1) this Amendment and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation or termination of the Obligations under the Unamended Credit Agreement as in effect prior to the Amendment Effective Date and which remain outstanding, (2) the Obligations are in all respects continuing (as amended by the Amended Credit Agreement and which are hereafter subject to the terms of the Amended Credit Agreement), (3) the security interests as granted under the applicable Loan Documents (other than the Mortgages) securing payment of such Obligations are in all respects continuing and in full force and effect and are reaffirmed hereby with no change in the priority applicable and such security interests are and continue to be, duly perfected security interests, subject only to (i) the terms thereof, and (ii) the Liens permitted under the Loan Documents, and (4) after giving effect to the Mortgage Amendments, the security interests as granted under the Mortgages securing payment of such Obligations are in all respects continuing and in full force and effect and are reaffirmed hereby with no change in the priority applicable and such security interests are and continue to be, duly perfected security interests, subject only to (i) any limitations contained in the Mortgages, including maximum indebtedness permitted to be secured thereby or stated maturity, (ii) the terms thereof, and (iii) the Liens permitted under the Loan Documents.

(d) The amendment of the Unamended Credit Agreement pursuant to this Amendment is limited as written and is not a consent to any other amendment, restatement or waiver or other modification, whether or not similar and, except as expressly provided herein or in any other Loan Document, all terms and conditions of the Loan Documents remain in full force and effect unless otherwise specifically amended hereby or by any other Loan Document.

(e) This Amendment shall be a Loan Document.

SECTION 5. Conditions of Effectiveness. This Amendment shall become effective in the order and in the manner herein described, as of the first date upon which each of the conditions precedent set forth below in this Section 5 shall be satisfied or waived in accordance with Section 9.08 of the Unamended Credit Agreement (such date, the "Amendment Effective Date"):

(a) The representations and warranties set forth in the Amended Credit Agreement and the other Loan Documents shall be true and correct in all material respects as of the Amendment Effective Date, with the same effect as though made on and as of such date; *provided* to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided, further*, that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language is true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) Both on and as of the date hereof and on and as of the Amendment Effective Date, both before and after giving effect to this Amendment, no event has occurred and is continuing that constitutes a Default or an Event of Default under the Unamended Credit Agreement, the Amended Credit Agreement and the other Loan Documents

(c) The execution, delivery of, and the performance of this Amendment by Holdings, the Company and the other Borrowers is permitted under the terms of all Material Indebtedness.

(d) The Administrative Agent (or its counsel) shall have received from Holdings, the Company, the other Borrowers and each Subsidiary Loan Party, the Administrative Agent, and the Lenders party hereto either (i) a counterpart of this Amendment 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 Amendment) that such party has signed a counterpart of this Agreement.



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(e) The Administrative Agent shall have received, on behalf of itself and the Lenders and each Issuing Bank on the Amendment Effective Date, a favorable written opinion of (i) Bryan Cave LLP, special counsel for the Loan Parties, (ii) Jason Greene, in-house counsel for the Loan Parties, (iii) VanCott, Bagley, Cornwall & McCarthy, Utah counsel for certain of the Loan Parties, (iv) Richards, Layton & Finger, Delaware counsel for certain of the Loan Parties, (v) Faegre Baker Daniels, LLP, Minnesota counsel for certain of the Loan Parties, (vi) Gess Gess & Wallace, New Jersey counsel for certain of the Loan Parties, (vii) Godfrey & Kahn, Wisconsin counsel for certain of the Loan Parties, and (viii) Venable LLP, Maryland counsel for certain of the Loan Parties, in each case (A) dated the Amendment Effective Date, (B) addressed to each Issuing Bank on the Amendment Effective Date, the Administrative Agent and the Lenders, and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such other matters relating to the Loan Documents as the Administrative Agent shall reasonably request.

(f) Except as provided in Section 6(b) hereof, the Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii), (iii) and (iv) below:

(i) only if such document or item has not previously been delivered, or shall have changed since the latter of (x) its last date of its previous delivery to the Administrative Agent pursuant to the Unamended Credit Agreement, and (y) the Original Agreement Date, a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, as applicable, including all amendments thereto, of each Loan Party, (A) in the case of a corporation, certified as of a recent date of the Amendment Effective Date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date of the Amendment Effective Date (and if available, accompanied by a "bring down" dated as of the Amendment Effective Date) from such Secretary of State (or other similar official) or (B) in the case of a partnership or limited liability company, certified by the Secretary or Assistant Secretary of each such Loan Party;

(ii) a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated the Amendment Effective Date and certifying:

(A) (1) that attached thereto is a true and complete copy of the bylaws (or partnership agreement, limited liability company agreement, operating agreement or other equivalent governing documents) of such Loan Party as in effect on the Amendment Effective Date and at all times since the date of the resolutions described in clause (B) below, or (2) that the by-laws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party, as in effect on the Amendment Effective Date, have not been modified, rescinded or amended since the latter of (x) its last date of delivery to the Administrative Agent pursuant to the Unamended Credit Agreement and (y) the Original Agreement Date,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case

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of the Borrowers, the borrowings thereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Amendment Effective Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed or delivered pursuant to clause (i) above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party, and

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party or, to the knowledge of such person, threatening the existence of such Loan Party;

(iii) a certificate of a director or another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above; and

(iv) such other documents as the Administrative Agent, the Lenders and any Issuing Bank on the Amendment Effective Date may reasonably request (including without limitation, tax identification numbers, addresses and any information requested pursuant to "know your customer" requirements).

(g) the Administrative Agent shall have received from a Financial Officer of the Company, an officer's certificate to the effect that the execution, delivery and performance of this Amendment, the Amended Credit Agreement and the other Loan Documents by the Loan Parties will not conflict with, result in a breach of or constitute a default under, or give rise to a right of, or result in, any cancellation or acceleration under, any indenture, credit or loan agreement or other documents or instruments to which any Loan Party is party with respect to any Material Indebtedness.

(h) The Agents shall have received all fees payable thereto or to any Lender on or prior to the Amendment Effective Date and, to the extent invoiced at least 2 Business Days prior to the Amendment Effective Date, all other amounts due and payable pursuant to the Loan Documents on or prior to the Amendment Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses (including reasonable fees, charges and disbursements of Cahill Gordon & Reindel LLP and local counsel) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document.

(i) The Administrative Agent shall have received (A) a standard flood hazard determination form ordered by the Collateral Agent evidencing whether each such Mortgaged Property is in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards (a "Flood Hazard Property") and whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance Program, (B) for each Flood Hazard Property, the applicable Loan Party's written acknowledgment of receipt of written notification from the Collateral Agent as to the fact that such Mortgaged Property is a Flood Hazard Property and as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program, and (C) for each Flood Hazard Property, copies of the applicable Loan Party's flood insurance in an amount and otherwise

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sufficient to comply with all rules and regulations promulgated pursuant to the Flood Insurance Laws and otherwise in form and substance reasonably acceptable to the Lenders (such acceptability being conclusively evidenced by the execution of this Amendment by each Lender).

For purposes of determining compliance with the conditions specified above, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Amendment Effective Date specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender's ratable portion of the initial Borrowing, if any.

#### SECTION 6. Covenants.

(a) Within 90 days after the Amendment Effective Date (which period may be extended in the sole and absolute discretion of the Administrative Agent and the Collateral Agent without any further consent from any Lender), the Loan Parties shall deliver to the Collateral Agent:

(i) (A) counterparts of an amendment to each Mortgage (each such amendment, a "Mortgage Amendment") entered into with respect to each Mortgaged Property set forth on Schedule 1.01(c) of the Amended Credit Agreement, duly executed, acknowledged and delivered by the record owner of such Mortgaged Property, suitable for recording or filing, with all filing and recording taxes and fees paid for by or on behalf of the Borrowers and (B) such other documents including, but not limited to, any consents, agreements and confirmations of third parties, as the Collateral Agent may have reasonably requested with respect to any Mortgage Amendment or any Mortgaged Property;

(ii) (A) with respect to any Mortgaged Properties for which title insurance policies were not previously issued in favor of Collateral Agent, a policy or policies or marked up unconditional binder of American Land Title Association Lender's Extended Coverage title insurance (an "ALTA Policy") or alternative title insurance policies reasonably acceptable to Collateral Agent in states where an ALTA Policy is unavailable or if a new property survey would be required to be made in order to issue a ALTA Policy ("Title Policies"), and (B) "datedown" and mortgage modification endorsements to the existing title insurance policies with respect to the Mortgaged Properties ("Modification Endorsements"; Title Policies and Modification Endorsements, to the extent required, collectively, "Title Insurance"), such Title Insurance paid for by the Borrowers, issued by a nationally recognized title insurance company insuring the Lien of each Mortgage (as amended by the Mortgage Amendment), as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except as permitted by Section 6.02 of the Amended Credit Agreement, such Title Insurance in a form and substance reasonably acceptable to Collateral Agent and together with such customary endorsements (including zoning endorsements where reasonably appropriate and available, which, in the case of a Modification Endorsement, shall not be required where a recent zoning report shows no changes in zoning since the date of the existing title policy or the last zoning endorsement), coinsurance and reinsurance as the Collateral Agent may reasonably request, and with respect to any such property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality in a form reasonably acceptable to the Collateral Agent;

(iii) evidence of the insurance required by the terms of the Mortgages (as amended by the Mortgage Amendments); and

(iv) payment in full of all costs, expenses and fees payable to the Agents in connection with the deliverables set forth in this Section 6 in accordance with the terms and provisions of Section 9.05(a) of the Amended Credit Agreement that are invoiced and sent in writing to the Company not later than 3 Business Days prior to the end of such 90-day period (or the end of any extended period, if applicable).

(b) Within 3 business days after the Amendment Effective Date (which period may be extended in the sole and absolute discretion of the Administrative Agent without any further consent from any Lender), the Loan Parties shall deliver to the Administrative Agent the certificate of incorporation, including all amendments thereto, of BPRex Specialty Products Puerto Rico Inc. certified as of a recent date of the Amendment Effective Date by the Secretary of State of New Jersey.

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SECTION 7. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopier or other electronic means shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 8. Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the state of New York.

SECTION 9. 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 RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AMENDMENT OR ANY OF THE OTHER LOAN DOCUMENTS. 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 AMENDMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.

SECTION 10. Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof (collectively, "New York Courts"), in any action or proceeding arising out of or relating to this Amendment or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Amendment shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Amendment or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than

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any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(b) Each of the parties hereto 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 Amendment or the other Loan Documents in any New York State or federal court. 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.

SECTION 11. Effect of Waiver. Except as expressly set forth herein, the Waiver shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Amended Credit Agreement or any other Loan Document, and except as expressly provided in the Waiver, shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Amended Credit Agreement or any other provision of the Amended Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

*[Remainder of Page Intentionally Left Blank]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement as of the date first written above.

**HOLDINGS:**

**BERRY PLASTICS GROUP, INC.**

By: /S/ Jason K. Greene

Name: Jason K. Greene

Title: Executive Vice President

**BORROWERS:**

**BERRY PLASTICS CORPORATION**

**BERRY PLASTICS TECHNICAL SERVICES, INC.**

**BERRY STERLING CORPORATION**

**CARDINAL PACKAGING, INC.**

**CPI HOLDING CORPORATION**

**PESCOR, INC.**

**VENTURE PACKAGING, INC.**

**VENTURE PACKAGING MIDWEST, INC.**

**BERRY PLASTICS ACQUISITION CORPORATION V**

**BERRY PLASTICS OPCO, INC.**

**BERRY PLASTICS ACQUISITION CORPORATION**

**IX**

**BERRY PLASTICS ACQUISITION LLC X**

**BERRY PLASTICS ACQUISITION CORPORATION**

**XI**

**BERRY PLASTICS ACQUISITION CORPORATION**

**XII**

**BERRY PLASTICS ACQUISITION CORPORATION**

**XIII**

**BERRY PLASTICS SP, INC.**

**ROLLPAK CORPORATION**

**CAPLAS NEPTUNE, LLC**

**CAPLAS LLC**

By: /S/ Jason K. Greene

Name: Jason K. Greene

Title: Executive Vice President

---

**BORROWERS (continued)**

**AEROCON, LLC  
BERRY PLASTICS IK, LLC  
BERRY PLASTICS ACQUISITION CORPORATION  
XV, LLC  
BERRY PLASTICS DESIGN, LLC  
COVALENCE SPECIALTY COATINGS LLC  
COVALENCE SPECIALTY ADHESIVES LLC  
KERR GROUP, LLC  
POLY-SEAL, LLC**

By: **BERRY PLASTICS CORPORATION,  
its sole member**

By: /S/ Jason K. Greene

Name: Jason K. Greene

Title: Executive Vice President

**PLIANT, LLC  
UNIPLAST HOLDINGS, LLC  
CAPTIVE PLASTICS, LLC  
CAPTIVE PLASTICS HOLDINGS, LLC  
KNIGHT PLASTICS, LLC  
PACKERWARE, LLC**

By: /S/ Jason K. Greene

Name: Jason K. Greene

Title: Executive Vice President

**BPREX CLOSURE SYSTEMS, LLC  
BPREX CLOSURES, LLC**

By: **BERRY PLASTICS CORPORATION,  
its sole member and manager**

By: /S/ Jason K. Greene

Name: Jason K. Greene

Title: Executive Vice President

---

**BORROWERS (continued):**

**SAFFRON ACQUISITION, LLC**

By: **KERR GROUP, LLC,**  
**its sole member and manager**

By: **BERRY PLASTICS CORPORATION,**  
**its sole member**

By: /S/ Jason K. Greene

\_\_\_\_\_  
Name: Jason K. Greene

Title: Executive Vice President

**SUN COAST INDUSTRIES, LLC**

By: **SAFFRON ACQUISITION, LLC,**  
**its sole member and manager**

By: **KERR GROUP, LLC,**  
**its sole member and manager**

By: **BERRY PLASTICS CORPORATION,**  
**its sole member and manager**

By: /S/ Jason K. Greene

\_\_\_\_\_  
Name: Jason K. Greene

Title: Executive Vice President



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**BORROWERS (continued):**

**SETCO, LLC**

By: **KERR GROUP, LLC,**  
**its sole member**

By: **BERRY PLASTICS CORPORATION,**  
**its sole member and manager**

By: /S/ Jason K. Greene \_\_\_\_\_

Name: Jason K. Greene

Title: Executive Vice President

**GRAFCO INDUSTRIES LIMITED PARTNERSHIP**

By: **Caplas Neptune, LLC,**  
**its General Partner**

By: /S/ Jason K. Greene \_\_\_\_\_

Name: Jason K. Greene

Title: Executive Vice President

**PLIANT CORPORATION INTERNATIONAL**

**UNIPLAST U.S., INC.**

**BPREX PLASTIC PACKAGING INC.**

**BPREX HEALTHCARE PACKAGING INC.**

**BPREX PLASTIC SERVICES COMPANY INC.**

**BPREX SPECIALTY PRODUCTS PUERTO RICO INC.**

**BPREX HEALTHCARE BROOKVILLE INC.**

**BPREX PRODUCT DESIGN AND ENGINEERING INC.**

**BPREX BRAZIL HOLDING INC.**

**BERRY PLASTICS FILMCO, INC.**

**BPREX CLOSURES KENTUCKY, INC.**

**BPREX DELTA INC.**

**PRIME LABEL & SCREEN INCORPORATED**

By: /S/ Jason K. Greene \_\_\_\_\_

Name: Jason K. Greene

Title: Executive Vice President

---

**BORROWERS (continued):**

**SEAL FOR LIFE INDUSTRIES, LLC**

By: **BERRY PLASTICS CORPORATION,**  
**its sole member and manager**

By: /S/ Jason K. Greene

Name: Jason K. Greene

Title: Executive Vice President

---

**BANK OF AMERICA, N.A.,**  
as Administrative Agent and Collateral Agent

By: /S/ Robert Q. Mahoney \_\_\_\_\_

Name: Robert Q. Mahoney

Title: Senior Vice President

---

**BANK OF AMERICA, N.A.,**  
as Lender

By: /S/ Robert Q. Mahoney \_\_\_\_\_

Name: Robert Q. Mahoney

Title: Senior Vice President

---

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as a Lender

By: /S/ Michael P. Henry \_\_\_\_\_

Name: Michael P. Henry

Title: Duly Authorized Signatory

---

**BARCLAYS BANK PLC,**  
as a Lender

By: /S/ Christopher Lee  
Name: Christopher Lee  
Title: Vice President

---

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**CITIBANK, N.A.,**  
as a Lender

By: /S/ Brendan MacKay \_\_\_\_\_

Name: Brendan MacKay

Title: Director and Vice President

---

**CREDIT SUISSE AGA, CAYMAN ISLANDS BRANCH,**  
as Lender

By: /S/ Vipul Dhadha \_\_\_\_\_  
Name: Vipul Dhadha  
Title: Authorized Signatory

By: /S/ Karim Rahimtoola \_\_\_\_\_  
Name: Karim Rahimtoola  
Title: Authorized Signatory



---

**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender

By: /S/ David Lawrence  
Name: David Lawrence  
Title: Vice President

---

**NYCB SPECIALTY FINANCING COMPANY, LLC**, a  
wholly owned subsidiary of NEW YORK COMMUNITY  
BANK, as a Lender

By: /s/ Willard D. Dickerson, Jr.

Name: Willard D. Dickerson, Jr.

Title: Senior Vice President

---

**GOLDMAN SACHS BANK USA,**  
as a Lender

By: /S/ Ryan Durkin \_\_\_\_\_

Name: Ryan Durkin

Title: Authorized Signatory

---

**DEUTSCHE BANK AG NEW YORK BRANCH,**  
as a Lender

By: /S/ Peter Cucchiara

Name: Peter Cucchiara  
Title: Vice President

By: /S/ Kirk L. Tashjian

Name: Kirk L. Tashjian  
Title: Director

---

**BMO HARRIS BANK N.A.,**  
as Lender

By: /s/ Quinn Herden

Name: Quinn Herden

Title: Director

---

**CITY NATIONAL BANK,**  
as Lender

By: /S/ Mia Bolin

Name: Mia Bolin

Title: Vice President

---

**JPMORGAN CHASE BANK, N.A.,**  
as a Lender

By: /S/ Lynne Ciaccia

Name: Lynne Ciaccia

Title: Authorized Officer

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**Annex A**

**[Form of Amended Credit Agreement Attached]**



\$650,000,000

SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

Dated as of May 14, 2015

Among

BERRY PLASTICS CORPORATION,

as Borrower,

BERRY PLASTICS GROUP, INC.

as Holdings,

and

CERTAIN OF ITS SUBSIDIARIES PARTY HERETO

as Borrowers or Guarantors,

THE LENDERS PARTY HERETO,

BANK OF AMERICA, N.A.,

as Collateral Agent and Administrative Agent,

Citigroup Global Markets Inc., Credit Suisse AG, Cayman Islands Branch, and U.S. Bank, National Association  
as Co-Syndication Agents,

Barclays Bank PLC and Wells Fargo Capital Finance, LLC,  
as Co-Documentation Agents,

Merrill Lynch, Pierce, Fenner & Smith Inc., Wells Fargo Capital Finance, LLC, and  
Barclays Capital,  
as Joint Lead Arrangers

and

Merrill Lynch, Pierce, Fenner & Smith Inc., Wells Fargo Capital Finance, LLC and Barclays Capital,  
as Joint Bookrunners

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*[To the extent not included herewith, exhibits and schedules are incorporated by reference to Exhibit 10.1 to Amendment No. 1 to Form 8-K filed on May 3, 2012 by Bery Plastics Corporation, SEC File No. 033-75706-01.]*

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This SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT is entered into as of May 14, 2015 (this "Agreement"), among BERRY PLASTICS GROUP, INC., a Delaware corporation ("Holdings"), COVALENCE SPECIALTY MATERIALS CORP., a Delaware corporation ("Covalence"), which on the Closing Date was merged with and into Berry Plastics Holding Corporation, a Delaware corporation ("Berry"), with Berry surviving such merger (Berry together with its successor, Berry Plastics Corporation, a Delaware corporation, the "Company"), certain domestic Subsidiaries of the Company party hereto from time to time as BORROWERS (as defined below), the LENDERS party hereto from time to time, BANK OF AMERICA, N.A., as administrative agent (in such capacity, the "Administrative Agent") and collateral agent for the Lenders, CITIGROUP GLOBAL MARKETS INC. CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH and U.S. BANK, NATIONAL ASSOCIATION as co-syndication agents (in such capacities, the "Syndication Agents"), and BARCLAYS BANK PLC and WELLS FARGO CAPITAL FINANCE, LLC. as co-documentation agents (in such capacities, the "Documentation Agents").

WHEREAS, this Agreement has been titled the "Second Amended and Restated Revolving Credit Agreement" for convenience of reference only and is, and is intended to be, a further amended revolving credit agreement;

WHEREAS, Covalence Holdings (as defined below), Covalence, the lenders and agents named therein, and Bank of America, N.A., as administrative agent for such lenders, entered into that certain Revolving Credit Agreement dated as of May 18, 2006 ("the "Existing Credit Agreement");

WHEREAS, Holdings, the Company, certain of the other Borrowers, the Administrative Agent, and the Collateral Agent (as defined below) have amended and restated the Existing Credit Agreement by entering into that certain Amended and Restated Revolving Credit Agreement, dated as of April 3, 2007 (the "2007 Credit Agreement") and, as amended, amended and restated, supplemented or otherwise modified through the date hereof and in effect immediately prior to the effectiveness of the Amendment, the "Unamended Credit Agreement"), with the lenders from time to time party thereto and the other agents party and issuing banks thereto;

WHEREAS, the Company has requested from the Existing Lenders (as defined below) and the Administrative Agent, to amend and restate the Unamended Credit Agreement in its entirety on and subject to the terms and conditions set forth in Amendment No. 4;

NOW, THEREFORE, the Borrowers, the Lenders and the other parties hereto hereby agree as follows:

## ARTICLE I

### Definitions

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

"2007 Credit Agreement" shall have the meaning assigned to such term in the recitals hereto.

"2011 Information Memorandum" shall mean the Confidential Information Memorandum dated June 7, 2011, as modified or supplemented prior to the Amendment Effective Date.

"2011 Projections" shall mean the projections of Holdings, the Company and the Subsidiaries included in the 2011 Information Memorandum and any other projections and any forward-looking statements

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(including statements with respect to booked business) of such entities furnished to the Lenders or the Administrative Agent by or on behalf of Holdings, the Company or any of the Subsidiaries in connection with the transactions contemplated on or about the Amendment Effective Date and delivered prior thereto.

“2015 Projections” shall mean the projections and forward-looking statements (including statements with respect to booked business) of Holdings, the Company and the Subsidiaries furnished to the Lenders or the Administrative Agent by or on behalf of Holdings, the Company or any of the Subsidiaries in connection with the transactions contemplated on or about the Amendment No. 4 Effective Date and delivered prior thereto.

“ABL Fixed Charge Coverage Ratio” shall mean the ratio of (a) EBITDA of the Company for the most recent period of four consecutive fiscal quarters of the Company for which financial statements are available minus the income taxes paid in cash by the Company and included in the determination of Consolidated Net Income during such period minus non-financed Capital Expenditures of the Company and its Subsidiaries during such period to (b) the sum of (i) scheduled principal payment required to be made during such period in respect of Indebtedness for borrowed money plus (ii) the Consolidated Interest Expense (excluding amortization of any original issue discount, interest paid in kind or added to principal and other noncash interest) of the Company and its Subsidiaries for such period plus (iii) Distributions pursuant to Sections 6.06(c) and (e) in each case to the extent paid by the Company in cash.

For fiscal periods ending prior to the first full fiscal quarter after the Closing Date, the ratio shall be calculated on a Pro Forma Basis giving effect to the Transactions.

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

“ABR Borrowing” shall mean a Borrowing comprised of ABR Loans.

“ABR Loan” shall mean any ABR Revolving Loan, Swingline Loan or Agent Advance.

“ABR Revolving Facility Borrowing” shall mean a Borrowing comprised of ABR Revolving Loans.

“ABR Revolving Loan” shall mean any Revolving Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

“Acceptable Appraiser” shall mean (a) any person listed on Schedule 1.01(b), or (b) any other experienced and reputable appraiser reasonably acceptable to the Company and the Administrative Agent.

“Acceptance Credit” shall mean a commercial Letter of Credit in which the applicable Issuing Bank engages with the beneficiary of such Letter of Credit to accept a time draft.



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“Acceptance Documents” shall mean such general acceptance agreements, applications, certificates and other documents as the applicable Issuing Bank may require in connection with the creation of Bankers’ Acceptances.

“Accommodation Payment” shall have the meaning assigned to such term in Section 9.22.

“Account” shall mean, with respect to a person, any of such person’s now owned and hereafter acquired or arising accounts, as defined in the UCC, including any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance, and “Accounts” shall mean, with respect to any such person, all of the foregoing.

“Account Debtor” shall mean each person obligated on an Account.

“Acquisition Agreement” shall mean the Stock and Asset Purchase Agreement (as amended by that certain Closing Agreement dated as of February 16, 2006) dated as of December 20, 2005, among Tyco Group S.a.r.l., a Luxembourg company, Covalence and, for purposes of Section 11.15 thereof only, Tyco International Group S.A.

“Act” shall have the meaning assigned to such term in Section 9.20.

“Additional Mortgage” shall have the meaning assigned to such term in Section 5.10(c).

“Adjusted LIBO Rate” shall mean, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate *per annum* equal to (a) the LIBO Rate in effect for such Interest Period divided by (b) (i) one minus (ii) the Statutory Reserves applicable to such Eurocurrency Borrowing, if any.

“Administrative Agent” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Administrative Agent Fees” shall have the meaning assigned to such term in Section 2.12(e).

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

“Affiliate” shall mean, when used 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. For purposes of clause (h) of the definition of Eligible Accounts, the term “Affiliate”, however, with respect to any Loan Party or the Equity Investors, shall exclude any Apollo Operating Company.

“Agent Advance Exposure” shall mean at any time the aggregate principal amount of all outstanding Agent Advances at such time. The Agent Advance Exposure of any Revolving Lender at any time shall mean its Pro Rata Share of the aggregate Agent Advance Exposure at such time.

“Agent Advances” shall have the meaning assigned to such term in Section 2.04(d).

“Agents” shall mean the Administrative Agent and the Collateral Agent.

“Agreement” shall have the meaning assigned to such term in the Introductory paragraph of this Agreement.

“Agreement Currency” shall have the meaning assigned to such term in Section 9.19.

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“Allocable Amount” shall have the meaning assigned to such term in Section 9.22.

“Alternate Currency” shall mean, with respect to any Letter of Credit, Canadian Dollars or Euros and any other currency other than Dollars as may be acceptable to the Administrative Agent and the Issuing Bank with respect thereto in their sole discretion.

“Alternate Currency Letter of Credit” shall mean any Letter of Credit denominated in an Alternate Currency.

“Amendment No. 3” shall mean that certain Amendment No. 3, dated as of the Amendment No. 3 Effective Date, among Holdings, the Company, the other Borrowers, certain other subsidiaries of the Company party thereto, the Consenting Lenders (as defined therein), the Designated Lenders (as defined therein), the Administrative Agent, the Collateral Agent, and the other agents and issuing banks party thereto, amending the 2007 Credit Agreement as theretofore amended.

“Amendment No. 3 Effective Date” shall mean June 28, 2011.

“Amendment No. 4” shall mean that certain Amendment No. 4, dated as of the Amendment No. 4 Effective Date, among Holdings, the Company, the other Borrowers, certain other subsidiaries of the Company party thereto, the Lenders (as defined therein), the Administrative Agent, the Collateral Agent, and the other agents and issuing banks party thereto, amending the Unamended Credit Agreement.

“Amendment No. 4 Effective Date” shall mean the date on which the Amendment No. 4 shall have become effective in accordance with its terms.

“Apollo Operating Company” shall mean a person engaged in the business of producing goods or providing services that but for the last sentence of the definition of Affiliate would be an Affiliate of the Equity Investors.

“Applicable Margin” shall mean for any day prior to August 14, 2015, for which interest has not been paid as of such date, 1.50% *per annum* in the case of any Eurocurrency Loan and 0.50% *per annum* in the case of any ABR Loan and on and after such date, the Applicable Margin will be determined pursuant to the Pricing Grid.

“Applicable Period” shall mean an Excess Cash Flow Period or an Excess Cash Flow Interim Period, as the case may be.

“Approved Fund” shall have the meaning assigned to such term in Section 9.04(b).

“Asset Sale” shall mean any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any sale and leaseback of assets and any mortgage or lease of real property) to any person of any asset or assets of the Company or any Subsidiary.

“Assignee” shall have the meaning assigned to such term in Section 9.04(b).

“Assignment and Acceptance” shall mean an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Company (if required by such assignment and acceptance), in the form of Exhibit A or such other form as shall be approved by the Administrative Agent.

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“Availability” shall mean, at any time, (a) the Borrowing Base minus (b) the Revolving Facility Credit Exposure.

“Availability Period” shall mean the period from and including the Amendment No. 4 Effective Date to but excluding the earlier of the Revolving Facility Maturity Date and the date of termination of the Revolving Facility Commitments.

“Availability Triggering Event” shall mean that (a) except for purposes of Sections 5.07, 5.11, 5.12 and 5.14, the Availability is less than the Threshold Amount, or (b) for purposes of Section 5.07, 5.11, 5.12 and 5.14 only, the Availability is less than the Threshold Amount for five consecutive Business Days. Once an Availability Triggering Event has occurred, it shall continue until such time as the Availability is greater than the Threshold Amount for a period of 10 consecutive days.

“Available Unused Commitment” shall mean, with respect to a Revolving Lender at any time, an amount equal to the amount by which (a) the Revolving Facility Commitment of such Revolving Lender at such time exceeds (b) the Revolving Facility Credit Exposure of such Revolving Lender at such time minus such Revolving Lender’s Pro Rata Share of the Swingline Exposure and the Agent Advance Exposure.

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

“Bankers’ Acceptance” or “BA” shall mean a time draft, drawn by the beneficiary under an Acceptance Credit and accepted by the applicable Issuing Bank upon presentation of documents by the beneficiary of an Acceptance Credit pursuant to Section 2.05 hereof, in the standard form for bankers’ acceptances of such Issuing Bank.

“Bankruptcy Code” shall mean Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

“Below Threshold Asset Sale Proceeds” shall have the meaning assigned to such term in the definition of “Cumulative Credit” in this Section 1.01.

“Berry” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Berry Holdings” shall mean Berry Plastics Group, Inc., which prior to the Closing Date was merged with and into Covalence Holdings.

“Berry Senior Subordinated Note Documents” shall mean the Berry Senior Subordinated Notes and the Berry Senior Subordinated Notes Indenture.

“Berry Senior Subordinated Notes” shall mean the 11% Senior Subordinated Notes due 2016, issued pursuant to the Berry Senior Subordinated Notes Indenture and any notes issued in exchange for, and as contemplated by, the Berry Senior Subordinated Notes and the related registration rights agreement with substantially identical terms as the Berry Senior Subordinated Notes.

“Berry Senior Subordinated Notes Indenture” shall mean the Indenture dated as of September 20, 2006 under which the Berry Senior Subordinated Notes were issued, among BPC Holding Corporation, a predecessor of Berry and certain of its subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Closing Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

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“Blocked Account Agreement” shall mean an agreement among one or more of the Loan Parties, the Collateral Agent, and a Clearing Bank, in form and substance reasonably satisfactory to the Collateral Agent, concerning the collection of payments which represent the proceeds of Accounts and other Collateral of a Loan Party.

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

“Board of Directors” shall mean as to any person, the board of directors or other governing body of such person, or, if such person is owned or managed by a single entity, the board of directors or other governing body of such person.

“Borrower” shall mean, the Company, those certain domestic subsidiaries of the Company party hereto, and each Other Borrower who becomes a Borrower hereunder in accordance with the terms of this Agreement, jointly, severally, and collectively, and “Borrowers” shall mean more than one or all of the foregoing persons, jointly, severally, and collectively, as the context requires.

“Borrower Joinder Agreement” shall mean a joinder agreement, in the form attached as Exhibit E.

“Borrower Materials” shall have the meaning assigned to such term in Section 9.17.

“Borrowing” shall mean all Revolving Loans of a single Type and made on a single date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect. Unless the context indicates otherwise, the term “Borrowing” shall also include any Swingline Borrowing and any Agent Advance.

“Borrowing Base” shall mean, at any time, an amount equal to the lesser of:

(a) the Revolving Facility Commitment; and

(b) the result of:

(i) the sum of (A) eighty-five percent (85.0%) of the Net Amount of Eligible Accounts, and (B) eighty-five percent (85.0%) of the Net Orderly Liquidation Value of Eligible Inventory, minus

(ii) all Reserves, without duplication of any items that are otherwise addressed or excluded through eligibility criteria, which the Administrative Agent deems necessary in the exercise of its Reasonable Credit Judgment to maintain with respect to any Loan Party, including Reserves for any amounts which the Administrative Agent or any Lender may be obligated to pay in the future for the account of any Loan Party.

The specified percentages set forth in this definition will not be reduced without the consent of the Company. Any determination by the Administrative Agent in respect of the Borrowing Base shall be based on the Administrative Agent’s Reasonable Credit Judgment. The parties understand that the exclusionary criteria in the definitions of Eligible Accounts and Eligible Inventory, any Reserves that may be imposed as provided herein, and Net Amount of Eligible Accounts and factors considered in the calculation of Net Orderly Liquidation Value of Eligible Inventory have the effect of reducing the Borrowing Base, and, accordingly, whether or not any provisions hereof so state, all of the foregoing shall be determined without duplication so as not to result in multiple reductions in the Borrowing Base for the same facts or circumstances.

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“Borrowing Base Certificate” shall mean a certificate by a Responsible Officer of the Company, substantially in the form of Exhibit E (or another form reasonably acceptable to the Administrative Agent) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent the Company has received notice of any such Reserve from the Administrative Agent, any of the Reserves included in such calculation pursuant to clause (b)(ii) of the definition of the Borrowing Base), all in such detail as shall be reasonably satisfactory to the Administrative Agent.

“Borrowing Minimum” shall mean \$5 million, except in the case of Swingline Loans, \$1 million.

“Borrowing Multiple” shall mean \$1 million, except in the case of Swingline Loans, \$500,000.

“Borrowing Request” shall mean a request by a Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C-1.

“Budget” shall have the meaning assigned to such term in Section 5.04(e).

“Business Combination” shall mean the business combination pursuant to which (i) immediately prior to the effectiveness of the Unamended Credit Agreement, Berry Holdings merged with and into Covalence Holdings, and Covalence Holdings was renamed Berry Plastics Group, Inc. (ii) substantially simultaneously with the effectiveness of the Unamended Credit Agreement, Covalence Holdings contributed all of the capital stock of Berry to Covalence, and (iii) immediately following the effectiveness of the Unamended Credit Agreement, Covalence merged with and into Berry, with Berry as the surviving corporation, pursuant to the Merger Agreement.

“Business Day” shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, that 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 applicable currency in the London interbank market.

“Canadian Subsidiary” shall mean any Subsidiary of the Company organized now or hereafter under the laws of Canada or a province or territory thereof.

“Capital Expenditures” shall mean, for any person in respect of any period, the aggregate of all expenditures incurred by such person during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the statement of cash flows of such person, provided, however, that Capital Expenditures for the Company and the Subsidiaries shall not include:

(a) expenditures to the extent they are made with proceeds of the issuance of Equity Interests of Holdings after the Closing Date or funds that would have constituted any Net Proceeds under clause (a) of the definition of the term “Net Proceeds” (but for the application of the first proviso to such clause (a)),

(b) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Company and the Subsidiaries within 15 months of receipt of such proceeds (or, if not made within such period of 15 months, are committed to be made during such period),

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(c) interest capitalized during such period,

(d) expenditures that are accounted for as capital expenditures of such person and that actually are paid for by a third party (excluding Holdings, the Company or any Subsidiary thereof) and for which neither Holdings, the Company nor any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period),

(e) the book value of any asset owned by such person prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided, that (i) any expenditure necessary in order to permit such asset to be reused shall be included as a Capital Expenditure during the period that such expenditure actually is made and (ii) such book value shall have been included in Capital Expenditures when such asset was originally acquired,

(f) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase and (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business,

(g) Investments in respect of a Permitted Business Acquisition,

(h) the Business Combination, or

(i) the purchase of property, plant or equipment made within 15 months of the sale of any asset to the extent purchased with the proceeds of such sale (or, if not made within such period of 15 months, to the extent committed to be made during such period).

“Capital Lease Obligations” of any person shall mean 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, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Cash Collateral” shall have the meaning assigned to such term in the definition of “Cash Collateralize” in this Section 1.01.

“Cash Collateralize” shall mean to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, Issuing Bank or Swingline Lender (as applicable) and the Lenders, as collateral for Revolving L/C – BA Exposure, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the Issuing Bank or Swingline Lender benefiting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the Issuing Bank or the Swingline Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Interest Expense” shall mean, with respect to the Company and the Subsidiaries on a consolidated basis for any period, Interest Expense for such period, less the sum of, without duplication,

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(a) pay in kind Interest Expense or other noncash Interest Expense (including as a result of the effects of purchase accounting), (b) to the extent included in Interest Expense, the amortization of any financing fees paid by, or on behalf of, the Company or any Subsidiary, including such fees paid in connection with the Transactions or upon entering into a Permitted Receivables Financing, (c) the amortization of debt discounts, if any, or fees in respect of Swap Agreements and (d) cash interest income of Company and its Subsidiaries for such period; provided, that Cash Interest Expense shall exclude any one time financing fees, including those paid in connection with the Transactions or upon entering into a Permitted Receivables Financing, or upon entering into any amendment of this Agreement.

For fiscal periods ending prior to the first full fiscal quarter after the Closing Date, Cash Interest Expense shall be calculated on a Pro Forma Basis giving effect to the Transactions.

“CD” and “Canadian Dollars” each shall mean the lawful currency of Canada.

A “Change in Control” shall be deemed to occur if:

(a) at any time, (i) Holdings shall fail to own, directly or indirectly, beneficially and of record, 100% of the issued and outstanding Equity Interests of the Company, (ii) a majority of the seats (other than vacant seats) on the Board of Directors of Holdings shall at any time be occupied by persons who were neither (A) nominated by the board of directors of Holdings or a Permitted Holder, (B) appointed by directors so nominated nor (C) appointed by a Permitted Holder or (iii) a “change of control” (or similar event) shall occur under any Second Lien Notes Indenture, any Senior Subordinated Notes Indenture, any First Priority Notes Indenture, any Material Indebtedness or any Permitted Refinancing Indebtedness in respect of any of the foregoing or any Disqualified Stock (to the extent the aggregate amount of the applicable Disqualified Stock exceeds \$35 million);

(b) at any time prior to a Qualified IPO, any combination of Permitted Holders shall fail to own beneficially (within the meaning of Rule 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings; or

(c) at any time after a Qualified IPO, any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 as in effect on the Closing Date), other than any combination of the Permitted Holders or any “group” including any Permitted Holders, shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting interest in Holdings’ Equity Interests and the Permitted Holders shall own, directly or indirectly, less than such person or “group” on a fully diluted basis of the voting interest in Holdings’ Equity Interests.

“Change in Law” shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or Issuing Bank (or, for purposes of Section 2.15(b), by any Lending Office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

“Charges” shall have the meaning assigned to such term in Section 9.09.

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“Clearing Bank” shall mean either Bank of America or any other banking institution with whom a Payment Account has been established pursuant to a Blocked Account Agreement.

“Closing Date” shall mean April 3, 2007.

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

“Collateral” shall mean all the “Collateral” as defined in any Security Document and shall also include the Mortgaged Properties and all other property that is subject to any Lien in favor of the Collateral Agent or any Subagent for the benefit of the Lenders pursuant to any Security Documents.

“Collateral Access Agreement” shall mean a landlord waiver, bailee letter or similar acknowledgment, in form and substance reasonably satisfactory to the Collateral Agent and containing such lien waivers, subordination provisions and other agreements of any lessor, landlord, warehouseman or processor in possession of Inventory, in each case reasonably required by the Collateral Agent to preserve, protect and maintain the security interest (and the priority of the security interest) of the Collateral Agent in such Inventory and executed pursuant to the requirements set forth in clause (j) of the definition of “Eligible Inventory”.

“Collateral Agent” shall mean the party acting as collateral agent for the Secured Parties under the Security Documents. On the Closing Date, the Collateral Agent is the same person as the Administrative Agent. Unless the context otherwise requires, the term “Administrative Agent” as used herein shall, unless the context otherwise requires, include the Collateral Agent, notwithstanding various specific references to the Collateral Agent herein.

“Collateral Agent’s Liens” shall mean the Liens in the Collateral granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the Collateral Agreement and the other Loan Documents.

“Collateral Agreement” shall mean the Second Amended and Restated First Lien Guarantee and Collateral Agreement, dated as of the Closing Date, as amended, supplemented or otherwise modified from time to time, in the form of Exhibit D, among Holdings, the Company, each Subsidiary Loan Party, the Collateral Agent and Credit Suisse as collateral agent.

“Collateral and Guarantee Requirement” shall mean the requirement that:

(a) on the Closing Date, the Collateral Agent shall have received (i) from Holdings, the Company and each Subsidiary Loan Party, a counterpart of the Collateral Agreement duly executed and delivered on behalf of such person and (ii) an Acknowledgment and Consent in the form attached to the Collateral Agreement, executed and delivered by each issuer of Pledged Collateral (as defined in the Collateral Agreement), if any, that is not a Loan Party;

(b) on or before the Closing Date, (i) the Collateral Agent shall have received (A) a pledge of all the issued and outstanding Equity Interests of (x) the Company and (y) each Domestic Subsidiary (other than Subsidiaries listed on Schedule 1.01(a)) owned on the Closing Date directly by or on behalf of the Company or any Subsidiary Loan Party and (B) a pledge of 65% of the outstanding Equity Interests of (1) each “first tier” Foreign Subsidiary directly owned by any Loan Party (except for NIM Holdings Limited, Berry Plastics Asia Pte. Ltd., Ociesse s.r.l., Berry Plastics Acquisition Corporation II, and Berry Plastics Acquisition Corporation XIV, LLC), and (2) each “first tier” Qualified CFC Holding Company directly owned by any Loan Party and (ii) a collateral agent under the Collateral Agreement, shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;



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(c) (i) all Indebtedness of the Company and each Subsidiary having, in the case of each instance of Indebtedness, an aggregate principal amount in excess of \$5 million (other than (A) intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of Holdings and its Subsidiaries or (B) to the extent that a pledge of such promissory note or instrument would violate applicable law) that is owing to any Loan Party shall be evidenced by a promissory note or an instrument and shall have been pledged pursuant to the Collateral Agreement (or other applicable Security Document as reasonably required by the Administrative Agent) (which pledge, in the case of any intercompany note evidencing debt owed by a Foreign Subsidiary to a Loan Party, shall be limited to 65% of the amount outstanding thereunder), and (ii) Credit Suisse, as a collateral agent under the Collateral Agreement shall have received all such promissory notes or instruments, together with note powers or other instruments of transfer with respect thereto endorsed in blank;

(d) in the case of any person that becomes a Subsidiary Loan Party after the Closing Date, the Collateral Agent shall have received a supplement to each of the Collateral Agreement, the Intercreditor Agreement and the Senior Lender Intercreditor Agreement, in the form specified therein, duly executed and delivered on behalf of such Subsidiary Loan Party;

(e) in the case of any person that becomes a "first tier" Foreign Subsidiary directly owned by the Company or a Subsidiary Loan Party after the Closing Date, the Collateral Agent shall have received, as promptly as practicable following a request by the Collateral Agent, a Foreign Pledge Agreement, duly executed and delivered on behalf of such Foreign Subsidiary and the direct parent company of such Foreign Subsidiary;

(f) after the Closing Date, (i) all the outstanding Equity Interests of (A) any person that becomes a Subsidiary Loan Party after the Closing Date and (B) subject to Section 5.10(g), all the Equity Interests that are acquired by a Loan Party after the Closing Date (including, without limitation, the Equity Interests of any Special Purpose Receivables Subsidiary established after the Closing Date), shall have been pledged pursuant to the Collateral Agreement; provided, that in no event shall more than 65% of the issued and outstanding Equity Interests of any "first tier" Foreign Subsidiary or any "first tier" Qualified CFC Holding Company directly owned by such Loan Party be pledged to secure Obligations, and in no event shall any of the issued and outstanding Equity Interests of any Foreign Subsidiary that is not a "first tier" Foreign Subsidiary of a Loan Party or any Qualified CFC Holding Company that is not a "first tier" Subsidiary of a Loan Party be pledged to secure Obligations, and (ii) a collateral agent under the Collateral Agreement shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(g) except as otherwise contemplated by any Security Document, all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by the Security Documents (in each case, including any supplements thereto) and perfect such Liens to the extent required by, and with the priority required by, the Security Documents, shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or the recording concurrently with, or promptly following, the execution and delivery of each such Security Document;

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(h) within 90 days (or such longer period as the Administrative Agent may determine) after the Closing Date, the Collateral Agent shall have received (i) counterparts of each Mortgage to be entered into with respect to each Mortgaged Property set forth on Schedule 1.01(c) duly executed and delivered by the record owner of such Mortgaged Property and suitable for recording or filing and (ii) such other documents including, but not limited to, any consents, agreements and confirmations of third parties, as the Collateral Agent may reasonably request with respect to any such Mortgage or Mortgaged Property;

(i) within 90 days (or such longer period as the Administrative Agent may determine) after the Closing Date, the Collateral Agent shall have received, except as otherwise set forth in clause (l) below, a policy or policies or marked-up unconditional binder of title insurance or foreign equivalent thereof, as applicable, paid for by the Borrowers, issued by a nationally recognized title insurance company insuring the Lien of each Mortgage to be entered into on or after, the Closing Date, as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except as permitted by Section 6.02 and Liens arising by operation of law, together with such customary endorsements (including zoning endorsements where reasonably appropriate and available), coinsurance and reinsurance as the Collateral Agent may reasonably request, and with respect to any such property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality in a form reasonably acceptable to the Collateral Agent;

(j) at or prior to delivery of any Mortgages, evidence of the insurance required by the terms of the Mortgages;

(k) except as otherwise contemplated by any Security Document, each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with (i) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (ii) the performance of its obligations thereunder; and

(l) after the Closing Date, the Administrative Agent shall have received (i) such other Security Documents as may be required to be delivered pursuant to Section 5.10, and (ii) upon reasonable request by the Administrative Agent, evidence of compliance with any other requirements of Section 5.10.

“Collateral Audit” shall have the meaning assigned to such term in Section 5.07.

“Commitment Fee” shall have the meaning assigned to such term in Section 2.12(b).

“Commitments” shall mean (a) with respect to any Lender, such Lender’s Revolving Facility Commitment (including any Incremental Revolving Facility Commitment), and (b) with respect to any Swingline Lender, its Swingline Commitment.

“Commodity Exchange Act” shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Company” shall have the meaning assigned to such term in the recitals hereto.

“Conduit Lender” shall mean any special purpose corporation organized and administered by any Lender for the purpose of making Loans otherwise required to be made by such Lender and designated by such Lender in a written instrument; provided, that the designation by any Lender of a Conduit Lender shall not relieve the designating Lender of any of its obligations to fund a Loan under this Agreement if,

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for any reason, its Conduit Lender fails to fund any such Loan, and the designating Lender (and not the Conduit Lender) shall have the sole right and responsibility to deliver all consents and waivers required or requested under this Agreement with respect to its Conduit Lender; provided, further, that no Conduit Lender shall (a) be entitled to receive any greater amount pursuant to Section 2.15, 2.16, 2.17 or 9.05 than the designating Lender would have been entitled to receive in respect of the extensions of credit made by such Conduit Lender or (b) be deemed to have any Commitment.

“Consolidated Debt” at any date shall mean the sum of (without duplication) all Indebtedness consisting of Capital Lease Obligations, Indebtedness for borrowed money (other than letters of credit to the extent undrawn but including all Bankers’ Acceptances issued under Acceptance Credits), Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services of the Company and the Subsidiaries determined on a consolidated basis on such date in accordance with GAAP.

“Consolidated Interest Expense” shall mean, with respect to any person for any period, the sum, without duplication, of:

- (i) consolidated interest expense of such person for such period, to the extent such expense was deducted in computing Consolidated Net Income (including amortization of original issue discount, the interest component of Capital Lease Obligations, and net payments and receipts (if any) pursuant to interest rate Hedging Obligations and excluding amortization of deferred financing fees and expensing of any bridge or other financing fees);
- (ii) consolidated capitalized interest of such person for such period, whether paid or accrued; and
- (iii) less interest income for such period.

“Consolidated Net Income” shall mean, with respect to any person for any period, the aggregate of the Net Income of such person and its subsidiaries for such period, on a consolidated basis; provided, however, that, without duplication,

- (i) any net after-tax extraordinary, nonrecurring or unusual gains or losses or income or expense or charge (less all fees and expenses relating thereto) including, without limitation, any severance, relocation or other restructuring expenses, any expenses relating to any reconstruction, recommissioning or reconfiguration of fixed assets for alternative uses and fees, expenses or charges relating to new product lines, plant shutdown costs, acquisition integration costs, and fees, expenses or charges related to any offering of Equity Interests of Holdings, any Investment, acquisition or Indebtedness permitted to be incurred hereunder (in each case, whether or not successful), including any such fees, expenses, charges or change in control payments related to the Transactions (including any transition-related expenses incurred before, on or after the Original Agreement Date), in each case, shall be excluded,
- (ii) any net after-tax income or loss from discontinued operations and any net after-tax gain or loss from disposed, abandoned, transferred, closed or discontinued operations shall be excluded,
- (iii) any net after-tax gain or loss (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the Board of Directors of the Company) shall be excluded,

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(iv) any net after-tax income or loss (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness shall be excluded,

(v) (A) the Net Income for such period of any person that is not a subsidiary of such person, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent person or a subsidiary thereof in respect of such period and (B) the Net Income for such period shall include any ordinary course dividend distribution or other payment in cash received from any person in excess of the amounts included in clause (A),

(vi) Consolidated Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(vii) any increase in amortization or depreciation or any one-time non-cash charges resulting from purchase accounting (or similar accounting, in the case of the Transactions) in connection with the Transactions or any acquisition that is consummated after the Original Agreement Date shall be excluded,

(viii) any non-cash impairment charges or asset write-off resulting from the application of GAAP, and the amortization of intangibles arising pursuant to GAAP, shall be excluded,

(ix) any non-cash expenses realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, grants of stock appreciation or similar rights, stock options, restricted stock grants or other rights to officers, directors and employees of such person or any of its subsidiaries shall be excluded,

(x) accruals and reserves that are established within twelve months after the Closing Date and that are so required to be established in accordance with GAAP shall be excluded,

(xi) any expenses realized in respect of the obligations under Sections 2.9 or 5.4 of the Acquisition Agreement, shall in each case be excluded,

(xii) non-cash gains, losses, income and expenses resulting from fair value accounting required by Statement of Financial Accounting Standards No. 133 shall be excluded, and

(xiii) non-cash charges for deferred tax asset valuation allowances shall be excluded.

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

“Control” shall mean 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 ownership of voting securities, by contract or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.

“Covalence” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

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“Covalence Holdings” shall mean Covalence Specialty Materials Holding Corp., which immediately prior to the Closing Date was merged with Berry Holdings, with Covalence Specialty Materials Holding Corp. surviving and being renamed Berry Plastics Group, Inc.

“Covalence Senior Subordinated Note Documents” shall mean the Covalence Senior Subordinated Notes and the Covalence Senior Subordinated Notes Indenture.

“Covalence Senior Subordinated Notes” shall mean the Company’s 10 1/4% Senior Subordinated Notes due 2016, issued pursuant to the Covalence Senior Subordinated Notes Indenture and any notes issued by the Company in exchange for, and as contemplated by, the Covalence Senior Subordinated Notes and the related registration rights agreement with substantially identical terms as the Covalence Senior Subordinated Notes.

“Covalence Senior Subordinated Notes Indenture” shall mean the Indenture dated as of February 16, 2006 among Covalence and certain of the Subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Closing Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Credit Event” shall have the meaning assigned to such term in Article IV.

“Credit Suisse” shall mean Credit Suisse, Cayman Islands Branch (or its successor entity, Credit Suisse AG, Cayman Islands Branch).

“Cumulative Credit” shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) \$100.0 million, plus

(b) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(c) the aggregate amount of proceeds received after the Original Agreement Date and prior to such time that would have constituted Net Proceeds pursuant to clause (a) of the definition thereof except for the operation of clause (A), (B) or (C) of the second proviso thereof (the “Below Threshold Asset Sale Proceeds”), plus

(d) the cumulative amount of proceeds (including cash and the fair market value of property other than cash) from the sale of Equity Interests of Holdings or any Parent Entity after the Original Agreement Date and on or prior to such time (including upon exercise of warrants or options) which proceeds have been contributed as common equity to the capital of the Company and common Equity Interests of the Company issued upon conversion of Indebtedness of the Company or any Subsidiary owed to a person other than the Company or a Subsidiary not previously applied for a purpose other than use in the Cumulative Credit; provided, that this clause (d) shall exclude Permitted Cure Securities and the proceeds thereof, sales of Equity Interests financed as contemplated by Section 6.04(e) and any amounts used to finance the payments or distributions in respect of any Junior Financing pursuant to Section 6.09(b), plus

(e) 100% of the aggregate amount of contributions to the common capital of the Company received in cash (and the fair market value of property other than cash) after the Original Agreement Date (subject to the same exclusions as are applicable to clause (d) above), plus

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(f) the principal amount of any Indebtedness (including the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock) of the Company or any Subsidiary thereof issued after the Original Agreement Date (other than Indebtedness issued to a Subsidiary), which has been converted into or exchanged for Equity Interests (other than Disqualified Stock) in Holdings or any Parent Entity, plus

(g) 100% of the aggregate amount received by the Company or any Subsidiary in cash (and the fair market value of property other than cash received by the Company or any Subsidiary) after the Original Agreement Date from:

(A) the sale (other than to the Company or any Subsidiary) of the Equity Interests of an Unrestricted Subsidiary, or

(B) any dividend or other distribution by an Unrestricted Subsidiary, plus

(h) in the event any Unrestricted Subsidiary has been redesignated as a Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, Holdings, the Company or any Subsidiary, the fair market value of the Investments of Holdings, the Company or any Subsidiary in such Unrestricted Subsidiary at the time of such Subsidiary Redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), plus

(i) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Company or any Subsidiary in respect of any Investments made pursuant to Section 6.04(j) (or the corresponding provision of the senior secured bank credit facility then applicable to such entity) after the Original Agreement Date, minus

(j) any amounts thereof used to make Investments pursuant to Section 6.04(b)(y) (or the corresponding provision of the senior secured bank credit facility then applicable to such entity) after the Original Agreement Date prior to such time, minus

(k) any amounts thereof used to make Investments pursuant to Section 6.04(j)(ii) (or the corresponding provision of the senior secured bank credit facility then applicable to such entity) after the Original Agreement Date prior to such time, minus

(l) the cumulative amount of dividends paid and distributions made pursuant to Section 6.06(e) (or the corresponding provision of the senior secured bank credit facility then applicable to such entity) after the Original Agreement Date prior to such time, minus

(m) payments or distributions in respect of Junior Financings pursuant to Section 6.09(b)(i) (or the corresponding provision of the senior secured bank credit facility then applicable to such entity) (other than payments made with proceeds from the issuance of Equity Interests that were excluded from the calculation of the Cumulative Credit pursuant to clause (d) above) after the Original Agreement Date;

provided, however, for purposes of Section 6.06(e), the calculation of the Cumulative Credit shall not include any Below Threshold Asset Sale Proceeds except to the extent they are used as contemplated in clauses (j) and (k) above.

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For the avoidance of doubt, the amount resulting from calculation of Cumulative Credit prior to the Amendment No. 4 Effective Date is intended to be the same amount as would be calculated under the Unamended Credit Agreement.

“Cumulative Retained Excess Cash Flow Amount” shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to:

- (a) the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Original Agreement Date and prior to such date, plus
- (b) for each Excess Cash Flow Interim Period ended prior to such date but as to which the corresponding Excess Cash Flow Period has not ended, an amount equal to the Retained Percentage of Excess Cash Flow for such Excess Cash Flow Interim Period, minus
- (c) the cumulative amount of all Retained Excess Cash Flow Overfundings as of such date.

“Cure Amount” shall have the meaning assigned to such term in Section 7.03(a).

“Cure Right” shall have the meaning assigned to such term in Section 7.03(a).

“Current Assets” shall mean, with respect to the Company and the Subsidiaries on a consolidated basis at any date of determination, the sum of (a) all assets (other than cash and Permitted Investments or other cash equivalents and amounts receivable under Sections 2.9 and 5.4 of the Acquisition Agreement) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Company and the Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits and (b) in the event that a Permitted Receivables Financing is accounted for off balance sheet, (x) gross accounts receivable comprising part of the Receivables Assets subject to such Permitted Receivables Financing less (y) collections against the amounts sold pursuant to clause (x).

“Current Liabilities” shall mean, with respect to the Company and the Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Company and the Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) accruals of Interest Expense (excluding Interest Expense that is due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals, if any, of transaction costs resulting from the Transactions, (e) accruals, if any, of transaction costs resulting from and obligations under Sections 2.9 and 5.4 of the Acquisition Agreement, (f) accruals of any costs or expenses related to (i) severance or termination of employees prior to the Original Agreement Date or (ii) bonuses, pension and other post-retirement benefit obligations, and (g) accruals for add-backs to EBITDA included in clauses (a)(iv) through (a)(vi) of the definition of such term.

“Debt Service” shall mean, with respect to the Company and the Subsidiaries on a consolidated basis for any period, Cash Interest Expense for such period plus scheduled principal amortization of Consolidated Debt for such period.

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

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“Default” shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

“Defaulting Lender” shall mean, subject to Section 2.23, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Company, the Administrative Agent or any Issuing Bank or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent and the Company that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.23) upon delivery of written notice of such determination to the Company, each Issuing Bank, each Swingline Lender and each Lender.

“Designated Non-Cash Consideration” mean the fair market value of non-cash consideration received by the Company or one of its Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation, less the amount of cash equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“Disqualified Stock” shall mean, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior



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repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Revolving Facility Maturity Date; provided, however, that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; provided further, however, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Company or the Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

“Distributions” shall have the meaning assigned to such term in Section 6.06.

“Documentation Agents” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Dollar” and “\$” shall mean dollars in the lawful currency of the United States.

“Dollar Equivalent” shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date or other applicable date of determination) for the purchase of Dollars with such currency.

“Domestic Subsidiary” shall mean any Subsidiary that is not a Foreign Subsidiary or a Qualified CFC Holding Company or a subsidiary listed on Schedule 1.01(a).

“EBITDA” shall mean, with respect to the Company and the Subsidiaries on a consolidated basis for any period, the Consolidated Net Income of the Company and the Subsidiaries for such period plus (a) the sum of (in each case without duplication and to the extent the respective amounts described in subclauses (i) through (vii) of this clause (a) reduced such Consolidated Net Income (and were not excluded therefrom) for the respective period for which EBITDA is being determined):

(i) provision for Taxes based on income, profits or capital of the Company and the Subsidiaries for such period, including, without limitation, state, franchise, business activity and similar taxes,

(ii) Interest Expense of the Company and the Subsidiaries for such period (net of interest income of the Company and its Subsidiaries for such period),

(iii) depreciation and amortization expenses of the Company and the Subsidiaries for such period,

(iv) business optimization expenses and other restructuring charges (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, plant closure, retention, severance, systems establishment costs and excess pension charges); provided, that with respect to each business optimization expense or other restructuring charge, the Company shall have delivered to the Administrative Agent an officers' certificate specifying and quantifying such expense or charge,

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(v) any other non-cash charges; provided, that, for purposes of this subclause (v) of this clause (a), any non-cash charges or losses shall be treated as cash charges or losses in any subsequent period during which cash disbursements attributable thereto are made,

(vi) the amount of management, consulting, monitoring, transaction and advisory fees and related expenses paid to any Fund or any Fund Affiliates (or any accruals related to such fees and related expenses) during such period; provided, that such amount shall not exceed in any four quarter period the sum of (i) the greater of \$7.5 million and 2.0% of EBITDA for such four quarter period, plus (ii) the amount of deferred fees (to the extent such fees would otherwise have been permitted to be included in clause (i) if paid, but were not included in such clause (i)), plus (iii) 2.0% of the value of transactions permitted hereunder and entered into by the Company or any of the Subsidiaries with respect to which any Fund or any Fund Affiliate provides any of the aforementioned types of services, and

(vii) non-operating expenses,

minus (b) the sum of (without duplication and to the extent the amounts described in this clause (b) increased such Consolidated Net Income for the respective period for which EBITDA is being determined) non-cash items increasing Consolidated Net Income of the Company and the Subsidiaries for such period (but excluding any such items (A) in respect of which cash was received in a prior period or will be received in a future period or (B) which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period).

For purposes of determining EBITDA under this Agreement for any quarter ending prior to the first full quarter ending after the Closing Date, EBITDA for such fiscal quarter shall be calculated on a Pro Forma Basis, giving effect to the Business Combination and the other Transactions occurring on the Closing Date.

“Eligible Accounts” shall mean all Accounts of the Borrowers reflected in the most recent Borrowing Base Certificate, except any Account with respect to which any of the exclusionary criteria set forth below applies (unless the Administrative Agent in its reasonable discretion elects to include such Account), such excluded Accounts being any Account or Accounts:

(a) with respect to which more than 120 days have elapsed since the date of the original invoice therefor or which is more than 60 days past due; provided that Accounts listed on Schedule 1.01(e) (as updated from time to time by the Company with the consent of the Administrative Agent (not to be unreasonably withheld or delayed)) in an aggregate amount of not more than \$5 million at any time shall be ineligible pursuant to this clause (a) only if they are more than 60 days past due or 180 days from the invoice date;

(b) that do not represent a bona fide indebtedness incurred in the amount of the Account for goods sold or services rendered to, and accepted by, the applicable Account Debtor; or that are not for a liquidated amount payable by the Account Debtor on the terms then in effect for such Account; or for which payment has been or will be received or credit, discount or extension, or agreement therefor, or compromise, compounding or settlement thereof, has been or will be granted, or any party liable thereon has been released, in each case other than in the ordinary course of business consistent with past practice; or for which invoices have not been issued or copies of any invoice with respect to such Account delivered to the Collateral Agent by any Loan Party do not represent genuine copies of the original invoice sent to the Account Debtor named therein;

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(c) with respect to which Account (or any other Account due from such Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, or other instrument for the payment of money has been received, presented for payment, and returned uncollected for any reason;

(d) which represents a progress billing; provided that for the purposes hereof, "progress billing" shall mean any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon the applicable Borrower's completion of any further performance under the contract or agreement;

(e) with respect to which any one or more of the following events has occurred to the Account Debtor on such Account: (i) death or judicial declaration of incompetency of an Account Debtor who is an individual; (ii) the filing by or against the Account Debtor of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief under the bankruptcy, insolvency, or similar laws of the United States, any state or territory thereof, or any foreign jurisdiction, now or hereafter in effect; (iii) the making of any general assignment by the Account Debtor for the benefit of creditors; (iv) the appointment of a receiver or trustee for the Account Debtor or for all or a substantial portion of the assets of the Account Debtor, including, without limitation, the appointment of or taking possession by a "custodian", as defined in the Bankruptcy Code; (v) the institution by or against the Account Debtor of any other type of insolvency proceeding (under the Bankruptcy Code or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, the Account Debtor; (vi) the sale, assignment, or transfer of all or substantially all of the assets of the Account Debtor (unless the obligations under such Account are assumed by the successor); (vii) the nonpayment generally by the Account Debtor of its debts as they become due; or (viii) the cessation of the business of the Account Debtor as a going concern;

(f) if fifty percent (50.0%) or more of the aggregate Dollar amount of outstanding Accounts owed at such time by the Account Debtor thereon is classified as ineligible under clause (a) preceding;

(g) owed by an Account Debtor which: (i) is not organized under the laws of the United States or Canada or any political subdivision, state, or province thereof; or (ii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof; except to the extent that such Account is insured by the Export-Import Bank of the United States or secured or payable by a letter of credit satisfactory to the Administrative Agent in its reasonable discretion;

(h) which are Intercompany Accounts or other Accounts owed by an Account Debtor which is an Affiliate or employee of any Borrower (not including, for the avoidance of doubt, any Apollo Operating Company);

(i) except as agreed by the Administrative Agent as provided in clause (g) preceding or clause (l) following regarding political subdivisions of the United States but not the U.S. federal government, with respect to which either the perfection, enforceability, or validity of the Collateral

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Agent's Lien in such Account, or the Collateral Agent's right or ability to obtain direct payment to the Collateral Agent of the proceeds of such Account, is governed by any federal, state, or local statutory requirements other than those of the UCC; except to the extent that such Account is insured by the Export-Import Bank of the United States or secured or payable by a letter of credit satisfactory to the Administrative Agent in its reasonable discretion;

(j) owed by an Account Debtor to which a Loan Party or any of their respective Subsidiaries is indebted in any way, or which is subject to any right of set-off or recoupment by the Account Debtor (but only to the extent of such indebtedness, right of set-off or recoupment), unless the Account Debtor has entered into an agreement acceptable to the Administrative Agent to waive set-off rights; or if the Account Debtor thereon has disputed liability on such Account or made any claim with respect to any other Account due from such Account Debtor (but only to the extent of such disputed liability or claim); but in each such case only if the aggregate amount of all such indebtedness, set-offs, recoupments, disputes and claims with respect to all Eligible Accounts exceeds \$2 million, and then only to the extent of such aggregate indebtedness, set-offs, recoupments, disputes and claims in excess of \$2 million;

(k) with respect to which any Borrower at the time of determination deems such Account as uncollectible;

(l) owed by any state of the United States or any municipality, or other political subdivision, department, agency, public corporation, or other instrumentality thereof, and as to which the Collateral Agent determines that its Lien therein is not or cannot be perfected; except to the extent that such Account is insured by the Export-Import Bank of the United States or secured or payable by a letter of credit satisfactory to the Administrative Agent in its reasonable discretion;

(m) which represents a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;

(n) which is evidenced by a promissory note or other instrument or by chattel paper;

(o) of any one Account Debtor or group of affiliated Account Debtors that are in excess of (i) 35%, in the case of Wal-Mart Stores, Inc., its Affiliates and subsidiaries, and (ii) 20% in the case of all other Account Debtors, of total Eligible Accounts;

(p) which arises out of a sale not made in the ordinary course of such Borrower's business except to the extent that the aggregate amount of such Accounts outstanding does not exceed \$2 million;

(q) with respect to which the goods giving rise to such Account have not been shipped and delivered to, or have been rejected by, the Account Debtor or the services giving rise to such Account have not been performed by the applicable Borrower, and, if applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services, but, in each case, only to the extent of the portion of such Account applicable to goods or services in question;

(r) which arises out of an enforceable contract or order which, by its terms, validly forbids, restricts, or makes void or unenforceable the granting of a Lien by such Loan Party to the Collateral Agent with respect to such Account;

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(s) which is not subject to a first priority and perfected security interest in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Lenders, or which is subject to any other Lien other than Liens securing the Second Lien Obligations, the First Priority Obligations and/or Permitted Liens arising by operation of law;

(t) 30% of the value of each Account which is owed to a Newly Obligated Party acquired in a Permitted Business Acquisition under this Agreement, for which the Administrative Agent has not been given the opportunity for a reasonable period (which shall not be required to be longer than thirty (30) days (or, in the case of acquisitions of less than \$50 million, twenty (20) days) prior to and/or after the closing of such acquisition to complete such due diligence as it deems, in the exercise of Reasonable Credit Judgment, to be necessary in the circumstances; and

(u) any Account from the time it is sold to or financed by a Special Purpose Receivables Subsidiary or otherwise sold pursuant to a Permitted Receivables Financing or any Account from the time it is transferred to a third-party financial institution pursuant to a Permitted Supplier Finance Facility.

If any Account at any time ceases to be an Eligible Account, then such Account shall promptly be excluded from the calculation of the Borrowing Base; provided, however, that if any Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Account from the Borrowing Base until 20 days following the date on which the Administrative Agent gives notice to the Company of such ineligibility.

The Administrative Agent and the Collateral Agent reserve the right, at any time and from time to time after the Closing Date, or upon reasonable request of the Company upon completion and delivery to the Administrative Agent of field examinations and appraisals in accordance with Section 5.11 (including, without limitation, the Post-Closing Reports), to adjust any of the exclusionary criteria set forth above and to establish new criteria, in their Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by such Agents, in connection with the preparation and review of the Post-Closing Reports or thereafter), subject, after any adjustments based on the Post-Closing Reports, to the approval of Required Lenders in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect.

“Eligible Inventory” shall mean all Inventory of the Borrowers reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies (unless the Administrative Agent in its reasonable discretion elects to include any such Inventory):

(a) Inventory that is not owned by a Borrower;

(b) Inventory that is not subject to the Collateral Agent’s Liens, or is subject to any other Lien (other than Permitted Liens arising by operation of law, or the Liens securing the Second Lien Obligations and the First Priority Obligations); provided that (unless such Permitted Liens (A) are junior in priority to the Collateral Agent’s Liens (other than statutory landlord’s Liens to the extent provided otherwise by a Requirement of Law) and (B) do not impair directly or indirectly the ability of the Collateral Agent to realize on or obtain the full benefit of the Collateral), the Administrative Agent may, in the exercise of Reasonable Credit Judgment, establish a Reserve against availability with respect to any Inventory subject to such Permitted Liens in an amount not to exceed (on an aggregate basis for all Inventory from time to time subject to such Permitted Liens) (A) in the case of Inventory subject to Liens described in Section 6.02(e), the

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greater of (x) an amount equal to the amount which would have to be paid to such Lien claimant in order to obtain a release of such Liens, or (y) an amount equal to thirty (30) days' rent for the properties or facilities on or at which the applicable Inventory is located and (B) in the case of Inventory subject to Liens described in Section 6.02(d), the amount of such taxes, fees, assessments or other charges;

(c) Inventory that consists of packing and shipping materials (other than finished goods inventory), or advertising or marketing materials (including samples);

(d) Inventory that is unmerchantable, or the sale or other disposition of which would contravene in any material respect any applicable laws or other governmental rules or regulations, but only if such contravention would have a material effect on the salability or value of such Inventory;

(e) Inventory that is not currently either usable or salable in the normal course of the applicable Borrower's business, as so identified according to the Company's accounting policy;

(f) Inventory that is slow-moving, obsolete or defective, as so identified according to the Company's accounting policy;

(g) Inventory that has been returned to a Borrower or a Subsidiary by a buyer or held for return by a supplier (and is not held for resale);

(h) Inventory that is subject to any Lien permitted under Section 6.02(p) or (bb) or any other Inventory financed by letters of credit or bankers' acceptances for which the Collateral Agent does not have possession or control of the documents of title;

(i) Inventory that is not located within the United States or Canada (or is in-transit from vendors or suppliers, except that in-transit Inventory will not be deemed ineligible if (i) in the case of in-transit inventory not located within the United States or Canada, it has been paid for in advance of shipment and legal ownership thereof has passed to the applicable Borrower as evidenced by customary documents of title, and (ii) in the case of in-transit Inventory located within the United States or Canada, legal ownership thereof has passed to the applicable Borrower as evidenced by customary documents of title);

(j) Inventory that is (i) stored or located on property that is (A) leased to the Borrower that owns such Inventory, or (B) owned or leased by a warehouseman that has contracted with such Borrower to store such Inventory, or (ii) stored with or otherwise in the possession of a bailee, provided that such Inventory shall not be excluded if (1) the applicable Borrower shall have delivered to the Collateral Agent a Collateral Access Agreement executed by such lessor or warehouseman or bailee with respect to such property, (2) the Collateral Agent has given its prior consent thereto, or (3) Reserves have been established with respect thereto, in an amount (on an aggregate basis for all Inventory from time to time so located or possessed) not to exceed (a) in the case of Inventory located in a warehouse or leased facility, the greater of (x) an amount equal to the amount which would have to be paid to such claimant in order to obtain a release of any Permitted Lien held by such claimant, or (y) an amount equal to thirty (30) days' rent or storage fee for the warehouses or facilities on or at which the applicable Inventory is located and (b) in the case of Inventory otherwise in the possession of a bailee, the amount necessary to complete any work being performed on such Inventory and/or to obtain a surrender of the Inventory to the possession of the applicable Borrower or the Collateral Agent, or, in any such case under this clause (3), such lesser amount as may be approved by the Collateral Agent;

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(k) if such Inventory contains or bears any Proprietary Rights licensed to a Borrower by any third party, and the Administrative Agent shall not be able to sell or otherwise dispose of such Inventory pursuant to Article VII or the terms of the Collateral Agreement subject to the same rights and obligations as the applicable Borrower pursuant to the contract with such licensor without infringing the rights of the licensor of such Proprietary Rights or violating any contract with such licensor (and without payment of any royalties other than any royalties due with respect to the sale or disposition of such Inventory pursuant to the existing license agreement), and, if the Administrative Agent deems it necessary, such Borrower shall deliver to the Administrative Agent a consent or sublicense agreement from such licensor in form and substance reasonably acceptable to the Administrative Agent; and

(l) 20% of the total book value of Inventory that is owned by a Newly Obligated Party acquired in a Permitted Business Acquisition under this Agreement, for which the Administrative Agent has not been given the opportunity for a reasonable period (which shall not be required to be longer than thirty (30) days (or, in the case of acquisitions of less than \$50 million, twenty (20) days)) prior to and/or after the closing of such acquisition to complete such due diligence as it deems, in the exercise of Reasonable Credit Judgment, to be necessary in the circumstances.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory shall promptly be excluded from the calculation of the Borrowing Base; provided, however, that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Agents will not require exclusion of such Inventory from the Borrowing Base until 20 days following the date on which the Administrative Agent gives notice to the Company of such ineligibility.

The Administrative Agent and the Collateral Agent reserve the right, at any time and from time to time after the Closing Date, or upon reasonable request of the Company upon completion and delivery to the Administrative Agent of field examinations and appraisals in accordance with Section 5.11 (including, without limitation, the Post-Closing Reports), to adjust any of the exclusionary criteria set forth above and to establish new criteria, in their Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by such Agents, in connection with the preparation and review of the Post-Closing Reports or thereafter), subject, after any adjustments based on the Post-Closing Reports, to the approval of Required Lenders in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect.

“EMU” shall mean the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“EMU Legislation” shall mean the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“environment” shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

“Environmental Laws” shall mean all applicable laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or Hazardous Materials).

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“Equity Interests” of any person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity or ownership of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

“Equity Investors” shall mean one or more investment funds advised, managed or controlled by Apollo Management V, L.P. Apollo Management VI, L.P., their Affiliates, and any group in which any such Equity Investors are, in the aggregate, a principal member.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with Holdings, the Company or a Subsidiary, 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” shall mean (a) any Reportable Event or the requirements of Section 4043(b) of ERISA apply with respect to a Plan; (b) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA); (c) the filing pursuant to 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, the failure to make by its due date a required installment under Section 430(k) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the incurrence by Holdings, the Company, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the receipt by Holdings, the Company, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (f) the incurrence by Holdings, the Company, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (g) the receipt by Holdings, the Company, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Holdings, the Company, a Subsidiary or any ERISA Affiliate of any notice, concerning the impending 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; or (h) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan.

“Euro” and “EUR” each shall mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency Borrowing” shall mean a Borrowing comprised of Eurocurrency Loans.

“Eurocurrency Loan” shall mean any Eurocurrency Revolving Loan.

“Eurocurrency Revolving Facility Borrowing” shall mean a Borrowing comprised of Eurocurrency Revolving Loans.



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“Eurocurrency Revolving Loan” shall mean any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

“Event of Default” shall have the meaning assigned to such term in Section 7.01.

“Excess Cash Flow” shall mean, with respect to the Company and its Subsidiaries on a consolidated basis for any Applicable Period, EBITDA of the Company and its Subsidiaries on a consolidated basis for such Applicable Period, minus, without duplication,

(a) Debt Service for such Applicable Period,

(b) the amount of any voluntary prepayment permitted hereunder (or, if made prior to the Closing Date, permitted under the senior secured bank credit facility then applicable to such entity) of term Indebtedness during such Applicable Period (other than any voluntary prepayment of the Revolving Loans), so long as the amount of such prepayment is not already reflected in Debt Service,

(c) (i) Capital Expenditures by the Company and the Subsidiaries on a consolidated basis during such Applicable Period that are paid in cash (to the extent permitted under this Agreement) and (ii) the aggregate consideration paid in cash during the Applicable Period in respect of Permitted Business Acquisitions and other Investments permitted hereunder less any amounts received in respect thereof as a return of capital,

(d) Capital Expenditures that the Company or any Subsidiary shall, during such Applicable Period, become obligated to make but that are not made during such Applicable Period (to the extent permitted under this Agreement or if prior to the Closing Date, the senior secured bank credit facility then applicable to such entity); provided, that (i) Holdings shall deliver a certificate to the Administrative Agent not later than 90 days after the end of such Applicable Period, signed by a Responsible Officer of the Company and certifying that such Capital Expenditures and the delivery of the related equipment will be made in the following Applicable Period, and (ii) any amount so deducted shall not be deducted again in a subsequent Applicable Period,

(e) Taxes paid in cash by Holdings and its Subsidiaries on a consolidated basis during such Applicable Period or that will be paid within six months after the close of such Applicable Period; provided, that with respect to any such amounts to be paid after the close of such Applicable Period, (i) any amount so deducted shall not be deducted again in a subsequent Applicable Period, and (ii) appropriate reserves shall have been established in accordance with GAAP,

(f) an amount equal to any increase in Working Capital of the Company and its Subsidiaries for such Applicable Period,

(g) cash expenditures made in respect of Swap Agreements during such Applicable Period, to the extent not reflected in the computation of EBITDA or Interest Expense,

(h) permitted dividends or distributions or repurchases of its Equity Interests paid in cash by the Company during such Applicable Period and permitted dividends paid by any Subsidiary to any person other than Holdings, the Company or any of the Subsidiaries during such Applicable Period, in each case in accordance with Section 6.06 hereof (or the corresponding provision of the senior secured bank credit facility then applicable to such entity) (other than Section 6.06(e) or the corresponding provision of the senior secured bank credit facility then applicable to such entity),

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(i) amounts paid in cash during such Applicable Period on account of (A) items that were accounted for as noncash reductions of Net Income in determining Consolidated Net Income or as noncash reductions of Consolidated Net Income in determining EBITDA of the Company and its Subsidiaries in a prior Applicable Period and (B) reserves or accruals established in purchase accounting,

(j) to the extent not deducted in the computation of Net Proceeds in respect of any asset disposition or condemnation giving rise thereto, the amount of any mandatory prepayment of Indebtedness (other than Indebtedness created hereunder or under any other Loan Document), together with any interest, premium or penalties required to be paid (and actually paid) in connection therewith,

(k) the aggregate amount of items that were added to or not deducted from Net Income in calculating Consolidated Net Income or were added to or not deducted from Consolidated Net Income in calculating EBITDA to the extent such items represented a cash payment (which had not reduced Excess Cash Flow upon the accrual thereof in a prior Applicable Period), or an accrual for a cash payment, by the Company and its Subsidiaries or did not represent cash received by the Company and its Subsidiaries, in each case on a consolidated basis during such Applicable Period, and

(l) amounts paid in cash during such Applicable Period in respect of obligations under Sections 2.9 and 5.4 of the Acquisition Agreement,

plus, without duplication,

(i) an amount equal to any decrease in Working Capital for such Applicable Period,

(ii) all amounts referred to in clauses (b), (c), (d) and (h) above to the extent funded with the proceeds of the issuance or the incurrence of Indebtedness (including Capital Lease Obligations and purchase money Indebtedness, but excluding, solely as relating to Capital Expenditures, proceeds of Revolving Loans (or, if prior to the Closing Date, revolving loans pursuant to the senior secured bank credit facility then applicable to such entity)), the sale or issuance of any Equity Interests (including any capital contributions) and any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any sale and leaseback of assets and any mortgage or lease of Real Property) to any person of any asset or assets, in each case to the extent there is a corresponding deduction from Excess Cash Flow above,

(iii) to the extent any permitted Capital Expenditures referred to in clause (d) above and the delivery of the related equipment do not occur in the following Applicable Period of the Company specified in the certificate of the Company provided pursuant to clause (d) above, the amount of such Capital Expenditures that were not so made in such following Applicable Period,

(iv) cash payments received in respect of Swap Agreements during such Applicable Period to the extent (i) not included in the computation of EBITDA or (ii) such payments do not reduce Cash Interest Expense,

(v) any extraordinary or nonrecurring gain realized in cash during such Applicable Period,

(vi) to the extent deducted in the computation of EBITDA, cash interest income, and

(vii) the aggregate amount of items that were deducted from or not added to Net Income in connection with calculating Consolidated Net Income or were deducted from or not added to Consolidated Net Income in calculating EBITDA to the extent either (i) such items represented cash received by the Company or any Subsidiary or (ii) such items do not represent cash paid by the Company or any Subsidiary, in each case on a consolidated basis during such Applicable Period.

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For the avoidance of doubt, the amount resulting from calculation of Excess Cash Flow prior to the Amendment No. 4 Effective Date is intended to be the same amount as would be calculated under the Unamended Credit Agreement.

“Excess Cash Flow Interim Period” shall mean, (x) during any Excess Cash Flow Period, any one-, two-, or three-quarter period (a) commencing on the later of (i) the end of the immediately preceding Excess Cash Flow Period and (ii) if applicable, the end of any prior Excess Cash Flow Interim Period occurring during the same Excess Cash Flow Period and (b) ending on the last day of the most recently ended fiscal quarter (other than the last day of the Fiscal Year) during such Excess Cash Flow Period for which financial statements are available and (y) during the period from the Original Agreement Date until the beginning of the first Excess Cash Flow Period, any period commencing on the Original Agreement Date and ending on the last day of the most recently ended fiscal quarter for which financial statements are available.

“Excess Cash Flow Period” shall mean (i) each fiscal year of the Company, commencing with the first full fiscal year of the Company following the Closing Date, and (ii) the period from January 1, 2007 through the day prior to the initial fiscal year referred to in clause (i).

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Excluded Indebtedness” shall mean all Indebtedness permitted to be incurred under Section 6.01.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) any income taxes imposed on (or measured by) its net income (or franchise taxes imposed in lieu of net income taxes) by the United States of America (or any state or locality thereof) or the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or any other jurisdiction as a result of such recipient engaging in a trade or business in such jurisdiction for tax purposes, (b) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender making a Loan to any Borrower, any tax (including any backup withholding tax) imposed by the United States (or the jurisdiction under the laws of which such Lender is organized or in which its principal office is located or in which its applicable Lending Office is located or any other jurisdiction as a result of such Lender engaging in a trade or business or having a taxable presence in such jurisdiction for tax purposes) that (x) is in effect and would apply to amounts payable hereunder to such Lender at the time such Lender becomes a party to such Loan to any Borrower (or designates a new Lending Office) except to the extent that the assignor to such Lender in the case of an assignment or the Lender in the case of a designation of a new Lending Office (for the absence of doubt, other than the Lending Office at the time such Lender becomes a party to such Loan) was entitled, at the time of such assignment or designation of a new Lending Office, respectively, to receive additional amounts from a Loan Party with respect to any withholding tax pursuant to Section 2.17(a) or Section 2.17(c) or (y) is attributable to such Lender’s failure to comply with Section 2.17(e) or (f) with respect to such Loan, (d) any United States Federal withholding Taxes that are imposed on a Lender as a

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result of such Lender's failure to comply with the requirements under FATCA (including, without limitation, the requirements of Sections 1471(b) and 1472(b) of the Code) or as a result of a Lender's election under Section 1471(b)(3) of the Code, and (e) any taxes that are imposed as a result of any event occurring after the Lender becomes a Lender (other than a Change in Law), and in the case of clause (a), (b), (c), (d) and (r), together with any and all interest and penalties related thereto.

“Existing Bankers' Acceptance” shall mean each of the bankers' acceptances set forth on Schedule 1.01(f).

“Existing Credit Agreement” shall have the meaning set forth in the recitals hereto.

“Existing Lender” shall mean each person who is, as of the date hereof and immediately prior to giving effect to Amendment No. 4, a “Lender” under, and as defined in, the Unamended Credit Agreement, but excluding therefrom any “Defaulting Lenders” under, and as defined in, the Unamended Credit Agreement.

“Existing Letter of Credit” shall mean each of the letters of credit set forth on Schedule 1.01(g).

“Facility” shall mean the Revolving Facility.

“FATCA” shall mean Sections 1471 through 1474 of the Code as of the date hereof (or any amended or successor provisions that are substantively similar) and any current or future regulations thereunder or official interpretation thereof.

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

“Fee Letter” shall mean (i) that certain Fee Letter dated March 2, 2007 by and among the Company, Bank of America, N.A., Banc of America Securities LLC, Citigroup Global Markets Inc., Credit Suisse, Credit Suisse Securities (USA) LLC, Deutsche Bank AG New York Branch, Deutsche Bank Securities Inc., Goldman Sachs Credit Partners L.P., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc. and Lehman Brothers Inc., (ii) that certain Engagement Letter dated June 24, 2011 by and among Holdings, the Company, Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated and (iii) that certain Engagement Letter dated April 30, 2015 by and among Holdings, the Company, Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“Fees” shall mean the Commitment Fees, the L/C – BA Participation Fees, the Issuing Bank Fees and the Administrative Agent Fees.

“FILO Commitment” shall mean the portion of the Incremental Revolving Facility Commitments, if any, comprising the commitment of the FILO Lenders under the FILO Subfacility established pursuant to Section 2.21 to make FILO Loans hereunder.

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“FILO Lender” shall mean any Revolving Lender hereunder that agrees to provide an Incremental Revolving Facility Commitment in the form of a FILO Commitment pursuant to Section 2.21, or an Assignee of any such FILO Commitment pursuant to Section 9.04, as such Section is amended in connection with the institution of the FILO Subfacility, if any.

“FILO Loans” shall mean advances made to or at the instructions of a Borrower under the FILO Subfacility, if any.

“FILO Subfacility” shall mean the facility resulting from the institution of one or more Incremental Revolving Facility Commitments that are FILO Commitments pursuant to the provisions of Section 2.21, if any.

“Financial Officer” of any person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

“First Lien Debt” at any date shall mean (i) the aggregate principal amount of Consolidated Debt of the Company and its Subsidiaries outstanding at such date that consists of, without duplication, Indebtedness that in each case is then secured by first priority Liens on property or assets of the Company and its Subsidiaries (other than property or assets held in a defeasance or similar trust or arrangement for the benefit of the Indebtedness secured thereby), less (ii) without duplication, the Unrestricted Cash and Permitted Investments of the Company and its Subsidiaries on such date.

“First Priority Fixed Rate 2015 Notes” shall mean the 8 1/4% First Priority Senior Secured Fixed Rate Notes due 2015, issued by the Company, via Berry Plastics Escrow LLC and Berry Plastics Escrow Corporation, pursuant to the First Priority Fixed Rate 2015 Notes Indenture and any notes issued in exchange for, and as contemplated by, the First Priority Fixed Rate 2015 Notes and the related registration rights agreement with substantially identical terms as the First Priority Fixed Rate 2015 Notes.

“First Priority Fixed Rate 2015 Notes Indenture” shall mean the Indenture dated as of November 12, 2009 among, Berry Plastics Escrow LLC and Berry Plastics Escrow (later assumed by the Company) and the trustee named therein from time to time, as in effect on the Amendment No. 3 Effective Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“First Priority Floating Rate 2015 Notes” shall mean the First Priority Senior Secured Floating Rate Notes due 2015 issued by the Company pursuant to the First Priority Floating Rate 2015 Notes Indenture and any notes issued in exchange for, and as contemplated by, the First Priority Floating Rate 2015 Notes and the related registration rights agreement with substantially identical terms as the First Priority Floating Rate 2015 Notes.

“First Priority Floating Rate 2015 Notes Indenture” shall mean the Indenture dated as of April 21, 2008 among, the Company, and certain of its subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Amendment No. 3 Effective Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“First Priority Note Documents” shall mean, collectively, the First Priority Notes, the First Priority Notes Indentures and the First Priority Security Documents.

“First Priority Notes” shall mean the First Priority Fixed Rate 2015 Notes and the First Priority Floating Rate 2015 Notes.

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“First Priority Notes Indentures” shall mean, collectively, the First Priority Fixed Rate 2015 Notes Indenture and the First Priority Floating Rate 2015 Notes Indenture.

“First Priority Obligations” shall mean, collectively, the obligations of the respective borrowers and guarantors under the First Priority Note Documents and the Term Loan Obligations, in all cases subject to the provisions of the Senior Lender Intercreditor Agreement.

“First Priority Security Documents” shall mean the “Security Documents” as defined in the First Priority Notes Indentures.

“Fiscal Period” shall mean Berry’s fiscal calendar month.

“Foreign Pledge Agreement” shall mean a pledge agreement with respect to the Pledged Collateral that constitutes Equity Interests of a “first tier” Foreign Subsidiary, in form and substance reasonably satisfactory to the Collateral Agent; provided, that in no event shall more than 65% of the issued and outstanding Equity Interests of such Foreign Subsidiary be pledged to secure Obligations of the Borrowers.

“Foreign Subsidiary” shall mean (a) 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, and (b) any Subsidiary of any Subsidiary described in the foregoing clause (a).

“Fronting Exposure” shall mean, at any time there is a Defaulting Lender, (a) with respect to the applicable Issuing Bank, such Defaulting Lender’s Pro Rata Share of the outstanding Revolving L/C – BA Exposure other than Revolving L/C – BA Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Pro Rata Share of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund I” shall mean Apollo Management V, L.P. and other affiliated co-investment partnerships.

“Fund II” shall mean affiliates of Apollo Management VI, L.P. and other affiliated co-investment partnerships and Graham Partners Inc.

“Fund Affiliates” shall mean (i) each Affiliate of any Funds, (ii) any individual who is a partner or employee of Apollo Management, L.P., Apollo Management IV, L.P. or Apollo Management V, L.P., Apollo Management VI, L.P., and (iii) Graham BPC Investment Holdings, LP.

“Fund Termination Fee” shall have the meaning specified in Section 6.07(b)(xiv).

“Funds” shall mean Fund I and Fund II, collectively.

“GAAP” shall mean generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, subject to the provisions of Section 1.02; provided that any reference to the application of GAAP in Sections 3.13(b), 3.20, 5.03, 5.07 and 6.02(e) to a Foreign Subsidiary (and not as a consolidated Subsidiary of the Company) shall mean generally accepted accounting principles in effect from time to time in the jurisdiction of organization of such Foreign Subsidiary.

“Governmental Authority” shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

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“Guarantee” of or by any person (the “guarantor”) shall mean (a) 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, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) 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, (iii) 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, (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (v) as an account party in respect of any letter of credit, bank guarantee, bankers’ acceptance or other letter of guaranty issued to support such Indebtedness or other obligation, or (b) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, the term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith. “Guarantee”, if used as a verb, shall have a meaning correlative to the foregoing.

“guarantor” shall have the meaning assigned to such term in the definition of the term “Guarantee.”

“Hazardous Materials” shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas, of any nature subject to regulation or which can give rise to liability under any Environmental Law.

“Hedging Obligations” shall mean, with respect to any person, the obligations of such person under (i) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements, and (ii) other agreements or arrangements designed to protect such person against fluctuations in currency exchange, interest rates or commodity prices.

“Holdings” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Immaterial Subsidiary” shall mean any Subsidiary that is not a Borrower and that, as of the last day of the fiscal quarter of the Company most recently ended, (a) did not have assets with a value in excess of 5.0% of the Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Company and the Subsidiaries on a consolidated basis as of such date and (b) when taken together with all other Immaterial Subsidiaries as of such date, did not have assets with a value in excess of 10.0% of the Consolidated Total Assets or revenues representing in excess of 10.0% of total revenues of the Company and the Subsidiaries on a consolidated basis as of such date. Each Immaterial Subsidiary as of the Amendment No. 4 Effective Date shall be set forth in Schedule 1.01(d).

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“Increased Amount Date” shall have the meaning assigned to such term in Section 2.21(a).

“Incremental Amount” shall mean, at any time, the excess, if any, of (a) \$250 million over (b) the aggregate amount of all Incremental Revolving Facility Commitments established prior to such time pursuant to Section 2.21.

“Incremental Assumption Agreement” shall mean an Incremental Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrowers, the Administrative Agent and one or more Incremental Revolving Lenders.

“Incremental Revolving Facility Commitment” shall mean any increased or incremental Revolving Facility Commitment provided pursuant to Section 2.21.

“Incremental Revolving Lender” shall mean a Lender with a Revolving Facility Commitment or an outstanding Revolving Loan as a result of an Incremental Revolving Facility Commitment.

“Indebtedness” of any person shall mean, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (d) all obligations of such person issued or assumed as the deferred purchase price of property or services, to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all Capital Lease Obligations of such person, (f) all net payments that such person would have to make in the event of an early termination, on the date Indebtedness of such person is being determined, in respect of outstanding Swap Agreements, (g) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit, (h) the principal component of all obligations of such person in respect of bankers’ acceptances, (i) all Guarantees by such person of Indebtedness described in clauses (a) to (h) above) and (j) the amount of all obligations of such person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock); provided, that Indebtedness shall not include (A) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, (C) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset, (D) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP, or (E) obligations under Section 2.9 and 5.4 of the Acquisition Agreement. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such person in respect thereof. To the extent not otherwise included, Indebtedness shall include the amount of any Receivables Net Investment.

“Indemnified Taxes” shall mean all Taxes other than Excluded Taxes.

“Indemnitee” shall have the meaning assigned to such term in Section 9.05(b).

“Ineligible Institution” shall mean the persons identified in writing to the Administrative Agent by the Company on the Closing Date, and as may be identified in writing to the Administrative Agent by the Company from time to time thereafter with the consent of the Administrative Agent (not to be unreasonably



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withheld or delayed), by delivery of a notice thereof to the Administrative Agent setting forth such person or persons (or the person or persons previously identified to the Administrative Agent that are to be no longer considered "Ineligible Institutions").

"Information" shall have the meaning assigned to such term in Section 3.14(a).

"Information Memorandum" shall mean the Confidential Information Memorandum dated March 13, 2007, as modified or supplemented prior to the Closing Date.

"Initial Pro Forma Adjustment" shall mean an amount equal to \$2.75 million for each quarterly period ending March 2006 and June 2006, \$5.876 million for the quarterly period ending September 2006, and \$3.125 million for the quarterly period ending December 2006.

"Intellectual Property Rights" shall have the meaning assigned to such term in Section 3.23.

"Intercreditor Agreement" shall mean the Second Amended and Restated Intercreditor Agreement, dated as of February 5, 2008, by and among Credit Suisse and Bank of America, as first lien agents, Wells Fargo Bank, N.A., as trustee, Holdings, the Company and the Subsidiary Loan Parties party thereto or that shall become party thereto, as in effect on the Amendment No. 4 Effective Date and each Other First Priority Lien Obligations Collateral Agent (as defined therein) from time to time party thereto.

"Intercreditor Agreements" shall mean, collectively, the Intercreditor Agreement, Senior Fixed Collateral Intercreditor Agreement, and Senior Lender Intercreditor Agreement.

"Intercompany Accounts" shall mean all assets and liabilities, however arising, which are due to any Loan Party from, which are due from any Loan Party to, or which otherwise arise from any transaction by any Loan Party with, any Affiliate of such Loan Party.

"Interest Election Request" shall mean a request by a Borrower to convert or continue a Revolving Facility Borrowing in accordance with Section 2.07.

"Interest Expense" shall mean, 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) net payments and receipts (if any) pursuant to interest rate Hedging Obligations, (b) capitalized interest of such person, and (c) commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Receivables Financing which are payable to any person other than the Company or a Subsidiary Loan Party. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received and costs incurred by the Company and the Subsidiaries with respect to Swap Agreements.

"Interest Payment Date" shall mean, (a) with respect to any Eurocurrency Loan, the last day of each 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 that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing and, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type, (b) with respect to any ABR Loan, the last Business Day of each calendar quarter and (c) with respect to any Swingline Loan or Agent Advance, the last Business Day of each calendar month and on the Revolving Facility Maturity Date or, if earlier, on the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein.

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“Interest Period” shall mean, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter (or 9 or 12 months, if at the time of the relevant Borrowing, all Lenders make interest periods of such length available), as the Borrowers may elect, or the date any Eurocurrency Borrowing is converted to an ABR Borrowing in accordance with Section 2.07 or repaid or prepaid in accordance with Section 2.09, 2.10 or 2.11; provided, however, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless 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. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Inventory” shall mean, with respect to a person, all of such person’s now owned and hereafter acquired inventory, as defined in the UCC, goods, and merchandise, wherever located, in each case to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature, or description which are used or consumed in such person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise, and other property, and all documents of title or other documents representing them.

“Investment” shall have the meaning assigned to such term in Section 6.04.

“Issuing Bank” shall mean (i) Bank of America, (ii) Credit Suisse, and (iii) each other Issuing Bank designated pursuant to Section 2.05(k), in each case in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(i). An Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Issuing Bank Fees” shall have the meaning assigned to such term in Section 2.12(d).

“Joint Bookrunners” shall mean Merrill Lynch, Pierce, Fenner & Smith Inc., Barclays Capital, the investment banking division of Barclays Bank PLC, and Wells Fargo Capital Finance, LLC, in their capacities as joint bookrunners.

“Joint Lead Arrangers” shall mean Merrill Lynch, Pierce, Fenner & Smith Inc., Wells Fargo Capital Finance, LLC and Barclays Capital, the investment banking division of Barclays Bank PLC, in their capacities as joint lead arrangers.

“Judgment Currency” shall have the meaning assigned to such term in Section 9.19.

“Junior Financing” shall have the meaning assigned to such term in Section 6.09(b)(i).

“L/C – BA Disbursement” shall mean (i) a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit (other than an Acceptance Credit) or (ii) a payment of a Bankers’ Acceptance upon presentation.

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“L/C – BA Participation Fee” shall have the meaning assigned such term in Section 2.12(d).

“Lender” shall mean each financial institution listed on Schedule 2.01, as well as any person that becomes a “Lender” hereunder pursuant to Section 9.04. For the avoidance of doubt, the term “Lender” includes the Swingline Lender and, with respect to any Agent Advances, the Administrative Agent.

“Lending Office” shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

“Letter of Credit” shall mean any letter of credit and any bank guarantee issued pursuant to Section 2.05, including any Acceptance Credit and any Alternate Currency Letter of Credit. Each Existing Letter of Credit shall be deemed to constitute a Letter of Credit issued hereunder on the Closing Date for all purposes of the Loan Documents.

“Letter of Credit Commitment” shall mean, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit pursuant to Section 2.05.

“Letter of Credit Sublimit” shall mean the aggregate Letter of Credit Commitments of the Issuing Banks, in an amount not to exceed \$130 million (or the equivalent thereof in an Alternate Currency).

“LIBO Rate” shall mean, for any Interest Period with respect to a Eurocurrency Borrowing, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or if such rate is not so published, a comparable or successor rate, which comparable or successor rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

“LIBOR” shall have the meaning assigned to such term in the definition of “LIBO Rate” in this Section 1.01.

“Lien” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset and (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, provided, that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Loan Account” shall mean the loan account of the Borrowers, which account shall be maintained by the Administrative Agent.

“Loan Documents” shall mean this Agreement, the Letters of Credit, the Security Documents, the Intercreditor Agreement, the Senior Lender Intercreditor Agreement and any Note issued under Section 2.09(e), and solely for the purposes of Sections 4.02 and 7.01 hereof, the Fee Letter.

“Loan Parties” shall mean Holdings, the Borrowers and the Subsidiary Loan Parties.

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“Loans” shall mean the Revolving Loans, the Swingline Loans and the Agent Advances.

“Local Time” shall mean New York City time.

“Management Group” shall mean the group consisting of the directors, executive officers and other management personnel of the Company, Holdings and their Subsidiaries, as the case may be, on the Closing Date together with (a) any new directors whose election by such boards of directors or whose nomination for election by the shareholders of the Company or Holdings, as the case may be, was approved by a vote of a majority of the directors of the Company or Holdings, as the case may be, then still in office who were either directors on the Closing Date or whose election or nomination was previously so approved and (b) executive officers and other management personnel of the Company or Holdings and their Subsidiaries, as the case may be, hired at a time when the directors on the Closing Date together with the directors so approved constituted a majority of the directors of the Company or Holdings, as the case may be.

“Margin Stock” shall have the meaning assigned to such term in Regulation U.

“Material Adverse Effect” shall mean a material adverse effect on the business, property, operations or condition of the Company and its Subsidiaries, taken as a whole, or the validity or enforceability of any of the material Loan Documents or the rights and remedies of the Administrative Agent and the Lenders thereunder.

“Material Indebtedness” shall mean Indebtedness (other than Loans and Letters of Credit) of any one or more of the Company or any Subsidiary in an aggregate principal amount exceeding \$35 million.

“Material Subsidiary” shall mean any Subsidiary other than an Immaterial Subsidiary.

“Maximum Rate” shall have the meaning assigned to such term in Section 9.09.

“Merger Agreement” shall mean that certain Agreement and Plan of Merger and Corporate Reorganization among Covalence, Holdings and Berry Holdings dated March 9, 2007.

“Merger Documents” shall mean the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

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

“Mortgaged Properties” shall mean the Real Properties owned in fee by the Loan Parties that are set forth on Schedule 1.01(c) and each additional Real Property encumbered by a Mortgage pursuant to Section 5.10.

“Mortgages” shall mean the mortgages, trust deeds, deeds of trust, deeds to secure debt, assignments of leases and rents, and other security documents delivered with respect to Mortgaged Properties, each in form and substance reasonably satisfactory to the Administrative Agent and the Company, as amended, supplemented or otherwise modified from time to time. For the avoidance of doubt, Mortgages may include mortgages delivered under the Existing Credit Agreement to the extent amended to be in a form otherwise satisfactory to the Administrative Agent.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Company, Holdings or any Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

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“Net Amount of Eligible Accounts” shall mean, at any time, the gross amount of Eligible Accounts less sales, excise, or similar taxes, and less returns, discounts, claims, credits, and allowances of any nature at any time issued, owing, granted, outstanding, available, or claimed (in each case without duplication, whether of the exclusionary criteria set forth in the definition of Eligible Accounts, of any Reserve, or otherwise).

“Net Income” shall mean, with respect to any person, the net income (loss) of such person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“Net Orderly Liquidation Value” shall mean the “net orderly liquidation value” determined by an Acceptable Appraiser after performance of an inventory valuation to be done at the Collateral Agent’s request and the Borrowers’ expense (subject to any applicable limitations contained in Section 5.11), less the amount estimated by such Acceptable Appraiser for marshaling, reconditioning, carrying, sales expenses, operating expenses, administration expenses and commissions designed to maximize the resale value of such Inventory and assuming that the time required to dispose of such Inventory is customary with respect to such Inventory and expressed as a percentage of the net book value of such Inventory. It is understood that the Net Orderly Liquidation Value on the Amendment No.4 Effective Date is equal to the “Orderly Liquidation Value” most recently determined prior to the Amendment No.4 Effective Date pursuant to the Unamended Credit Agreement.

“Net Proceeds” shall mean:

(a) 100% of the cash proceeds actually received by the Company or any Subsidiary Loan Party (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but only as and when received) from any Asset Sale (other than those pursuant to Section 6.05(a), (b), (c), (d) (except as contemplated by Section 6.03(b)), (e), (f), (h), (i) or (j)), net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations relating to the applicable asset to the extent such debt or obligations are secured by a Lien permitted hereunder (other than pursuant to the Loan Documents or the Term Loan Documents) on such asset, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) Taxes paid or payable as a result thereof, and (iii) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Company or any of the Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Asset Sale occurring on the date of such reduction); provided, that, if no Event of Default exists and the Company shall deliver a certificate of a Responsible Officer of the Company to the Administrative Agent promptly following receipt of any such proceeds setting forth the Company’s intention to use any portion of such proceeds, to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Company and the Subsidiaries or to make investments in Permitted Business Acquisitions, in each case within 15 months of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to

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the extent not, within 15 months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such 15-month period but within such 15-month period are contractually committed to be used, then upon the termination of such contract, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); provided, further, that (A) no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such proceeds shall exceed \$5.0 million, (B) no proceeds shall constitute Net Proceeds in any fiscal year until the aggregate amount of all such proceeds in such fiscal year shall exceed \$10.0 million, (C) at any time during the 15-month period contemplated by the immediately preceding proviso above, if, on a Pro Forma Basis after giving effect to the Asset Sale and the application of the proceeds thereof, the Total Net First Lien Leverage Ratio is less than or equal to 2.00 to 1.00, up to \$100 million of such proceeds shall not constitute Net Proceeds, and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrowers or any Subsidiary Loan Party of any Indebtedness (other than Excluded Indebtedness), net of all taxes and fees (including investment banking fees), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Company or any Affiliate of the Company shall be disregarded, except for financial advisory fees customary in type and amount paid to Affiliates of the Funds and otherwise not prohibited from being paid hereunder.

“New York Courts” shall have the meaning assigned to such term in Section 9.15(a).

“Newly Obligated Party” shall mean each person, if any, who becomes party to this Agreement as a Loan Party effective as of any date after the Closing Date.

“Non-Consenting Lender” shall have the meaning assigned to such term in Section 2.19(c).

“Note” shall have the meaning assigned to such term in Section 2.09(e).

“Obligations” shall mean all amounts owing to the Administrative Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document.

“Original Agreement Date” shall mean February 16, 2006 in respect of the subsidiaries of Covalence Holdings prior to the Closing Date, shall mean September 20, 2006 in respect of subsidiaries of Holdings prior to the Closing Date, and shall mean the Closing Date in respect of subsidiaries of Holdings that were not subsidiaries of Covalence Holdings or Holdings prior to the Closing Date.

“Original Second Lien Notes” shall mean the Second Lien Fixed Rate 2014 Notes and the Second Lien Floating Rate 2014 Notes.

“Original Second Lien Notes Indenture” shall mean the Second Lien 2014 Notes Indenture.

“Other Borrower” shall mean each domestic Subsidiary who shall from time to time, pursuant to Section 9.24 hereof, become a “Borrower” hereunder pursuant to a Borrower Joinder Agreement or other form satisfactory to the Administrative Agent.

“Other Taxes” shall mean any and all present or future stamp or documentary taxes or any other excise, transfer, sales, property, intangible, mortgage recording, or similar taxes, charges or levies arising

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from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Loan Documents, and any and all interest and penalties related thereto (but not Excluded Taxes).

“Overdraft Line” shall have the meaning assigned to such term in Section 6.01(w).

“Parent Entity” shall mean any direct or indirect parent of Holdings.

“Participant” shall have the meaning assigned to such term in Section 9.04(c)(i).

“Participating Member State” shall mean each state so described in any EMU Legislation.

“Payment Account” shall mean each bank account established or maintained pursuant to Section 5.14, to which the funds of the Borrowers and their Subsidiaries (including proceeds of Accounts and other Collateral) are deposited or credited, and which is maintained in the name of the Collateral Agent or any Loan Party, or any of them, as the Collateral Agent may determine, on terms acceptable to the Collateral Agent.

“PBGC” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Pending Revolving Loans” shall mean, at any time, the aggregate principal amount of all Revolving Loans, Swingline Loans and Agent Advances requested in any Borrowing Request received by the Administrative Agent or otherwise which have not yet been advanced.

“Perfection Certificate” shall mean the Perfection Certificate with respect to Company and the other Loan Parties in a form reasonably satisfactory to the Administrative Agent.

“Permitted Business Acquisition” shall mean any acquisition of all or substantially all the assets of, or all the Equity Interests (other than directors' qualifying shares) in, or merger or consolidation with, a person or division or line of business of a person (or any subsequent investment made in a person, division or line of business previously acquired in a Permitted Business Acquisition), if immediately after giving effect thereto: (i) no Event of Default shall have occurred and be continuing or would result therefrom; (ii) all transactions related thereto shall be consummated in accordance with applicable laws; (iii) with respect to any such acquisition or investment with a fair market value in excess of \$20.0 million, the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to such acquisition or investment and any related transaction; (iv) any acquired or newly formed Subsidiary shall not be liable for any Indebtedness except for Indebtedness permitted by Section 6.01; (v) to the extent required by Section 5.10, any person acquired in such acquisition, if acquired by a Borrower or a Domestic Subsidiary, shall be merged into a Borrower or a Subsidiary Loan Party or become upon consummation of such acquisition a Subsidiary Loan Party; and (vi) the aggregate amount of such acquisitions and investments in assets that are not owned by the Borrowers or Subsidiary Loan Parties or in Equity Interests in persons that are not Subsidiary Loan Parties or persons that do not become Subsidiary Loan Parties upon consummation of such acquisition shall not exceed the greater (x) 4.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such acquisition or investment for which financial statements have been delivered pursuant to Section 5.04 and (y) \$150 million.

“Permitted Cure Securities” shall mean any equity securities of Holdings other than Disqualified Stock and upon which all dividends or distributions (if any) shall, prior to 91 days after the Revolving Facility Maturity Date, be payable solely in additional shares of such equity security.

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“Permitted Holder” shall mean each of (i) the Funds and the Fund Affiliates, and (ii) the Management Group.

“Permitted Investments” shall mean:

(a) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case with maturities not exceeding two years;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of \$250 million and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of any Borrower) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-1 (or higher) according to Moody’s, or A-1 (or higher) according to S&P;

(e) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody’s;

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (a) through (e) above;

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5,000.0 million; and

(h) time deposit accounts, certificates of deposit and money market deposits in an aggregate face amount not in excess of 0.5% of the total assets of the Company and the Subsidiaries, on a consolidated basis, as of the end of the Company’s most recently completed fiscal year; and

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.



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“Permitted Liens” shall have the meaning assigned to such term in Section 6.02.

“Permitted Receivables Documents” shall mean all documents and agreements evidencing, relating to or otherwise governing a Permitted Receivables Financing.

“Permitted Receivables Financing” shall mean one or more transactions pursuant to which (i) Receivables Assets or interests therein are sold to or financed by one or more Special Purpose Receivables Subsidiaries, and (ii) such Special Purpose Receivables Subsidiaries finance their acquisition of such Receivables Assets or interests therein, or the financing thereof, by selling or borrowing against Receivables Assets; provided that (A) recourse to the Company or any Subsidiary (other than the Special Purpose Receivables Subsidiaries) in connection with such transactions shall be limited to the extent customary for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a “true sale”/“absolute transfer” opinion with respect to any transfer by the Company or any Subsidiary (other than a Special Purpose Receivables Subsidiary), (B) once sold or financed in connection herewith, such Receivables Assets shall no longer be part of the Borrowing Base, and (C) the aggregate Receivables Net Investment since the Amendment No. 3 Effective Date shall not exceed \$100 million at any time.

“Permitted Refinancing Indebtedness” shall mean any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium thereon and underwriting discounts, fees, commissions and expenses), (b) except with respect to Section 6.01(i), the weighted average life to maturity of such Permitted Refinancing Indebtedness is greater than or equal to the earlier of (i) the weighted average life to maturity of the Indebtedness being Refinanced and (ii) 90 days after the Revolving Facility Maturity Date, (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing Indebtedness shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced, (d) no Permitted Refinancing Indebtedness shall have different obligors, or greater guarantees or security, than the Indebtedness being Refinanced and (e) if the Indebtedness being Refinanced is secured by any collateral (whether equally and ratably with, or junior to, the Secured Parties or otherwise), such Permitted Refinancing Indebtedness may be secured by such collateral (including in respect of working capital facilities of Foreign Subsidiaries otherwise permitted under this Agreement only, any collateral pursuant to after-acquired property clauses to the extent any such collateral secured the Indebtedness being Refinanced) on terms no less favorable to the Secured Parties than those contained in the documentation governing the Indebtedness being Refinanced; provided further, that with respect to a refinancing of (x) the Senior Subordinated Notes or other subordinated Indebtedness permitted to be incurred herein, such Permitted Refinancing Indebtedness shall (i) be subordinated to the guarantee by Holdings and the Subsidiary Loan Parties of the Revolving Facility, and (ii) be otherwise on terms not materially less favorable to the Lenders than those contained in the documentation governing the Indebtedness being Refinanced; and (y) the Original Second Lien Notes, (i) the Liens, if any, securing such Permitted Refinancing Indebtedness shall be subject to an intercreditor agreement that is substantially consistent with and no less favorable to the Lenders in all material respects than the Intercreditor Agreement and (ii) such Permitted Refinancing Indebtedness shall be otherwise on terms not materially less favorable to the Lenders than those contained in the documentation governing the Indebtedness being Refinanced.

“Permitted Supplier Finance Facility” shall mean an arrangement entered into with one or more third-party financial institutions for the purpose of facilitating the processing of receivables such that receivables

are purchased directly by such third-party financial institutions from one or more of the Borrowers at such discounted rates as may be agreed; provided that (i) no third-party financial institution shall have any recourse to any Borrower in connection with such arrangement and no Borrower shall Guarantee any liabilities or obligations with respect to such arrangement (including, without limitation, no Borrower shall provide any guarantee, surety or other credit support for any of the obligations owed by any customer to such third-party financial institution under any such financing arrangement), and (ii) such receivables purchased by any such third party institutions shall no longer be part of the Borrowing Base.

“person” shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

“Plan” shall mean any employee pension benefit plan, as such term is defined in Section 3(2) of ERISA, (other than a Multiemployer Plan), (i) subject to the provisions of Title IV of ERISA, and (ii) (x) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by Holdings, the Company or any ERISA Affiliate, or (y) in respect of which Holdings, the Company, any Subsidiary 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.

“Platform” shall have the meaning assigned to such term in Section 9.17(b).

“Pledged Collateral” shall have the meaning assigned to such term in the Collateral Agreement.

“Post-Closing Reports” shall mean field exam reports and appraisals with respect to the Accounts and Inventory of the Loan Parties, in each case in form customary for financings similar to this Agreement.

“Pricing Grid” shall mean, with respect to the Revolving Loans, the table set forth below:

| <u>Level</u> | <u>Quarterly Average Daily Availability<br/>(as a percentage of the<br/>Borrowing Base)</u> | <u>Applicable Margin<br/>for ABR Loans</u> | <u>Applicable Margin for<br/>Eurocurrency Loans</u> |
|--------------|---|--|---|
| I            | Less than or equal to 25%   | 0.75%                                      | 1.75%   |
| II           | More than 25% but less than or equal to 60%   | 0.50%                                      | 1.50%   |
| III          | More than 60%   | 0.25%                                      | 1.25%   |

For the purposes of the Pricing Grid, changes in the Applicable Margin shall become effective on August 14, and thereafter on the first Business Day of each calendar quarter (to be effective from such date until changed pursuant to the Pricing Grid), and shall be determined in accordance with the Pricing Grid based on average daily Availability during the immediately preceding fiscal quarter.

“primary obligor” shall have the meaning given such term in the definition of the term “Guarantee.”

“Primary Payment Account” shall have the meaning assigned to such term in Section 5.14(a).

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“Pro Forma Adjusted EBITDA” shall have the meaning assigned to such term in Section 3.05(a).

“Pro Forma Basis” shall mean, as to any person, for any events as described below that occur subsequent to the commencement of a period for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred on the first day of the four consecutive fiscal quarter period (or such other relevant time period, as the context may require) ended on or before the occurrence of such event (the “Reference Period”): (i) in making any determination of EBITDA, effect shall be given to any Asset Sale, any acquisition (or any similar transaction or transactions not otherwise permitted under Section 6.04 or 6.05 that require a waiver or consent of the Required Lenders and such waiver or consent has been obtained), any dividend, distribution or other similar payment, any designation of any Subsidiary as an Unrestricted Subsidiary and any Subsidiary Redesignation, the Initial Pro Forma Adjustment for the quarters ending March 2006, June 2006, September 2006, and December 2006, and any restructurings of the business of the Company or any of its Subsidiaries that are expected to have a continuing impact and are factually supportable, which would include cost savings resulting from head count reduction, closure of facilities and similar operational and other cost savings, which adjustments the Company determines are reasonable as set forth in a certificate of a Financial Officer of the Company (the foregoing, together with any transactions related thereto or in connection therewith, the “relevant transactions”), in each case that occurred during the Reference Period (or, in the case of determinations made pursuant to the definition of the term “Permitted Business Acquisition”, or pursuant to Sections, 6.01(r), 6.02(u) or 6.06(e), occurring during the Reference Period or thereafter and through and including the date upon which the respective Permitted Business Acquisition or incurrence of Indebtedness or Liens, Asset Sale, or dividend is consummated), (ii) in making any determination on a Pro Forma Basis, (x) all Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the financial effect is being calculated, whether incurred under this Agreement or otherwise, but excluding normal fluctuations in revolving Indebtedness incurred for working capital purposes and amounts outstanding under any Permitted Receivables Financing, in each case not to finance any acquisition) issued, incurred, assumed or permanently repaid during the Reference Period (or, in the case of determinations made pursuant to the definition of the term “Permitted Business Acquisition” or pursuant to Sections 6.01(r), 6.02(u) or 6.06(e), occurring during the Reference Period or thereafter and through and including the date upon which the respective Permitted Business Acquisition or incurrence of Indebtedness or Liens, Asset Sale, or dividend is consummated) shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such period and (y) Interest Expense of such person attributable to interest on any Indebtedness, for which pro forma effect is being given as provided in preceding clause (x) (A) bearing floating interest rates shall be computed on a pro forma basis as if the rate in effect on the date of such calculation had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months), and (B) in respect of a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP; and (iii) (A) any Subsidiary Redesignation then being designated, effect shall be given to such Subsidiary Redesignation and all other Subsidiary Redesignations after the first day of the relevant Reference Period and on or prior to the date of the respective Subsidiary Redesignation then being designated, collectively, and (B) any designation of a Subsidiary as an Unrestricted Subsidiary, effect shall be given to such designation and all other designations of Subsidiaries as Unrestricted Subsidiaries after the first day of the relevant Reference Period and on or prior to the date of the then applicable designation of a Subsidiary as an Unrestricted Subsidiary, collectively.

Calculations made pursuant to the definition of the term “Pro Forma Basis” shall be determined in good faith by a Responsible Officer of the Company and may include adjustments to reflect (1) operating expense reductions and other operating improvements or synergies reasonably expected to result from

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such relevant transaction, which adjustments are reasonably anticipated by the Company to be realizable in connection with such relevant transaction (or any similar transaction or transactions made in compliance with this Agreement or that require a waiver or consent of the Required Lenders), and are estimated on a good faith basis by the Company, and (2) all adjustments reflected in the Pro Forma Financial Statements and Pro Forma Adjusted EBITDA to the extent such adjustments, without duplication, continue to be applicable. The Company shall deliver to the Administrative Agent a certificate of a Financial Officer of the Company setting forth such demonstrable or additional operating expense reductions and other operating improvements or synergies and information and calculations supporting them in reasonable detail.

“Pro Forma Compliance” shall mean, at any date of determination, that (a) either (i) the Availability is equal to or greater than 15.0% of the lesser of (A) the then-current Borrowing Base and (B) the aggregate Revolving Facility Commitments, immediately before and after giving effect on a Pro Forma Basis to the relevant transactions (including the assumption, issuance, incurrence and repayment of Indebtedness) at such time and during the 30 consecutive day period immediately prior thereto, or (ii) (A) the Company and its Subsidiaries shall be in compliance, on a Pro Forma Basis after giving effect on a Pro Forma Basis to the relevant transactions, with an ABL Fixed Charge Coverage Ratio of at least 1:00 to 1:00 recomputed as at the last day of the most recently ended fiscal quarter of the Company and its Subsidiaries for which the financial statements and certificates required pursuant to Section 5.04 have been delivered, and (B) the Availability is equal to or greater than 12.5% of the lesser of (x) the then-current Borrowing Base and (y) the aggregate Revolving Facility Commitments, immediately before and after giving effect on a Pro Forma Basis to the relevant transactions (including the assumption, issuance, incurrence and repayment of Indebtedness) at such time and during the 30 consecutive day period immediately prior thereto; provided that, notwithstanding anything to the contrary in the preceding clauses (i) and (ii), solely for the purpose of determining Pro Forma Compliance to permit the payment of dividends to Holdings under Section 6.06(e), “Pro Forma Compliance” shall mean that either (A) (I) the Company and its Subsidiaries are in compliance, on a Pro Forma Basis after giving effect on a Pro Forma Basis to the relevant distribution, with an ABL Fixed Charge Coverage Ratio of at least 1:00 to 1:00 recomputed as at the last day of the most recently ended fiscal quarter of the Company and its Subsidiaries for which the financial statements and certificates required pursuant to Section 5.04 have been delivered and (II) the Availability is equal to or greater than 15.0% of the lesser of (x) the then-current Borrowing Base and (y) the aggregate Revolving Facility Commitments, immediately before and after giving effect on a Pro Forma Basis to the relevant payment of dividends at such time and during the 30 consecutive day period immediately prior thereto or (B) the Availability is equal to or greater than 20.0% of the lesser of (x) the then-current Borrowing Base and (y) the aggregate Revolving Facility Commitments, immediately before and after giving effect on a Pro Forma Basis to the relevant payment of dividends at such time and during the 30 consecutive day period immediately prior thereto; and (b) the Borrowers shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrowers to such effect, together with all relevant financial information.

“Pro Forma Financial Statements” shall have the meaning assigned to such term in Section 3.05(a).

“Pro Rata Share” shall mean, with respect to a Lender, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender’s Revolving Facility Commitment and the denominator of which is the sum of the amounts of all of the Lenders’ Revolving Facility Commitments, or if no Revolving Facility Commitments are outstanding, a fraction (expressed as a percentage), the numerator of which is the principal amount of Obligations owed to such Lender and the denominator of which is the aggregate principal amount of the Obligations owed to the Lenders, in each case giving effect to a Lender’s participation in Swingline Loans and Agent Advances.

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“Projections” shall mean the projections of Holdings, the Company and the Subsidiaries included in the Information Memorandum and any other projections and any forward-looking statements (including statements with respect to booked business) of such entities furnished to the Lenders or the Administrative Agent by or on behalf of Holdings, the Company or any of the Subsidiaries prior to the Closing Date.

“Proprietary Rights” shall mean, with respect to a person, all of such person’s now owned and hereafter arising or acquired licenses, franchises, permits, patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses and rights related to any of the foregoing, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing, and all rights to sue for past, present, and future infringement of any of the foregoing.

“Public Lender” shall have the meaning assigned to such term in Section 9.17.

“Qualified CFC Holding Company” shall mean a Wholly Owned Subsidiary of the Company that is a limited liability company, that (a) is in compliance with Section 6.12 and (b) the primary asset of which consists of Equity Interests in either (i) a Foreign Subsidiary or (ii) a limited liability company that is in compliance with Section 6.12 and the primary asset of which consists of Equity Interests in a Foreign Subsidiary.

“Qualified ECP Guarantor” shall mean, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time under § 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Equity Interests” shall mean any Equity Interest other than Disqualified Stock.

“Qualified IPO” shall mean an underwritten public offering of the Equity Interests of Holdings (or any Parent Entity) which generates cash proceeds of at least \$50 million.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Reasonable Credit Judgment” shall mean reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions and as it relates to the establishment of Reserves or the adjustment or imposition of exclusionary criteria shall require that, (x) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts or events relating to the Accounts, Inventory or other components of the Borrowing Base first occurring or first discovered by the Administrative Agent after the Closing Date or that are materially different from facts or events occurring or known to the Administrative Agent on the Closing Date, (y) the contributing factors to the imposition of any Reserve shall not duplicate (i) the exclusionary criteria set forth in definitions of “Eligible Accounts” and “Eligible Inventory”, as applicable (and vice versa) or (ii) any reserves deducted in computing book value and (z) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

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“Receivables Assets” shall mean accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Company or any Subsidiary.

“Receivables Net Investment” shall mean the aggregate cash amount paid by the lenders or purchasers under any Permitted Receivables Financing in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables Assets or otherwise in accordance with the terms of the Permitted Receivables Documents (but excluding any such collections used to make payments of items included in clause (c) of the definition of Interest Expense); provided, however, that if all or any part of such Receivables Net Investment shall have been reduced by application of any distribution and thereafter such distribution is rescinded or must otherwise be returned for any reason, such Receivables Net Investment shall be increased by the amount of such distribution, all as though such distribution had not been made.

“Reference Period” shall have the meaning assigned to such term in the definition of the term “Pro Forma Basis.”

“Refinance” shall have the meaning assigned to such term in the definition of the term “Permitted Refinancing Indebtedness,” and “Refinanced” shall have a meaning correlative thereto.

“Refinancing” shall mean the refinancing of (x) the “Revolving Loans” (as defined in the Credit Agreement, dated as of September 20, 2006, by and between Holdings, the Company, Credit Suisse, Cayman Islands Branch, as administrative agent and collateral agent and the other parties thereto), and (y) the “Loans” (as defined in the Revolving Credit Agreement, dated as of May 18, 2006, by and between Covalence Specialty Materials Corp., Covalence Specialty Materials Holding Corp., Bank of America, N.A., as administrative agent, and the other parties thereto), in each case that was consummated on or about April 3, 2007.

“Register” shall have the meaning assigned to such term in Section 9.04(b).

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Fund” shall mean, with respect to any Lender that is a fund that invests in bank or commercial loans and similar extensions of credit, any other fund that invests in bank or commercial loans and similar extensions of credit and is advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity (or an Affiliate of such entity) that administers, advises or manages such Lender.

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

“Related Sections” shall have the meaning assigned to such term in Section 6.04.

“Release” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment.

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“relevant transactions” shall have the meaning assigned to such term in the definition of “Pro Forma Basis” in this Section 1.01.

“Remaining Present Value” shall mean, as of any date with respect to any lease, the present value as of such date of the scheduled future lease payments with respect to such lease, determined with a discount rate equal to a market rate of interest for such lease reasonably determined at the time such lease was entered into.

“Report” shall have the meaning assigned to such term in Section 8.11(a).

“Reportable Event” shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period referred to in Section 4043(e) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Required Lenders” shall mean, at any time, Lenders whose Pro Rata Shares aggregate more than fifty percent (50%). The Pro Rata Share of any Defaulting Lender shall be disregarded in determining the Required Lenders at any time.

“Required Percentage” shall mean, with respect to an Excess Cash Flow Period (or Excess Cash Flow Interim Period), 50%; provided, that (a) if the Total Net First Lien Leverage Ratio at the end of the Applicable Period (or Excess Cash Flow Interim Period) is greater than 1.50 to 1.00 but less than or equal to 2.00 to 1.00, such percentage shall be 25%, and (b) if the Total Net First Lien Leverage Ratio at the end of the Applicable Period (or Excess Cash Flow Interim Period) is less than or equal to 1.50 to 1.00, such percentage shall be 0%.

“Requirement of Law” shall mean, as to any person, any law (statutory or common), treaty, rule, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the person or any of its property or to which the person or any of its property is subject.

“Reserves” shall mean such reserves against the Borrowing Base that the Administrative Agent has, in the exercise of its Reasonable Credit Judgment, established from time to time upon at least seven Business Days’ notice to the Company.

“Responsible Officer” of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

“Retained Excess Cash Flow Overfunding” shall mean, at any time, in respect of any Excess Cash Flow Interim Period as to which the corresponding Excess Cash Flow Period has ended at such time, a portion of the cumulative Excess Cash Flow for such Excess Cash Flow Interim Period equal to the amount, if any, by which the Retained Percentage of Excess Cash Flow for such Excess Cash Flow Interim Period exceeds the Retained Percentage of Excess Cash Flow for such corresponding Excess Cash Flow Period.

“Retained Percentage” shall mean, with respect to any Excess Cash Flow Period (or Excess Cash Flow Interim Period), (a) 100% minus (b) the Required Percentage with respect to such Excess Cash Flow Period (or Excess Cash Flow Interim Period).

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“Revaluation Date” shall mean, with respect to any Alternate Currency Letter of Credit, each of the following: (i) each date of issuance of an Alternate Currency Letter of Credit, (ii) each date of an amendment of an Alternate Currency Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the Issuing Bank under an Alternate Currency Letter of Credit, and (iv) such additional dates as the Administrative Agent or the Issuing Bank shall determine or the Required Lenders shall require.

“Revolving Facility” shall mean the Revolving Facility Commitments (including any Incremental Revolving Facility Commitments) and the extensions of credit made hereunder by the Revolving Lenders.

“Revolving Facility Borrowing” shall mean a Borrowing comprised of Revolving Loans.

“Revolving Facility Commitment” shall mean, with respect to each Revolving Lender, the commitment of such Revolving Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Revolving Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08, (b) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 9.04, and (c) increased or provided under Section 2.21. As of the Amendment No. 4 Effective Date, the amount of each Lender’s Revolving Facility Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance or Incremental Assumption Agreement pursuant to which such Lender shall have assumed its Revolving Facility Commitment (or Incremental Revolving Facility Commitment), as applicable. As of the Amendment No. 4 Effective Date, the aggregate amount of the Lenders’ Revolving Facility Commitments prior to any Incremental Revolving Facility Commitments) is \$650 million.

“Revolving Facility Credit Exposure” shall mean, at any time, the sum of (a) the aggregate principal amount of the Revolving Loans outstanding at such time, (b) the aggregate amount of Pending Revolving Loans, (c) the Swingline Exposure and Agent Advance Exposure at such time and (d) the Revolving L/C – BA Exposure at such time. The Revolving Facility Credit Exposure of any Revolving Lender at any time shall be the product of (x) such Revolving Lender’s Pro Rata Share and (y) the aggregate Revolving Facility Credit Exposure of all Revolving Lenders, collectively, at such time.

“Revolving Facility Maturity Date” shall mean the earlier to occur of (a) May 14, 2020, and (b) the date that is 45 days prior to the earliest scheduled maturity of any of the Company’s or its Subsidiaries’ Indebtedness in an aggregate amount in excess of \$100,000,000, except to the extent that such Indebtedness is refinanced or otherwise extended to a maturity date that is more than five years and 45 days after the Amendment No.4 Effective Date, or is repaid or defeased prior to such scheduled maturity date.

“Revolving L/C – BA Exposure” shall mean at any time the sum of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time (calculated, in the case of Alternate Currency Letters of Credit, based on the Dollar Equivalent thereof), (b) the sum of the maximum aggregate amount that is, or at any time thereafter may become, payable by the Issuing Banks under all then outstanding Bankers’ Acceptances (calculated, in the case of Alternate Currency Letters of Credit, based on the Dollar Equivalent thereof) and (c) the aggregate principal amount of all L/C – BA Disbursements that have not yet been reimbursed at such time (calculated, in the case of Alternate Currency Letters of Credit, based on the Dollar Equivalent thereof). The Revolving L/C – BA Exposure of any Revolving Lender at any time shall mean its Pro Rata Share of the aggregate Revolving L/C – BA Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the International Standby Practices (ISP98), such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided.



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that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

“Revolving Lender” shall mean a Lender (including an Incremental Revolving Lender) with a Revolving Facility Commitment or with outstanding Revolving Loans.

“Revolving Loan” shall mean a Loan made by a Revolving Lender pursuant to Section 2.01.

“S&P” shall mean Standard & Poor’s Financial Services LLC, a wholly-owned subsidiary of The McGraw-Hill Companies, Inc.

“Sale and Lease-Back Transaction” shall have the meaning assigned to such term in Section 6.03.

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Second Lien Fixed Rate 2014 Notes” shall mean the 8 <sup>7</sup>/<sub>8</sub>% Second Priority Senior Secured Fixed Rate Notes due 2014, issued by the Company pursuant to the Second Lien 2014 Notes Indenture and any notes issued in exchange for, and as contemplated by, the Second Lien Fixed Rate 2014 Notes and the related registration rights agreement with substantially identical terms as the Second Lien Fixed Rate 2014 Notes.

“Second Lien Fixed Rate 2018 Notes” shall mean the 9 <sup>1</sup>/<sub>2</sub>% Second Priority Senior Secured Fixed Rate Notes due 2018, issued by the Company pursuant to the Second Lien 2018 Notes Indenture and any notes issued in exchange for, and as contemplated by, the Second Lien Fixed Rate 2018 Notes and the related registration rights agreement with substantially identical terms as the Second Lien Fixed Rate 2018 Notes.

“Second Lien Fixed Rate 2021 Notes” shall mean the 9.75% Second Priority Senior Secured Fixed Rate Notes due 2021, issued by the Company pursuant to the Second Lien 2021 Notes Indenture and any notes issued in exchange for, and as contemplated by, the Second Lien Fixed Rate 2021 Notes and the related registration rights agreement with substantially identical terms as the Second Lien Fixed Rate 2021 Notes.

“Second Lien Fixed Rate 2022 Notes” shall mean the 5.50% Second Priority Senior Secured Notes due 2022, issued by the Company pursuant to the Second Lien 2022 Notes Indenture and any notes issued in exchange for, and as contemplated by, the Second Lien Fixed Rate 2022 Notes and the related registration rights agreement with substantially identical terms as the Second Lien Fixed Rate 2022 Notes.

“Second Lien Floating Rate 2014 Notes” shall mean the floating rate Second Priority Senior Secured Floating Rate Notes due 2014, issued pursuant to the Second Lien Notes Indenture and any notes issued by the Company or another Borrower in exchange for, and as contemplated by, the Second Lien Floating Rate 2014 Notes and the related registration rights agreement with substantially identical terms as the Second Lien Floating Rate 2014 Notes.

“Second Lien Note Documents” shall mean, collectively, the Second Lien Notes, the Second Lien Notes Indentures and the Second Lien Security Documents.

“Second Lien Notes” shall mean the Second Lien Fixed Rate 2014 Notes, the Second Lien Floating Rate 2014 Notes, Second Lien Fixed Rate 2018 Notes and Second Lien Fixed Rate 2021 Notes.

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“Second Lien 2014 Notes Indenture” shall mean the Indenture dated as of September 20, 2006 among BPC Acquisition Corp., as predecessor of Berry, and certain of its subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Closing Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Second Lien 2018 Notes Indenture” shall mean the Indenture dated as of April 30, 2010 among the Company, and certain of its subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Amendment No. 3 Effective Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Second Lien 2021 Notes Indenture” shall mean the Indenture dated as of November 19, 2010 among the Company, and certain of its subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Amendment No. 3 Effective Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Second Lien 2022 Notes Indenture” shall mean the Indenture dated as of May 12, 2014 among the Company, and certain of its subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Amendment No. 4 Effective Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Second Lien Notes Indentures” shall mean, collectively, the Second Lien 2014 Notes Indenture, the Second Lien 2018 Notes Indenture, the Second Lien 2021 Notes Indenture and the Second Lien 2022 Notes Indenture.

“Second Lien Obligations” shall mean the obligations of the respective borrowers and guarantors under the Second Lien Note Documents.

“Second Lien Security Documents” shall mean the “Security Documents” as defined in the Second Lien Notes Indentures.

“Secured Parties” shall mean the “Secured Parties” as defined in the Collateral Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Documents” shall mean the Mortgages, the Collateral Agreement, the Foreign Pledge Agreements and each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.10.

“Senior Fixed Collateral Intercreditor Agreement” shall mean the Senior Fixed Collateral Priority and Intercreditor Agreement, dated as of February 5, 2008, as amended, supplemented or otherwise modified from time to time, among Credit Suisse, Bank of America, Holdings, the Company and certain of the Company’s Subsidiaries.

“Senior Lender Intercreditor Agreement” shall mean the Second Amended and Restated Senior Lender Priority and Intercreditor Agreement, dated as of February 5, 2008, as amended, supplemented or otherwise modified from time to time, among Holdings, the Company, the Borrowers, each Subsidiary that became or becomes a party thereto after February 5, 2008, the Collateral Agent, the Administrative Agent, the “Administrative Agent” under the Term Loan Credit Agreement, the “Collateral Agent” under the Term Loan Credit Agreement, each other First Priority Lien Obligations Administrative Agent (as defined therein) and each Other First Priority Lien Obligations Collateral Agent (as defined therein) from time to time party thereto.

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“Senior Subordinated Note Documents” shall mean the Covalence Senior Subordinated Note Documents and the Berry Senior Subordinated Note Documents.

“Senior Subordinated Notes” shall mean the Covalence Senior Subordinated Notes and the Berry Senior Subordinated Notes.

“Senior Subordinated Notes Indentures” shall mean the Covalence Senior Subordinated Notes Indenture and the Berry Senior Subordinated Notes Indenture.

“Settlement” and “Settlement Date” have the meanings specified in Section 2.04(e)(i).

“Special Purpose Receivables Subsidiary” shall mean a direct or indirect Subsidiary of the Company established in connection with a Permitted Receivables Financing for the acquisition of Receivables Assets or interests therein, and which is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with Holdings, the Company or any of the Subsidiaries (other than Special Purpose Receivables Subsidiaries) in the event Holdings, the Company or any such Subsidiary becomes subject to a proceeding under the U.S. Bankruptcy Code (or other insolvency law).

“Specified Asset Sale” shall mean that certain sale of a certain division or line of business (which was identified to the Agents and the Joint Bookrunners prior to the Amendment No.3 Effective Date), to be made by one or more of the Borrowers.

“Specified Default” shall mean the occurrence of any Event of Default specified in Sections 7.01(b), (c), (h) or (i).

“Specified Loan Party” shall mean any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 9.27 hereof).

“Specified Stock Purchases” shall mean the acquisition by one or more of the Borrowers of all of the outstanding Equity Interests in those certain business entities which were identified to the Agents and the Joint Bookrunners prior to the Amendment No. 3 Effective Date as being acquisition targets, if immediately after giving effect thereto: (i) no Event of Default shall have occurred and be continuing or would result therefrom, (ii) all transactions related thereto shall be consummated in accordance with applicable laws, (iii) any acquired or newly formed Subsidiary shall not be liable for any Indebtedness except for Indebtedness permitted by Section 6.01, and (iv) to the extent required by Section 5.10, any person acquired in such acquisition, if acquired by a Borrower or a Domestic Subsidiary, shall be merged into a Borrower or a Subsidiary Loan Party or become upon consummation of such acquisition a Subsidiary Loan Party.

“Spot Rate” for a currency shall mean the rate determined by the Administrative Agent or the Issuing Bank, as applicable, to be the rate quoted by the person acting in such capacity as the spot rate for the purchase by such person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date three Business Days prior to the date as of which the foreign exchange computation is made or if such rate cannot be computed as of such date such other rate as the Administrative Agent or the Issuing Bank shall reasonably determine is appropriate under the circumstances; provided that the Administrative Agent or the Issuing Bank may obtain such spot rate from another financial institution designated by the Administrative Agent or the Issuing Bank if the person acting in such capacity does not have as of the date of determination a spot buying rate for any

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such currency; and provided further that the Issuing Bank may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternate Currency.

“Statutory Reserves” shall mean, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Loans in such currency are determined.

“Subagent” shall have the meaning assigned to such term in Section 8.02.

“Subordinated Intercompany Debt” shall have the meaning assigned to such term in Section 6.01(e).

“subsidiary” shall mean, with respect to any person (herein referred to as the “parent”), any corporation, partnership, association or other business 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 more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held, or (b) that is, at the time any determination is made, 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” shall mean, unless the context otherwise requires, a subsidiary of the Company. Notwithstanding the foregoing (and except for purposes of Sections 3.09, 3.13, 3.15, 3.16, 5.03, 5.09 and 7.01(k), and the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Company or any of its Subsidiaries for purposes of this Agreement.

“Subsidiary Loan Party” shall mean (a) each Domestic Subsidiary of the Company on the Closing Date and (b) each Domestic Subsidiary of the Company that becomes, or is required to become, a party to the Collateral Agreement, the Intercreditor Agreement and the Senior Lender Intercreditor Agreement after the Closing Date.

“Subsidiary Redesignation” shall have the meaning provided in the definition of “Unrestricted Subsidiary” contained in this Section 1.01.

“Swap Agreement” shall mean 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 (including, for the avoidance of doubt, resin), 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 Holdings, the Company or any of the Subsidiaries shall be a Swap Agreement.

“Swap Obligation” shall mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Borrowing” shall mean a Borrowing comprised of Swingline Loans.

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“Swingline Borrowing Request” shall mean a request by a Borrower substantially in the form of Exhibit C-2.

“Swingline Commitment” shall mean, with respect to the Swingline Lender, the commitment of the Swingline Lender to make Swingline Loans pursuant to Section 2.04. The aggregate amount of the Swingline Commitments on the Amendment No. 4 Effective Date is \$32.5 million; provided, that the Swingline Lender may at any time and from time to time, at its sole discretion, reduce such aggregate commitment amount by the aggregate amount of all Swingline Commitments then held by or attributed to Lenders who are then Defaulting Lenders.

“Swingline Exposure” shall mean at any time the aggregate principal amount of all outstanding Swingline Borrowings at such time. The Swingline Exposure of any Revolving Lender at any time shall mean its Pro Rata Share of the aggregate Swingline Exposure at such time.

“Swingline Lender” shall mean Bank of America in its capacity as a lender of Swingline Loans.

“Swingline Loans” shall mean the swingline loans made to the Borrowers pursuant to Section 2.04.

“Syndication Agent” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, withholdings or similar charges (including *ad valorem* charges) imposed by any Governmental Authority and any and all interest and penalties related thereto.

“Term Facility Collateral Agent” shall have the meaning assigned to such term in the Senior Lender Intercreditor Agreement.

“Term Loan Credit Agreement” shall mean the Second Amended and Restated Term Loan Credit Agreement, dated as of April 3, 2007, among Holdings, the Company, the lenders and agents party thereto and Credit Suisse, as administrative agent and collateral agent for such lenders, as amended, restated, supplemented, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or increasing the amount loaned thereunder or altering the maturity thereof.

“Term Loan Documents” shall mean the “Loan Documents” as defined in the Term Loan Credit Agreement.

“Term Loan Obligations” shall mean the “Obligations” as defined in the Term Loan Credit Agreement.

“Term Loan Secured Parties” shall have the meaning assigned to such term in the Senior Lender Intercreditor Agreement.

“Term Loans” shall mean loans made pursuant to and in accordance with the Term Loan Credit Agreement.

“Test Period” shall mean, on any date of determination, the period of four consecutive fiscal quarters of the Company then most recently ended (taken as one accounting period).

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“Threshold Amount” shall mean 10.0% of the lesser of (i) the Revolving Facility Commitments and (ii) the Borrowing Base, but notwithstanding the foregoing, in no event shall such amount be less than \$45,000,000, in each case as of any date of determination.

“Total Net First Lien Leverage Ratio” shall mean, on any date, the ratio of (a) First Lien Debt as of such date to (b) EBITDA for the period of four consecutive fiscal quarters of the Company most recently ended as of such date, all determined on a consolidated basis in accordance with GAAP; provided, that EBITDA shall be determined for the relevant Test Period on a Pro Forma Basis.

“Transaction Documents” shall mean the Loan Documents, the Term Loan Credit Agreement and the “Loan Documents” as defined therein and the Merger Documents.

“Transaction Expenses” shall mean any fees or expenses incurred or paid by the Funds or Fund Affiliates, Holdings, the Company (or any direct or indirect parent of the Company) or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents (including expenses in connection with Swap Agreements) and the transactions contemplated hereby and thereby.

“Transactions” shall mean, collectively, the transactions to occur pursuant to the Transaction Documents, including (a) the consummation of the Business Combination; (b) the execution and delivery of the Loan Documents, the creation or continuation of the Liens pursuant to the Security Documents, and the initial borrowings hereunder; (c) the Refinancing; and (d) the payment of all Transaction Expenses.

“Type” shall mean, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” shall include the Adjusted LIBO Rate and the ABR.

“UFCA” shall have the meaning assigned to such term in Section 9.22.

“UFTA” shall have the meaning assigned to such term in Section 9.22.

“Unamended Credit Agreement” shall have the meaning set forth in the recitals hereto.

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

“Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Cash” shall mean domestic cash or cash equivalents of the Company or any of its Subsidiaries that would not appear as “restricted” on a consolidated balance sheet of the Company or any of its Subsidiaries.

“Unrestricted Subsidiary” shall mean (i) any subsidiary of the Company identified on Schedule 1.01(i) and (ii) any subsidiary of the Company that is acquired or created after the Closing Date and designated by the Company as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; provided, that the Company shall only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date and so long as (a) no Default or Event of Default has occurred and is continuing or would result therefrom, (b) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized

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by the Company or any of its Subsidiaries) through Investments as permitted by, and in compliance with, Section 6.04(j), and any prior or concurrent Investments in such Subsidiary by the Company or any of its Subsidiaries shall be deemed to have been made under Section 6.04(j), (c) without duplication of clause (b), any assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof shall be treated as Investments pursuant to Section 6.04(j), and (d) such Subsidiary shall have been designated an “unrestricted subsidiary” (or otherwise not be subject to the covenants and defaults) under the Second Lien Notes Indentures, the Senior Subordinated Notes Indentures, the First Priority Notes Indentures, any other Indebtedness permitted to be incurred hereby and all Permitted Refinancing Indebtedness in respect of any of the foregoing and all Disqualified Stock; provided, further, that at the time of the initial Investment by the Company or any of its Subsidiaries in such Subsidiary, the Company shall designate such entity as an Unrestricted Subsidiary in a written notice to the Administrative Agent. The Company may designate any Unrestricted Subsidiary to be a Subsidiary for purposes of this Agreement (each, a “Subsidiary Redesignation”); provided, that (i) such Unrestricted Subsidiary, both before and after giving effect to such designation, shall be a Wholly Owned Subsidiary of the Company, (ii) no Default or Event of Default has occurred and is continuing or would result therefrom, (iii) all representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of such Subsidiary Redesignation (both before and after giving effect thereto), unless stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and (iv) the Company shall have delivered to the Administrative Agent an officer’s certificate executed by a Responsible Officer of the Company, certifying to the best of such officer’s knowledge, compliance with the requirements of preceding clauses (i) through (iii), inclusive.

“Wholly Owned Subsidiary” of any person shall mean a subsidiary of such person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such person or another Wholly Owned Subsidiary of such person.

“Withdrawal Liability” shall mean 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.

“Working Capital” shall mean, with respect to the Company and the Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided, that, for purposes of calculating Excess Cash Flow, increases or decreases in Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both 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.” All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, that, if the Company notifies the Administrative Agent that the Company requests an amendment to any provision hereof to eliminate

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the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Company that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.03. Effectuation of Transactions. Each of the representations and warranties of Holdings and the Borrowers contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.04. Exchange Rates: Currency Equivalents.

(a) The Administrative Agent shall determine the Spot Rate as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Alternate Currency Letters of Credit. Such Spot Rate shall become effective as of such Revaluation Date and shall be the Spot Rate employed in converting any amounts between the Dollars and each Alternate Currency until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent. No Default or Event of Default shall arise as a result of any limitation or threshold set forth in U.S. Dollars in Article VI or paragraph (f) or (j) of Section 7.01 being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the first day of the fiscal quarter in which such determination occurs or in respect of which such determination is being made.

(b) Wherever in this Agreement in connection with an Alternate Currency Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, such amount shall be the Dollar Equivalent of such Dollar amount (rounded to the nearest unit of such Alternate Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent.

SECTION 1.05. Senior Debt. The Obligations constitute (a) "First-Lien Indebtedness" pursuant to, and as defined in, the Intercreditor Agreement, (b) "Senior Debt" and "Designated Senior Debt" pursuant to, and as defined in, each Senior Subordinated Notes Indenture, (c) "First-Priority Lien Obligations" pursuant to, and as defined in, each Second Lien Notes Indenture, and (d) "Revolving Facility Obligations" as defined in the Senior Lender Intercreditor Agreement. This Agreement is a "Credit Agreement" for purposes of the Subordinated Indentures, the First Priority Notes Indentures and the Second Lien Notes Indentures.

SECTION 1.06. Effect of Restatement. This Agreement amends and restates the Unamended Credit Agreement in its entirety, with the parties hereby agreeing there is no novation of the Unamended Credit Agreement, and on the Amendment No. 4 Effective Date, the rights and obligations of the parties under the Unamended Credit Agreement shall be subsumed and governed by this Agreement. Following the Amendment No. 4 Effective Date, the Loans and Commitments under this Agreement shall be outstanding until otherwise terminated in accordance with the terms hereof.



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## ARTICLE II

### The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Facility Credit Exposure (except for the Administrative Agent with respect to Agent Advances) exceeding such Lender's Revolving Facility Commitment (or, if less, prior to delivery to the Administrative Agent of the Post-Closing Reports, such Lender's Pro Rata Share of \$340 million), or (ii) the Revolving Facility Credit Exposure exceeding the total Revolving Facility Commitments or, until delivery of the Post-Closing Reports to the Administrative Agent, \$340 million, or (iii) such Lender's Revolving Facility Credit Exposure exceeding such Lender's Pro Rata Share of the Borrowing Base. The Lenders, however, in their unanimous discretion, may elect to make Revolving Loans or issue or arrange to have issued Letters of Credit in excess of the Availability on one or more occasions, but if they do so, neither the Administrative Agent nor the Lenders shall be deemed thereby to have changed the limits of the Borrowing Base or to be obligated to exceed such limits on any other occasion. If the Revolving Facility Credit Exposure exceeds the Borrowing Base, the Lenders may refuse to make or otherwise restrict the making of Revolving Loans and the issuance of Letters of Credit as the Lenders determine until such excess has been eliminated, subject to the Administrative Agent's authority, in its sole discretion, to make Agent Advances pursuant to the terms of Section 2.04(d). 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 under the Revolving Facility and of the same Type made by the Lenders ratably in accordance with their respective Commitments under the Revolving Facility (or, in the case of Swingline Loans, in accordance with their respective Swingline Commitments); provided, however, that Revolving Loans shall be made by the Revolving Lenders ratably in accordance with their respective Pro Rata Shares on the date such Loans are made hereunder. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided, that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Borrowing (other than a Swingline Borrowing and excluding Agent Advances) shall be comprised entirely of ABR Loans or Eurocurrency Loans as the Borrowers may request in accordance herewith. Each Swingline Borrowing shall be an ABR Borrowing. 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 Borrowers 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 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(c) At the commencement of each Interest Period for any Eurocurrency Revolving Facility Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. At the time that each ABR Revolving Facility Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided, that an ABR Revolving Facility Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Revolving Facility Commitments or that is required to finance the reimbursement of an L/C – BA Disbursement as contemplated by Section 2.05(e). Each Swingline Borrowing shall be in an amount that is an integral

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multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type and under more than one Facility may be outstanding at the same time; provided, that there shall not at any time be more than a total of 10 Eurocurrency Borrowings outstanding under the Revolving Facility.

(d) 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 Revolving Facility Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Revolving Facility Borrowing, a Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing, not later than 12:00 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 12:00 noon, Local Time, one Business Day before the date of the proposed Borrowing; provided, that any such notice of an ABR Revolving Facility Borrowing to finance the reimbursement of an L/C – BA 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. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by such Borrower. Each such telephonic and written Borrowing 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 an ABR Borrowing or a Eurocurrency Borrowing;
- (iv) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and
- (v) the location and number of the Borrower’s account to which funds are to be disbursed.

If no election as to the Type of Revolving Facility Borrowing is specified, then the requested Revolving Facility Borrowing shall be an ABR 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 Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

SECTION 2.04. Swingline Loans and Agent Advances.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, agrees to make Swingline Loans to the Borrowers 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 the Swingline Commitment or (ii) the Revolving Facility Credit Exposure exceeding the Borrowing Base; provided, that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Borrowing. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Swingline Loans.

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(b) To request a Swingline Borrowing, the Borrowers shall notify the Administrative Agent and the Swingline Lender of such request by telephone (confirmed by a Swingline Borrowing Request by telecopy), not later than 1:00 p.m., Local Time, on the day of a proposed Swingline Borrowing. Each such notice and Swingline Borrowing Request 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 Swingline Lender shall consult with the Administrative Agent as to whether the making of the Swingline Loan is in accordance with the terms of this Agreement prior to the Swingline Lender funding such Swingline Loan. The Swingline Lender shall make each Swingline Loan 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 such Borrower (or, in the case of a Swingline Borrowing made to finance the reimbursement of an L/C – BA 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 Administrative Agent not later than 10:00 a.m., Local Time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the outstanding Swingline Loans made by it. Such notice shall specify the aggregate amount of such Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each such Lender, specifying in such notice such Lender's Revolving Lender's Pro Rata Share of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent for the account of the Swingline Lender, such Revolving Lender's Pro Rata Share of such Swingline Loan or Loans. Each Revolving 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 Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan), in the same manner as provided in Section 2.06 with respect to Loans made by such Revolving Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrowers 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 Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrowers (or other party on behalf of such Borrowers) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided, that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the applicable Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrowers of any default in the payment thereof.

(d) Subject to the limitations set forth in the provisos contained in this Section 2.04(d), the Administrative Agent is hereby authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion, (i) after the occurrence of a Default or an Event of Default, or

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(ii) at any time that any of the other applicable conditions precedent set forth in Article IV have not been satisfied, to make advances to or for the account of any Borrower on behalf of the Lenders which the Administrative Agent, in its reasonable business judgment, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of, or maximize the amount of, repayment of the Revolving Loans and other Obligations, or (C) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including costs, fees, and expenses as described in Section 9.05(a) (any of the advances described in this Section 2.04(d) being hereinafter referred to as "Agent Advances"); provided that (1) the Revolving Facility Credit Exposure after giving effect to any Agent Advance shall not exceed the Revolving Facility Commitments and (2) Agent Advances outstanding and unpaid at no time will exceed \$30 million in the aggregate, and provided further that the Required Lenders may at any time revoke the Administrative Agent's authorization contained in this Section 2.04(d) to make Agent Advances, any such revocation to be in writing and to become effective prospectively upon the Administrative Agent's receipt thereof. The Agent Advances shall be repayable on demand and secured by the Collateral Agent's Liens in and to the Collateral, shall constitute Obligations hereunder, and shall bear interest at the rate applicable to Revolving Loans from time to time. The Administrative Agent shall notify each Lender in writing of each Agent Advance; provided that any delay or failure of the Administrative Agent in providing any such notice to any Lender shall not result in any liability or constitute the breach of any duty or obligation of the Administrative Agent hereunder.

(e) The Administrative Agent, the Swingline Lender and the Lenders agree (which agreement shall not be for the benefit of or enforceable by the Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Revolving Loans and the Swingline Loans and the Agent Advances shall take place on a periodic basis in accordance with the following provisions:

(i) The Administrative Agent shall request settlement (a "Settlement") with the Lenders on at least a weekly basis, or on a more frequent basis if so determined by the Administrative Agent, (A) on behalf of the Swingline Lender, with respect to each outstanding Swingline Loan, (B) for itself, with respect to each Agent Advance, and (C) with respect to collections received, in each case, by notifying the Lenders of such requested Settlement by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 12:00 noon, Local Time, on the date of such requested Settlement (the "Settlement Date"). Each Lender (other than the Swingline Lender, in the case of Swingline Loans, and the Administrative Agent, in the case of Agent Advances) shall make the amount of such Lender's Pro Rata Share of the outstanding principal amount of the Swingline Loans and Agent Advances with respect to which Settlement is requested available to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 3:00 p.m., Local Time, on the Settlement Date applicable thereto, which may occur before or after the occurrence or during the continuation of a Default or an Event of Default and whether or not the applicable conditions precedent set forth in Article IV have then been satisfied. Such amounts made available to the Administrative Agent shall be applied against the amounts of the applicable Swingline Loan or Agent Advance and, together with the portion of such Swingline Loan or Agent Advance representing the Swingline Lender's or Administrative Agent's Pro Rata Share thereof, shall constitute Revolving Loans of the Revolving Lenders. If any such amount is not made available to the Administrative Agent by any Revolving Lender on the Settlement Date applicable thereto, the Administrative Agent shall, on behalf of the Swingline Lender with respect to each outstanding Swingline Loan and for itself with respect to each Agent Advance, be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Federal Funds Effective Rate for the first three days from and after the Settlement Date and thereafter at the interest rate then applicable to ABR Revolving Loans.

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(ii) Notwithstanding the foregoing, not more than one Business Day after demand is made by the Administrative Agent (whether before or after the occurrence of a Default or an Event of Default and regardless of whether the Administrative Agent has requested a Settlement with respect to a Swingline Loan or Agent Advance), each Revolving Lender (A) shall irrevocably and unconditionally purchase and receive from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Agent Advance equal to such Revolving Lender's Pro Rata Share of such Swingline Loan or Agent Advance and (B) if Settlement has not previously occurred with respect to such Swingline Loans or Agent Advances, upon demand by the Swingline Lender or the Administrative Agent, as the case may be, shall pay to the Swingline Lender or Administrative Agent, as applicable, as the purchase price of such participation an amount equal to one-hundred percent (100%) of such Revolving Lender's Pro Rata Share of such Swingline Loans or Agent Advances. If such amount is not in fact made available to the Administrative Agent by any Lender, the Administrative Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Effective Rate for the first three days from and after such demand and thereafter at the Interest Rate then applicable to ABR Revolving Loans.

(iii) From and after the date, if any, on which any Lender purchases an undivided interest and participation in any Swingline Loan or Agent Advance pursuant to clause (ii) preceding, the Administrative Agent shall promptly distribute to such Revolving Lender such Revolving Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Agent Advance.

(iv) Between Settlement Dates, to the extent no Agent Advances are outstanding, the Administrative Agent may pay over to the Swingline Lender any payments received by the Administrative Agent, which in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Swingline Lender's Revolving Loans or Swingline Loans. If, as of any Settlement Date, collections received since the then immediately preceding Settlement Date have been applied to the Swingline Lender's Revolving Loans, the Swingline Lender shall pay to the Administrative Agent for the accounts of the Lenders, to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, the Swingline Lender with respect to Swingline Loans, the Administrative Agent with respect to Agent Advances, and each Revolving Lender with respect to the Revolving Loans, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the actual average daily amount of funds employed by the Swingline Lender, the Administrative Agent and the Revolving Lenders.

#### SECTION 2.05. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, any Borrower may request the issuance of Letters of Credit for its own account in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period and prior to the date that is five Business Days prior to the Revolving Facility Maturity Date. 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 (including any Acceptance Documents) submitted by a Borrower to, or entered into by a Borrower with, an Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Each Existing Letter of Credit and Existing Bankers' Acceptance shall be deemed to be a Letter of Credit or Bankers' Acceptance, as applicable, under this Facility and

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each Lender that is an issuer of an Existing Letter of Credit or Existing Bankers' Acceptance shall be deemed to be an Issuing Bank with respect to such Existing Letter of Credit or Existing Bankers' Acceptance, as applicable, and shall have all rights of an Issuing Bank hereunder (but shall have no obligation extend or renew any Existing Letter of Credit or Existing Bankers' Acceptance or to issue additional Letters of Credit or Bankers' Acceptances) until such Existing Letter of Credit or Existing Bankers' Acceptance, as applicable, has been terminated. No Issuing Bank shall be under any obligation to issue any Letter of Credit if any Lender is at that time a Defaulting Lender, unless the Issuing Bank has entered into customary cash collateral arrangements with the Company or such Lender to eliminate the Issuing Bank's actual or potential Fronting Exposure (after giving effect to Section 2.23(a)(iv)) with respect to the Defaulting Lender arising from the Letter of Credit then proposed to be issued.

(b) Notice of Issuance, Amendment, Renewal, Extension: Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic extension in accordance with paragraph (c) of this Section) or extension of an outstanding Letter of Credit), a Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (three Business Days in advance of the requested date of issuance, amendment or extension or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit and, in the case of an Acceptance Credit, all Bankers' Acceptances created thereunder are to expire (which shall comply with paragraph (c) of this Section), the amount and currency (which may be Dollars or an Alternate Currency) of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to issue, amend or extend such Letter of Credit (including whether such Letter of Credit is an Acceptance Credit). If requested by the applicable Issuing Bank, such Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit such Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) the Revolving L/C – BA Exposure shall not exceed the Letter of Credit Sublimit, (ii) the Revolving Facility Credit Exposure shall not exceed the Borrowing Base and (iii) in the case of any Acceptance Credit, the creation of any related Bankers' Acceptances would not cause the applicable Issuing Bank to exceed the maximum amount of outstanding bankers' acceptances permitted by applicable law.

(c) Expiration Date. Each Letter of Credit shall expire (and in the case of an Acceptance Credit, shall provide that all Bankers' Acceptances created thereunder (which shall in no event have a maturity of less than 30 or more than 120 days after creation thereof) shall expire) at or prior to the close of business on the earlier of (i) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of the issuance of such Letter of Credit (or, in the case of any extension thereof, one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such renewal or extension) and (ii) the date that is three Business Days prior to the Revolving Facility Maturity Date; provided, that any Letter of Credit with one year tenor may provide for automatic extension thereof for additional one year periods (which, in no event, shall extend beyond the date referred to in clause (ii) of this paragraph (c)) so long as such Letter of Credit permits the Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than five days in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued; provided, further, that if the Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date on any Letter of Credit (or, in the case of an Acceptance Credit, any Bankers' Acceptances thereunder) may extend beyond the date referred to in

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clause (ii) above, provided that, if any such Letter of Credit is outstanding or is issued after the date that is 30 days prior to the Revolving Facility Maturity Date the Borrowers shall provide cash collateral pursuant to documentation reasonably satisfactory to the Administrative Agent and the relevant Issuing Bank in an amount equal to 105% of the face amount of each such Letter of Credit on or prior to the date that is 30 days prior to the Revolving Facility Maturity Date or, if later, such date of issuance.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) or the creation of a Bankers' Acceptance in respect of an Acceptance Credit, and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit or Bankers' Acceptance equal to such Revolving Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit or the aggregate amount of such Bankers' Acceptance (calculated, in the case of Alternate Currency Letters of Credit, based on the Dollar Equivalent thereof). In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, in Dollars, such Revolving Lender's Pro Rata Share of each L/C – BA Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason (calculated, in the case of any Alternate Currency Letter of Credit, based on the Dollar Equivalent thereof). Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the applicable Issuing Bank shall make any L/C – BA Disbursement in respect of a Letter of Credit or Bankers' Acceptance, the Borrowers shall reimburse such L/C – BA Disbursement by paying to the Administrative Agent an amount in Dollars equal to such L/C – BA Disbursement (or, in the case of an Alternate Currency Letter of Credit, the Dollar Equivalent thereof) not later than 2:00 p.m., Local Time, on the third Business Day after the Borrowers receives notice under paragraph (g) of this Section of such L/C – BA Disbursement, together with accrued interest thereon from the date of such L/C – BA Disbursement at the rate applicable to ABR Loans; provided, that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Facility Borrowing or a Swingline Borrowing, as applicable, in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Facility Borrowing or Swingline Borrowing. If the Borrowers fail to reimburse any L/C – BA Disbursement when due, then the Administrative Agent shall promptly notify the applicable Issuing Bank and each other Revolving Lender of the applicable L/C – BA Disbursement, the payment then due from the Borrowers in respect thereof and, in the case of a Revolving Lender, such Lender's Pro Rata Share thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent in Dollars its Pro Rata Share of the payment then due from the Borrowers in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse an Issuing Bank for any L/C – BA Disbursement (other

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than the funding of an ABR Revolving Loan or a Swingline Borrowing as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such L/C – BA Disbursement.

(f) Obligations Absolute. The obligation of the Borrowers to reimburse L/C – BA 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, any Bankers' Acceptance or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit or Bankers' Acceptance 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 applicable Issuing Bank under a Letter of Credit or Bankers' Acceptance against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or Bankers' Acceptance 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 Borrowers' obligations hereunder. Neither the Administrative Agent, the Lenders nor any 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 Bankers' Acceptance 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 or Bankers' Acceptance (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 such Issuing Bank, or any of the circumstances referred to in clauses (i), (ii) or (iii) of the first sentence; provided, that the foregoing shall not be construed to excuse the applicable Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by the Borrowers that are determined by a court of competent jurisdiction to have been caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit or Bankers' Acceptance 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 applicable Issuing Bank, such 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 or Bankers' Acceptance, the applicable 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.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment or creation of a Bankers' Acceptance under a Letter of Credit or any presentation for payment of a Bankers' Acceptance. Such Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by teletype) of any such demand for payment or Bankers' Acceptance and whether such Issuing Bank has made or will make a L/C – BA Disbursement thereunder; provided, that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such L/C – BA Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any L/C – BA Disbursement, then, unless the Borrowers shall reimburse such L/C – BA Disbursement in full on the date such L/C – BA Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C – BA Disbursement is made to but excluding the date that the Borrowers reimburse such L/C – BA



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Disbursement, at the rate *per annum* then applicable to ABR Revolving Loans; provided, that, if such L/C – BA Disbursement is not reimbursed by the Borrowers when due pursuant to paragraph (e) of this Section, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among the Company, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced 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 such Issuing Bank under this Agreement with respect to Letters of Credit or Bankers’ Acceptances issued by it prior to such replacement but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization on Event of Default. If any Event of Default shall occur and be continuing, (i) in the case of an Event of Default described in Section 7.01(h) or (i), on the Business Day or (ii) in the case of any other Event of Default, on the third Business Day, in each case, following the date on which the Company receives notice from the Administrative Agent (or, if the maturity of the Loans has been accelerated, Revolving Lenders with Revolving L/C – BA Exposure representing greater than 50% of the total Revolving L/C – BA Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers 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 Revolving L/C – BA Exposure as of such date plus any accrued and unpaid interest thereon; provided, that upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Section 7.01, 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. Each such deposit pursuant to this paragraph shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrowers 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 (i) for so long as an Event of Default shall be continuing, the Administrative Agent and (ii) at any other time, the Borrowers, in each case, in Permitted Investments and at the risk and expense of the Borrowers, 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 each Issuing Bank for L/C – BA Disbursements for which such Issuing Bank has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Revolving L/C – BA Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with Revolving L/C – BA Exposure representing greater than 50% of the total Revolving L/C – BA Exposure), be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are 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 Borrowers within three Business Days after all Events of Default have been cured or waived.

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(k) Additional Issuing Banks. From time to time, the Borrowers may by notice to the Administrative Agent designate one or more Lenders (in addition to Bank of America and Credit Suisse) each of which agrees (in its sole discretion) to act in such capacity and is reasonably satisfactory to the Administrative Agent as an Issuing Bank. Each such additional Issuing Bank shall execute a counterpart of this Agreement upon the approval of the Administrative Agent (which approval shall not be unreasonably withheld) and shall thereafter be an Issuing Bank hereunder for all purposes.

(l) Reporting. Unless otherwise requested by the Administrative Agent, each Issuing Bank shall (i) provide to the Administrative Agent copies of any notice received from the Borrowers pursuant to Section 2.05(b) no later than the next Business Day after receipt thereof and (ii) report in writing to the Administrative Agent (A) on or prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or extension, and the aggregate face amount of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), and the Issuing Bank shall be permitted to issue, amend or extend such Letter of Credit if the Administrative Agent shall not have advised the Issuing Bank that such issuance, amendment or extension would not be in conformity with the requirements of this Agreement, (B) on each Business Day on which such Issuing Bank makes any L/C – BA Disbursement or creates any Bankers' Acceptance, the date of such L/C – BA Disbursement or Bankers' Acceptance and the amount of such L/C – BA Disbursement or Bankers' Acceptance and (C) on any other Business Day, such other information as the Administrative Agent shall reasonably request, including but not limited to prompt verification of such information as may be requested by the Administrative Agent.

#### SECTION 2.06. 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 Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided, that Swingline Loans and Agent Advances shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to an account of the Company maintained with the Administrative Agent in New York City; provided, that ABR Revolving Loans and Swingline Borrowings made to finance the reimbursement of a L/C – BA Disbursement and reimbursements as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative 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 Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative 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 Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

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SECTION 2.07. 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, any Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section. Any 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 Borrowings or Agent Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the applicable Borrower shall notify the Administrative 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 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 teletype to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative 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; 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 Administrative 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 any 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. 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

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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 and (ii) unless repaid, each Eurocurrency Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

**SECTION 2.08. Termination and Reduction of Commitments.**

(a) Unless previously terminated, the Revolving Facility Commitments shall terminate on the Revolving Facility Maturity Date.

(b) The Borrowers may at any time terminate, or from time to time reduce, the Revolving Facility Commitments; provided, that (i) each reduction of the Revolving Facility Commitments shall be in an amount that is an integral multiple of \$1 million and not less than \$5 million (or, if less, the remaining amount of the Revolving Facility Commitments), and (ii) the Borrowers shall not terminate or reduce the Revolving Facility Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Revolving Facility Credit Exposure would exceed the Borrowing Base.

(c) The Borrowers shall notify the Administrative Agent of any election to terminate or reduce the Revolving Facility 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 applicable Lenders of the contents thereof. Each notice delivered by the Borrowers pursuant to this Section shall be irrevocable; provided, that a notice of termination of the Revolving Facility Commitments delivered by the Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrowers (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 Revolving Facility Commitments shall be permanent. Each reduction of the Revolving Facility Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Facility Commitments.

**SECTION 2.09. Repayment of Loans; Evidence of Debt.**

(a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan to the Borrowers on the Revolving Facility Maturity Date, (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Facility Maturity Date, and (iii) to the Administrative Agent the then unpaid principal amount of each Agent Advance on the Revolving Facility Maturity Date; provided, that on each date that a Revolving Facility Borrowing is made by any Borrower, the Borrowers shall repay all Swingline Loans and Agent Advances then outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers 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) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the 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 the Borrowers to each Lender hereunder and (iii) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

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(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 the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers 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 (a "Note"). In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrowers. 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 2.10. Repayment of Revolving Loans.

(a) To the extent not previously paid, outstanding Revolving Loans shall be due and payable on the Revolving Facility Maturity Date.

(b) Prior to any repayment of any Loan hereunder, the Borrowers shall select the Borrowing or Borrowings to be repaid and shall notify the Administrative Agent by telephone (confirmed by telecopy) of such selection not later than 1:00 p.m., Local Time, (i) in the case of an ABR Borrowing, one Business Day before the scheduled date of such repayment and (ii) in the case of a Eurocurrency Borrowing, three Business Days before the scheduled date of such repayment. Each repayment of a Borrowing shall be applied to the Revolving Loans included in the repaid Borrowing such that each Revolving Lender receives its ratable share of such repayment (based upon the respective Revolving Facility Credit Exposures of the Revolving Lenders at the time of such repayment). Notwithstanding anything to the contrary in the immediately preceding sentence, prior to any repayment of a Swingline Loan hereunder, the Borrowers shall select the Borrowing or Borrowings to be repaid and shall notify the Administrative Agent by telephone (confirmed by telecopy) of such selection not later than 1:00 p.m., Local Time, on the scheduled date of such repayment. Repayments of Loans shall be accompanied by accrued interest on the amount repaid.

(c) All payments of interest, fees and reimbursement for expenses pursuant to Section 9.05(a) may, if not paid by the due date, at the option of the Administrative Agent, be paid from the proceeds of Revolving Loans made hereunder, whether made following a request by the Borrowers pursuant to Section 2.03 or a deemed request as provided in this Section 2.10 (c). Upon the occurrence and during the continuance of any Event of Default, the Borrowers hereby irrevocably authorize the Administrative Agent to charge the Loan Account on the due date for the purpose of paying interest, fees and reimbursing expenses pursuant to Section 9.05(a) and agree that all such accounts charged shall constitute Revolving Loans (including Swingline Loans and Agent Advances) and that all such Revolving Loans so made shall be deemed to have been requested pursuant to Section 2.03 (except the Borrowers shall not be deemed to make any representation or warranty pursuant to Section 4.01(b) with respect to such Revolving Loans).

#### SECTION 2.11. Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Loan in whole or in part, without premium or penalty (but subject to Section 2.16), in an aggregate principal amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum or, if less, the amount outstanding, subject to prior notice in accordance with Section 2.10(b).

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(b) In the event and on such occasion that the total Revolving Facility Credit Exposure exceeds the Borrowing Base (including any reduction in the Borrowing Base as a result of a sale or other disposition pursuant to any Permitted Receivables Financing or any Permitted Supplier Finance Facilities or a sale or other disposition of Eligible Inventory or Eligible Accounts outside the ordinary course of business), the Borrowers shall prepay Revolving Facility Borrowings, Swingline Borrowings or Agent Advances (or, if no such Borrowings or Agent Advances are outstanding, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.05(j)) in an aggregate amount equal to such excess.

(c) In the event and on such occasion as the Revolving L/C-BA Exposure exceeds (i) the Letter of Credit Sublimit or (ii) the Borrowing Base, the Borrowers shall deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.05(j) in an amount equal to such excess.

SECTION 2.12. Fees.

(a) The Borrowers agree to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the Amendment No. 4 Effective Date, all accrued and unpaid fees payable in accordance with the applicable Fee Letter, this Agreement and the other Loan Documents. All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. For the purpose of calculating any Lender's Commitment Fee, the outstanding Swingline Loans during the period for which such Lender's Commitment Fee is calculated shall be deemed to be zero.

(b) Prior to the Amendment No. 4 Effective Date, the Borrowers agree to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent on the fifth Business Day of each calendar quarter and on the Revolving Facility Maturity Date and, if earlier, on the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a commitment fee (a "Commitment Fee") on the daily amount of the Available Unused Commitment of such Lender during the preceding quarter (or other period commencing with the Closing Date or ending with the date on which the last of the Commitments of such Lender shall be terminated), at a rate equal to (i) if the average daily amount of the aggregate Available Unused Commitments of all Lenders during such period is less than 60% of Revolving Facility Commitments, 0.375% *per annum*, and (ii) otherwise, 0.50% *per annum*. The Commitment Fee due to each Lender under this Section 2.12(b) shall commence to accrue on the Closing Date and shall cease to accrue on the Amendment No. 4 Effective Date.

(c) On and after the Amendment No. 4 Effective Date, the Borrowers agree to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent on the fifth Business Day of each calendar quarter and on the Revolving Facility Maturity Date and, if earlier, on the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a Commitment Fee on the daily amount of the Available Unused Commitment of such Lender (or other period ending with the date on which the last of the Commitments of such Lender shall be terminated), in each case, at a rate equal to (i) if the average daily amount of the aggregate Available Unused Commitments of all Lenders during such period is less than 50% of Revolving Facility Commitments, 0.25% *per annum*, and (ii) otherwise, 0.325% *per annum*. The Commitment Fee due to each Lender under this Section 2.12(c) shall commence to accrue on the Amendment No. 4 Effective Date and shall cease to accrue on the date on which the last of the Commitments of such Lender shall be terminated as provided herein.

(d) The Borrowers from time to time agree to pay (i) to each Revolving Lender (other than any Defaulting Lender), through the Administrative Agent, on the fifth Business Day of each calendar

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quarter and on the Revolving Facility Maturity Date and, if earlier, on the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a fee (an “L/C – BA Participation Fee”) on such Lender’s Pro Rata Share of the daily aggregate Revolving L/C – BA Exposure (excluding the portion thereof attributable to unreimbursed L/C – BA Disbursements) during the preceding quarter (or shorter period commencing with the Closing Date or ending with the Revolving Facility Maturity Date or the date on which the Revolving Facility Commitments shall be terminated) at the rate *per annum* equal to the Applicable Margin for Eurocurrency Revolving Facility Borrowings on such payment date, and (ii) to the Issuing Bank, on the fifth Business Day of each calendar quarter and on the Revolving Facility Maturity Date and, if earlier, on the date on which the Revolving Facility Commitments of all the Lenders shall be terminated as provided herein, a fronting fee in respect of each Letter of Credit issued by such Issuing Bank and outstanding during the preceding quarter (or shorter period commencing with the Closing Date or ending with the Revolving Facility Maturity Date or the date on which the Revolving Facility Commitments shall be terminated) at a rate *per annum* equal to 1/8 of 1% *per annum* of the stated amount of such Letter of Credit, plus (y) in connection with the issuance, amendment or transfer of any such Letter of Credit or any L/C – BA Disbursement thereunder, such Issuing Bank’s customary documentary and processing fees and charges (collectively, “Issuing Bank Fees”). All L/C Participation Fees and Issuing Bank Fees that are payable on a *per annum* basis shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(e) The Borrowers agree to pay to the Administrative Agent and the Joint Lead Arrangers, for the account of the Administrative Agent and the Joint Lead Arrangers, as the case may be, the fees set forth in the Fee Letter, as amended, restated, supplemented or otherwise modified from time to time, at the times specified therein (the “Administrative Agent Fees”).

(f) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that Issuing Bank Fees shall be paid directly to the applicable Issuing Banks. Once paid, none of the Fees shall be refundable under any circumstances.

#### SECTION 2.13. Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan and each Agent Advance) shall bear interest at the ABR plus the Applicable Margin.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any Fees or other amount payable by the Borrowers 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; provided, that this paragraph (c) shall not apply to any Event of Default that has been waived by the Lenders pursuant to Section 9.08.

(d) Accrued interest on each Loan shall be payable in arrears (i) on each Interest Payment Date for such Loan, and (ii) upon termination of the Revolving Facility Commitments; provided, that (A) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (B) 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

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payable on the date of such repayment or prepayment, and (C) in the event of any conversion of any Eurocurrency 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.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR 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 ABR, 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:

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

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

then the Administrative Agent shall give notice thereof to the Company and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Company 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 an ABR Borrowing, and (ii) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR 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 Issuing Bank; or

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

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or 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 Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.



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(b) If any Lender or 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 Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrowers shall pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section 2.15 shall be delivered to the Company and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank shall notify the Company thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided, that the Borrowers shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or 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 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) The foregoing provisions of this Section 2.15 shall not apply in the case of any Change in Law in respect of Taxes, which shall instead be governed by Section 2.17.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency 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 on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by a Borrower pursuant to Section 2.19, then, in any such event, the Borrowers 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 be the amount determined by such Lender (it being understood that the deemed amount shall not exceed the actual amount) 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 a Eurocurrency Loan, 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 deposits in dollars 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

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receive pursuant to this Section 2.16 shall be delivered to the Company and shall be conclusive absent manifest error. The Borrowers 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 Loan Party hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided, that if a Loan Party 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, any Lender or any Issuing Bank, as applicable, receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Loan Party shall indemnify the Administrative Agent, each Lender and each 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 such Issuing Bank, as applicable, on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any 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 such Loan Party by a Lender or an Issuing Bank, or by the Administrative Agent on its own behalf, on behalf of another Agent or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party 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 Lender that is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which any Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Company (with a copy to the Administrative Agent), to the extent such Lender is legally entitled to do so, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as may reasonably be requested by the Company to permit such payments to be made without such withholding Tax or at a reduced rate; provided, that no Lender shall have any obligation under this paragraph (e) with respect to any withholding Tax imposed by any jurisdiction other than the United States if in the reasonable judgment of such Lender such compliance would subject such Lender to any material unreimbursed cost or expense or would otherwise be disadvantageous to such Lender in any material respect.

(f) Each Lender shall deliver to the Company and the Administrative Agent on the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), two original copies of whichever of the

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following is applicable: (i) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party, (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto), (iii) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) a certificate to the effect that, for United States federal income tax purposes, such Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of any Borrower within the meaning of Section 871(h)(3) or 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and that, accordingly, such Lender qualifies for such exemption and (y) duly completed copies of Internal Revenue Service Form W-8BEN (or any subsequent versions thereof or successors thereto), (iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and additional Form W-8IMYs) as may be required or (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers to determine the withholding or deduction required to be made. In addition, in each of the foregoing circumstances, each Lender shall deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Lender. Each Lender shall promptly notify the Company at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Company (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). In addition, each Lender that is a “United States person” (as defined in Section 770(a)(30) of the Code) shall deliver to the Company and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver.

(g) If the Administrative Agent or a Lender receives a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party 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 (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or such Lender, as applicable, in good faith and in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (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 2.17(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Loan Parties or any other person.

(h) If a payment made by the Company hereunder or under any other Loan Document would be subject to United States federal withholding tax imposed pursuant to FATCA if any Lender or any Issuing Bank fails to comply with applicable reporting and other requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender or such Issuing Bank shall use commercially reasonable efforts to deliver to the Company and the Administrative Agent, at the time or times prescribed by applicable law or as reasonably requested by the Company or the Administrative

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Agent, any documentation reasonably requested by the Company or the Administrative Agent reasonably satisfactory to the Company or the Administrative Agent for the Company and the Administrative Agent to comply with their obligations under FATCA to determine the amount to withhold or deduct from such payment and to determine that such Lender or such Issuing Bank has complied with such applicable reporting and other requirements of FATCA, provided, that, notwithstanding any other provision of this subsection, no Lender or Issuing Bank shall be required to deliver any document pursuant to this subsection that such Lender or Issuing Bank, as the case may be, is not legally able to deliver or, if in the reasonable judgment of such Lender or Issuing Bank, such compliance would subject such Lender or Issuing Bank to any material unreimbursed cost or expense or would otherwise be disadvantageous to such Lender or Issuing Bank in any material respect, provided, further, that in the event a Lender or Issuing Bank does not comply with the requirements of this subsection 2.17(h) as a result of the application of the first proviso of this subsection 2.17(h), then such Lender or Issuing Bank shall be deemed for purposes of this Agreement to have failed to comply with the requirements under FATCA.

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 L/C – BA Disbursements, or of amounts payable under Section 2.15, 2.16, or 2.17, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrowers by the Administrative 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 and 9.05 shall be made directly to the persons entitled thereto. The Administrative 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 under the Loan Documents shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative 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 the Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the Borrowers to pay fully all amounts of principal, unreimbursed L/C – BA Disbursements, interest and fees then due from the Borrowers hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from the Borrowers 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 L/C – BA Disbursements then due from the Borrowers hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed L/C – BA 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 or interest on any of its Revolving Loans or participations in L/C – BA Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in L/C – BA 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 Revolving

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Loans and participations in L/C – BA 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 Revolving Loans and participations in L/C – BA 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 the Borrowers 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 L/C – BA Disbursements to any assignee or participant, other than to the Borrowers 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. For the avoidance of doubt, the provisions of this Section shall not be construed to apply to the application of Cash Collateral provided for in Section 2.23 or to the assignments and repayments described in Section 9.04(g).

(d) Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have 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 the Borrowers have not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative 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 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.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.06(b) or 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative 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 the Borrowers are 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 reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrowers hereby agree 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 the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender

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pursuant to Section 2.17, or is a Defaulting Lender, then the Borrowers may, at their 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 to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and, if in respect of any Revolving Facility Commitment or Revolving Loan, the Swingline Lender and 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 and participations in L/C – BA Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (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. Nothing in this Section 2.19 shall be deemed to prejudice any rights that the Borrowers may have against any Lender that is a Defaulting Lender.

(c) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.08 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, then the Borrowers shall have the right (unless such Non-Consenting Lender grants such consent) to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans, and its Commitments hereunder to one or more Assignees reasonably acceptable to (i) the Administrative Agent and (ii) if in respect of any Revolving Facility Commitment or Revolving Loan, the Swingline Lender and the Issuing Bank; provided, that: (a) all Obligations of the Borrowers owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment, and (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrowers, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 9.04; provided, that if such Non-Consenting Lender does not comply with Section 9.04 within three Business Days after Borrowers’ request, compliance with Section 9.04 shall not be required to effect such assignment.

SECTION 2.20. Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Eurocurrency Loans, then, on notice thereof by such Lender to the Company through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans or to convert ABR Borrowings to Eurocurrency Borrowings shall be suspended until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

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SECTION 2.21. Incremental Commitments.

(a) The Borrowers may, by written notice to the Administrative Agent from time to time, request Incremental Revolving Facility Commitments in an amount not to exceed the Incremental Amount from one or more Incremental Revolving Lenders (which may include any existing Lender) willing to provide such Incremental Revolving Facility Commitments, as the case may be, in their own discretion; provided, that (i) each Incremental Revolving Lender shall be subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld) unless such Incremental Revolving Lender is a Lender, and (ii) each Incremental Revolving Facility Commitment shall be on the same terms as the existing Revolving Facility Commitments and in all respects shall become a part of the Revolving Facility hereunder on such terms; provided that the Applicable Margin (including the Pricing Grid) and the Commitment Fee applicable to the existing Revolving Facility Commitments shall automatically be increased (but in no event decreased) to the extent necessary to cause any Incremental Revolving Facility to comply with this clause (ii); and provided further, that up to \$60 million of the Incremental Revolving Facility Commitments in the aggregate may be provided in the form of FILO Commitments, subject to the requirements of clause (b) of this Section 2.21. Such notice shall set forth (i) the amount of the Incremental Revolving Facility Commitments being requested (which shall be in minimum increments of \$5 million and a minimum amount of \$25 million or equal to the remaining Incremental Amount), (ii) the aggregate amount of Incremental Revolving Facility Commitments, which shall not exceed the Incremental Amount, (iii) the date on which such Incremental Revolving Facility Commitments are requested to become effective (the "Increased Amount Date"), and (iv) whether such Incremental Revolving Facility Commitments will constitute FILO Commitments (it being understood that (x) all FILO Commitments shall be requested on a single Increased Amount Date, and (y) the terms of such FILO Commitments, including pricing, shall be set forth in such notice, if applicable, and shall be as agreed by the relevant Incremental Revolving Lenders, the Borrowers, and the Administrative Agent).

(b) The Borrowers and each Incremental Revolving Lender shall execute and deliver to the Administrative Agent an Incremental Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Revolving Facility Commitment of such Incremental Revolving Lender. Each of the parties hereto hereby agrees that upon the effectiveness of any Incremental Assumption Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to increase the Revolving Facility by the amount of the Incremental Revolving Loan Commitments evidenced thereby, except as required by the last sentence of this clause (b). Any such deemed amendment may be memorialized in writing by the Administrative Agent with the Borrowers' consent (not to be unreasonably withheld) and furnished to the other parties hereto. In addition, the Borrowers and each Incremental Revolving Lender accepting a FILO Commitment shall execute and deliver to the Administrative Agent an amendment to (i) this Agreement, incorporating the FILO Subfacility on customary terms as are reasonably acceptable to the Administrative Agent, including (w) reallocations of outstanding Revolving Loans, if necessary, to evidence the initial Borrowing under the FILO Subfacility, (x) the addition of voting provisions in Section 9.08 that relate solely to the FILO Subfacility, (y) the addition of assignment provisions in Section 9.04 allowing for the assignment of Revolving Facility Commitments, or FILO Commitments, as the case may be, on a standalone basis, and (z) a prohibition on optional prepayments of the FILO Loans at any time when Revolving Loans are outstanding, and (ii) an amendment to Section 5.02(b) of the Collateral Agreement, executed by the Collateral Agents (as defined therein) in order to provide for the payment of Obligations due to the FILO Lenders in a customary fashion following the payment in full of all other Obligations of the Revolving Lenders and cash collateralization of outstanding Letters of Credit, but prior to any payments in respect of Bank Products (as defined in the Collateral Agreement).

(c) Notwithstanding the foregoing, no Incremental Revolving Facility Commitment shall become effective under this Section 2.21 unless (i) on the date of such effectiveness, the applicable conditions

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set forth in paragraphs (b) and (c) of Section 4.01 shall be satisfied, and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer of the Company, and (ii) the Administrative Agent shall have received legal opinions, board resolutions and other closing certificates and documentation as required by the relevant Incremental Assumption Agreement and, to the extent required by the Administrative Agent, consistent with those delivered on the Closing Date under Section 4.02 and such additional documents and filings (including amendments to the Mortgages and other Security Documents and title endorsement bringdowns) as the Administrative Agent may reasonably require to assure that the Revolving Loans in respect of Incremental Revolving Facility Commitments are secured by the Collateral ratably with all other Revolving Loans.

(d) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure all Revolving Loans in respect of Incremental Revolving Facility Commitments, when originally made, are included in each Borrowing of outstanding Revolving Loans on a *pro rata* basis, except that with respect to FILO Commitments, such actions shall ensure FILO Loans in an amount equal to the lesser of (x) the aggregate FILO Commitments or (y) the then-current Borrowing Base applicable to the FILO Subfacility are drawn in full prior to any other Revolving Loans being borrowed at any time. The Borrowers agree that Section 2.16 shall apply to any conversion of Eurocurrency Loans to ABR Loans reasonably required by the Administrative Agent to effect the foregoing.

#### SECTION 2.22. Cash Collateral for Defaulting Lenders.

(a) At any time that there shall exist a Defaulting Lender, within three Business Days following notice by the Administrative Agent, the Issuing Bank or the Swingline Lender, the Company shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover the Company's obligations corresponding to the Fronting Exposure related to such Defaulting Lender (after giving effect to Section 2.23(a)(iv) and any Cash Collateral provided by the Defaulting Lender) for so long as the Fronting Exposure remains outstanding.

(b) All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrower, and to the extent provided by any Lender, such Lender, shall maintain (pursuant to, if necessary in order to create such a security interest, a customary pledge agreement reasonably acceptable to the Administrative Agent) a first priority security interest, subject (in the case of a grant by the Borrower) to the Intercreditor Agreements, in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.22(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any prior right or claim of any Person other than the Collateral Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, the Company or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) (i) If no Event of Default shall have occurred and be continuing, Cash Collateral provided by the Company to reduce such obligations corresponding to such Fronting Exposure shall be released promptly to the Company as and to the extent that, after giving effect to such return, the applicable Fronting Exposure is eliminated, and (ii) if an Event of Default shall have occurred and be continuing, Cash Collateral provided by the Company to reduce such obligations corresponding to such Fronting Exposure shall be applied as provided in this Section 2.22 and otherwise in accordance with Section 5.02 of the Collateral Agreement and the other Loan Documents (subject to the Intercreditor Agreements), and then shall be released promptly to the Company following such application.



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SECTION 2.23. Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Sections 1.01 and 9.08.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.06), shall, in lieu of being distributed to such defaulting Lender, be retained by the Administrative Agent in a blocked, non-interest bearing deposit account at Bank of America and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Issuing Bank or Swingline Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the Issuing Bank or Swingline Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swingline Loan or Letter of Credit; *fourth*, as the Company may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Company, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Revolving Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, to the payment of any amounts owing to the Company as a result of any judgment of a court of competent jurisdiction obtained by the Company against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.23(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto. Notwithstanding anything to the contrary in this Agreement, provisions relating to Defaulting Lenders shall be subject to the Intercreditor Agreements.

(iii) That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.12(b) or (c) for any period during which that Lender is a Defaulting Lender (and the Company shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.05.

(iv) During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swingline Loans pursuant to Sections 2.04 and 2.05, the "Pro Rata Share" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Commitment of that non-Defaulting Lender minus (2) the Revolving Credit Facility Exposure of that Lender.

(b) If the Company, the Administrative Agent, Swingline Lender and each Issuing Bank agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may reasonably determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Shares (without giving effect to Section 2.23(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Company while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

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SECTION 2.24. Canadian Guarantors.

(a) The Company may at any time, upon written notice from the Company to the Administrative Agent, request that any one or more Canadian Subsidiaries of the Company be designated as a Guarantor hereunder (each, a "Canadian Guarantor"), which Canadian Guarantor's assets may be included in the computation of the Borrowing Base following the effectiveness of such designation, subject to fulfilling the requirements of this Section 2.24. For the avoidance of doubt, the assets of any such Canadian Guarantor shall be pledged as Collateral to the Administrative Agent and the Lenders on similar terms to those applicable to the assets of the Borrowers, and the Guarantee by any Canadian Guarantor shall be full and unconditional and not limited in any manner not customary for similar Canadian guarantees implemented in comparable financings, including to avoid any resulting additional taxes payable by any Canadian Guarantor, any Borrower, or any Subsidiary Loan Party.

(b) Prior to the initial joinder of any Canadian Guarantor, the Borrowers, the Administrative Agent, and such new Canadian Guarantor shall execute and deliver to the Administrative Agent an amendment to this Agreement, incorporating the assets of Canadian Guarantors into the definition of Borrowing Base, and the component definitions thereof. Such incorporation shall be on similar terms to those set forth for assets of the Borrowers, but with customary changes to account for the Canadian jurisdiction of the Canadian Guarantors, the currency in which the applicable Accounts are denominated, the locations of applicable Account Debtors, Canadian collateral perfection requirements, and such customary Reserves relating to Canadian laws and regulations, as are reasonably acceptable to the Administrative Agent in its sole discretion. In addition, the Administrative Agent shall have received from such new Canadian Guarantor all Security Documents it (or its counsel) deems necessary under applicable Canadian or other local law as are required to create in favor of the Administrative Agent and the Lenders first priority perfected Liens over the assets of such Canadian Guarantors of a type that would constitute Revolving Facility Senior Collateral (as defined in the Senior Lender Intercreditor Agreement).

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(c) The parties hereto acknowledge and agree that prior to any Canadian Guarantor designation becoming effective, the Administrative Agent shall have received such supporting resolutions, constitutional documents, incumbency certificates, opinions of counsel, Security Documents (or joinders thereto), Deposit Account Control Agreements, Collateral Access Agreements, valuations and other documents, instruments or information, satisfactory to it in its sole discretion (including any "know-your-customer" information requested by the Administrative Agent, in form, content and scope reasonably satisfactory to the Administrative Agent in its sole discretion, as may be reasonably required by the Administrative Agent or the Required Lenders).

(d) If the Administrative Agent agrees that a Canadian Subsidiary shall have satisfied all of the requirements of this Section 2.24, then promptly following receipt of all such documents, instruments and information, together with a duly executed counterpart to this Agreement designating such Canadian Subsidiary as a Guarantor hereunder, the Administrative Agent shall notify the Company and the Lenders specifying the effective date upon which the Canadian Subsidiary shall constitute a Guarantor for purposes hereof, whereupon each of the Lenders agrees to permit such Canadian Subsidiary's assets to be included in the calculation of the Borrowing Base on the terms then incorporated into this Agreement, and each of the parties agrees that such Canadian Subsidiary otherwise shall be Guarantor for all purposes of this Agreement.

### ARTICLE III

#### Representations and Warranties

On the date of each Credit Event as provided in Section 4.01, each of Holdings and each of the Borrowers represent and warrant to each of the Lenders that:

SECTION 3.01. Organization; Powers. Except as set forth on Schedule 3.01, each of Holdings, each Borrower and the Material Subsidiaries (a) is a partnership, limited liability company or corporation 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, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to have a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of the Borrowers, to borrow and otherwise obtain credit hereunder.

SECTION 3.02. Authorization. The execution, delivery and performance by Holdings, each Borrower and each of the Subsidiary Loan Parties of each of the Loan Documents to which it is a party, and the borrowings hereunder and the transactions forming a part of the Transactions (a) have been duly authorized by all corporate, stockholder, partnership or limited liability company action required to be obtained by Holdings, such Borrower and such Subsidiary Loan Parties and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreements) or by-laws of Holdings, any such Borrower or any such Subsidiary Loan Party, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which Holdings,

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any such Borrower or any such Subsidiary Loan Party is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation, breach or default referred to in clause (i) or (ii) of this Section 3.02(b), would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by Holdings, any such Borrower or any such Subsidiary Loan Party, other than the Liens created by the Loan Documents and Permitted Liens.

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrowers and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for (a) the filing of Uniform Commercial Code financing statements and/or continuation statements, (b) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions, (c) recordation of the Mortgages, (d) such as have been made or obtained and are in full force and effect, (e) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect and (f) filings or other actions listed on Schedule 3.04.

SECTION 3.05. Financial Statements.

(a) The unaudited pro forma consolidated financial information, (the "Pro Forma Financial Statements") and pro forma adjusted EBITDA (the "Pro Forma Adjusted EBITDA"), for the twelve months ended on or about December 30, 2006, copies of which have heretofore been furnished to each Lender (via inclusion on page 38 the Information Memorandum), have been prepared giving effect (as if such events had occurred on such date) to the Transactions. Each of the Pro Forma Financial Statements and the Pro Forma Adjusted EBITDA has been prepared in good faith based on assumptions believed by the Borrower to have been reasonable as of the date of delivery thereof (it being understood that such assumptions are based on good faith estimates of certain items and that the actual amount of such items on the Closing Date is subject to change), and presents fairly in all material respects on a Pro Forma Basis the estimated financial position of the Borrower and its consolidated Subsidiaries as at December 30, 2006, assuming that the Transactions had actually occurred at such date, and the results of operations of Borrower and its consolidated subsidiaries for the twelve-month period ended December 30, 2006, assuming that the Transactions had actually occurred on the first day of such twelve-month period.

(b) The audited combined balance sheets of each of Covalence (or its predecessor) and Berry (or its predecessor) as at the end of 2006, 2005 and 2004 fiscal years, and the related audited combined statements of income, stockholders' equity and cash flows for such fiscal years, reported on by and accompanied

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by a report from Deloitte & Touche LLP, and Ernst & Young LLP, respectively, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the combined financial position of Covalence or Berry, as applicable, as at such date and the combined results of operations, shareholders' equity and cash flows of Covalence or Berry, as applicable, for the years then ended.

SECTION 3.06. No Material Adverse Effect. Since September 27, 2014, there has been no event, development or circumstance that has or would reasonably be expected to have a Material Adverse Effect.

SECTION 3.07. Title to Properties; Possession Under Leases.

(a) Each of Holdings, the Borrowers and the Subsidiaries has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its Real Properties (including all Mortgaged Properties) and has valid title to its personal property and assets, in each case, except for Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(b) Each of the Borrowers and the Subsidiaries has complied with all obligations under all leases to which it is a party, except where the failure to comply would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and all such leases are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.07(b), each of the Borrowers and each of the Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Amendment No. 4 Effective Date, none of the Borrowers or the Subsidiaries has received any notice of any pending or contemplated condemnation proceeding affecting any material portion of the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation that remains unresolved as of the Amendment No. 4 Effective Date.

(d) None of the Borrowers or the Subsidiaries is obligated on the Amendment No. 4 Effective Date under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein, except as permitted under Section 6.02 or 6.05.

SECTION 3.08. Subsidiaries.

(a) Schedule 3.08(a) sets forth as of the Amendment No. 4 Effective Date the name and jurisdiction of incorporation, formation or organization of each subsidiary of Holdings and, as to each such subsidiary, the percentage of each class of Equity Interests owned by Holdings or by any such subsidiary.

(b) As of the Amendment No. 4 Effective Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options and stock appreciation rights granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of Holdings, the Borrowers or any of the Subsidiaries, except rights of current or former employees, officers or directors to purchase Equity Interests of Holdings or as set forth on Schedule 3.08(b).

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SECTION 3.09. Litigation; Compliance with Laws.

(a) There are no actions, suits or proceedings at law or in equity or, to the knowledge of the Borrowers, investigations by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of Holdings or the Borrowers, threatened in writing against or affecting Holdings or the Borrowers or any of the Subsidiaries or any business, property or rights of any such person which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Holdings, the Borrowers, the Subsidiaries and their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are subject to Section 3.16) or any restriction of record or agreement affecting any Mortgaged Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.10. Federal Reserve Regulations.

(a) None of Holdings, the Borrowers or the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.11. Investment Company Act. None of Holdings, the Borrowers and the Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.12. Use of Proceeds. The Borrowers will use the proceeds of the Revolving Loans, together with other cash, to consummate the Refinancing, for general corporate purposes and to pay the Transaction Expenses.

SECTION 3.13. Tax Returns. Except as set forth on Schedule 3.13:

(a) except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each of Holdings, the Borrowers and the Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it and (ii) taken as a whole, and each such Tax return is true and correct;

(b) each of Holdings, the Borrowers and the Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Amendment No. 4 Effective Date (except Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 5.03 and for which Holdings, the Borrowers or any of the Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP), which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(c) other than as would not be, individually or in the aggregate, reasonably expected to have a Material Adverse Effect: as of the Amendment No. 4 Effective Date, with respect to each of Holdings, the Borrowers and the Subsidiaries, there are no claims being asserted in writing with respect to any Taxes.

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SECTION 3.14. No Material Misstatements.

(a) All written information (other than the Projections, estimates and information on Schedule 4.02 or estimates and information of a general economic nature or general industry nature) (the "Information") concerning Holdings, the Borrowers, the Subsidiaries, the Transactions and any other transactions contemplated hereby included in the Information Memorandum or otherwise prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects, as of the date such Information was furnished to the Lenders and as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(b) [Reserved]

(c) All written information (other than the projections, estimates and information on Schedule 4.02(c) or estimates and information of a general economic nature or general industry nature) concerning Holdings, the Borrowers, the Subsidiaries, and any transactions contemplated hereby included in the 2011 Information Memorandum or otherwise prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with any of the transactions contemplated hereby, when taken as a whole, was true and correct in all material respects, as of the date such information was furnished to the Lenders and as of the Amendment No. 3 Effective Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(d) [Reserved]

(e) The 2015 Projections and estimates and information of a general economic nature prepared by or on behalf of the Borrowers or any of their representatives and that have been made available to any Lenders or the Administrative Agent in connection with the transactions contemplated hereby (i) have been prepared in good faith based upon assumptions believed by the Borrowers to be reasonable as of the date thereof (it being understood that actual results may vary materially from the 2015 Projections), as of the date such 2015 Projections and estimates were furnished to the Lenders and as of the Amendment No. 4 Effective Date, and (ii) as of the Amendment No. 4 Effective Date, have not been modified in any material respect by the Borrowers.

SECTION 3.15. Employee Benefit Plans.

(a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each Plan is in compliance in all material respects with the applicable provisions

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of ERISA and the Code; (ii) no Reportable Event has occurred during the past five years as to which the Borrowers, Holdings, any of their Subsidiaries or any ERISA Affiliate was required to file a report with the PBGC, other than reports that have been filed; (iii) no Plan has any Unfunded Pension Liability in excess of \$50 million; (iv) no ERISA Event has occurred or is reasonably expected to occur; and (v) none of the Borrowers, Holdings, the Subsidiaries and the ERISA Affiliates (A) has received any written notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, or has knowledge that any Multiemployer Plan is reasonably expected to be in reorganization or to be terminated or (B) has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan.

(b) Each of Holdings, the Borrowers and the Subsidiaries is in compliance (i) with all applicable provisions of law and all applicable regulations and published interpretations thereunder with respect to any employee pension benefit plan or other employee benefit plan governed by the laws of a jurisdiction other than the United States and (ii) with the terms of any such plan, except, in each case, for such noncompliance that would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.16. Environmental Matters. Except as set forth in Schedule 3.16 and except as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice, request for information, order, complaint or penalty has been received by the Borrowers or any of their Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to such Borrower's knowledge, threatened which allege a violation of or liability under any Environmental Laws, in each case relating to the Borrowers or any of their Subsidiaries, (ii) each of the Borrowers and their Subsidiaries has all environmental permits, licenses and other approvals necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits, licenses and other approvals and with all other applicable Environmental Laws, (iii) to the Borrowers' knowledge, no Hazardous Material is located at, on or under any property currently owned, operated or leased by the Borrowers or any of their Subsidiaries that would reasonably be expected to give rise to any cost, liability or obligation of the Borrowers or any of their Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrowers or any of their Subsidiaries and transported to or Released at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of the Borrowers or any of their Subsidiaries under any Environmental Laws, and (iv) there are no agreements in which the Borrowers or any of their Subsidiaries have expressly assumed or undertaken responsibility for any known or reasonably likely liability or obligation of any other person arising under or relating to Environmental Laws, which in any such case has not been made available to the Administrative Agent prior to the date hereof.

SECTION 3.17. Security Documents.

(a) The Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Collateral described in the Collateral Agreement, when certificates or promissory notes, as applicable, representing such Pledged Collateral are delivered to the Collateral Agent, and in the case of the other Collateral described in the Collateral Agreement (other than the Intellectual Property (as defined in the Collateral Agreement)), when financing statements and other filings specified in the Perfection Certificate are filed in the offices specified in the Perfection Certificate, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the proceeds thereof, as security for the Obligations to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, in each case prior and superior in right to any other person (except Permitted Liens).



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(b) When the Collateral Agreement or a summary thereof is properly filed in the United States Patent and Trademark Office and the United States Copyright Office, and, with respect to Collateral in which a security interest cannot be perfected by such filings, upon the proper filing of the financing statements referred to in paragraph (a) above, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties thereunder in all domestic Intellectual Property, in each case prior and superior in right to any other person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the grantors after the Closing Date) (except Permitted Liens).

(c) Each Foreign Pledge Agreement, if any, shall be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof to the fullest extent permissible under applicable law. In the case of the Pledged Collateral described in a Foreign Pledge Agreement, when certificates representing such Pledged Collateral (if any) are delivered to the Collateral Agent, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other person.

(d) The Mortgages (if any) executed and delivered on or before the Amendment No. 4 Effective Date are, and the Mortgages to be executed and delivered after the Amendment No. 4 Effective Date pursuant to Section 5.10 shall be, effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a valid Lien on all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and when such Mortgages are filed or recorded in the proper real estate filing or recording offices, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof, in each case prior and superior in right to any other person, other than with respect to the rights of a person pursuant to Permitted Liens.

(e) Notwithstanding anything herein (including this Section 3.17) or in any other Loan Document to the contrary, other than to the extent set forth in the applicable Foreign Pledge Agreements, no Borrower or any other Loan Party makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary that is not a Loan Party, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law.

#### SECTION 3.18. Location of Real Property and Leased Premises.

(a) The Perfection Certificate, as supplemented as of the date hereof, lists completely and correctly, in all material respects, as of the Amendment No. 4 Effective Date all material Real Property owned by Holdings, the Borrowers and the Subsidiary Loan Parties and the addresses thereof. As of the Amendment No. 4 Effective Date, Holdings, the Borrowers and the Subsidiary Loan Parties own in fee all the Real Property set forth as being owned by them on the Perfection Certificate.

(b) The Perfection Certificate, as supplemented as of the date hereof, lists completely and correctly in all material respects, as of the Amendment No. 4 Effective Date, all material real property leased by Holdings, the Borrowers and the Subsidiary Loan Parties and the addresses thereof. As of the Amendment No. 4 Effective Date, Holdings, the Borrowers and the Subsidiary Loan Parties have in all material respects valid leases in all the real property set forth as being leased by them on the Perfection Certificate.

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SECTION 3.19. Solvency

(a) Immediately after the Amendment No. 4 Effective Date, (i) the fair value of the assets of the Company (individually) and Holdings, the Company and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Company (individually) and Holdings, the Company and its Subsidiaries on a consolidated basis, respectively; (ii) the present fair saleable value of the property of the Company (individually) and Holdings, the Company and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Company (individually) and Holdings, the Company and its Subsidiaries on a consolidated basis, respectively, on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Company (individually) and Holdings, the Company and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Company (individually) and Holdings, the Company and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Amendment No. 4 Effective Date.

(b) On the Amendment No. 4 Effective Date, neither Holdings nor any Borrower intends to, and neither Holdings nor any Borrower believes that it or any of its subsidiaries will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing and amounts of cash to be received by it or any such subsidiary and the timing and amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such subsidiary.

SECTION 3.20. Labor Matters. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or threatened against Holdings, the Borrowers or any of the Subsidiaries; (b) the hours worked and payments made to employees of Holdings, the Borrowers and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (c) all payments due from Holdings, the Borrowers or any of the Subsidiaries or for which any claim may be made against Holdings, the Borrowers or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Holdings, the Borrowers or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which Holdings, the Borrowers or any of the Subsidiaries (or any predecessor) is a party or by which Holdings, the Borrowers or any of the Subsidiaries (or any predecessor) is bound.

SECTION 3.21. Insurance. Schedule 3.21 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of Holdings, the Borrowers or the Subsidiaries as of the Amendment No. 4 Effective Date. As of such date, such insurance is in full force and effect.

SECTION 3.22. No Default. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

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SECTION 3.23. Intellectual Property; Licenses, Etc. Except as would not reasonably be expected to have a Material Adverse Effect and as set forth in Schedule 3.23, (a) the Borrowers and each of their Subsidiaries own, or possess the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights and any and all applications or registrations for any of the foregoing (collectively, "Intellectual Property Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other person, (b) to the best knowledge of the Borrowers, no intellectual property right, proprietary right, product, process, method, substance, part, or other material now employed, sold or offered by or contemplated to be employed, sold or offered by the Borrowers or their Subsidiaries infringes upon any rights held by any other person, and (c) no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrowers, threatened.

SECTION 3.24. Senior Debt. The Obligations constitute "Senior Debt" (or the equivalent thereof) and "Designated Senior Debt" (or the equivalent thereof) under the Senior Subordinated Notes Indentures or any Permitted Refinancing Indebtedness in respect of the Senior Subordinated Notes or such other Indebtedness permitted to be incurred hereunder constituting subordinated Indebtedness.

SECTION 3.25. Common Enterprise. The successful operation and condition of each of the Loan Parties is enhanced by the continued successful performance of the functions of the group of Loan Parties as a whole. Each of the Loan Parties expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from successful operations of Holdings and each of the other Loan Parties. Each Loan Party expects to derive benefit (and the boards of directors or other governing body of each such Loan Party have determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Loan Parties hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party are within its corporate purpose, will be of direct and indirect benefit to such Loan Party, and are in its best interest.

SECTION 3.26. Sanctioned Persons; Anti-Money Laundering; Etc. Neither Holdings, the Company nor any of the Subsidiaries, nor, to the knowledge of any Responsible Officer of the Company, any director, officer, agent or employee of Holdings, the Company or any of the Subsidiaries is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and no Borrower will directly or indirectly use the proceeds of the Loans, or otherwise make available such proceeds to any Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC. To the extent applicable, Holdings, the Company and the Subsidiaries are in compliance, in all material respects, with the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto. No part of the proceeds of the Loans 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.

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ARTICLE IV

Conditions of Lending

The obligations of (a) the Lenders (including the Swingline Lender) to make Loans and (b) any Issuing Bank to issue Letters of Credit or increase the stated amounts of Letters of Credit hereunder (each, a "Credit Event") are subject to the satisfaction of the following conditions:

SECTION 4.01. All Credit Events. On the date of each Credit Event:

(a) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with the last paragraph of Section 2.03) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.05(b).

(b) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects as of such date (other than an amendment, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), in each case, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) In the case of each Credit Event that occurs after the Closing Date, at the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing or would result therefrom.

(d) Such Credit Event is permitted under the terms of all Material Indebtedness.

Each such Borrowing and each issuance, amendment, extension or renewal of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date of such Borrowing, issuance, amendment, extension or renewal as applicable, (i) as to the matters specified in paragraphs (b), (c) and (d) of this Section 4.01, and (b) that the aggregate amount of the Revolving Facility Credit Exposure for which any Borrower is the borrower (in the case of Loans) or the account party (in the case of Letters of Credit) does not exceed the portion of the Borrowing Base attributable to such Borrower's Accounts and Inventory.

SECTION 4.02. Effectiveness of the Commitments. On the Closing Date:

(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, on behalf of itself and the Lenders and each Issuing Bank on the Closing Date, a favorable written opinion of (i) Wachtell, Lipton, Rosen & Katz, special counsel for the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent, (ii) Jeff Thompson, in-house counsel for certain of the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent, and (iii) Gail Lehman, in-house counsel for certain of the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent, in each case (A) dated the Closing Date, (B) addressed to each Issuing Bank on the Closing Date, the Administrative Agent and the Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such other matters relating to the Loan Documents as the Administrative Agent shall reasonably request.

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(c) The Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii), (iii), (iv) and (v) below:

(i) only if such document or item shall have changed since September 20, 2006 in respect of Berry and any Loan Party that was a subsidiary of Berry Holdings immediately prior to Closing Date, or May 18, 2006 in respect of Covalence Holdings or any Loan Party that was a subsidiary of Covalence Holdings immediately prior to the Closing Date, a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, (A) in the case of a corporation, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official) or (B) in the case of a partnership or limited liability company, certified by the Secretary or Assistant Secretary of each such Loan Party;

(ii) a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated the Closing Date and certifying

(A) (1) that attached thereto is a true and complete copy of the by-laws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date and at all times since the date of the resolutions described in clause (B) below, or (2) that the by-laws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party, as in effect on the Closing Date, have not been modified, rescinded or amended since September 20, 2006 in respect of Berry and any Loan Party that was a subsidiary of Berry Holdings immediately prior to Closing Date, or May 18, 2006 in respect of Covalence Holdings or any Loan Party that was a subsidiary of Covalence Holdings immediately prior to the Closing Date,

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of the Borrowers, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above,

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party, and

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party or, to the knowledge of such person, threatening the existence of such Loan Party;

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(iii) a certificate of a director or another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above;

(iv) a calculation of the Borrowing Base as of the Closing Date in the form of Schedule 4.02 reasonably satisfactory to the Administrative Agent; and

(v) such other documents as the Administrative Agent, the Lenders and any Issuing Bank on the Closing Date may reasonably request (including without limitation, tax identification numbers and addresses).

(d) The elements of the Collateral and Guarantee Requirement required to be satisfied on the Closing Date shall have been satisfied (other than in the case of any security interest in the intended Collateral or any deliverable related to the perfection of security interests in the intended Collateral (other than any Collateral the security interest in which may be perfected by the filing of a UCC financing statement or the delivery of stock certificates and the security agreement giving rise to the security interest therein) that is not provided on the Closing Date after the Company's use of commercially reasonable efforts to do so, which such security interest or deliverable shall be delivered within the time periods specified with respect thereto in Schedule 4.02(d)), and the Administrative Agent shall have received a completed Perfection Certificate, dated the Closing Date and signed by a Responsible Officer of the Company, together with all attachments contemplated thereby.

(e) The Business Combination shall have been consummated or shall be consummated simultaneously with or immediately following the closing under this Agreement in accordance with the terms and conditions of the Business Combination as set forth in the Merger Documents, without material amendment, supplement, modification or waiver thereof which is materially adverse to the Lenders without the prior written consent of the Joint Lead Arrangers.

(f) The Lenders shall have received the financial statements referred to in Section 3.05.

(g) On the Closing Date, after giving effect to the Transactions and the other transactions contemplated hereby, Holdings shall have outstanding no Indebtedness and the Borrowers and the Subsidiaries shall have outstanding no Indebtedness other than (i) the Loans and other extensions of credit under this Agreement, (ii) the Senior Subordinated Notes, (iii) the Original Second Lien Notes, (iv) the Term Loans, and (v) other Indebtedness permitted pursuant to Section 6.01.

(h) The Lenders shall have received a solvency certificate substantially in the form of Exhibit B and signed by the Chief Financial Officer of the Company confirming the solvency of the Company and its Subsidiaries on a consolidated basis after giving effect to the Transactions on the Closing Date.

(i) The Agents shall have received all fees payable thereto or to any Lender on or prior to the Closing Date and, to the extent invoiced, all other amounts due and payable pursuant to the Loan Documents on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses (including reasonable fees, charges and disbursements of Shearman & Sterling LLP and local counsel) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document.

(j) Each of (i) the Collateral Agreement, (ii) the Senior Lender Intercreditor Agreement, (iii) Intercreditor Agreement and (iv) the Term Loan Credit Agreement shall have been executed and delivered by the respective parties thereto and shall have become effective, and the Administrative Agent shall have received evidence satisfactory to it of such execution and delivery and effectiveness.

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For purposes of determining compliance with the conditions specified in this Section 4.02, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender's ratable portion of the initial Borrowing.

## ARTICLE V

### Affirmative Covenants

The Borrowers covenant and agree with each Lender that from and after the Closing Date, so long as this Agreement shall remain in effect (other than in respect of contingent indemnification obligations for which no claim has been made) and until the Commitments have been terminated and the Obligations (including principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document) shall have been paid in full and all Letters of Credit and Bankers' Acceptances have been canceled or fully cash collateralized (in a manner reasonably acceptable to the Administrative Agent and the Issuing Banks) or have expired and all amounts drawn or paid thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, the Borrowers will, and will cause each of the Material Subsidiaries to:

#### SECTION 5.01. Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except, in the case of a Subsidiary of the Company, where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and except as otherwise expressly permitted under Section 6.05, and except for the liquidation or dissolution of Subsidiaries if the assets of such Subsidiaries to the extent they exceed estimated liabilities are acquired by the Company or a Wholly Owned Subsidiary of the Company in such liquidation or dissolution; provided, that Subsidiary Loan Parties may not be liquidated into Subsidiaries that are not Loan Parties and Domestic Subsidiaries may not be liquidated into Foreign Subsidiaries.

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto necessary to the normal conduct of its business and (ii) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times (in each case except as expressly permitted by this Agreement).

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SECTION 5.02. Insurance.

(a) Maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and cause the Administrative Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies.

(b) With respect to any Mortgaged Properties, if at any time the area in which the Premises (as defined in the Mortgages) are located is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance to comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time.

(c) In connection with the covenants set forth in this Section 5.02, it is understood and agreed that:

(i) none of the Administrative Agent, the Issuing Banks, the Lenders, and their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 5.02, it being understood that (A) the Loan Parties shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Administrative Agent, the Lenders, any Issuing Bank or their agents or employees. If, however, the insurance policies, as a matter of the internal policy of such insurer, do not provide waiver of subrogation rights against such parties, as required above, then each of Holdings and the Borrowers, on behalf of itself and behalf of each of its subsidiaries, hereby agrees, to the extent permitted by law, to waive, and further agrees to cause each of their Subsidiaries to waive, its right of recovery, if any, against the Administrative Agent, the Lenders, any Issuing Bank and their agents and employees; and

(ii) the designation of any form, type or amount of insurance coverage by the Administrative Agent under this Section 5.02 shall in no event be deemed a representation, warranty or advice by the Administrative Agent or the Lenders that such insurance is adequate for the purposes of the business of Holdings, the Borrowers and the Subsidiaries or the protection of their properties.

SECTION 5.03. Taxes. Pay and discharge promptly when due all material Taxes, imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such Tax or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings, and Holdings, the Company or the affected Subsidiary, as applicable, shall have set aside on its books reserves in accordance with GAAP with respect thereto.

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) within 90 days (or, if applicable, such shorter period as the SEC shall specify for the filing of annual reports on Form 10-K) after the end of each fiscal year, a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Company and its Subsidiaries as of the close of such fiscal year and the



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consolidated results of its operations during such year and, beginning with the financials delivered pursuant to this clause (a) in respect of the 2008 fiscal year, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which opinion shall not be qualified as to scope of audit or as to the status of the Company or any Material Subsidiary as a going concern) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP (it being understood that the delivery by the Company of annual reports on Form 10-K of the Company and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(a) to the extent such annual reports include the information specified herein);

(b) within 45 days (or, if applicable, such shorter period as the SEC shall specify for the filing of quarterly reports on Form 10-Q) after the end of each of the first three fiscal quarters of each fiscal year beginning with the fiscal quarter ending June 30, 2007, for each of the first three fiscal quarters of each fiscal year, (i) a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Company and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, and (ii) management's discussion and analysis of significant operational and financial developments during such quarterly period, all of which shall be in reasonable detail and which consolidated balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of the Company on behalf of the Company as fairly presenting, in all material respects, the financial position and results of operations of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) (it being understood that the delivery by the Company of quarterly reports on Form 10-Q of the Company and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(b) to the extent such quarterly reports include the information specified herein);

(c) (x) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer of the Company certifying (i) that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, (ii) whether an Availability Triggering Event has occurred during the applicable period covered by such financial statements, (iii) the calculation of the ABL Fixed Charge Coverage Ratio as of the last day of the applicable period covered by such financial statements, and (iv) that the aggregate amount of the Revolving Facility Credit Exposure for which any Borrower is the borrower (in the case of Loans) or the account party (in the case of Letters of Credit) does not exceed the portion of the Borrowing Base attributable to such Borrower's Accounts and Inventory, together with, if requested by the Administrative Agent, calculations evidencing and supporting such certification, (v) the calculation and uses of the Cumulative Credit for the fiscal period then ended if the Company shall have used the Cumulative Credit for any purpose during such fiscal period, (vi) a list of names of all Immaterial Subsidiaries for the following fiscal quarter, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate (together with all Unrestricted Subsidiaries) do not exceed the limitation set forth in clause (b) of the definition of the term Immaterial Subsidiary, and (vii) a list of names of all Unrestricted Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Unrestricted Subsidiary, and (y) concurrently with any delivery of financial statements under paragraph (a) above, if the accounting firm is not restricted from providing such a

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certificate by its policies of its national office, a certificate of the accounting firm opining on or certifying such statements stating whether they obtained knowledge during the course of their examination of such statements of any Default or Event of Default (which certificate may be limited to accounting matters and disclaim responsibility for legal interpretations);

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by Holdings, the Company or any of the Subsidiaries with the SEC, or after an initial public offering, distributed to its stockholders generally, as applicable; provided, however, that such reports, proxy statements, filings and other materials required to be delivered pursuant to this clause (d) shall be deemed delivered for purposes of this Agreement when posted to the website of the Company;

(e) within 90 days after the beginning of each fiscal year, a reasonably detailed consolidated quarterly budget for such fiscal year (including a projected consolidated balance sheet of the Company and its Subsidiaries as of the end of the following fiscal year, and the related consolidated statements of projected cash flow and projected income), including a description of underlying assumptions with respect thereto (collectively, the “Budget”), which Budget shall in each case be accompanied by the statement of a Financial Officer of the Company to the effect that the Budget is based on assumptions believed by such Financial Officer to be reasonable as of the date of delivery thereof;

(f) upon the reasonable request of the Administrative Agent, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (f) or Section 5.10(g);

(g) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Company or any of the Subsidiaries, or compliance with the terms of any Loan Document, or such consolidating financial statements as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender);

(h) in the event that (i) in respect of the Second Lien Notes, the First Priority Notes or the Senior Subordinated Notes, and any Refinancing Indebtedness with respect thereto, the rules and regulations of the SEC permit the Company, Holdings or any Parent Entity to report at Holdings’ or such Parent Entity’s level on a consolidated basis and (ii) Holdings or such Parent Entity, as the case may be, is not engaged in any business or activity, and does not own any assets or have other liabilities, other than those incidental to its ownership directly or indirectly of the capital stock of the Company and the incurrence of Indebtedness for borrowed money (and, without limitation on the foregoing, does not have any subsidiaries other than the Company and the Company’s Subsidiaries and any direct or indirect parent companies of the Company that are not engaged in any other business or activity and do not hold any other assets or have any liabilities except as indicated above) such consolidated reporting at such Parent Entity’s level in a manner consistent with that described in paragraphs (a) and (b) of this Section 5.04 for the Company (together with a reconciliation showing the adjustments necessary to determine the ABL Fixed Charge Coverage Ratio) will satisfy the requirements of such paragraphs;

(i) promptly upon request by the Administrative Agent, copies of: (i) each Schedule SB (Actuarial Information) to the most recent annual report (Form 5500 Series) filed with the U.S. Department of Labor with respect to a Plan; (ii) the most recent actuarial valuation report for

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any Plan; (iii) all notices received from a Multiemployer Plan sponsor, a plan administrator or any governmental agency, or provided to any Multiemployer Plan by Holdings, the Company, a Subsidiary or any ERISA Affiliate, concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan or Multiemployer Plan as the Administrative Agent shall reasonably request; and

(j) promptly upon Holdings, the Company or the Subsidiaries becoming aware of any fact or condition which would reasonably be expected to result in an ERISA Event, the Company shall deliver to Administrative Agent a summary of such facts and circumstances and any action it or Holdings or the Subsidiaries intend to take regarding such facts or conditions.

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of Holdings or the Company obtains actual knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings, the Company or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(c) any other development specific to Holdings, the Company or any of the Subsidiaries that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect;

(d) the development of any ERISA Event that, together with all other ERISA Events that have developed or occurred, would reasonably be expected to have a Material Adverse Effect; and

(e) any default or event of default under any lease of Real Property if the fair market value of the Inventory of the Borrowers stored, maintained or otherwise located on such leased Real Property exceeds \$5,000,000.

SECTION 5.06. Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; provided, that this Section 5.06 shall not apply to Environmental Laws, which are the subject of Section 5.09, or to laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Maintain all financial records in accordance with GAAP and, upon five Business Days' notice (or, if an Event of Default has occurred and is continuing, one Business Day's notice), permit any authorized representatives of the Administrative Agent and the Collateral Agent to visit, audit and inspect any of the properties of such Borrower and its Subsidiaries, including its and their financial and accounting records, and to make copies and take extracts therefrom, and to discuss its and their affairs, finances and business with its and their officers and certified public accountants (so long as such Borrower has the opportunity to participate in any discussions with such certified public accountants), at such reasonable times during normal business hours and without undue disruption to the business of the Borrowers as often as may be reasonably requested,

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in each case at the expense of the Borrowers (a “Collateral Audit”); provided, that so long as no Availability Triggering Event or Event of Default has occurred and is continuing, the Administrative Agent shall not conduct more than one Collateral Audit per year unless the Availability is less than 20.0% of the lesser of (A) the then-current Borrowing Base and (B) the aggregate Revolving Facility Commitments for five consecutive days, in which case the Administrative Agent may, but shall not be required to, conduct two Collateral Audits per year. If an Availability Triggering Event or Event of Default has occurred and is continuing, representatives of each Lender (at such Lender’s expense) will be permitted to accompany representatives of the Administrative Agent during each visit, inspection and discussion conducted during the existence of such Availability Triggering Event or Event of Default.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Revolving Loans and the Swingline Loans and request the issuance of Letters of Credit, together with other cash, to consummate the Refinancing and the other Transactions and for general corporate purposes including to support payment obligations incurred in the ordinary course of business of the Borrowers and their Subsidiaries.

SECTION 5.09. Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case with respect to this Section 5.09, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10. Further Assurances: Additional Security.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents and recordings of Liens in stock registries), that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the Collateral and Guarantee Requirement and to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties and provide to the Collateral Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Collateral Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any asset (including any Real Property (other than Real Property covered by paragraph (c) below) or improvements thereto or any interest therein) that has an individual fair market value in an amount greater than \$5 million is acquired by the Company or any other Loan Party after the Closing Date or owned by an entity at the time it becomes a Subsidiary Loan Party (in each case other than (x) assets constituting Collateral under a Security Document that become subject to the Lien of such Security Document upon acquisition thereof and (y) assets that are not required to become subject to Liens in favor of the Collateral Agent pursuant to Section 5.10(g) or the Security Documents) (i) notify the Collateral Agent thereof, (ii) if such asset is comprised of Real Property with a value at the time of acquisition in excess of \$10 million, deliver to Collateral Agent an updated Schedule 1.01(c) reflecting the addition of such asset, and (iii) cause such asset to be subjected to a Lien securing the Obligations and take, and cause the Subsidiary Loan Parties to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties, subject to paragraph (g) below.

(c) Promptly notify the Collateral Agent of the acquisition of and grant and cause each of the Subsidiary Loan Parties to grant to the Collateral Agent security interests and mortgages in such Real Property of the Company or any such Subsidiary Loan Parties as are not covered by the original Mortgages,

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to the extent acquired after the Closing Date and having a value at the time of acquisition in excess of \$10 million pursuant to documentation substantially in the form of the Mortgages delivered to the Collateral Agent on the Closing Date or in such other form as is reasonably satisfactory to the Administrative Agent (each, an “Additional Mortgage”) and constituting valid and enforceable Liens subject to no other Liens except Permitted Liens, at the time of perfection thereof, record or file, and cause each such Subsidiary to record or file, the Additional Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Mortgages and pay, and cause each such Subsidiary to pay, in full, all Taxes, fees and other charges payable in connection therewith, in each case subject to paragraph (g) below. Unless otherwise waived by the Collateral Agent, with respect to each such Additional Mortgage, the Company shall deliver to the Collateral Agent contemporaneously therewith a title insurance policy, and a survey.

(d) If any additional direct or indirect Subsidiary of the Company is formed or acquired after the Closing Date (with any Subsidiary Redesignation resulting in an Unrestricted Subsidiary becoming a Subsidiary being deemed to constitute the acquisition of a Subsidiary) and if such Subsidiary is a Subsidiary Loan Party, within five Business Days after the date such Subsidiary is formed or acquired, notify the Collateral Agent and the Lenders thereof and, within 20 Business Days after the date such Subsidiary is formed or acquired or such longer period as the Collateral Agent shall agree, cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by or on behalf of any Loan Party, subject to paragraph (g) below.

(e) If any additional Foreign Subsidiary of the Company is formed or acquired after the Closing Date (with any Subsidiary Redesignation resulting in an Unrestricted Subsidiary becoming a Subsidiary being deemed to constitute the acquisition of a Subsidiary) and if such Subsidiary is a “first tier” Foreign Subsidiary, within five Business Days after the date such Foreign Subsidiary is formed or acquired, notify the Collateral Agent and the Lenders thereof and, within 20 Business Days after the date such Foreign Subsidiary is formed or acquired or such longer period as the Collateral Agent shall agree, cause the Collateral and Guarantee Requirement to be satisfied with respect to any Equity Interest in such Foreign Subsidiary owned by or on behalf of any Loan Party, subject to paragraph (g) below.

(f) (i) Furnish to the Collateral Agent prompt written notice of any change (A) in any Loan Party’s corporate or organization name, (B) in any Loan Party’s identity or organizational structure or (C) in any Loan Party’s organizational identification number; provided, that the Borrowers shall not effect or permit any such change unless all filings have been made, or will have been made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral for the benefit of the Secured Parties and (ii) promptly notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

(g) The Collateral and Guarantee Requirement and the other provisions of this Section 5.10 need not be satisfied with respect to (i) any Real Property held by the Borrowers or any of their Subsidiaries as a lessee under a lease, (ii) any vehicle, (iii) except as required pursuant to Section 5.14, cash, deposit account and security accounts (provided that this clause (iii) shall not affect the Collateral Agent’s right to claim a security interest in proceeds of Accounts and Inventory), (iv) any Equity Interests acquired after the Closing Date (other than Equity Interests in the Company or, in the case of any person which is a Subsidiary, Equity Interests in such person issued or acquired after such person became a Subsidiary) in accordance with this Agreement if, and to the extent that, and for so long as (A) such Equity Interests constitute less than 100% of all applicable Equity Interests of such person and the person holding the remainder of such Equity Interests are not Affiliates, (B) doing so would violate applicable law or a contractual

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obligation binding on such Equity Interests and (C) with respect to such contractual obligations, such obligation existed at the time of the acquisition thereof and was not created or made binding on such Equity Interests in contemplation of or in connection with the acquisition of such Subsidiary, (v) any assets acquired after the Closing Date, to the extent that, and for so long as, taking such actions would violate an enforceable contractual obligation binding on such assets that existed at the time of the acquisition thereof and was not created or made binding on such assets in contemplation or in connection with the acquisition of such assets (except in the case of assets acquired with Indebtedness permitted pursuant to Section 6.01 (i) that is secured by a Permitted Lien) or (vi) those assets as to which the Collateral Agent shall reasonably determine that the costs of obtaining or perfecting such a security interest are excessive in relation to the value of the security to be afforded thereby; provided, that, upon the reasonable request of the Collateral Agent, the Company shall, and shall cause any applicable Subsidiary to, use commercially reasonable efforts to have waived or eliminated any contractual obligation of the types described in clauses (iv) and (v) above.

SECTION 5.11. Appraisals and Reports. The Company shall use commercially reasonable efforts to facilitate the completion of Post-Closing Reports within 90 days after the Closing Date. In addition, the Borrowers shall provide to the Collateral Agent, upon request of the Collateral Agent and at the expense of the Borrowers, (a) once in each period of 12 consecutive months (in coordination with the Company's annual financial statement audit), or (b) if the Availability is less than 20% of the lesser of (x) the then-current Borrowing Base and (y) the aggregate Revolving Facility Commitments for five consecutive days, twice in such 12-month period, appraisals or updates thereof of any or all of the Collateral from one or more Acceptable Appraisers (as selected by the Borrowers), and prepared in a form and on a basis reasonably satisfactory to the Collateral Agent, such appraisals and updates to include, without limitation, information required by Requirements of Law and by the internal policies of the Lenders; provided that if the Revolving L/C-BA Exposure is less than \$75,000,000 and Revolving Facility Credit Exposure is less than \$100,000,000 at all times during the period of 12 consecutive months ending on such date of determination, the appraisal requirements in this sentence shall not be required for such 12-month period; provided further that if at any time (i) the Revolving L/C-BA Exposure shall be greater than or equal to \$75,000,000 or (ii) the Revolving Facility Credit Exposure shall be greater than or equal to \$100,000,000, in each case, at any time when the latest inventory appraisal delivered hereunder is more than two years old, the Administrative Agent shall have the immediate right to commence an inventory appraisal at that time. In addition, the Borrowers shall have the right (but not the obligation), at their expense, at any time and from time to time (but not more than twice in any period of 12 consecutive months) to provide the Collateral Agent with additional appraisals or updates thereof of any or all of the Collateral from one or more Acceptable Appraisers (as selected by the Borrowers), and prepared in a form and on a basis reasonably satisfactory to the Collateral Agent, in which case such appraisals or updates shall be used in connection with the determination of the Net Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. In connection with any appraisal requested by the Collateral Agent pursuant to this Section 5.11, the Borrowers shall be given 20 days following such request by the Collateral Agent to choose and engage the Acceptable Appraiser prior to the commencement of such appraisal. With respect to each appraisal made pursuant to this Section 5.11 after the Closing Date, (i) the Collateral Agent and the Borrowers shall each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall become effective 20 days following the finalization of such appraisal.

SECTION 5.12. Collateral Reporting. Provide, or cause to be provided, to the Collateral Agent, a Borrowing Base Certificate on or before the 20<sup>th</sup> Business Day of each Fiscal Period, or, during the continuance of an Availability Triggering Event or Event of Default, more frequently if requested by the Collateral Agent (but in no event more frequently than once in any seven consecutive day period), for the preceding Fiscal Period end (or such shorter period during the continuance of an Availability Triggering

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Event or Event of Default), substantially in the form of Exhibit E. If the Borrowers' records or reports of the Collateral required to be delivered pursuant to this Agreement are prepared by an accounting service or other agent, the Borrowers hereby authorize such service or agent to deliver such records or reports to the Collateral Agent, for distribution to the Lenders.

SECTION 5.13. Accounts.

(a) Not re-date any invoice or sale or make sales on extended dating or extend or modify any Account outside the ordinary course of business.

(b) Not, without the Collateral Agent's prior written consent, accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Account other than Accounts which (i) do not exceed \$1 million individually and (ii) at the time of accepting such note or other instrument are not less than 90 days past due from the date of the original invoice therefor or in settlement of a bankrupt or disputed account. If the Collateral Agent consents to the acceptance of any such instrument, such Loan Party will promptly deliver such instrument to the Collateral Agent, endorsed to the Collateral Agent in a manner satisfactory in form and substance to the Collateral Agent.

(c) Take commercially reasonable steps to settle, contest, or adjust any dispute or claim in excess of \$1 million at no expense to the Secured Parties. No discount, credit, or allowance shall be granted to any Account Debtor without the Collateral Agent's prior written consent, except for discounts, credits, and allowances made or given in the ordinary course of business of the Borrowers (unless an Event of Default has occurred and is continuing and the Collateral Agent has notified the Borrowers that such exception is withdrawn).

(d) If an Account Debtor returns any Inventory to any Borrower then, unless an Event of Default exists and the Collateral Agent has given notice to the Borrowers not to do so, such Borrower shall promptly determine the reason for such return and if such return has a valid reason shall issue a credit memorandum to the Account Debtor in the appropriate amount. All returned Inventory of the Borrowers or its Subsidiaries shall be subject to the Collateral Agent's Liens thereon. Whenever any Inventory is returned, the related Account shall be deemed ineligible (without duplication of any other exclusion) to the extent of the amount owing by the Account Debtor with respect to such returned Inventory.

SECTION 5.14. Collection of Accounts; Payments.

(a) Within 120 days after the Closing Date, establish a Payment Account (the "Primary Payment Account") subject to a Blocked Account Agreement and other documentation reasonably acceptable to the Administrative Agent, into which all Account collections and proceeds of Revolving Facility Senior Collateral (as defined in the Senior Lender Intercreditor Agreement) will be deposited, and the Borrowers hereby agree that, if an Availability Triggering Event or Specified Default has occurred and is continuing, the Collateral Agent will have exclusive dominion and control over the Primary Payment Account. In the absence of an Availability Triggering Event or Specified Default, the Borrowers will be entitled to direct the application of funds in the Primary Payment Account, including directing the Administrative Agent (or other depository bank, if applicable) to apply funds to the repayment of the outstanding Loans and other amounts payable under the Loan Documents and to otherwise withdraw funds from the Primary Payment Account; provided that all funds withdrawn from the Primary Payment Account will be applied to repay operating expenses of the Borrowers and their Subsidiaries in the ordinary course of business or for other purposes permitted hereunder other than transfers of funds to a deposit account that is not subject to a Blocked Account Agreement (an "Unblocked Account") or investments in Permitted Investments unless (i) the Collateral Agent has a first priority perfected security interest in such Permitted

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Investment or Unblocked Account or (ii) the amount of such Permitted Investments and funds in Unblocked Accounts so transferred for which the Collateral Agent does not have a first priority perfected security interest does not exceed \$40 million at any one time; provided, further, that no such transfers of funds to Unblocked Accounts or Permitted Investments may be made pursuant to this clause (ii) if the Availability is less than \$100 million on such date immediately before and after giving effect to such transfer or Permitted Investment. If an Availability Triggering Event or Specified Default has occurred and is continuing, (i) the Collateral Agent shall have the right to apply collections received into the Primary Payment Account to the outstanding Loans as provided in Section 5.02 of the Collateral Agreement and the Borrowers shall have the right, subject to the terms and conditions of this Agreement, to request Borrowings hereunder and direct the disposition of Revolving Loan proceeds, and (ii) the Borrowers shall not be entitled to present items drawn on or otherwise to withdraw or direct the dispositions of funds from the Primary Payment Account nor shall any Borrower be entitled to close the Primary Payment Account until all obligations under this Agreement are paid and performed in full. Notwithstanding any other agreements the Borrowers may have with any Secured Party, the Collateral Agent shall be entitled, during the continuance of any Event of Default, for purposes of this Agreement to give instructions as to the withdrawal or disposition of funds from time to time credited to any deposit account with the Collateral Agent, any Payment Account, or the Primary Payment Account, or as to any other matters relating to any of the forgoing without further consent of the Borrowers. The Collateral Agent's power under this Agreement to give instructions as to the withdrawal or disposition of any funds from time to time credited to the Primary Payment Account, any other Payment Account or deposit account with the Collateral Agent or as to any other matters relating to the foregoing includes, without limitation, during an Event of Default, the power to give stop payment orders for any items being presented to such accounts for payment.

(b) No later than 120 days after the Closing Date or such later time as the Administrative Agent shall agree, establish a lock-box service for collections of Accounts at Clearing Banks reasonably acceptable to the Administrative Agent and, with respect to bank accounts with Clearing Banks other than the Collateral Agent, if requested by the Administrative Agent, subject to Blocked Account Agreements and other documentation reasonably acceptable to the Administrative Agent (provided, that Blocked Account Agreements and other documentation consistent in form and substance with the Blocked Account Agreements and documentation established in connection with the Existing Credit Agreement shall be acceptable to the Administrative Agent). The Borrowers shall instruct all new Account Debtors with respect to Accounts to make all payments directly to the address established for each such lock-box service or electronically into such lockbox accounts. If, notwithstanding such instructions, any Borrower receives any proceeds of Accounts, it shall deliver such payments to the Collateral Agent or deposit them into the Primary Payment Account of another Payment Account established pursuant to this Section 5.14(b). All funds received in any Payment Account other than the Primary Payment Account shall be promptly transferred to the Primary Payment Account. During an Availability Triggering Event or Specified Default, all collections received in any lock-box or Payment Account or directly by the Borrowers or the Collateral Agent, and all funds in any Payment Account or other account to which such collections are deposited, shall be subject to the Collateral Agent's exclusive dominion and control and withdrawals by the Borrowers shall not be permitted; provided, however, that, in the absence of an Availability Triggering Event or Specified Default, all collections received in any lock-box or Payment Account, and all funds in any Payment Account or other account to which such collections are deposited shall be subject to direction as to application thereof and withdrawal by the Borrowers in the same manner as provided in Section 5.14(a) for the Primary Payment Account. The Collateral Agent or its designee may, at any time after the occurrence and during the continuation of an Event of Default, upon notice to the Borrowers, notify Account Debtors that the Accounts have been assigned to the Collateral Agent and of the Collateral Agent's security interest therein, and may collect them directly and charge the collection costs and expenses to the Loan Account as a Revolving Loan. So long as an Event of Default exists, the Borrowers, at the Collateral Agent's request, shall execute and deliver to the Collateral Agent such documents as the Collateral Agent shall reasonably request to grant the Collateral Agent access to any post office box in which collections of Accounts are received.



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(c) If sales of Inventory are made or services are rendered by any of the Borrowers for cash, such Borrowers shall promptly deposit such cash into a Payment Account.

(d) Except as otherwise provided in this Section 5.14, all payments received by the Collateral Agent in a bank account, an account separate from the Primary Payment Account, a Payment Account or a lock-box account, designated by the Borrowers and the Collateral Agent will be credited to the Loan Account (conditional upon final collection) on the same day received (if received prior to 3:00 p.m., Local Time); provided that the Borrowers shall compensate the Collateral Agent for the cost of collection and clearance of remittances applied to the Loan Account, including interest for one day, on all uncollected funds credited to the Loan Account as provided by this Section 5.14(d).

(e) In the event all of the Obligations (other than contingent indemnification and expense reimbursement obligations for which no claim has been made) are repaid upon the termination of this Agreement or upon acceleration of the Obligations, other than through the Collateral Agent's receipt of payments on account of the Accounts or proceeds of the other Collateral, such payment will be credited (conditional upon final collection) to the Loan Account (i) on the date of the Collateral Agent's receipt of such funds if such funds are collected funds or other immediately available funds if received by 3:00 p.m. (New York, New York time) or (ii) one Business Day after the Collateral Agent's receipt of such funds if such funds are uncollected funds or collected or immediately available funds received after such time.

SECTION 5.15. Inventory; Perpetual Inventory.

(a) Keep its Inventory (other than returned or obsolete Inventory) in good and marketable condition, except for damaged or defective goods arising in the ordinary course of its business. The Borrowers will not, without the prior written consent of the Collateral Agent, acquire or maintain any Inventory in excess of \$5 million at any time on consignment or approval unless such Inventory is disclosed to the Collateral Agent pursuant to Section 5.12 and the Borrowers take appropriate steps to insure that all of such Inventory meets the criteria of Eligible Inventory, including delivery of appropriate subordination agreements, if necessary. The Borrowers will conduct a physical count of their Inventory at least once per its fiscal year, and during the existence of an Event of Default, at such other times as the Collateral Agent may reasonably request. Without the Collateral Agent's written consent, the Borrowers will not sell, through a single transaction or a series of related transactions, Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis in excess of \$5 million.

(b) In connection with all Inventory financed by letters of credit, the Borrowers will, when an Event of Default is continuing, at the Collateral Agent's request, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or other persons receiving or holding cash, checks, Inventory, documents or instruments in which the Collateral Agent holds a security interest to deliver them to the Collateral Agent and/or subject to the Collateral Agent's order, and if they shall come into the Borrowers' or their Subsidiaries' possession, to deliver them, upon request, to the Collateral Agent in their original form. The Borrowers shall also, when an Event of Default is continuing, at the Collateral Agent's request, designate the Collateral Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents.

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ARTICLE VI

Negative Covenants

The Borrowers covenant and agree with each Lender that, from and after the Closing Date, and so long as this Agreement shall remain in effect (other than in respect of contingent indemnification obligations for which no claim has been made) and until the Commitments have been terminated and the Obligations (including principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document) have been paid in full and all Letters of Credit and Bankers' Acceptances have been canceled or fully cash collateralized (in a manner reasonably acceptable to the Administrative Agent and the Issuing Banks) or have expired and all amounts drawn or paid thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, the Borrowers will not, and will not permit any of the Material Subsidiaries to:

SECTION 6.01. Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness existing on the Amendment No. 3 Effective Date and set forth on Schedule 6.01 and any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness (other than intercompany indebtedness Refinanced with Indebtedness owed to a person not affiliated with the Company or any Subsidiary);

(b) Indebtedness created hereunder and under the other Loan Documents;

(c) Indebtedness pursuant to Swap Agreements;

(d) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Company or any Subsidiary, pursuant to reimbursement or indemnification obligations to such person, in each case in the ordinary course of business; provided, that upon the incurrence of Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than 30 days following such incurrence;

(e) Indebtedness of the Company to Holdings or any Subsidiary and of any Subsidiary to Holdings, the Company or any other Subsidiary; provided, that (i) Indebtedness of any Subsidiary that is not a Subsidiary Loan Party owing to the Loan Parties shall be subject to Section 6.04(b) and (ii) Indebtedness of the Company to Holdings or any Subsidiary and Indebtedness of any other Loan Party to Holdings or any Subsidiary that is not a Subsidiary Loan Party (the "Subordinated Intercompany Debt") shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(f) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; provided, that (x) such Indebtedness (other than credit or purchase cards) is extinguished within ten Business Days of notification to the applicable Borrower of its incurrence and (y) such Indebtedness in respect of credit or purchase cards is extinguished within 60 days from its incurrence;

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(h) (i) Indebtedness of a Subsidiary acquired after the Closing Date or an entity merged into or consolidated with the Company or any Subsidiary after the Closing Date and Indebtedness assumed in connection with the acquisition of assets, which Indebtedness in each case exists at the time of such acquisition, merger or consolidation and is not created in contemplation of such event and where such acquisition, merger or consolidation is permitted by this Agreement and (ii) any Permitted Refinancing Indebtedness incurred to Refinance such Indebtedness; provided, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(i) Capital Lease Obligations, mortgage financings and purchase money Indebtedness incurred by the Company or any Subsidiary prior to or within 270 days after the acquisition, lease or improvement of the respective asset permitted under this Agreement in order to finance such acquisition or improvement, and any Permitted Refinancing Indebtedness in respect thereof; provided, that, if immediately after giving effect to such transaction, the Total Net First Lien Leverage Ratio of the Company on a Pro Forma Basis would be greater than 4.00 to 1.00, then the amount of Indebtedness incurred pursuant to this paragraph (i), when combined with the Remaining Present Value of outstanding leases permitted under Section 6.03, shall not exceed the greater of \$150 million and 4.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04;

(j) Capital Lease Obligations incurred by the Company or any Subsidiary in respect of any Sale and Lease-Back Transaction that is permitted under Section 6.03 and any Permitted Refinancing Indebtedness in respect thereof;

(k) other Indebtedness of the Company or any Subsidiary, in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed the greater of \$175 million and 5.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04;

(l) Indebtedness of the Company and/or its Subsidiaries pursuant to (i) the Second Lien Notes in an aggregate principal amount that is not in excess of \$1,525.0 million, (ii) the Berry Senior Subordinated Notes in an aggregate principal amount that is not in excess of \$454.6 million, (iii) the Covalence Senior Subordinated Notes in an aggregate principal amount that is not in excess of \$265 million, (iv) the extensions of Term Loans under the Term Loan Credit Agreement, (v) the First Priority Notes in an aggregate principal amount that is not in excess of \$1,050.6 million, and (vi) any Permitted Refinancing Indebtedness incurred to Refinance any such Indebtedness;

(m) Guarantees (i) by the Subsidiary Loan Parties of the Indebtedness of the Company and its Subsidiaries described in paragraph (1) of this Section 6.01, so long as the Guarantee of the Senior Subordinated Notes or any Permitted Refinancing Indebtedness in respect thereof is subordinated substantially on terms as set forth in the Senior Subordinated Notes Indentures with respect to the Senior Subordinated Notes, and so long as any Liens securing the Guarantee of the Original Second Lien Notes or any Permitted Refinancing Indebtedness in respect thereof are subject to the Intercreditor Agreement, (ii) by the Company or any Subsidiary Loan Party of any Indebtedness of any Borrower or any Subsidiary Loan Party expressly permitted to be incurred under this Agreement, (iii) by the Company or any Subsidiary Loan Party of Indebtedness otherwise permitted hereunder of Holdings or any Subsidiary that is not a Subsidiary Loan Party to the extent such Guarantees are permitted by Section 6.04 (other than Section 6.04(v)), (iv) by any Foreign Subsidiary of Indebtedness of another Foreign Subsidiary, and (v) by the Company of Indebtedness of Foreign Subsidiaries incurred for working capital purposes in the ordinary

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course of business on ordinary business terms so long as such Indebtedness is permitted to be incurred under Section 6.01(s) to the extent such Guarantees are permitted by 6.04 (other than Section 6.04(v)); provided, that Guarantees by the Company or any Subsidiary Loan Party under this Section 6.01(m) of any other Indebtedness of a person that is subordinated to other Indebtedness of such person shall be expressly subordinated to the Obligations to at least the same extent as the Guarantee of the Senior Subordinated Notes is under the Senior Subordinated Notes Indentures;

(n) Indebtedness arising from agreements of the Company or any Subsidiary providing for indemnification, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Transactions, Specified Stock Purchases and any Permitted Business Acquisition or the disposition of any business, assets or a Subsidiary not prohibited by this Agreement, other than Guarantees of Indebtedness incurred by any person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(o) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business;

(p) Indebtedness supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;

(q) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(r) (i) other Indebtedness incurred by the Company or any Subsidiary Loan Party; provided that (A) at the time of the incurrence of such Indebtedness and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (B) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to the issuance, incurrence or assumption of such Indebtedness and (C) in the case of any such Indebtedness that is secured, immediately after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Total Net First Lien Leverage Ratio on a Pro Forma Basis shall not be greater than 3.75 to 1.00 and (ii) Permitted Refinancing Indebtedness in respect thereof;

(s) Indebtedness of Foreign Subsidiaries; provided that the aggregate amount of Indebtedness incurred under this clause (s), when aggregated with all other Indebtedness incurred and outstanding pursuant to this clause (s), shall not exceed the greater of \$100 million and 10.0% of the consolidated assets of the Foreign Subsidiaries at the time of such incurrence;

(t) unsecured Indebtedness in respect of obligations of the Company or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided, that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms (which require that all such payments be made within 60 days after the incurrence of the related obligations) in the ordinary course of business and not in connection with the borrowing of money or any Swap Agreements;

(u) Indebtedness representing deferred compensation to employees of the Company or any Subsidiary incurred in the ordinary course of business;

(v) Indebtedness in connection with Permitted Receivables Financings; provided that, after giving effect to such Indebtedness, the Borrowers shall be in compliance with Section 2.11(b);

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(w) Indebtedness of Foreign Subsidiaries incurred under lines of credit or overdraft facilities (including, but not limited to, intraday, ACH and purchasing card/T&E services) extended by one or more financial institutions reasonably acceptable to the Administrative Agent or one or more of the Lenders and (in each case) established for such Foreign Subsidiaries' ordinary course of operations (such Indebtedness, the "Overdraft Line"), which Indebtedness may be secured as, but only to the extent, provided in Section 6.02(b) and in the Security Documents;

(x) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures not in excess, at any one time outstanding, of the greater of \$175 million or 5.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04;

(y) Indebtedness consisting of promissory notes issued by the Company or any Subsidiary to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings or any Parent Entity permitted by Section 6.06;

(z) Indebtedness consisting of obligations of the Company or any Subsidiary under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, Specified Stock Purchases, Permitted Business Acquisitions or any other Investment expressly permitted hereunder; and

(aa) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (z) above.

SECTION 6.02. Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including the Company and any Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, "Permitted Liens"):

(a) Liens on property or assets of the Company and the Subsidiaries existing on the Amendment No. 3 Effective Date and set forth on Schedule 6.02(a) or, to the extent not listed in such Schedule, where such property or assets have a fair market value that does not exceed \$10 million in the aggregate and \$5 million in respect of Accounts and Inventory, and any modifications, replacements, renewals or extensions thereof; provided, that such Liens shall secure only those obligations that they secure on the Closing Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01(a)) and shall not subsequently apply to any other property or assets of the Company or any Subsidiary other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, and (B) proceeds and products thereof;

(b) any Lien created under the Loan Documents (including, without limitation, Liens created under the Security Documents securing obligations in respect of Swap Agreements owed to a person that is a Lender or an Affiliate of a Lender at the time of entry into such Swap Agreements) or permitted in respect of any Mortgaged Property by the terms of the applicable Mortgage and, provided that such Liens are subject to the terms of the Senior Lender Intercreditor Agreement, any Lien securing the Term Loan Credit Agreement or any Indebtedness or obligations under the Term Loan Credit Agreement or any "Loan Documents" thereunder; provided, however, in no event shall the holders of the Indebtedness under the Overdraft Line have the right to receive proceeds in respect of a claim in excess of \$20 million in the aggregate (plus (i) any accrued and unpaid interest in respect of Indebtedness incurred by the Company and the Subsidiaries

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under the Overdraft Line and (ii) any accrued and unpaid fees and expenses owing by the Company and the Subsidiaries under the Overdraft Line) from the enforcement of any remedies available to the Secured Parties under all of the Loan Documents;

(c) any Lien on any property or asset (other than Accounts and Inventory unless such Accounts and Inventory are held by a Subsidiary that is not a Borrower and such Accounts and Inventory are not commingled with the Accounts and Inventory of any other Borrower) of the Company or any Subsidiary securing Indebtedness or Permitted Refinancing Indebtedness permitted by Section 6.01(h); provided, that such Lien (i) does not apply to any other property or assets of the Company or any of the Subsidiaries not securing such Indebtedness at the date of the acquisition of such property or asset (other than after acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such date and which Indebtedness and other obligations are permitted hereunder that require a pledge of after acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), (ii) such Lien is not created in contemplation of or in connection with such acquisition and (iii) in the case of a Lien securing Permitted Refinancing Indebtedness, any such Lien is permitted, subject to compliance with clause (e) of the definition of the term "Permitted Refinancing Indebtedness";

(d) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;

(e) Liens imposed by law, such as landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Company or any Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(f) (i) pledges and deposits and other Liens with respect to property other than Accounts and Inventory made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (ii) pledges and deposits and other Liens with respect to property other than Accounts and Inventory securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Company or any Subsidiary;

(g) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(h) zoning restrictions, survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights-of-way, covenants, conditions, restrictions and declaration on or with respect to the use of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Company or any Subsidiary;

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- (i) Liens securing Indebtedness permitted by Section 6.01(i) (limited to the assets subject to such Indebtedness);
- (j) Liens arising out of capitalized lease transactions permitted under Section 6.03, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions thereto or proceeds thereof and related property;
- (k) Liens securing judgments that do not constitute an Event of Default under Section 7.01(j);
- (l) Liens disclosed by the title insurance policies delivered on or subsequent to the Closing Date and pursuant to Section 5.10 and any replacement, extension or renewal of any such Lien; provided, that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted by this Agreement;
- (m) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Company or any Subsidiary in the ordinary course of business;
- (n) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any Subsidiary in the ordinary course of business;
- (o) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;
- (p) Liens securing obligations in respect of trade-related letters of credit, banker's acceptances or bank guarantees permitted under Section 6.01(f), (k) or (o) and covering the goods (or the documents of title in respect of such goods) financed by such letters of credit, bankers' acceptances or bank guarantees and the proceeds and products thereof;
- (q) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business not interfering in any material respect with the business of the Company and its Subsidiaries, taken as a whole;
- (r) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (s) Liens solely on any cash earnest money deposits made by the Company or any of the Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder;
- (t) Liens with respect to property or assets of any Foreign Subsidiary securing Indebtedness of a Foreign Subsidiary permitted under Section 6.01;

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(u) other Liens with respect to property or assets of the Company or any Subsidiary; provided that (i) after giving effect to any such Lien and the incurrence of Indebtedness, if any, secured by such Lien is created, incurred, acquired or assumed (or any prior Indebtedness becomes so secured) on a Pro Forma Basis, the Total Net First Lien Leverage Ratio on the last day of the Company's then most recently completed fiscal quarter for which financial statements are available shall be less than or equal to 3.75 to 1.00, (ii) at the time of the incurrence of such Lien and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (iii) the Indebtedness or other obligations secured by such Lien are otherwise permitted by this Agreement, and (iv) an intercreditor agreement on customary terms that is reasonably satisfactory to the Administrative Agent shall be entered into providing for the treatment of such Liens and the additional Indebtedness and other obligations secured by such Liens in relation to the Obligations and the Liens securing the Obligations in a manner that is the same as, or no less favorable to the Lenders than, the treatment under the Senior Lender Intercreditor Agreement of the "Term Loan Obligations" (as defined in the Senior Lender Intercreditor Agreement) and the security therefor (including with regard to each class of collateral);

(v) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(w) agreements to subordinate any interest of the Company or any Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Company or any of its Subsidiaries pursuant to an agreement entered into in the ordinary course of business;

(x) Liens arising from precautionary Uniform Commercial Code financing statements or consignments entered into in connection with any transaction otherwise permitted under this Agreement;

(y) Liens on Equity Interests in joint ventures securing obligations of such joint venture;

(z) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under clause (c) of the definition thereof;

(aa) [Reserved];

(bb) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of a Borrower or any Subsidiary in the ordinary course of business; provided, that such Lien secures only the obligations of such Borrower or such Subsidiaries in respect of such letter of credit, bankers' acceptance or bank guarantee to the extent permitted under Section 6.01;

(cc) Liens securing insurance premiums financing arrangements, provided, that such Liens are limited to the applicable unearned insurance premiums;

(dd) Liens in favor of the Company or any Subsidiary Loan Party; provided that if any such Lien shall cover any Collateral, the holder of such Lien shall execute and deliver to the Administrative Agent a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent;



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(ee) Liens securing obligations under the Second Lien Note Documents and any Permitted Refinancing Indebtedness in respect thereof, to the extent such Liens are subject to the Intercreditor Agreement;

(ff) Liens on not more than \$30 million of deposits securing Swap Agreements;

(gg) Liens in respect of Permitted Receivables Financings and Permitted Supplier Finance Facilities that extend only to the receivables subject thereto, provided that, after giving effect to such Liens, the Borrowers shall be in compliance with Section 2.11(b);

(hh) Liens securing obligations under the First Priority Note Documents and any Permitted Refinancing Indebtedness in respect thereof, to the extent such Liens are subject to the Senior Fixed Collateral Intercreditor Agreement; and

(ii) other Liens with respect to property or assets of the Company or any Subsidiary securing obligations in an aggregate principal amount outstanding at any time not to exceed \$30 million.

SECTION 6.03. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "Sale and Lease-Back Transaction"); provided, that a Sale and Lease-Back Transaction shall be permitted (A) with respect to property (i) owned by the Company or any Domestic Subsidiary that is acquired after the Closing Date so long as such Sale and Lease Back Transaction is consummated within 180 days of the acquisition of such property or (ii) by any Foreign Subsidiary regardless of when such property was acquired, and (B) with respect to any property owned by the Company or any Domestic Subsidiary, if at the time the lease in connection therewith is entered into, and after giving effect to the entering into of such lease, (a) the Total Net First Lien Leverage Ratio is equal to or less than 4.00 to 1.00, or (b) if the Total Net First Lien Leverage Ratio is greater than 4.00 to 1.00, the Remaining Present Value of such lease, together with Indebtedness outstanding pursuant to Section 6.01(i) and the Remaining Present Value of outstanding leases entered into under this Section 6.03(b) on or after the Amendment No. 3 Effective Date, shall not exceed the greater of \$150 million and 4.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date the lease was entered into for which financial statements have been delivered pursuant to Section 5.04.

SECTION 6.04. Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger with a person that is not a Wholly Owned Subsidiary immediately prior to such merger) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, an "Investment"), any other person, except:

(a) the Transactions and Investments arising as a result of one or more Permitted Supplier Finance Facilities;

(b) (i) Investments by the Company or any Subsidiary in the Equity Interests of the Company or any Subsidiary; (ii) intercompany loans from the Company or any Subsidiary to the Company or any Subsidiary; and (iii) Guarantees by the Company or any Subsidiary Loan Party of Indebtedness otherwise expressly permitted hereunder of the Company or any Subsidiary; provided, that the sum of (A) Investments (valued at the time of the making thereof and without giving effect to any write-downs or write-offs thereof) made after the Closing Date by the Loan Parties

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pursuant to clause (i) in Subsidiaries that are not Subsidiary Loan Parties, plus (B) net intercompany loans made after the Closing Date to Subsidiaries that are not Subsidiary Loan Parties pursuant to clause (ii), plus (C) Guarantees of Indebtedness after the Amendment No. 3 Effective Date of Subsidiaries that are not Subsidiary Loan Parties pursuant to clause (iii), shall not exceed an aggregate net amount equal to (x) the greater of (1) \$100 million and (2) 4.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such Investment for which financial statements have been delivered pursuant to Section 5.04 (plus any return of capital actually received by the respective investors in respect of Investments theretofore made by them pursuant to this paragraph (b)); plus (y) the portion, if any, of the Cumulative Credit on the date of such election that the Company elects to apply to this Section 6.04(b)(y), such election to be specified in a written notice of a Responsible Officer of the Company calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied; provided, further, that intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Company and the Subsidiaries shall not be included in calculating the limitation in this paragraph at any time;

(c) Permitted Investments and Investments that were Permitted Investments when made;

(d) Investments arising out of the receipt by the Company or any Subsidiary of noncash consideration for the sale of assets permitted under Section 6.05;

(e) loans and advances to officers, directors, employees or consultants of the Company or any Subsidiary (i) in the ordinary course of business not to exceed the greater of \$25 million and 1.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such loan or advance for which financial statements have been delivered pursuant to Section 5.04, in the aggregate at any time outstanding (calculated without regard to write downs or write offs thereof), (ii) in respect of payroll payments and expenses in the ordinary course of business and (iii) in connection with such person's purchase of Equity Interests of Holdings (or any Parent Entity) solely to the extent that the amount of such loans and advances shall be contributed to the Company in cash as common equity;

(f) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business;

(g) Swap Agreements;

(h) Investments existing on, or contractually committed as of, the Amendment No. 3 Effective Date and set forth on Schedule 6.04 and any extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (h) is not increased at any time above the amount of such Investment existing on the Amendment No. 3 Effective Date;

(i) Investments resulting from pledges and deposits under Sections 6.02(f), (g), (k), (r), (s), and (u);

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(j) other Investments by the Company or any Subsidiary in an aggregate amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed (i) the greater of \$225 million and 6.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04 (plus any returns of capital actually received by the respective investor in respect of investments theretofore made by it pursuant to this paragraph (j)) plus (ii) the portion, if any, of the Cumulative Credit on the date of such election that the Company elects to apply to this Section 6.04(j)(ii), such election to be specified in a written notice of a Responsible Officer of the Company calculating in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied;

(k) Investments constituting Permitted Business Acquisitions and Investments constituting the Specified Stock Purchases;

(l) intercompany loans between Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(m);

(m) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by the Company as a result of a foreclosure by the Company or any of the Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(n) Investments of a Subsidiary acquired after the Closing Date or of an entity merged into the Company or merged into or consolidated with a Subsidiary after the Closing Date, in each case, to the extent permitted under this Section 6.04 and, in the case of any merger or consolidation, in accordance with Section 6.05 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(o) acquisitions by the Company of obligations of one or more officers or other employees of Holdings, any Parent Entity, the Company or its Subsidiaries in connection with such officer's or employee's acquisition of Equity Interests of Holdings or any Parent Entity, so long as no cash is actually advanced by the Company or any of the Subsidiaries to such officers or employees in connection with the acquisition of any such obligations;

(p) Guarantees by the Company or any Subsidiary of operating leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into by the Company or any Subsidiary in the ordinary course of business;

(q) Investments to the extent that payment for such Investments is made with Equity Interests of Holdings (or any Parent Entity);

(r) Investments in the equity interests of one or more newly formed persons that are received in consideration of the contribution by Holdings, the Company or the applicable Subsidiary of assets (including Equity Interests and cash) to such person or persons; provided, that (i) the fair market value of such assets, determined on an arms'-length basis, so contributed pursuant to this paragraph (r) shall not in the aggregate exceed \$30 million and (ii) in respect of each such contribution, a Responsible Officer of the Company shall certify, in a form to be agreed upon by the Company and the Administrative Agent (x) after giving effect to such contribution, no

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Default or Event of Default shall have occurred and be continuing, (y) the fair market value of the assets so contributed and (z) that the requirements of paragraph (i) of this proviso remain satisfied;

(s) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

(t) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(u) Investments in Foreign Subsidiaries not to exceed the greater of \$75 million and 2.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such Investment for which financial statements have been delivered pursuant to Section 5.04, in the aggregate, as valued at the fair market value of such Investment at the time such Investment is made;

(v) Guarantees permitted under Section 6.01 (except to the extent such Guarantee is expressly subject to Section 6.04);

(w) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Company or such Subsidiary;

(x) Investments by the Company and its Subsidiaries, including loans to any direct or indirect parent of the Company, if such Borrower or any other Subsidiary would otherwise be permitted to make a dividend or distribution in such amount (provided that the amount of any such investment shall also be deemed to be a distribution under the appropriate clause of Section 6.06 for all purposes of this Agreement);

(y) Investments arising as a result of Permitted Receivables Financings;

(z) Investments received substantially contemporaneously in exchange for Equity Interests of any Parent Entity; provided that such Investments are not included in any determination of the Cumulative Credit; and

(aa) Investments in joint ventures not in excess of the greater of \$75 million and 2.0% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such Investment for which financial statements have been delivered pursuant to Section 5.04, in the aggregate.

The amount of Investments that may be made at any time pursuant to clause (C) of the proviso of Section 6.04(b) or 6.04(j) (such Sections, the "Related Sections") may, at the election of the Company, be increased by the amount of Investments that could be made at such time under the other Related Section; provided that the amount of each such increase in respect of one Related Section shall be treated as having been used under the other Related Section.

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SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into or consolidate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (whether now owned or hereafter acquired), or issue, sell, transfer or otherwise dispose of any Equity Interests of the Company or any Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other person or any division, unit or business of any person, except that this Section shall not prohibit:

(a) (i) the purchase and sale of inventory in the ordinary course of business by the Company or any Subsidiary and the sale of receivables by any Foreign Subsidiary pursuant to non-recourse factoring arrangements in the ordinary course of business of such Foreign Subsidiary, (ii) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business by the Company or any Subsidiary, (iii) the sale of surplus, obsolete or worn out equipment or other property in the ordinary course of business by the Company or any Subsidiary or (iv) the sale of Permitted Investments in the ordinary course of business;

(b) if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing or would result therefrom, (i) the merger of any Subsidiary into the Company in a transaction in which the Company is the survivor, (ii) the merger or consolidation of any Subsidiary into or with any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party and, in the case of each of clauses (i) and (ii), no person other than the Company or Subsidiary Loan Party receives any consideration, (iii) the merger or consolidation of any Subsidiary that is not a Subsidiary Loan Party into or with any other Subsidiary that is not a Subsidiary Loan Party, (iv) the liquidation or dissolution or change in form of entity of any Subsidiary (other than the Company) if the Company determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Company and is not materially disadvantageous to the Lenders or (v) any Subsidiary may merge with any other person in order to effect an Investment permitted pursuant to Section 6.04 so long as the continuing or surviving person shall be a Subsidiary, which shall be a Loan Party if the merging Subsidiary was a Loan Party and which together with each of its Subsidiaries shall have complied with the requirements of Section 5.10;

(c) sales, transfers, leases or other dispositions to the Company or a Subsidiary (upon voluntary liquidation or otherwise); provided, that any sales, transfers, leases or other dispositions by a Loan Party to a Subsidiary that is not a Subsidiary Loan Party in reliance on this paragraph (c) shall be made in compliance with Section 6.07 and shall be included in Section 6.05(g);

(d) Sale and Lease-Back Transactions permitted by Section 6.03;

(e) Investments permitted by Section 6.04, Permitted Liens, Dividends permitted by Section 6.06 and capital expenditures;

(f) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;

(g) sales, transfers, leases or other dispositions of assets not otherwise permitted by this Section 6.05 (or required to be included in this clause (g) pursuant to Section 6.05(c)); provided, that (i) the aggregate gross proceeds (including noncash proceeds) of any or all assets sold, transferred, leased or otherwise disposed of in reliance upon this paragraph (g) shall not exceed, in any fiscal year of the Company, the greater of (x) \$200 million and (y) 6.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04, (ii) no Default or Event of Default exists or would result therefrom; (iii) immediately after giving effect thereto, the Revolving Facility Credit Exposure shall not exceed the Borrowing Base calculated on a Pro Forma Basis after giving effect to such sale, transfer, lease or other disposition, and (iv) immediately after giving effect to any such sale, lease, transfer, lease or other disposition of Accounts or Inventory not undertaken in the ordinary course of business, the Revolving Facility Credit Exposure shall not exceed the Borrowing Base;

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(h) Permitted Business Acquisitions (including any merger or consolidation in order to effect a Permitted Business Acquisition); provided, that following any such merger or consolidation (i) involving the Company, the Company is the surviving corporation, (ii) involving a Domestic Subsidiary, the surviving or resulting entity shall be a Subsidiary Loan Party that is a Wholly Owned Subsidiary and (iii) involving a Foreign Subsidiary, the surviving or resulting entity shall be a Wholly Owned Subsidiary;

(i) leases, licenses (on a non-exclusive basis with respect to intellectual property), or subleases or sublicenses (on a non-exclusive basis with respect to intellectual property) of any real or personal property in the ordinary course of business;

(j) sales, leases or other dispositions of inventory of the Company and its Subsidiaries determined by the management of the Company to be no longer useful or necessary in the operation of the business of the Company or any of the Subsidiaries;

(k) acquisitions and purchases made with the proceeds of any Asset Sale pursuant to the first proviso of paragraph (a) of the definition of "Net Proceeds";

(l) the purchase and sale or other transfer (including by capital contribution) of Receivables Assets pursuant to Permitted Receivables Financings; provided, that, after giving effect to each such purchase and sale or other transfer, the Borrower shall be in compliance with Section 2.11(b);

(m) any exchange of assets for services and/or other assets of comparable or greater value; provided, that (i) at least 90% of the consideration received by the transferor consists of assets that will be used in a business or business activity permitted hereunder, (ii) in the event of a swap with a fair market value in excess of \$10.0 million, the Administrative Agent shall have received a certificate from a Responsible Officer of the Company with respect to such fair market value and (iii) in the event of a swap with a fair market value in excess of \$20.0 million, such exchange shall have been approved by at least a majority of the Board of Directors of Holdings or the Company; provided, that (A) the aggregate gross consideration (including exchange assets, other noncash consideration and cash proceeds) of any or all assets exchanged in reliance upon this paragraph (m) shall not exceed, in any fiscal year of the Company, the greater of \$200 million and 6.5% of Consolidated Total Assets as of the end of the fiscal quarter immediately prior to the date of such incurrence for which financial statements have been delivered pursuant to Section 5.04, (B) no Default or Event of Default exists or would result therefrom and (C) immediately after giving effect to such exchange, the Revolving Facility Credit Exposure shall not exceed the Borrowing Base calculated on a Pro Forma Basis after giving effect to such exchange;

(n) the sale of assets described on Schedule 6.05;

(o) the sale of assets as part of the Specified Asset Sale; and

(p) the purchase and sale or other transfer of Receivables Assets in connection with a Permitted Supplier Finance Facility; provided, that, after giving effect to each such purchase and sale or other transfer, the Borrower shall be in compliance with Section 2.11(b).

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Notwithstanding anything to the contrary contained in Section 6.05 above, (i) no sale, transfer or other disposition of assets shall be permitted by this Section 6.05 (other than sales, transfers, leases, licenses or other dispositions to Loan Parties pursuant to paragraph (c) of this Section 6.05) unless such disposition is for fair market value and (ii) no sale, transfer or other disposition of assets in excess of \$15 million shall be permitted by paragraph (g) of this Section 6.05 unless such disposition is for at least 75% cash consideration; provided, that for purposes of clause (ii), (a) the amount of any liabilities (as shown on the Company's or any Subsidiary's most recent balance sheet or in the notes thereto) of the Company or any Subsidiary of the Company (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee of any such assets, (b) any notes or other obligations or other securities or assets received by the Company or such Subsidiary of the Company from such transferee that are converted by the Company or such Subsidiary of the Company into cash within 180 days of the receipt thereof (to the extent of the cash received) and (c) any Designated Non-Cash Consideration received by the Company or any of its Subsidiaries in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of 3.0% of Consolidated Total Assets and \$100 million at the time of the receipt of such Designated Non-Cash Consideration (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value) shall be deemed to be cash. To the extent any Collateral is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than Holdings, the Company or any Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall take, and shall be authorized by each Lender to take, any actions reasonably requested by the Company in order to evidence the foregoing. Anything contained herein to the contrary notwithstanding, (A) neither the Company nor any other Loan Party shall sell or otherwise dispose of any Inventory or Accounts (other than sales of Inventory in the ordinary course of business and sales of Accounts for collection) if, as a result of such sale or other disposition, the Revolving Facility Credit Exposure would exceed the Borrowing Base, in each case determined as of the time of such sale or other disposition, and (B) none of the capital stock of any Borrower shall be sold or transferred, nor shall any Borrower enter into any merger or similar transaction in which such Borrower is not the surviving entity, unless in any such case (1) the obligations of such Borrower are assumed by another Borrower on terms reasonably acceptable to the Administrative Agent, (2) such event would not result in a Default or an Event of Default, and (3) the portion of the Revolving Facility Credit Exposure of the assuming Borrower does not exceed the portion of the Borrowing Base attributable to the Accounts and Inventory of the assuming Borrower.

SECTION 6.06. Dividends and Distributions. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the person redeeming, purchasing, retiring or acquiring such shares) (collectively, the "Distributions"); provided, however, that:

(a) any Subsidiary of the Company may declare and pay dividends to, repurchase its Equity Interests from or make other distributions to the Company or to any Wholly Owned Subsidiary of the Company (or, in the case of non-Wholly Owned Subsidiaries, to the Company or any Subsidiary that is a direct or indirect shareholder of such Subsidiary and to each other owner of Equity Interests of such Subsidiary on a *pro rata* basis (or more favorable basis from the perspective of the Company or such Subsidiary) based on their relative ownership interests so long as any repurchase of its Equity Interests from a person that is not the Company or a Subsidiary is permitted under Section 6.04);

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(b) the Company may declare and pay dividends or make other distributions to Holdings in respect of (i) overhead, legal, accounting and other professional fees and expenses of Holdings or any Parent Entity, (ii) fees and expenses related to any public offering or private placement of debt or equity securities of Holdings or any Parent Entity whether or not consummated, (iii) franchise taxes and other fees, taxes and expenses in connection with the maintenance of its existence and its (or any Parent Entity's indirect) ownership of the Company, (iv) payments permitted by Section 6.07(b), (v) the tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated returns for the relevant jurisdiction of Holdings (or any Parent Entity) attributable to Holdings, the Company or its Subsidiaries and (vi) customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of Holdings or any Parent Entity, in each case in order to permit Holdings or any Parent Entity to make such payments; provided, that in the case of clauses (i), (ii) and (iii), the amount of such dividends and distributions shall not exceed the portion of any amounts referred to in such clauses (i), (ii) and (iii) that are allocable to the Company and its Subsidiaries (which shall be 100% for so long as Holdings or such Parent Entity, as the case may be, owns no assets other than the Equity Interests in the Company, Holdings or another Parent Entity);

(c) the Company may declare and pay dividends or make other distributions to Holdings the proceeds of which are used to purchase or redeem the Equity Interests of Holdings or any Parent Entity (including related stock appreciation rights or similar securities) held by then present or former directors, consultants, officers or employees of Holdings, the Company or any of the Subsidiaries or by any Plan or shareholders' agreement then in effect upon such person's death, disability, retirement or termination of employment or under the terms of any such Plan or any other agreement under which such shares of stock or related rights were issued; provided, that the aggregate amount of such purchases or redemptions under this paragraph (c) shall not exceed in any fiscal year \$20 million (plus the amount of net proceeds contributed to the Company that were (x) received by Holdings or any Parent Entity during such calendar year from sales of Equity Interests of Holdings or any Parent Entity of Holdings to directors, consultants, officers or employees of Holdings, any Parent Entity, the Company or any Subsidiary in connection with permitted employee compensation and incentive arrangements and (y) of any key-man life insurance policies received during such calendar year), which, if not used in any year, may be carried forward to any subsequent calendar year;

(d) noncash repurchases of Equity Interests deemed to occur upon exercise of stock options if such Equity Interests represent a portion of the exercise price of such options;

(e) the Company may pay dividends to Holdings; provided, that no Default or Event of Default has occurred and is continuing or would result therefrom and, after giving effect thereto, that the Company and its Subsidiaries shall be in Pro Forma Compliance;

(f) the Company may pay dividends on the Closing Date to consummate the Transactions;

(g) the Company may pay dividends or distributions to allow Holdings or any Parent Entity to make payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such person;



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(h) after a Qualified IPO, the Company may pay dividends and make distributions to, or repurchase or redeem shares from, its equity holders in an amount equal to 6.0% *per annum* of the net proceeds received by the Company from any public offering of Equity Interests of the Company or any direct or indirect parent of the Company;

(i) the Company may make distributions to Holdings or any Parent Entity to finance any Investment permitted to be made pursuant to Section 6.04; provided, that (A) such distribution shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Company or a Subsidiary or (2) the merger (to the extent permitted in Section 6.05) of the Person formed or acquired into the Company or a Subsidiary in order to consummate such Permitted Business Acquisition or Investment; and

(j) the Company may pay dividends after the Closing Date to permit Holdings to make payments required under the Acquisition Agreement (including Sections 2.9 and 5.4 thereof).

#### SECTION 6.07. Transactions with Affiliates.

(a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates or any known direct or indirect holder of 10% or more of any class of capital stock of Holdings or the Company in a transaction involving aggregate consideration in excess of \$5 million, unless such transaction is (i) otherwise permitted (or required) under this Agreement or (ii) upon terms no less favorable to the Company or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate.

(b) The foregoing paragraph (a) shall not prohibit, to the extent otherwise permitted under this Agreement,

(i) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of Holdings or of the Company,

(ii) loans or advances to employees or consultants of Holdings (or any Parent Entity), the Company or any of the Subsidiaries in accordance with Section 6.04(e),

(iii) transactions among the Company or any Subsidiary or any entity that becomes a Subsidiary as a result of such transaction (including via merger or consolidation in which a Subsidiary is the surviving entity) not prohibited by this Agreement,

(iv) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of Holdings, any Parent Entity, the Company and the Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Company and its Subsidiaries (which shall be 100% for so long as Holdings or such Parent Entity, as the case may be, owns no assets other than the Equity Interests in the Company, Holdings or another Parent Entity and assets incidental to the ownership of the Company and its Subsidiaries)),

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(v) subject to the limitations set forth in Section 6.07(b)(xiv), if applicable, transactions pursuant to the Transaction Documents and permitted agreements in existence on the Closing Date and set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect and other transactions, agreements and arrangements described on Schedule 6.07 and any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect or similar transactions, agreements or arrangements entered into by the Company or any of its Subsidiaries.

(vi) (A) any employment agreements entered into by the Company or any of the Subsidiaries in the ordinary course of business, (B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors, and (C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto,

(vii) dividends, redemptions and repurchases permitted under Section 6.06, including payments to Holdings (and any Parent Entity),

(viii) any purchase by Holdings of the equity capital of the Company; provided, that any Equity Interests of the Company purchased by Holdings shall be pledged to the Administrative Agent on behalf of the Lenders pursuant to the Collateral Agreement,

(ix) payments by the Company or any of the Subsidiaries to any Fund or any Fund Affiliate made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of Directors of the Company, or a majority of disinterested members of the Board of Directors of the Company, in good faith,

(x) transactions with Wholly Owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business in a manner consistent with past practice,

(xi) any transaction in respect of which the Company delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of the Company from an accounting, appraisal or investment banking firm, in each case of nationally recognized standing that is (A) in the good faith determination of the Company qualified to render such letter and (B) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Company or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate,

(xii) subject to paragraph (xiv) below, the payment of all fees, expenses, bonuses and awards related to the Transactions contemplated by the Information Memorandum, including fees to any Fund or any Fund Affiliates and as set forth on Schedule 6.07,

(xiii) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business and in a manner consistent with past practice,

(xiv) any agreement to pay, and the payment of, monitoring, management, transaction, advisory or similar fees payable to any Fund or any Fund Affiliate (A) in an aggregate amount in any fiscal year not to exceed the sum of (1) the greater of \$7.5 million and 2.0% of EBITDA for

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such fiscal year, plus reasonable out of pocket costs and expenses in connection therewith and unpaid amounts accrued for prior periods; plus (2) any deferred fees (to the extent such fees were within such amount in clause (A) (1) above originally), plus (B) 2.0% of the value of transactions with respect to which any Fund or any Fund Affiliate provides any transaction, advisory or other services, plus (C) so long as no Availability Triggering Event or Event of Default has occurred and is continuing, in the event of a Qualified IPO, the present value of all future amounts payable pursuant to any agreement referred to in clause (A) (1) above in connection with the termination of such agreement with the Funds and Fund Affiliates (the "Fund Termination Fee"); provided, that if any such payment pursuant to clause (C) is not permitted to be paid as a result of an Availability Triggering Event or Event of Default, such payment shall accrue and may be payable when no Availability Triggering Event or Events of Default are continuing to the extent that no further Availability Triggering Event or Event of Default would result therefrom,

(xv) the issuance, sale, transfer of Equity Interests of Company to Holdings and capital contributions by Holdings to Company,

(xvi) the Business Combination and all transactions in connection therewith,

(xvii) without duplication of any amounts otherwise paid with respect to taxes, payments by Holdings (and any Parent Entity), the Company and the Subsidiaries pursuant to tax sharing agreements among Holdings (and any such Parent Entity), the Company and the Subsidiaries on customary terms that require each party to make payments when such taxes are due or refunds received of amounts equal to the income tax liabilities and refunds generated by each such party calculated on a separate return basis and payments to the party generating tax benefits and credits of amounts equal to the value of such tax benefits and credits made available to the group by such party, or

(xviii) transactions pursuant to any Permitted Receivables Financing.

SECTION 6.08. Business of the Borrowers and the Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary thereto, and in the case of a Special Purpose Receivables Subsidiary, Permitted Receivables Financing.

SECTION 6.09. Limitation on Modifications of Indebtedness; Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc.

(a) Amend or modify in any manner materially adverse to the Lenders, or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders), the articles or certificate of incorporation, by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Company or any of the Subsidiaries or the Merger Agreement.

(b) (i) Make, or agree or offer to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on the loans under the Senior Subordinated Notes or any Permitted Refinancing Indebtedness in respect of the Senior Subordinated Notes or any preferred Equity Interests or any Disqualified Stock ("Junior Financing"), or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation

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or termination in respect of any Junior Financing except for (A) refinancings permitted by Section 6.01(l) or (r), (B) payments of regularly scheduled interest, and, to the extent this Agreement is then in effect, principal on the scheduled maturity date of any Junior Financing, (C) payments or distributions in respect of all or any portion of the Junior Financing with the proceeds contributed to the Company by Holdings from the issuance, sale or exchange by Holdings (or any Parent Entity) of Equity Interests made within eighteen months prior thereto, (D) the conversion of any Junior Financing to Equity Interests of Holdings or any Parent Entity; and (E) so long as no Default or Event of Default has occurred and is continuing or would result therefrom and after giving effect to such payment or distribution the Company would be in Pro Forma Compliance, payments or distributions in respect of Junior Financings prior to their scheduled maturity; or

(ii) Amend or modify, or permit the amendment or modification of, any provision of Junior Financing, or any agreement, document or instrument evidencing or relating thereto, other than amendments or modifications that (A) are not in any manner materially adverse to Lenders and that do not affect the subordination or payment provisions thereof (if any) in a manner adverse to the Lenders and (B) otherwise comply with the definition of "Permitted Refinancing Indebtedness."

(c) Permit any Material Subsidiary to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances to the Company or any Subsidiary that is a direct or indirect shareholder of such Subsidiary or (ii) the granting of Liens by the Company or such Material Subsidiary pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(A) restrictions imposed by applicable law;

(B) contractual encumbrances or restrictions in effect on the Amendment No. 3 Effective Date under Indebtedness existing on the Amendment No. 3 Effective Date and set forth on Schedule 6.01, the Term Loan Credit Agreement, the Second Lien Notes, the Senior Subordinated Notes, the First Priority Notes or any agreements related to any Permitted Refinancing Indebtedness in respect of any such Indebtedness that does not expand the scope of any such encumbrance or restriction;

(C) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Subsidiary pending the closing of such sale or disposition;

(D) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business;

(E) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(F) any restrictions imposed by any agreement relating to Indebtedness incurred pursuant to Section 6.01(r), to the extent such restrictions are not more restrictive, taken as a whole, than the restrictions contained in the Senior Subordinated Note Documents and Second Lien Note Documents;

(G) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

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(H) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(I) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(J) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer, lease or other disposition;

(K) customary restrictions and conditions contained in the document relating to any Lien, so long as (1) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(L) customary net worth provisions contained in Real Property leases entered into by Subsidiaries of the Company, so long as the Company has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Company and its Subsidiaries to meet their ongoing obligations;

(M) any agreement in effect at the time such subsidiary becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary other than Subsidiaries of such new Subsidiary;

(N) restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Subsidiary of the Company that is not a Subsidiary Loan Party;

(O) customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

(P) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(Q) restrictions contained in any Permitted Receivables Document with respect to any Special Purpose Receivables Subsidiary; or

(R) any encumbrances or restrictions of the type referred to in Sections 6.09(c)(i) and 6.09(c)(ii) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (A) through (Q) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

SECTION 6.10. Fiscal Year; Accounting. Permit its fiscal year to end on any date other than (a) September 30 or December 30 during the 2007 fiscal year, or (b) the Saturday nearest September 30, without prior notice to the Administrative Agent given concurrently with any required notice to the SEC.

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SECTION 6.11. Availability Triggering Event. If an Availability Triggering Event or Event of Default shall have occurred and shall be continuing, permit the ABL Fixed Charge Coverage Ratio, calculated as of the last day of the preceding fiscal quarter for which financial statements have been delivered to the Administrative Agent pursuant to Section 5.04(b), to be less than 1.00 to 1.00 (which calculation shall be made on a Pro Forma Basis to take into account any events described in the definition of “Pro Forma Basis” occurring during the period of four fiscal quarters ending on the last day of such preceding fiscal quarter).

SECTION 6.12. Qualified CFC Holding Companies. Permit any Qualified CFC Holding Company to (a) create, incur or assume any Indebtedness or other liability, or create, incur, assume or suffer to exist any Lien on, or sell, transfer or otherwise dispose of, other than in a transaction permitted under Section 6.05, any of the Equity Interests of a Foreign Subsidiary held by such Qualified CFC Holding Company, or any other assets, or (b) engage in any business or activity or acquire or hold any assets other than the Equity Interests of one or more Foreign Subsidiaries of the Company and/or one or more other Qualified CFC Holding Companies and the receipt and distribution of dividends and distributions in respect thereof.

#### ARTICLE VIA

##### Holdings Covenants

Holdings covenants and agrees with each Lender that, so long as this Agreement shall remain in effect (other than in respect of contingent indemnification obligations for which no claim has been made) and until the Commitments have been terminated and the Obligations (including principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document) have been paid in full and all Letters of Credit and Bankers' Acceptances have been canceled or fully cash collateralized (in a manner reasonably acceptable to the Administrative Agent and the Issuing Banks) or have expired and all amounts drawn or paid thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, (a) Holdings will not create, incur, assume or permit to exist any Lien (other than Liens of a type described in Section 6.02(d), (e) or (k)) on any of the Equity Interests issued by the Company other than the Liens created under the Loan Documents, (b) Holdings shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence; provided, that so long as no Default or Event of Default exists or would result therefrom, Holdings may merge with any other person, and (c) Holdings shall at all times own directly 100% of the Equity Interests of the Company and shall not sell, transfer or otherwise dispose of the Equity Interests in the Company.

#### ARTICLE VII

##### Events of Default

SECTION 7.01. Events of Default. In case of the happening of any of the following events (each, an “Event of Default”):

(a) any representation or warranty made or deemed made by Holdings, any Borrower or any other Loan Party herein or in any other Loan Document or any certificate or document delivered pursuant hereto or thereto shall prove to have been false or misleading in any material respect when so made or deemed made;

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(b) default shall be made in the payment of any principal of any Loan 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 by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or the reimbursement with respect to any L/C Disbursement or in the payment of any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(d) default shall be made in the due observance or performance by Holdings, any Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in Section 5.01(a), 5.05(a) or 5.08 or in Article VI or VIA;

(e) default shall be made in the due observance or performance by Holdings, any Borrower or any of the Subsidiaries of any covenant, condition or agreement contained in (i) Section 5.07 or Sections 5.11 through 5.15 and such default shall continue unremedied for a period of seven days after notice thereof from the Administrative Agent to the Borrowers, or (ii) any Loan Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of 30 days (or 60 days if such default results solely from a Foreign Subsidiary's failure to duly observe or perform any such covenant, condition or agreement) after notice thereof from the Administrative Agent to the Company;

(f) (i) any event or condition occurs that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) 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 or (ii) Holdings, any Borrower or any of the Subsidiaries shall fail to pay the principal of any Material Indebtedness at the stated final maturity thereof; provided, that this clause (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness;

(g) there shall have occurred a Change in Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of Holdings, any Borrower or any of the Subsidiaries, or of a substantial part of the property or assets of Holdings, any Borrower or any Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, any Borrower or any of the Subsidiaries or for a substantial part of the property or assets of Holdings, any Borrower or any of the Subsidiaries or (iii) the winding-up or liquidation of Holdings, any Borrower or any Subsidiary (except, in the case of any Subsidiary, in a transaction permitted by Section 6.05); and 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) Holdings, any Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now

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constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, any Borrower or any of the Subsidiaries or for a substantial part of the property or assets of Holdings, any Borrower or any Subsidiary, (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) become unable or admit in writing its inability or fail generally to pay its debts as they become due;

(j) the failure by Holdings, any Borrower or any Subsidiary to pay one or more final judgments aggregating in excess of \$35 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days;

(k) (i) a trustee shall be appointed by a United States district court to administer any Plan, (ii) an ERISA Event or ERISA Events shall have occurred with respect to any Plan or Multiemployer Plan, (iii) the PBGC shall institute proceedings (including giving notice of intent thereof) to terminate any Plan or Plans, (iv) Holdings, any Borrower or any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, or (v) Holdings, any 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; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect;

(l) (i) any Loan Document shall for any reason be asserted in writing by Holdings, any Borrower or any Subsidiary not to be a legal, valid and binding obligation of any party thereto, (ii) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrowers and the Subsidiaries on a consolidated basis, shall cease to be, or shall be asserted in writing by any Borrower or any other Loan Party not to be, a valid and perfected security interest (perfected as or having the priority required by this Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby, except to the extent that any such loss of perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Agreement or to file Uniform Commercial Code continuation statements or take the actions described on Schedule 3.04 and except to the extent that such loss is covered by a Lender's title insurance policy and the Administrative Agent shall be reasonably satisfied with the credit of such insurer, or (iii) the Guarantees pursuant to the Security Documents by Holdings, any Borrower or the Subsidiary Loan Parties of any of the Obligations shall cease to be in full force and effect (other than in accordance with the terms thereof), or shall be asserted in writing by Holdings or any Borrower or any Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations;

(m) (i) the Obligations shall fail to constitute "Senior Debt" (or the equivalent thereof) and "Designated Senior Debt" (or the equivalent thereof) under the Senior Subordinated Notes Indentures and under the documentation governing any Indebtedness incurred pursuant to Section 6.01(r) constituting subordinated Indebtedness or any Permitted Refinancing Indebtedness in respect of the Senior Subordinated Notes or such Indebtedness incurred pursuant to Section 6.01(r) constituting subordinated Indebtedness, or (ii) the subordination provisions thereunder



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shall be invalidated or otherwise cease, or shall be asserted in writing by Holdings, the Borrowers or any Subsidiary Loan Party to be invalid or to cease to be legal, valid and binding obligations of the parties thereto, enforceable in accordance with their terms; or

(n) there shall occur and be continuing an “Event of Default” under and as defined in the Term Loan Credit Agreement,

then, and in every such event (other than an event with respect to any Borrower described in paragraph (h) or (i) above), and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of the Required Lenders, shall, by notice to the Company, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding and (iii) if the Loans have been declared due and payable pursuant to clause (ii) above, demand cash collateral pursuant to Section 2.05(j); and in any event with respect to any Borrower described in paragraph (h) or (i) above, the Commitments shall automatically terminate, the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall automatically become due and payable and the Administrative Agent shall be deemed to have made a demand for cash collateral to the full extent permitted under Section 2.05(j), without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding.

SECTION 7.02. Exclusion of Immaterial Subsidiaries. Solely for the purposes of determining whether an Event of Default has occurred under clause (h), (i) or (l) of Section 7.01, any reference in any such clause to any Subsidiary shall be deemed not to include any Immaterial Subsidiary affected by any event or circumstance referred to in any such clause.

SECTION 7.03. Holdings’ Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 7.01, in the event that the Borrowers fail to comply with the requirements of the ABL Fixed Charge Coverage Ratio set forth in Section 6.11 hereof, until the expiration of the 10th day subsequent to the date that the certificate calculating such ABL Fixed Charge Coverage Ratio is required to be delivered pursuant to Section 5.04(c), Holdings shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Company (collectively, the “Cure Right”), and upon the receipt by the Company of such cash (the “Cure Amount”) pursuant to the exercise by Holdings of such Cure Right, such ABL Fixed Charge Coverage Ratio shall be recalculated giving effect to the following pro forma adjustment:

(i) EBITDA shall be increased with respect to such applicable quarter and any four-quarter period that contains such quarter, solely for the purpose of measuring the ABL Fixed Charge Coverage Ratio and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(ii) If, after giving effect to the foregoing pro forma adjustment, the Borrowers shall then be in compliance with the requirements of the ABL Fixed Charge Coverage Ratio set forth

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in Section 6.11 hereof, the Borrowers shall be deemed to have satisfied the requirements of such Section 6.11 as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of such Section 6.11 that had occurred shall be deemed cured for this purposes of the Agreement.

(b) Notwithstanding anything herein to the contrary, (i) in each four-fiscal-quarter period there shall be at least one fiscal quarter in which the Cure Right is not exercised, (ii) in each eight-fiscal-quarter period, there shall be a period of at least four consecutive fiscal quarters during which the Cure Right is not exercised, and (iii) for purposes of this Section 7.03, the Cure Amount shall be no greater than the amount required for purposes of complying with Section 6.11.

## ARTICLE VIII

### The Agents

#### SECTION 8.01. Appointment.

(a) Each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Swap Agreements) and each Issuing Bank (in such capacities and on behalf of itself and its Affiliates as potential counterparties to Swap Agreements) hereby irrevocably designates and appoints (A) the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, including as a Collateral Agent for such Lender and the other Secured Parties (including the Term Loan Secured Parties) under the Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto and (B) the Term Facility Collateral Agent as collateral agent for such lender for purposes of the Security Documents. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders and the Issuing Banks hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's or Issuing Bank's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, neither the Administrative Agent nor any Lender shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any other Lender or any Loan Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or any Lender. Except as expressly otherwise provided in this Agreement, the Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which such Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including (a) the determination of the applicability of ineligibility criteria and other determinations with respect to the calculation of the Borrowing Base, (b) the making of Agent Advances pursuant to Section 2.04(d), and (c) the exercise of remedies pursuant to Section 7.01, and any action so taken or not taken shall be deemed consented to by the Lenders.

(b) In furtherance of the foregoing, each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Swap Agreements) and each Issuing Bank (in such capacities and on behalf of itself and its Affiliates as potential counterparties to Swap Agreements) hereby appoints and authorizes the Collateral Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and

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discretion as are reasonably incidental thereto and to enter into and take such action on its behalf under the provisions of the Intercreditor Agreement and the Senior Lender Intercreditor Agreement and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of the Intercreditor Agreement and the Senior Lender Intercreditor Agreement, together with such other powers as are reasonably incidental thereto. In this connection, the Collateral Agent (and any Subagents appointed by the Collateral Agent pursuant to Section 8.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Collateral Agent) shall be entitled to the benefits of this Article VIII (including, without limitation, Section 8.07) as though the Collateral Agent (and any such Subagents) were an "Agent" under the Loan Documents, as if set forth in full herein with respect thereto.

(c) Each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Swap Agreements) and each Issuing Bank (in such capacities and on behalf of itself and its Affiliates as potential counterparties to Swap Agreements) irrevocably authorizes each of the Administrative Agent and the Collateral Agent, at its option and in its discretion, (i) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (A) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration, termination or cash collateralization of all Letters of Credit and Bankers' Acceptances, (B) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (C) if approved, authorized or ratified in writing in accordance with Section 9.08 hereof, (ii) to release any Guarantor from its obligations under the Loan Documents if such person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and (iii) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(i) and (j). Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Loan Documents.

(d) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (i) the Administrative Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Company) shall be entitled and empowered, by intervention in such proceeding or otherwise (A) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent and any Subagents allowed in such judicial proceeding, and (B) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (ii) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

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SECTION 8.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a "Subagent") with respect to all or any part of the Collateral; provided, that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrowers or any other Loan Party be required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrowers shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 8.02 in the absence of the Administrative Agent's gross negligence or willful misconduct.

SECTION 8.03. Exculpatory Provisions. Neither any Agent or its Affiliates nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (x) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (y) the Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to the Administrative Agent by the Borrowers, a Lender or an Issuing Bank. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default

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or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 8.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Credit Event, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to such Credit Event. The Administrative Agent may consult with legal counsel (including counsel to Holdings or the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 8.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender, Holdings or the Borrowers referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); provided, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 8.06. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal

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of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 8.07. Indemnification. The Lenders agree to indemnify each Agent and each Issuing Bank in its capacity as such (to the extent not reimbursed by Holdings or the Borrowers and without limiting the obligation of Holdings or the Borrowers to do so), in the amount of its *pro rata* share (based on its aggregate Revolving Facility Credit Exposure and unused Commitments hereunder; provided, that the aggregate principal amount of Swingline Loans owing to the Swingline Lender and of L/C – BA Disbursements owing to any Issuing Bank shall be considered to be owed to the Revolving Lenders ratably in accordance with their respective Revolving Facility Credit Exposure), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent or such Issuing Bank in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents (including, without limitation, the Intercreditor Agreement and the Senior Lender Intercreditor Agreement) or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent or such Issuing Bank under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's or such Issuing Bank's gross negligence or willful misconduct. The failure of any Lender to reimburse any Agent or any Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to such Agent or such Issuing Bank, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent or such Issuing Bank, as the case may be, for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse such Agent or such Issuing Bank, as the case may be, for such other Lender's ratable share of such amount. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 8.08. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued, or Letter of Credit or Swingline Loan participated in, by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 8.09. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 10 days' notice to the Lenders and the Borrowers. If the Administrative

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Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 7.01(b), (c), (h) or (i) shall have occurred and be continuing) be subject to approval by the Company (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the retiring Administrative Agent shall, on behalf of the Lenders, appoint a successor agent which shall (unless an Event of Default under Section 7.01(b), (c), (h) or (i) shall have occurred and be continuing) be subject to approval by the Company (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 8.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 8.10. Agents and Arrangers. Neither the Syndication Agent, the Documentation Agents nor any of the Joint Lead Arrangers shall have any duties or responsibilities hereunder in its capacity as such.

SECTION 8.11. Field Audit and Examination Reports; Disclaimer by Lenders. By signing this Agreement, each Lender:

(a) is deemed to have requested that the Collateral Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a "Report" and collectively, "Reports") prepared by or on behalf of the Collateral Agent;

(b) expressly agrees and acknowledges that neither the Banks nor the Agents (i) make any representation or warranty as to the accuracy of any Report, or (ii) shall be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Collateral Agent, a Bank, or other party performing any audit or examination will inspect only specific information regarding the Borrowers and will rely significantly upon the Borrowers' books and records, as well as on representations of the Borrowers' personnel;

(d) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its participants, or use any Report in any other manner; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agents and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrowers; and (ii) to pay and protect, and indemnify, defend, and hold the Agents and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages,

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costs, expenses, and other amounts (including Attorney Costs) incurred by the Agents and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

## ARTICLE IX

### Miscellaneous

#### SECTION 9.01. Notices; Communications.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 9.01(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party, the Administrative Agent, the Issuing Bank or the Swingline Lender, to the address, telecopier number, electronic mail address or telephone number specified for such person on Schedule 9.01; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers 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.

(c) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 9.01(b) above shall be effective as provided in such Section 9.01(b).

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(e) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 9.17) and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 9.01, or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative



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Agent); provided, that (A) the Company shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender, and (B) the Borrowers shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrowers shall be required to provide paper copies of the certificates required by Section 5.04(c) to the Administrative Agent. Except for such certificates required by Section 5.04(c), the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 9.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, regardless of any investigation made by such persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or L/C – BA Disbursement or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17 and 9.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit and the termination of the Commitments or this Agreement.

SECTION 9.03. Binding Effect. This Agreement shall become effective when it shall have been executed by Holdings, the Borrowers and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender (or otherwise received evidence satisfactory to the Administrative Agent) that such Lender has executed it, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrowers, each Issuing Bank, the Administrative Agent and each Lender and their respective permitted successors and assigns.

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 or Bankers' Acceptance), except that (i) the Borrowers may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrowers without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

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(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Company; provided, that no consent of the Company shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default under Sections 7.01(b), (c), (h) or (i) has occurred and is continuing, any other person;

(B) the Administrative Agent; and

(C) the Issuing Bank and the Swingline Lender; provided, that no consent of the Issuing Bank and the Swingline Lender shall be required for an assignment of all or any portion of a Revolving Loan.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5 million, unless each of the Company and the Administrative Agent otherwise consent; provided, that (1) no such consent of the Company shall be required if an Event of Default under Sections 7.01(b), (c), (h) or (i) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Related Funds shall be treated as one assignment), if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all applicable tax forms;

(D) the Assignee shall not be a Borrower or any of the Borrowers’ Affiliates or Subsidiaries;

(E) no such assignment shall be made to a Defaulting Lender;

(F) no such assignment shall be made to a natural person; and

(G) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor

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hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

For the purposes of this Section 9.04, “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 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. Notwithstanding the foregoing, no Lender shall be permitted to assign or transfer any portion of its rights and obligations under this Agreement to an Ineligible Institution.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.05). 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 9.04.

(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 Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans and Revolving L/C – BA Exposure owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, 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. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as Defaulting Lender. 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 Acceptance executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, 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 promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (b)(v).

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(c) (i) Any Lender may, without the consent of the Company or the Administrative Agent, sell participations to one or more banks or other entities (other than a Defaulting Lender) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments 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 pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided, that (x) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 9.04(a)(i) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 9.08(b) and (2) directly affects such Participant and (y) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to paragraph (c)(ii) of this Section 9.04, 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 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender, provided such Participant shall 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, 2.16 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 Company's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(e) and (f) 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 any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) The Borrowers, upon receipt of written notice from the relevant Lender, agree to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(f) Notwithstanding the foregoing, any Conduit Lender may assign any or all of the Loans it may have funded hereunder to its designating Lender without the consent of the Company or the Administrative Agent. Each of Holdings, the Borrowers, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; provided, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto and each Loan Party for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

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(g) If the Company wishes to replace the Loans or Commitments under the Revolving Facility with ones having different terms, it shall have the option, with the consent of the Administrative Agent, and subject to at least three Business Days' advance notice to the Lenders under the Revolving Facility, instead of prepaying the Loans or reducing or terminating the Commitments to be replaced, to (i) (A) with respect to all Loans and Commitments held by Lenders who are not then Defaulting Lenders, require all such Lenders under the Revolving Facility to assign all such Loans or Commitments to the Administrative Agent or its designees and (B) with respect to all Loans and Commitments held by Lenders who are then Defaulting Lenders, and notwithstanding anything to the contrary in Section 2.08, 2.18 or otherwise in this Agreement, prepay all amounts outstanding under any Loans held by such Defaulting Lenders, and terminate and cancel the Commitments held by such Defaulting Lenders; and (ii) amend the terms of all such Loans and Commitments so assigned pursuant to the preceding clause (i)(A) in accordance with Section 9.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 9.08(d)). Pursuant to any such assignment, all Loans and Commitments to be replaced, terminated, canceled and/or repaid pursuant to this Section 9.04(g) shall be purchased or repaid at par (allocated among the Lenders under the Revolving Facility in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrowers), accompanied by payment of any accrued interest and fees thereon and any other amounts owing pursuant to Section 9.05(b). By receiving such purchase price, the Lenders under the Revolving Facility shall automatically be deemed to have assigned the Loans or Commitments under the Revolving Facility pursuant to the terms of the form of Assignment and Acceptance attached as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (g) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(h) Notwithstanding the foregoing, no assignment may be made to an Ineligible Institution without the prior written consent of the Company.

**SECTION 9.05. Expenses; Indemnity.**

(a) The Borrowers agree to pay (i) all reasonable out-of-pocket expenses (including Other Taxes) incurred by the Administrative Agent in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent in connection with the syndication of the Commitments or the administration of this Agreement (including reasonable expenses incurred in connection with due diligence, to the extent incurred with the reasonable prior approval of the Company and the reasonable fees, disbursements and charges for no more than one counsel in each jurisdiction where Collateral is located or where any Canadian Guarantor is formed or incorporated) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions hereby contemplated shall be consummated), including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel LLP, counsel to the Administrative Agent, the Collateral Agent and the Joint Lead Arrangers, and, if necessary, the reasonable fees, charges and disbursements of one local counsel per jurisdiction; (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent or the Joint Lead Arrangers for (A) the costs of appraisals, inspections and verifications of the Collateral, including travel, lodging, and meals for inspections of the Collateral and the Loan Parties' operations by the Administrative Agent or the Collateral Agent, plus the Administrative Agent's then customary charge for field examinations and audits and the preparation of reports thereof, (B) the costs and expenses of forwarding loan proceeds, collecting checks, and other items of payment, and establishing and maintaining Payment Accounts and lock boxes, and (C) the costs and expenses of lien searches, taxes, fees and other charges for filing financing statements, and other actions to maintain, preserve and protect the Collateral and the Collateral Agent's Lien thereon; provided, that so long as no Default or Event of Default shall have occurred and be continuing, such costs, expenses and charges described in clauses (A)-(C) shall not exceed (x) \$100,000 per year in any

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year that the Collateral Agent conducts no more than one Collateral Audit and one appraisal of the Collateral and (y) \$150,000 per year in any year that the Collateral Agent conducts more than one Collateral Audit and appraisal of the Collateral; (iii) sums paid or incurred to pay any amount or take any action required of any Borrower or other Loan Party under the Loan Documents that such Borrower or Loan Party fails to take; and (iv) all out-of-pocket expenses (including Other Taxes) incurred by the Administrative Agent or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made or the Letters of Credit issued hereunder, including the fees, charges and disbursements of counsel for the Administrative Agent (including any special and local counsel).

(b) The Borrowers agree to indemnify the Administrative Agent, the Collateral Agent, the Joint Lead Arrangers, each Issuing Bank, each Lender, each of their respective Affiliates and each of their respective directors, trustees, officers, employees, agents, trustees and advisors (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document (including, without limitation, the Intercreditor Agreement and the Senior Lender Intercreditor Agreement) or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans or the use of any Letter of Credit or Bankers' Acceptance or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by Holdings, the Borrowers or any of their subsidiaries or Affiliates; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee (for purposes of this proviso only, each of the Administrative Agent, the Joint Lead Arrangers, any Issuing Bank or any Lender shall be treated as several and separate Indemnitees, but each of them together with its respective Related Parties, shall be treated as a single Indemnitee). Subject to and without limiting the generality of the foregoing sentence, the Borrowers agree to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel or consultant fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (A) any claim related in any way to Environmental Laws and Holdings, any Borrower or any of their Subsidiaries, or (B) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any Property; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Parties. None of the Indemnitees (or any of their respective affiliates) shall be responsible or liable to the Fund, Holdings, the Borrowers or any of their respective subsidiaries, Affiliates or stockholders or any other person or entity for any special, indirect, consequential or punitive damages, which may be alleged as a result of the Facility or the Transactions. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, any Issuing Bank or any Lender. All amounts due under this Section 9.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

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(c) Except as expressly provided in Section 9.05(a) with respect to Other Taxes, which shall not be duplicative with any amounts paid pursuant to Section 2.17, this Section 9.05 shall not apply to Taxes.

(d) To the fullest extent permitted by applicable law, Holdings and the Borrowers shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) The agreements in this Section 9.05 shall survive the resignation of the Administrative Agent, any Issuing Bank, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

SECTION 9.06. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender and each Issuing Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Issuing Bank to or for the credit or the account of Holdings, the Borrowers or any Subsidiary against any of and all the obligations of Holdings or the Borrowers now or hereafter existing under this Agreement or any other Loan Document held by such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender and each Issuing Bank under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender or such Issuing Bank may have.

SECTION 9.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

SECTION 9.08. Waivers; Amendment.

(a) No failure or delay of the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents 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 any other Loan Document or consent to any departure by Holdings, any Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, any Borrower or any other Loan Party in any case shall entitle such person to any other or further notice or demand in similar or other circumstances.

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(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) as provided in Section 2.21 or Section 2.24, (y) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrowers and the Required Lenders, and (z) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent (or, in the case of any Security Documents, the Collateral Agent if so provided therein) and consented to by the Required Lenders; provided, however, that no such agreement shall

(i) decrease or forgive the principal amount of, or extend the final maturity of, or decrease the rate of interest on, any Loan or any L/C – BA Disbursement, or extend the stated expiration of any Letter of Credit or Bankers' Acceptance beyond the Revolving Facility Maturity Date, without the prior written consent of each Lender directly affected thereby, except as provided in Section 2.05(c),

(ii) increase or extend the Commitment of any Lender or decrease the Commitment Fees or L/C-BA Participation Fees or other fees of any Lender without the prior written consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender),

(iii) extend any date on which payment of interest on any Loan or any L/C – BA Disbursement or any Fees is due, without the prior written consent of each Lender adversely affected thereby,

(iv) amend the provisions of Section 5.02 of the Collateral Agreement (except as contemplated by Section 2.21 in connection with the institution of a FILO Subfacility) or any other provision of the Loan Documents providing for the *pro rata* sharing of payments, without the prior written consent of each Lender adversely affected thereby,

(v) amend or modify the provisions of this Section 9.08 (except as contemplated by Section 2.21 in connection with the institution of a FILO Subfacility) or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Loans and Commitments are included on the Closing Date),

(vi) release all or substantially all the Collateral or release any of Holdings, the Company or all or substantially all of the Subsidiary Loan Parties from their respective Guarantees under the Collateral Agreement, unless, in the case of a Subsidiary Loan Party, all or substantially all the Equity Interests of such Subsidiary Loan Party is sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender,

(vii) increase any of the percentages set forth in the definition of the Borrowing Base without the consent of all of the Lenders (it being understood that the incorporation of assets owned by any Canadian Guarantor on terms agreed by the Administrative Agent in its sole discretion as contemplated by Section 2.24 without the consent of any Lenders shall not be prohibited hereby), or

(viii) increase the Incremental Revolving Facility Commitment above \$150 million or add any other Indebtedness under the Facility without the prior written consent of each Lender;



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provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or an Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any assignee of such Lender.

(c) Without the consent of the Syndication Agent, the Documentation Agent or any Joint Lead Arranger or any Lender or Issuing Bank, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrowers (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(e) Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrowers and the Administrative Agent to the extent necessary to integrate any Incremental Revolving Facility Commitments on substantially the same basis as the Revolving Loans, or any FILO Commitments on customary terms as contemplated by Section 2.21.

SECTION 9.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "Charges"), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender or any Issuing Bank, shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender or such Issuing Bank, shall be limited to the Maximum Rate; provided, that such excess amount shall be paid to such Lender or such Issuing Bank on subsequent payment dates to the extent not exceeding the legal limitation.

SECTION 9.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

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SECTION 9.11. 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 RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. 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 AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 9.03. Delivery of an executed counterpart to this Agreement by facsimile transmission (or other electronic transmission pursuant to procedures approved by the Administrative Agent) shall be as effective as delivery of a manually signed original.

SECTION 9.14. 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 are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15. Jurisdiction; Consent to Service of Process.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof (collectively, "New York Courts"), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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SECTION 9.16. Confidentiality. Each of the Lenders, each Issuing Bank and each of the Agents agrees that it shall maintain in confidence any information relating to Holdings, the Borrowers and any Subsidiary furnished to it by or on behalf of Holdings, the Borrowers or any Subsidiary (other than information that (a) has become generally available to the public other than as a result of a disclosure by such party, (b) has been independently developed by such Lender, such Issuing Bank or such Agent without violating this Section 9.16 or (c) was available to such Lender, such Issuing Bank or such Agent from a third party having, to such person's knowledge, no obligations of confidentiality to Holdings, the Borrowers or any other Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any person that approves or administers the Loans on behalf of such Lender (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 9.16), except: (A) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, (B) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the National Association of Securities Dealers, Inc., (C) to its parent companies, Affiliates or auditors (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 9.16), (D) in order to enforce its rights under any Loan Document in a legal proceeding, (E) to any pledge under Section 9.04(d) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall have been instructed to keep the same confidential in accordance with this Section 9.16) and (F) to any direct or indirect contractual counterparty in Swap Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.16).

SECTION 9.17. Platform; Borrower Materials. The Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrowers or their securities) (each, a "Public Lender"). Each Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, the Issuing Bank and the Lenders to treat such Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States Federal and state securities laws, (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (iv) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

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SECTION 9.18. Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any of the Equity Interests or assets of any Subsidiary Loan Party to a person that is not (and is not required to become) a Loan Party in a transaction not prohibited by Section 6.05, the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrowers and at the Borrowers' expense to release any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party in a transaction permitted by Section 6.05 and as a result of which such Subsidiary Loan Party would cease to be a Subsidiary, terminate such Subsidiary Loan Party's obligations under its Guarantee. In addition, the Collateral Agent agrees to take such actions as are reasonably requested by Holdings or the Borrowers and at the Borrowers' expense to terminate the Liens and security interests created by the Loan Documents when all the Obligations (other than contingent indemnification Obligations with respect to which no claim has been made) are paid in full and all Letters of Credit and Commitments are terminated. Any representation, warranty or covenant contained in any Loan Document relating to any such Equity Interests, asset or subsidiary of Holdings shall no longer be deemed to be made once such Equity Interests or asset is so conveyed, sold, leased, assigned, transferred or disposed of.

SECTION 9.19. Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrowers in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

SECTION 9.20. USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

SECTION 9.21. Joint and Several Liability. All Revolving Loans, upon funding, shall be deemed to be jointly funded to and received by the Borrowers. Each Borrower jointly and severally agrees to pay, and shall be jointly and severally liable under this Agreement for, all Obligations, regardless

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of the manner or amount in which proceeds of Revolving Loans are used, allocated, shared, or disbursed by or among the Borrowers themselves, or the manner in which an Agent and/or any Lender accounts for such Revolving Loans or other extensions of credit on its books and records. Each Borrower shall be liable for all amounts due to an Agent and/or any Lender under this Agreement, regardless of which Borrower actually receives Revolving Loans or other extensions of credit hereunder or the amount of such Revolving Loans and extensions of credit received or the manner in which such Agent and/or such Lender accounts for such Revolving Loans or other extensions of credit on its books and records. Each Borrower's Obligations with respect to Revolving Loans and other extensions of credit made to it, and such Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans made to the other Borrowers hereunder, shall be separate and distinct obligations, but all such Obligations shall be primary obligations of such Borrower. The Borrowers acknowledge and expressly agree with the Agents and each Lender that the joint and several liability of each Borrower is required solely as a condition to, and is given solely as inducement for and in consideration of, credit or accommodations extended or to be extended under the Loan Documents to any or all of the other Borrowers and is not required or given as a condition of extensions of credit to such Borrower. Each Borrower's obligations under this Agreement and as an obligor under a Guaranty Agreement shall be separate and distinct obligations. Each Borrower's obligations under this Agreement shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance, or subordination of the Obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the Obligations of any other Borrower, (ii) the absence of any attempt to collect the Obligations from any other Borrower, any Guarantor, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance, or granting of any indulgence by an Agent and/or any Lender with respect to any provision of any instrument evidencing the Obligations of any other Borrower or Guarantor, or any part thereof, or any other agreement now or hereafter executed by any other Borrower or Guarantor and delivered to an Agent and/or any Lender, (iv) the failure by an Agent and/or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations of any other Borrower or Guarantor, (v) an Agent's and/or any Lender's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (vi) any borrowing or grant of a security interest by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code, (vii) the disallowance of all or any portion of an Agent's and/or any Lender's claim(s) for the repayment of the Obligations of any other Borrower under Section 502 of the Bankruptcy Code, or (viii) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower. With respect to any Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to Revolving Loans or other extensions of credit made to any of the other Borrowers hereunder, such Borrower waives, until the Obligations shall have been paid in full and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy which an Agent and/or any Lender now has or may hereafter have against any other Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to an Agent and/or any Lender to secure payment of the Obligations or any other liability of any Borrower to an Agent and/or any Lender. Upon any Event of Default, the Agents may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that the Agents shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations. Notwithstanding anything to the contrary provided herein, until the consummation of the merger of Covalence with and into Berry, with Berry surviving, the amount of Obligations deemed funded to Berry and each of the Borrowers that are subsidiaries of Berry, and the amount of Obligations for which such Borrowers agree to pay and for which they shall be liable shall be limited to the amount of such Obligations that such entities may incur pursuant to the proviso of Section 4.03(a) of each of the Berry Senior Subordinated Notes Indenture and the Original Second Lien Notes Indenture.

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SECTION 9.22. Contribution and Indemnification among the Borrowers. Each Borrower is obligated to repay the Obligations as joint and several obligor under this Agreement. To the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Revolving Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an “Accommodation Payment”), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower’s Allocable Amount (as defined below) and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the “Allocable Amount” of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act (“UFTA”) or Section 2 of the Uniform Fraudulent Conveyance Act (“UFCA”), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA. All rights and claims of contribution, indemnification, and reimbursement under this Section shall be subordinate in right of payment to the prior payment in full of the Obligations. The provisions of this Section shall, to the extent expressly inconsistent with any provision in any Loan Document, supersede such inconsistent provision.

SECTION 9.23. Agency of Company for Each Other Borrower. Each of the other Borrowers irrevocably appoints the Company as its agent for all purposes relevant to this Agreement, including the giving and receipt of notices and execution and delivery of all documents, instruments, and certificates contemplated herein (including, without limitation, execution and delivery to the Agents of Borrowing Base Certificates, Borrowing Requests and Interest Election Requests) and all modifications hereto. Any acknowledgment, consent, direction, certification, or other action which might otherwise be valid or effective only if given or taken by all or any of the Borrowers or acting singly, shall be valid and effective if given or taken only by the Company, whether or not any of the other Borrowers joins therein, and the Agents and the Lenders shall have no duty or obligation to make further inquiry with respect to the authority of the Company under this Section 9.23, provided that nothing in this Section 9.23 shall limit the effectiveness of, or the right of the Agents and the Lenders to rely upon, any notice (including without limitation a Borrowing Request or an Interest Election Request), document, instrument, certificate, acknowledgment, consent, direction, certification, or other action delivered by any Borrower pursuant to this Agreement.

SECTION 9.24. Additional Borrowers.

(a) Subject to any applicable limitations set forth in the Security Documents, upon the request of the Company from time to time, any direct or indirect Domestic Subsidiary formed or otherwise purchased or acquired after the Original Agreement Date (including pursuant to a Permitted Business Acquisition), or that ceases to constitute an Unrestricted Subsidiary after the Original Agreement Date, may be added as an Other Borrower hereunder, effective upon the execution and delivery to the Administrative Agent of (a) by such Domestic Subsidiary, (i) a Borrower Joinder Agreement and amendments or joinders to any outstanding promissory notes issued under Section 2.09(e) and (ii) any other Security Documents and other documents that such Domestic Subsidiary would be required to deliver pursuant to the Collateral and Guarantee Requirement if it were becoming a guarantor (with such modifications thereto as are

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reasonably necessary to accommodate such Domestic Subsidiary becoming a Borrower and not a Guarantor), and (b) by Holdings and each Subsidiary Loan Party, reaffirmations from each of their respective Guarantees under the Loan Documents. For the avoidance of doubt, Domestic Subsidiaries which were Other Borrowers immediately prior to the Amendment No. 4 Effective Date shall be Other Borrowers hereunder.

(b) Each of the Borrowers hereby designates the Company as its representative and agent for all purposes under the Loan Documents, including requests for Revolving Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base Certificates and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent, the Issuing Bank or any Lender. The Company hereby accepts such appointment. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Borrowing Request) delivered by the Company on behalf of any of the Borrowers. The Administrative Agent and the Lenders may give any notice or communication with a Borrower hereunder to the Company on behalf of such Borrower. Each of the Borrowers agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by the Company shall be binding upon and enforceable against it.

SECTION 9.25. Express Waivers By Borrowers In Respect of Cross Guaranties and Cross Collateralization. Each Borrower agrees as follows:

(a) Each Borrower hereby waives: (i) notice of acceptance of this Agreement; (ii) notice of the making of any Revolving Loans, the issuance of any Letter of Credit or any other financial accommodations made or extended under the Loan Documents or the creation or existence of any Obligations; (iii) notice of the amount of the Obligations, subject, however, to such Borrower's right to make inquiry of the Administrative Agent to ascertain the amount of the Obligations at any reasonable time; (iv) notice of any adverse change in the financial condition of any other Borrower or of any other fact that might increase such Borrower's risk with respect to such other Borrower under the Loan Documents; (v) notice of presentment for payment, demand, protest, and notice thereof as to any promissory notes or other instruments among the Loan Documents; and (vii) all other notices (except if such notice is specifically required to be given to such Borrower hereunder or under any of the other Loan Documents to which such Borrower is a party) and demands to which such Borrower might otherwise be entitled;

(b) Each Borrower hereby waives the right by statute or otherwise to require an Agent or any Lender to institute suit against any other Borrower or to exhaust any rights and remedies which an Agent or any Lender has or may have against any other Borrower. Each Borrower further waives any defense arising by reason of any disability or other defense of any other Borrower (other than the defense that the Obligations shall have been fully and finally performed and paid) or by reason of the cessation from any cause whatsoever of the liability of any such Borrower in respect thereof.

(c) Each Borrower hereby waives and agrees not to assert against an Agent, any Lender, or any Issuing Bank: (i) any defense (legal or equitable), set-off, counterclaim, or claim which such Borrower may now or at any time hereafter have against any other Borrower or any other party liable under the Loan Documents; (ii) any defense, set-off, counterclaim, or claim of any kind or nature available to any other Borrower against an Agent, any Lender, or any Issuing Bank, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor; (iii) any right or defense arising

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by reason of any claim or defense based upon an election of remedies by an Agent, any Lender, or any Issuing Bank under any applicable law; (iv) the benefit of any statute of limitations affecting any other Borrower's liability hereunder;

(d) Each Borrower consents and agrees that, without notice to or by such Borrower and without affecting or impairing the obligations of such Borrower hereunder, the Agents may (subject to any requirement for consent of any of the Lenders to the extent required by this Agreement), by action or inaction: (i) compromise, settle, extend the duration or the time for the payment of, or discharge the performance of, or may refuse to or otherwise not enforce the Loan Documents; (ii) release all or any one or more parties to any one or more of the Loan Documents or grant other indulgences to any other Borrower in respect thereof; (iii) amend or modify in any manner and at any time (or from time to time) any of the Loan Documents; or (iv) release or substitute any Person liable for payment of the Obligations, or enforce, exchange, release, or waive any security for the Obligations or any Guaranty of the Obligations;

(e) Each Borrower represents and warrants to the Agents and the Lenders that such Borrower is currently informed of the financial condition of all other Borrowers and all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower agrees that neither the Agents, any Lender, nor any Issuing Bank has any responsibility to inform any Borrower of the financial condition of any other Borrower or of any other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

SECTION 9.26. Intercreditor Agreements and Collateral Agreement. Each Lender hereunder (a) consents to the priority and/or subordination of Liens provided for in the Intercreditor Agreement, (b) consents to the priority and/or subordination of Liens provided for in the Senior Lender Intercreditor Agreement, (c) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement or the Senior Lender Intercreditor Agreement, (d) authorizes and instructs the Collateral Agent to enter into the Intercreditor Agreement as First Lien Intercreditor Agent and on behalf of such Lender, (e) authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the Senior Lender Intercreditor Agreement as Revolving Facility Administrative Agent and Collateral Agent, respectively, and on behalf of such Lender, and (f) consents to the amendment of the First Lien Guarantee and Collateral Agreement under (and as defined in) the Existing Credit Agreement, in the form of the Collateral Agreement referred to herein. The foregoing provisions are intended as an inducement to the Lenders to extend credit and such Lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement and the Senior Lender Intercreditor Agreement.

SECTION 9.27. Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Guarantee under Article II of the Collateral Agreement or the grant of the security interest under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Guarantee and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Guarantee under Article II of the Collateral Agreement voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 9.27 shall remain in full force and effect until the Obligations have been paid and performed in full. Each Qualified ECP Guarantor intends this Section 9.27 to constitute, and this Section 9.27 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.



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**SCHEDULE 1.01(c)**

**Mortgaged Properties**

**As of Amendment No. 4 Effective Date**

Berry Plastics Corporation:

1. 9534 Foley Boulevard, Coon Rapids, Minnesota (Anoka County)\*\*
2. 4613 Central Avenue, Monroe, Louisiana (Ouachita Parish) \*\*
3. 1 Armin Road, Pryor, Oklahoma (Mayes County) \*\*
4. 1800 North M Avenue, Sioux Falls, South Dakota (Minnehaha County) \*\*
5. 202 S. John Stockbauer Drive, Victoria, Texas (Victoria County) \*\*
6. 3414 Wesley Chapel-Stouts Road, Monroe, North Carolina (Union County) \*\*
7. 800 East Horizon Drive, Henderson, Nevada (Clark County) \*\*

Covalence Specialty Adhesives, LLC:

8. 2320 Bowling Green Road, Franklin, Kentucky (Simpson County) \*\*

Berry Plastics Design, LLC:

9. 1401 Progress Road, Suffolk, Virginia (City of Suffolk)\*\*

Venture Packaging Midwest, Inc.:

10. 311 W. Monroe Street, Monroeville, Ohio (Huron County) \*\*

Cardinal Packaging, Inc.:

11. 1275 Ethan Avenue, Streetsboro, Ohio (Portage County)\*\*

Knight Plastics, LLC:

12. 1008 Courtaulds Drive, Woodstock, Illinois (McHenry County) \*\*

Sun Coast Industries, LLC:

13. 7350 26<sup>th</sup> Ct. East, Sarasota, Florida (Manatee County)\*\*

BPRex Healthcare Packaging, Inc.:

14. 1900 Commerce Parkway, Franklin, Indiana (Johnson County)\*\*

\*\* Property value less than \$10 million as of Amendment No. 4 Effective Date

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**SCHEDULE 1.01(d)**

**Immaterial Subsidiaries**

**As of Amendment No. 4 Effective Date**

Aspen Industrial S.A. de C.V.  
Berry Plastics (Australia) Pty Ltd.  
Berry Plastics Acquisition Corporation XIV, LLC  
Berry Plastics Acquisition LLC II  
Berry Plastics Asia Pacific Limited  
Berry Plastics Asia Pte. Ltd.  
Berry Plastics Beheer B.V.  
Berry Plastics Canada, Inc.  
Berry Plastics de Mexico, S. de R.L. de C.V.  
Berry Plastics Dutch Holding Cooperatief U. A.  
Berry Plastics France Holdings SAS  
Berry Plastics GmbH  
Berry Plastics Holding GmbH & Co. KG  
Berry Plastics Hong Kong Limited  
Berry Plastics International B.V.  
Berry Plastics International C.V.  
Berry Plastics International GmbH  
Berry Plastics International, LLC  
Berry Plastics Malaysia SDN BHD  
Berry Plastics Qingdao Limited  
BPRex Closures and Packaging Services Ltd.  
BPRex de Mexico S.A. de R.L. de CV  
BPRex Healthcare Offranville SAS  
BPRex Participacoes Ltda  
BPRex Plastic Packaging de Mexico S.A. de C.V.  
BPRex Plasticos Do Brasil Ltda  
BPRex Singapore Pte. Ltd.  
Seal for Life Industries Mexico, S. de R.L. de C.V.  
CSM Mexico SPV LLC  
Frans Nooren Afdichtingssystemen B.V.  
Grupo de Servicios Berpla, S. de R.L. de C.V.  
Jacinto Mexico, S.A. de C.V.  
Pliant de Mexico S.A. de C.V.  
Rafypak, S.A. de C.V.  
Rexam Pharma Packaging India Pvt. Ltd.  
BPRex Plastic Packaging (India) Limited  
Seal for Life India Private Limited  
Seal for Life Industries Beta LLC

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Seal for Life Industries BVBA  
Seal for Life Industries Tijuana LLC  
Seal for Life Technologies & Services B.V.  
Stopaq B.V.  
Stopaq Saudi Factory LLC  
Tyco Acquisition Alpha LLC

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**SCHEDULE 1.01(f)**

**Existing Bankers' Acceptances**

**As of Amendment No. 4 Effective Date**

None.

**SCHEDULE 1.01(g)**

**Existing Letters of Credit**

**As of Amendment No. 4 Effective Date**

| <u>L/C #</u>   | <u>Beneficiary</u>                  | <u>Balance</u>         |
|----------------|-------------------------------------|------------------------|
| 1158927        | KAPS TEX CO. LTD                    | \$ 4,924.80            |
| 1158932        | KAPS TEX CO. LTD                    | 54,172.80              |
| BPH0P-07006994 | NATIONAL UNION FIRE INS. CO.        | 2,433,179.00           |
| 3068927        | CONSTELLATION NEWENERGY GAS         | 24,000.00              |
| 3088524        | 4875 HUNTER AVENUE INVESTMENT GROUP | 350,000.00             |
| 3088253        | BLT ALAMEDA/OXNARD LP               | 300,000.00             |
| 3088525        | FEDERAL INSURANCE AGENCY            | 3,376,000.00           |
| 3070877        | OHIO BUREAU OF WORKERS              | 133,000.00             |
| 3088526        | PENSION BENEFIT GUARANTY            | 3,000,000.00           |
| 3094735        | TRAVELERS CASUALTY AND SURETY       | 59,360.03              |
| 68060599       | GENERAL ELECTRIC CAPITAL            | 1,037,072.40           |
| 68077109       | SAFETY NATIONAL CORPORATION         | 10,200,000.00          |
| 3096411        | DUKE BALTIMORE LLC                  | 68,340.53              |
| 3068921        | FEDERAL INSURANCE COMPANY           | 5,094,000.00           |
| 68077005       | BANK OF AMERICA                     | 1,514,217.09           |
| 68077004       | BANK OF AMERICA                     | 3,188,359.11           |
| 3070884        | ENTERGY ARKANSAS INC.               | 400,000.00             |
| 3070883        | SOMPO JAPAN INSURANCE COMPANY       | 2,450,000.00           |
| 3070874        | ZURICH AMERICAN INSURANCE CO        | 1,000,000.00           |
| 3080362        | ARCH INSURANCE CO.                  | 1,383,822.00           |
| 3080364        | NATIONAL BANK & TRUST COMPANY OF    | 102,858.76             |
| 3068918        | OHIO BUREAU OF WORKERS COMP         | 337,000.00             |
|                | <b>Total</b>                        | <b>\$36,510,306.52</b> |

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**SCHEDULE 1.01(i)**

**Unrestricted Subsidiaries**

**As of Amendment No. 4 Effective Date**

BP Parallel, LLC (Delaware)  
Berry Plastics Escrow Corporation (Delaware)  
Berry Plastics Escrow, LLC (Delaware)

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**SCHEDULE 2.01****Commitments****As of Amendment No. 4 Effective Date**

| <b><u>Name of Lender</u></b>            | <b><u>Revolving Facility<br/>Commitment</u></b> | <b><u>Revolving Facility<br/>Commitment Percentage</u></b> |
|---|---|--|
| Bank of America, N.A.                   | \$ 125,000,000                                  | 19.23%   |
| Wells Fargo Bank, National Association  | \$ 100,000,000                                  | 15.38%   |
| Barclays Bank PLC                       | \$ 75,000,000                                   | 11.54%   |
| Citibank, N.A.                          | \$ 60,000,000                                   | 9.23%  |
| Credit Suisse AG, Cayman Islands Branch | \$ 60,000,000                                   | 9.23%  |
| US Bank National Association            | \$ 60,000,000                                   | 9.23%  |
| NYCB Specialty Finance Company          | \$ 50,000,000                                   | 7.69%  |
| Goldman Sachs Bank USA                  | \$ 35,000,000                                   | 5.38%  |
| Deutsche Bank AG New York Branch        | \$ 25,000,000                                   | 3.85%  |
| BMO Harris Bank N.A.                    | \$ 20,000,000                                   | 3.08%  |
| City National Bank                      | \$ 20,000,000                                   | 3.08%  |
| JPMorgan Chase Bank, N.A.               | \$ 20,000,000                                   | 3.08%  |
| <b><u>Total</u></b>                     | <b><u>\$ 650,000,000</u></b>                    | <b><u>100%</u></b>   |

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**SCHEDULE 3.08(a)**

**Subsidiaries**

**As of Amendment No. 4 Effective Date**

| <b><u>Name</u></b>                             | <b><u>Jurisdiction of<br/>Incorporation, Formation<br/>or Organization</u></b> | <b><u>Interest held by:</u></b>                                |
|--|--|--|
| AeroCon, LLC                                   | Delaware   | 100% of membership interest held by Berry Plastics Corporation |
| Berry Plastics IK, LLC                         | Delaware   | 100% of membership interest held by Berry Plastics Corporation |
| Berry Plastics Acquisition Corporation IX      | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Acquisition Corporation V       | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Corporation                     | Delaware   | 100% of common stock held by Berry Plastics Group, Inc.        |
| Berry Plastics Opco, Inc.                      | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Acquisition LLC X               | Delaware   | 100% of membership interest held by Berry Plastics Corporation |
| Berry Plastics Acquisition Corporation XI      | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Acquisition Corporation XII     | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Acquisition Corporation XIII    | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Acquisition Corporation XV, LLC | Delaware   | 100% of membership interest held by Berry Plastics Corporation |
| Berry Plastics Design, LLC                     | Delaware   | 100% of membership interest held by Berry Plastics Corporation |



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|   |            |  |
|---|------------|--|
| Berry Plastics Filmco, Inc.               | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics SP, Inc.                   | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Technical Services, Inc.   | Delaware   | 100% of common stock held by Venture Packaging, Inc.           |
| Berry Sterling Corporation                | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| BPRex Brazil Holding Inc.                 | Delaware   | 100% of common stock held by BPRex Healthcare Brookville, Inc. |
| BPRex Closure Systems, LLC                | Delaware   | 100% of membership interest held by Berry Plastics Corporation |
| BPRex Closures Kentucky Inc.              | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| BPRex Closures, LLC                       | Delaware   | 100% of membership interest held by Berry Plastics Corporation |
| BPRex Delta Inc.                          | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| BPRex Healthcare Brookville Inc.          | Delaware   | 100% of common stock held by BPRex Plastic Packaging, Inc.     |
| BPRex Healthcare Packaging Inc.           | Delaware   | 100% of common stock held by BPRex Plastic Packaging, Inc.     |
| BPRex Plastic Packaging Inc.              | Delaware   | 100% of common stock held by Berry Plastics Corporation        |
| BPRex Plastics Services Company Inc.      | Delaware   | 100% of common stock held by BPRex Plastic Packaging, Inc.     |
| BPRex Product Design and Engineering Inc. | Minnesota  | 100% of common stock held by BPRex Healthcare Brookville, Inc. |
| BPRex Specialty Products Puerto Rico Inc. | New Jersey | 100% of common stock held by BPRex Plastic Packaging, Inc.     |

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|                                       |          |   |
|---------------------------------------|----------|---|
| Caplas Neptune, LLC                   | Delaware | 100% of membership interest held by Captive Plastics LLC  |
| Caplas LLC                            | Delaware | 100% of membership interest held by Captive Plastics LLC  |
| Captive Plastics, LLC                 | Delaware | 100% of membership interest held by Berry Plastics SP, Inc.                                     |
| Captive Plastics Holdings, LLC        | Delaware | 100% of membership interest held by Berry Plastics SP, Inc.                                     |
| Cardinal Packaging, Inc.              | Delaware | 100% of common stock held by CPI Holding Corporation  |
| Covalence Specialty Adhesives LLC     | Delaware | 100% of membership interest held by Berry Plastics Corporation                                  |
| Covalence Specialty Coatings LLC      | Delaware | 100% of membership interest held by Berry Plastics Corporation                                  |
| CPI Holding Corporation               | Delaware | 100% of common stock held by Berry Plastics Corporation   |
| Grafco Industries Limited Partnership | Maryland | 1% General Partner Interest by Caplas Neptune, LLC – 99% Limited Partner Interest by Caplas LLC |
| Kerr Group, LLC                       | Delaware | 100% of membership interest held by Berry Plastics Corporation                                  |
| Knight Plastics, LLC                  | Delaware | 100% of membership interest held by Berry Plastics SP, Inc.                                     |
| Packerware, LLC                       | Delaware | 100% of membership interest held by Berry Plastics SP, Inc.                                     |
| Pescor, Inc.                          | Delaware | 100% of common stock held by Berry Plastics Corporation   |
| Pliant Corporation International      | Utah     | 100% of common stock held by Pliant, LLC  |
| Pliant, LLC                           | Delaware | 100% of membership interest held by Berry Plastics Corporation                                  |

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|   |           |   |
|---|-----------|---|
| Poly-Seal, LLC                                  | Delaware  | 100% of membership interest held by Berry Plastics Corporation    |
| Prime Label & Screen Incorporated               | Wisconsin | 100% of common stock held by Berry Plastics Corporation           |
| Rollpak Corporation                             | Delaware  | 100% of common stock held by Berry Plastics Corporation           |
| Saffron Acquisition, LLC                        | Delaware  | 100% of membership interest held by Kerr Group, LLC               |
| Seal for Life Industries, LLC                   | Delaware  | 100% of membership interest held by Berry Plastics Corporation    |
| Setco, LLC                                      | Delaware  | 100% of membership interest held by Kerr Group, LLC               |
| Sun Coast Industries, LLC                       | Delaware  | 100% of membership interest held by Saffron Acquisition, LLC      |
| Uniplast Holdings, LLC                          | Delaware  | 100% of membership interest held by Pliant, LLC                   |
| Uniplast U.S., Inc.                             | Delaware  | 100% of common stock held by Uniplast Holdings, Inc. <sup>1</sup> |
| Venture Packaging Midwest, Inc.                 | Delaware  | 100% of common stock held by Venture Packaging, Inc.              |
| Venture Packaging, Inc.                         | Delaware  | 100% of common stock held by Berry Plastics Corporation           |
| Aspen Industrial S.A. de C.V.                   | Mexico    | 100% of interest held by Pliant, LLC                              |
| Berry Plastics (Australia) Pty Ltd.             | Australia | 100% of interest held by Berry Plastics International B.V.        |
| Berry Plastics Acquisition Corporation XIV, LLC | Delaware  | 100% of membership interest held by Berry Plastics Corporation    |

<sup>1</sup> Berry Plastics Canada, Inc. owns preferred stock in Uniplast U.S., Inc.

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|  |             |   |
|--|-------------|---|
| Berry Plastics Acquisition LLC II              | Delaware    | 100% of membership interest held by Berry Plastics Corporation  |
| Berry Plastics Asia Pacific Limited            | Hong Kong   | 75% of interest held by Berry Plastics Hong Kong Limited <sup>2</sup>   |
| Berry Plastics Asia Pte. Ltd.                  | Singapore   | 100% of interest held by Berry Plastics International B.V.  |
| Berry Plastics Beheer B.V.                     | Netherlands | 100% of interest held by Berry Plastics Dutch Holding Cooperatief U.A.  |
| Berry Plastics Canada, Inc.                    | Canada      | 100% of interest held by Berry Plastics Corporation   |
| Berry Plastics de Mexico, S. de R.L. de C.V.   | Mexico      | 100% of interest held by Berry Plastics Acquisition Corporation V   |
| Berry Plastics Dutch Holding Cooperatief U. A. | Netherlands | 99.99% of interest held by Berry Plastics International B.V. <sup>3</sup>   |
| Berry Plastics France Holdings SAS             | France      | 100% of interest held by Berry Plastics International B.V.  |
| Berry Plastics GmbH                            | Germany     | 100% of interest held by Berry Plastics Holding GmbH & Co. KG   |
| Berry Plastics Holding GmbH & Co. KG           | Germany     | Berry Plastics International GmbH is the General Partner and Berry Plastics International B.V. is the limited partner |
| Berry Plastics Hong Kong Limited               | Hong Kong   | 100% of interest held by Berry Plastics International B.V.  |
| Berry Plastics International B.V.              | Netherlands | 100% of interest held by Berry Plastics International C.V.  |
| Berry Plastics International C.V.              | Netherlands | 100% of the interest held by Pliant, LLC and Berry Plastics Corporation   |

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<sup>2</sup> 25% of joint venture interest held by third parties.

<sup>3</sup> .01% of interest held by Berry Plastics International, LLC

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|   |           |  |
|---|-----------|--|
| Berry Plastics International GmbH                   | Germany   | 100% of interest held by Berry Plastics International B.V.   |
| Berry Plastics International, LLC                   | Delaware  | 100% of interest held by Berry Plastics International B.V.   |
| Berry Plastics Malaysia SDN BHD                     | Malaysia  | 60% of interest held by Berry Plastics Singapore Pte. Ltd. <sup>4</sup>  |
| Berry Plastics Qingdao Limited                      | China     | 75% of interest held by Berry Plastics Hong Kong Limited <sup>5</sup>  |
| BPRex Closures and Packaging Services Ltd.          | UK        | 100% of interest held by BPRex Healthcare Brookville, Inc.   |
| BPRex de Mexico S.A. de R.L. de CV                  | Mexico    | 99.99% of interest held by Berry Plastics Corporation <sup>6</sup>   |
| BPRex Healthcare Offranville SAS                    | France    | 100% of interest held by Berry Plastics France Holdings SAS  |
| BPRex Participacoes Ltda                            | Brazil    | 99% of interest held by Berry Plastics International B.V. <sup>7</sup>   |
| BPRex Plastic Packaging de Mexico S.A. de C.V.      | Mexico    | 50% of interest held by Berry Plastics Corporation and 50% of interest held by BPRex Healthcare Packaging Inc. |
| BPRex Plasticos Do Brasil Ltda                      | Brazil    | 100% of interest held by BPRex Participacoes Ltda  |
| BPRex Singapore Pte. Ltd.                           | Singapore | 100% of interest held by Berry Plastics International B.V.   |
| Seal for Life Industries Mexico, S. de R.L. de C.V. | Mexico    | 99+% of interest held by Seal for Life Industries Beta LLC   |
| CSM Mexico SPV LLC                                  | Delaware  | 100% of interest held by Berry Plastics Corporation  |

<sup>4</sup> 40% of joint venture interest held by third party.

<sup>5</sup> 25% of joint venture interest held by third parties.

<sup>6</sup> .01% of interest held by Berry Plastics Acquisition LLC X

<sup>7</sup> 1% of interest held by Berry Plastics Acquisition LLC X

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|   |             |   |
|---|-------------|---|
| Frans Nooren Afdichtingssystemen B.V.         | Netherlands | 100% of interest held by Berry Plastics Beheer B.V.   |
| Grupo de Servicios Berpla, S. de R.L. de C.V. | Mexico      | 65% of interest held by Berry Plastics Acquisition Corporation V                              |
| Jacinto Mexico, S.A. de C.V.                  | Mexico      | 100% of interest held by Pliant, LLC  |
| Pliant de Mexico S.A. de C.V.                 | Mexico      | 100% of interest held by Pliant, LLC  |
| Rafypak, S.A. de C.V.                         | Mexico      | 99% of interest held by Ryco Acquisition Alpha LLC, 1% of interest held by CSM Mexico SPV LLC |
| Rexam Pharma Packaging India Pvt. Ltd.        | India       | 100% of interest held by BPRex Plastic Packaging (India) Ltd.                                 |
| BPRex Plastic Packaging (India) Limited       | UK          | 100% of interest held by Berry Plastics International B.V.                                    |
| Seal for Life India Private Limited           | India       | 100% of interest held by Berry Plastics Corporation   |
| Seal for Life Industries Beta LLC             | Delaware    | 100% of membership interest held by Seal for Life Industries Tijuana LLC                      |
| Seal for Life Industries BVBA                 | Belgium     | 99.99% of interest held by Berry Plastics Holding GmbH & Co. KG                               |
| Seal for Life Industries Tijuana LLC          | Delaware    | 100% of membership interest held by Berry Plastics Corporation                                |
| Seal for Life Technologies & Services B.V.    | Netherlands | 100% of interest held by Stopaq B.V.  |
| Stopaq B.V.                                   | Netherlands | 100% of interest held by Berry Plastics Beheer B.V.   |
| Stopaq Saudi Factory LLC                      | Saudi       | 51% of interest held by Stopaq B.V. <sup>8</sup>  |

<sup>8</sup> 49% of joint venture interest held by third party

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|                                   |          |  |
|-----------------------------------|----------|--|
| Tyco Acquisition Alpha LLC        | Nevada   | 100% of membership interest held by CSM Mexico SPV LLC         |
| BP Parallel, LLC                  | Delaware | 100% of membership interest held by Berry Plastics Corporation |
| Berry Plastics Escrow Corporation | Delaware | 100% of common stock held by Berry Plastics Corporation        |
| Berry Plastics Escrow, LLC        | Delaware | 100% of membership interest held by Berry Plastics Corporation |

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**SCHEDULE 3.08(b)**

**Subscriptions**

**As of Amendment No. 4 Effective Date**

Berry Plastics Group, Inc. 2006 Equity Incentive Plan

Berry Plastics Group, Inc. 2012 Long-Term Incentive Plan

Berry Plastics Group, Inc. 2015 Long-Term Incentive Plan



**SCHEDULE 3.21**

**Insurance**

**As of Amendment No. 4 Effective Date**

| <b>Coverage Line</b>                      | <b>Policy Number</b>                   | <b>Carrier</b>   | <b>Limits</b>   |   | <b>Deductible</b>   |  |
|---|--|--|---|---|---|--|
| <b>Auto Liability</b><br>09-01-14 / 15    | ADV40007H0<br>(AOS)<br>ACV40657F0 (MA) | Sompo Japan Insurance<br>Co. of America<br>Sompo Japan Insurance<br>Co. of America | Liability / UM:<br>PIP:<br>Medical Payments:  | \$ 1,000,000<br>Statutory<br>\$ 5,000   | Liability:<br>Comprehensive:<br>Collision:                | \$ 100,000<br>\$ 100,000<br>\$ 100,000 |
| <b>General Liability</b><br>09-01-14 / 15 | 015375387                              | Lexington Insurance<br>Company   | General Aggregate<br>(per loc / max of<br>\$10mm):<br>Prod/Comp Opps<br>Aggregate:<br>Personal/Advertising<br>Injury:<br>Each Occurrence:<br>Damages to Premises<br>Rented To You:<br>Medical Expense:<br>Employee Benefits<br>(each claim /<br>aggregate): | \$ 4,000,000<br>\$ 4,000,000<br>\$ 2,000,000<br>\$ 2,000,000<br>\$ 300,000<br>\$ Excluded<br>\$ 1,000,000 | Each Occurrence (SIR):<br>Employee Benefits<br>Liability: | \$ 500,000<br>\$ 1,000                 |
| <b>Property (Global)</b><br>03-01-15 / 16 | PPR011138100                           | Zurich American<br>Insurance Company   | Loss Limit*<br>(real property,<br>contents, BI):<br>Dependant Property:<br>Off Premises Service<br>Interruption:<br>Newly Acquired /<br>Constructed:  | \$500,000,000<br>\$ 10,000,000<br>\$ 10,000,000<br>\$ 10,000,000  | Each Occurrence,<br>except:                               | \$1,000,000                            |

| Coverage Line   | Policy Number | Carrier | Limits        | Deductible |
|---|---------------|---------|---------------|------------|
| <p data-bbox="875 172 1068 621">           Earth Movement except:<br/>           a). \$5,000,000 for property located in Zone 1 for Earth Movement. But not to exceed:<br/>           \$5,000,000 for Earth Movement in China<br/>           \$5,000,000 for Earth Movement in India<br/>           \$5,000,000 for Earth Movement in Mexico<br/>           b). \$25,000,000 for property located in Zone 2 for Earth Movement         </p>   |               |         |               |            |
|   |               |         | \$100,000,000 |            |
| <p data-bbox="875 640 1073 1318">           Flood except:<br/>           a). \$5,000,000 as respects Locations with any part of the legal description within a Special Flood Hazard Area (SFHA) and not otherwise listed herein.<br/>           b). \$25,000,000 as respects Locations with any part of the legal description within a Moderate Flood Hazard Area (MFHA) and not otherwise listed herein. But not to exceed:<br/>           \$10,000,000 for Flood in Canada<br/>           c). NCP for Sturmflut events in Germany.<br/>           d). \$5,000,000 for Flood events in Netherlands.         </p> |               |         |               |            |
|   |               |         | \$100,000,000 |            |

| Coverage Line                                       | Policy Number | Carrier                          | Limits  | Deductible                          |
|---|---------------|----------------------------------|---|-------------------------------------|
|   |               |                                  | Named Storm except:<br>a). \$100,000,000 for property located in Zone 1 for Named Storm. But not to exceed:<br>\$10,000,000 for Named Storm in China<br>b). \$100,000,000 for property located in Zone 2. | \$500,000,000                       |
|   |               |                                  | <i>Additional sublimits apply</i>   | <i>Additional deductibles apply</i> |
| <b>Work Comp - AOS</b><br>09-01-14 / 15             | LDS4047041    | Safety National Casualty Corp    | Workers' Compensation: Statutory  | Each Occurrence: \$500,000          |
| <b>Work Comp - WI</b><br>09-01-14 / 15              | PS4047044     | Safety National Casualty Corp    | Employer's Liability: \$ 1,000,000<br>Workers' Compensation: Statutory  | Each Occurrence: \$500,000          |
| <b>Excess Work Comp - OH</b><br>09-01-14 / 15       | SP4051696     | Safety National Casualty Corp    | Employer's Liability: \$ 1,000,000<br>Workers' Compensation: Statutory  | Each Occurrence: \$500,000          |
| <b>Aviation</b><br>09-01-13 / 15                    | SIHL1209V     | USAIG                            | Liability (each occurrence): \$ 75,000,000<br>Hull (physical damage): \$ 5,569,010  | Each Occurrence: Nil                |
| <b>Aviation Products Liability</b><br>09-01-14 / 15 | NAP4033811    | Catlin Insurance Company         | Each Occurrence: \$ 25,000,000<br>Annual Aggregate \$ 25,000,000  | Each Occurrence: Nil                |
| <b>Cargo</b><br>09-01-14 / 15                       | OMC3CAAPU9WO  | Liberty Mutual Insurance Company | Any One Vessel: \$ 3,000,000<br>Any One Barge: \$ 3,000,000<br>Any One Aircraft: \$ 3,000,000   | Each Occurrence: \$ 50,000          |

|   |                   |   |                                |              |                          |             |
|---|-------------------|---|--------------------------------|--------------|--------------------------|-------------|
|   |                   |   | Foreign Inland Transit:        | \$ 3,000,000 |                          |             |
|   |                   |   | Mexico Inland Transit:         | \$ 500,000   |                          |             |
| <b>Flood</b><br>(Middlesex, NJ Only - 2 Buildings)        | 99044199272014    | Hartford Insurance Company              | Building:                      | \$ 500,000   | Building:                | \$ 50,000   |
|   | 99044199262014    | of the Midwest                          | Contents:                      | \$ 500,000   | Contents:                | \$ 50,000   |
| 05-27-14 / 15   |                   |   |                                |              |                          |             |
| <b>Storage Tank Liability</b><br>(Milwaukee / Schaumburg) | 7128400           | Commerce and Industry Insurance Company | Each Occurrence:               | \$ 1,000,000 | Each Occurrence:         | \$ 25,000   |
|   |                   |   | Annual Aggregate               | \$ 2,000,000 |                          |             |
| 04-23-14 / 15   |                   |   |                                |              |                          |             |
| <b>Fiduciary Liability</b>                                | MCN742409/01/2014 | Axis Insurance Company                  | Each Occurrence:               | \$ 5,000,000 | Each Occurrence:         | \$ 50,000   |
| 09/01/14-15   |                   |   | Annual Aggregate               | \$ 5,000,000 |                          |             |
| <b>Special Crime</b>                                      | U712-89123        | U.S. Specialty Ins. Co. (HCC)           | Each Occurrence:               | \$20,000,000 | Each Occurrence:         | Nil         |
| 09/01/12-15   |                   |   | Annual Aggregate               | Nil          |                          |             |
| <b>ERISA Bond</b>   | 37BDDFQ3769       | Hartford Fire Ins. Co.                  | Each Occurrence:               | \$ 1,000,000 | Each Occurrence:         | Nil         |
| 01/10/13-16   |                   |   |                                |              |                          |             |
| <b>Directors &amp; Officers Liability</b>                 | 01-615-80-55      | Illinois National Ins. Co. (AIG)        | Each Occurrence:               | \$10,000,000 | Side A Non-Indemnifiable | \$ 0        |
| 10/03/14-15   |                   |   | Annual Aggregate               | \$10,000,000 | Side B Non-Securities    | \$1,000,000 |
|   |                   |   |                                |              | Side C Securities        | \$1,000,000 |
| <b>Excess D&amp;O Liability</b>                           | ELU136364-14      | XL Specialty Ins. Co.                   | Each Occurrence and Aggregate: | \$10,000,000 | Each Occurrence:         | \$ 0        |
| 10/3/14-15  |                   |   | Excess of \$10,000,000         |              |                          |             |
| <b>Excess D&amp;O Liability</b>                           | DOX10005614200    | Endurance American Ins. Co.             | Each Occurrence and Aggregate: | \$10,000,000 | Each Occurrence:         | \$ 0        |
| 10/3/14-15  |                   |   | Excess of \$20,000,000         |              |                          |             |
| <b>Excess D&amp;O Liability</b>                           | DOXG25593613003   | ACE American Ins. Co.                   | Each Occurrence and Aggregate: | \$10,000,000 | Each Occurrence:         | \$ 0        |
| 10/3/14-15  |                   |   | Excess of \$30,000,000         |              |                          |             |

|  |                   |  |   |   |   |                      |
|--|-------------------|--|---|---|---|----------------------|
| <b>Excess D&amp;O Liability</b><br>10/3/14-15            | SISIXFL21097814   | Starr Indemnity &<br>Liability Company | Each Occurrence and<br>Aggregate:<br>Excess of<br>\$40,000,000  | \$10,000,000  | Each Occurrence:                            | \$ 0                 |
| <b>Excess D&amp;O Liability/Side<br/>A</b><br>10/3/14-15 | V13075140301      | Beazley Insurance<br>Company, Inc.     | Each Occurrence and<br>Aggregate:<br>Excess of<br>\$50,000,000  | \$10,000,000  | Each Occurrence:                            | \$ 0                 |
| <b>Excess D&amp;O Liability/Side<br/>A</b><br>10/3/14-15 | MCN769850/01/2014 | Axis Insurance<br>Company              | Each Occurrence and<br>Aggregate:<br>Excess of<br>\$60,000,000  | \$10,000,000  | Each Occurrence:                            | \$ 0                 |
| <b>Excess D&amp;O Liability/Side<br/>A</b><br>10/3/14-15 | ELU136365-14      | XL Specialty Ins. Co.                  | Each Occurrence and<br>Aggregate:<br>Excess of<br>\$70,000,000  | \$10,000,000  | Each Occurrence:                            | \$ 0                 |
| <b>Foreign Casualty</b><br>09-01-14 / 15                 | WP613859259       | Continental<br>Casualty Company        | General Liability<br><br>General Aggregate:<br>Products / Completed<br>Operations<br>Aggregate:<br>Personal and<br>Advertising Injury<br>Aggregate:<br>Each Occurrence<br>Limit:<br>Medical Expense<br>Limit (any one<br>person):<br>Contingent<br>Automobile<br>Liability<br>Liability Each<br>Accident:<br>Hired Auto Physical<br>Damage (each<br>accident):<br>Medical Payments<br>(each accident):<br>Foreign<br>Voluntary WC<br>and EL<br>Employers Liability:<br>Executive Assistance<br>(including<br>repatriation): | \$ 2,000,000<br><br>\$ 2,000,000<br><br>\$ 1,000,000<br>\$ 1,000,000<br><br>\$ 50,000<br><br>\$ 1,000,000<br>\$ 25,000<br>\$ 25,000<br><br>\$ 1,000,000<br>\$ 1,000,000 | Employee Benefits Liability:<br>Hired Auto: | \$ 1,000<br>\$25,000 |

|  |                 |   |                                       |                                |                  |
|--|-----------------|---|---------------------------------------|--------------------------------|------------------|
| <b>Excess Liability</b><br>09-01-14 / 15 | 1000010688      | Starr Surplus Lines Insurance<br>Company                          | Each Occurrence:<br>Annual Aggregate: | \$ 8,000,000<br>\$ 8,000,000   | Each Occurrence: |
| <b>Excess Liability</b><br>09-01-14 / 15 | L4030741584     | Continental Casualty<br>Company                                   | Each Occurrence:<br>Annual Aggregate: | \$ 10,000,000<br>\$ 10,000,000 | Each Occurrence: |
| <b>Excess Liability</b><br>09-01-14 / 15 | MAXA3EC30001361 | Alterra America Insurance<br>Company<br>(Part of \$ 30,000,000)   | Each Occurrence:<br>Annual Aggregate: | \$ 15,000,000<br>\$ 15,000,000 | Each Occurrence: |
| <b>Excess Liability</b><br>09-01-14 / 15 | EXC10004167501  | Endurance American Specialty<br>Ins Co<br>(Part of \$ 30,000,000) | Each Occurrence:<br>Annual Aggregate: | \$ 15,000,000<br>\$ 15,000,000 | Each Occurrence: |