

# United States Securities and Exchange Commission

Washington, DC 20549

## FORM 10-K

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

For the fiscal year ended December 31, 2015

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

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

Commission file number 1-16091

## PolyOne Corporation

(Exact name of registrant as specified in its charter)

Ohio

34-1730488

(State or other jurisdiction of  
incorporation or organization)

(IRS Employer Identification No.)

33587 Walker Road,  
Avon Lake, Ohio

44012  
(Zip Code)

(Address of principal executive offices)

Registrant's telephone number, including area code (440) 930-1000

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Common Shares, par value \$.01 per share	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the registrant's outstanding common shares held by non-affiliates on June 30, 2015, determined using a per share closing price on that date of \$38.90, as quoted on the New York Stock Exchange, was \$3.3 billion.

The number of shares of common shares outstanding as of February 1, 2016 was 85,306,587.

### DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Annual Report on Form 10-K incorporates by reference certain information from the registrant's definitive Proxy Statement with respect to the 2016 Annual Meeting of Shareholders.

**POLYONE CORPORATION**

## PART I

### CAUTIONARY NOTE ON FORWARD-LOOKING STATEMENTS

In this Annual Report on Form 10-K, statements that are not reported financial results or other historical information are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements give current expectations or forecasts of future events and are not guarantees of future performance. They are based on management’s expectations that involve a number of business risks and uncertainties, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements. You can identify these statements by the fact that they do not relate strictly to historic or current facts. They use words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe” and other words and terms of similar meaning in connection with any discussion of future operating or financial performance and/or sales. In particular, these include statements relating to future actions; prospective changes in raw material costs, product pricing or product demand; future performance; estimated capital expenditures; results of current and anticipated market conditions and market strategies; sales efforts; expenses; the outcome of contingencies such as legal proceedings; and financial results. Factors that could cause actual results to differ materially from those implied by these forward-looking statements include, but are not limited to:

- effects on foreign operations due to currency fluctuations, tariffs and other political, economic and regulatory risks;
- changes in polymer consumption growth rates and laws and regulations regarding the disposal of plastic materials where we conduct business;
- changes in global industry capacity or in the rate at which anticipated changes in industry capacity come online in the industries in which we participate;
- fluctuations in raw material prices, quality and supply, and in energy prices and supply;
- production outages or material costs associated with scheduled or unscheduled maintenance programs;
- unanticipated developments that could occur with respect to contingencies such as litigation and environmental matters, including any developments that would require any increase in our costs and/or reserves for such contingencies;
- an inability to achieve or delays in achieving or achievement of less than the anticipated financial benefit from initiatives related to working capital reductions, cost reductions and employee productivity goals;
- an inability to raise or sustain prices for products or services;
- an inability to maintain appropriate relations with unions and employees;
- the strength and timing of economic recoveries;
- the financial condition of our customers, including the ability of customers (especially those that may be highly leveraged and those with inadequate liquidity) to maintain their credit availability;
- disruptions, uncertainty or volatility in the credit markets that may limit our access to capital;
- other factors affecting our business beyond our control, including, without limitation, changes in the general economy, changes in interest rates and changes in the rate of inflation;
- the amount and timing of repurchases, if any, of PolyOne common shares;
- our ability to pay regular quarterly cash dividends and the amounts and timing of any future dividends;
- our ability to realize anticipated savings and operational benefits from the realignment of assets, including the closure of manufacturing facilities; the timing of closings and shifts of production to new facilities related to asset realignments and any unforeseen loss of customers and/or disruptions of service or quality caused by such closings and/or production shifts; separation and severance amounts that differ from original estimates, amounts for non-cash charges related to asset write-offs and accelerated depreciation realignments of property, plant and equipment, that differ from original estimates;
- our ability to identify and evaluate acquisition targets and consummate acquisitions;
- the ability to successfully integrate acquired businesses into our operations, including whether such businesses will be accretive to our earnings, retain the management teams of acquired businesses, and retain relationships with customers of acquired businesses, including, without limitation, Sparteck, Accella Performance Materials and Magenta;

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- information systems failures and cyberattacks; and
- other factors described in this Annual Report on Form 10-K under Item 1A, "Risk Factors."

We cannot guarantee that any forward-looking statement will be realized, although we believe we have been prudent in our plans and assumptions. Achievement of future results is subject to risks, uncertainties and inaccurate assumptions. Should known or unknown risks or uncertainties materialize, or should underlying assumptions prove inaccurate, actual results could vary materially from those anticipated, estimated or projected. Investors should bear this in mind as they consider forward-looking statements. We undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise, except as otherwise required by law. You are advised, however, to consult any further disclosures we make on related subjects in our reports on Forms 10-Q, 8-K and 10-K furnished to the SEC. You should understand that it is not possible to predict or identify all risk factors. Consequently, you should not consider any such list to be a complete set of all potential risks or uncertainties.

## **ITEM 1. BUSINESS**

### **Business Overview**

We are a premier provider of specialized polymer materials, services and solutions with operations in specialty polymer formulations, color and additive systems, plastic sheet and packaging solutions and polymer distribution. We are also a highly specialized developer and manufacturer of performance enhancing additives, liquid colorants and fluoropolymers and silicone colorants. Headquartered in Avon Lake, Ohio, we have employees at sales, manufacturing and distribution facilities in North America, South America, Europe, Asia and Africa. We provide value to our customers through our ability to link our knowledge of polymers and formulation technology with our manufacturing and supply chain capabilities to provide value added solutions to designers, assemblers and processors of plastics (our customers). When used in this Annual Report on Form 10-K, the terms "we," "us," "our", "PolyOne" and the "Company" mean PolyOne Corporation and its consolidated subsidiaries.

PolyOne was formed on August 31, 2000 from the consolidation of The Geon Company (Geon) and M.A. Hanna Company (Hanna). Geon's roots date back to 1927 when BFGoodrich scientist Waldo Semon produced the first usable vinyl polymer. In 1948, BFGoodrich created a vinyl plastic division that was subsequently spun off through a public offering in 1993, creating Geon, a separate publicly-held company. Hanna was formed in 1885 as a privately-held company and became publicly-held in 1927. In the mid-1980s, Hanna began to divest its historic mining and shipping businesses to focus on polymers. Hanna purchased its first polymer company in 1986 and completed its 26<sup>th</sup> polymer company acquisition in 2000.

PolyOne Corporation is incorporated in Ohio and headquartered in Avon Lake, Ohio. We employ approximately 6,900 people and have 76 manufacturing sites and eight distribution facilities in North America, South America, Europe and Asia. We offer more than 35,000 polymer solutions to over 10,000 customers across the globe. In 2015, we had sales of \$3.4 billion, 34% of which were to customers outside the United States.

We provide value to our customers with solutions built upon our ability to leverage our polymer and formulation expertise with our operational capabilities, being the essential link between large chemical producers (our raw material suppliers) and designers, assemblers and processors of plastics (our customers). We believe that our role in the value chain continues to become more essential as our customers need reliable suppliers with global reach and more effective solutions to improve their profitability and competitive advantage. Our goal is to provide our customers with specialized materials and service solutions through our global reach, broad market knowledge, technical expertise, product breadth, efficient manufacturing operations, a fully integrated information technology network and raw material procurement leverage. Our end markets are primarily in transportation, packaging, building and construction, industrial, healthcare, consumer, wire and cable, electrical and electronics, and appliance.

### **Polymer Industry Overview**

Polymers are a class of organic materials that are generally produced by converting natural gas or crude oil derivatives into monomers, such as ethylene, propylene, vinyl chloride and styrene. These monomers are then polymerized into chains called polymers, or plastic resin, such as polyethylene and polypropylene, in their most basic forms. Large petrochemical companies, including some in the petroleum industry, produce a majority of the monomers and base resins because they have direct access to the raw materials needed for production. Monomers make up the majority of the variable cost of manufacturing the base resin. As a result, the cost of a base resin tends to move in tandem with the industry market prices for monomers and the cost of raw materials and energy used

during production. Resin selling prices can move in tandem with costs, but are largely driven by supply and demand.

Thermoplastic polymers make up a substantial majority of the resin market and are characterized by their ability to be reshaped repeatedly into new forms after heat and pressure are applied. Thermoplastics offer versatility and a wide range of applications. The major types of thermoplastics include polyethylene, polyvinyl chloride, polypropylene, polystyrene, polyester and a range of specialized engineering resins. Each type of thermoplastic has unique qualities and characteristics that make it appropriate for use in a particular application. Thermoplastic composites include these base resins, but are combined with a structural filler such as glass, wood, carbon or polymer fibers to enhance strength, rigidity and structure. Further performance can be delivered through an engineered thermoplastic sheet or thick film, which may incorporate more than one resin formulation or composite in multiple layers to impart additional properties such as gas barrier, structural integrity and lightweighting.

Thermoplastic and polymer composites are found in a variety of end-use products and markets, including packaging, building and construction, wire and cable, transportation, medical, furniture and furnishings, durable goods, electrical and electronics, adhesives, inks and coatings. Each type of thermoplastic resin has unique characteristics (such as flexibility, strength or durability) suitable for use in a particular end-use application. The packaging industry requires plastics that help keep food fresh and free of contamination while providing a variety of options for product display, and offering advantages in terms of weight and user-friendliness. In the building and construction industry, plastic provides an economical and energy efficient replacement for other traditional materials in piping applications, siding, flooring, insulation, windows and doors, as well as structural and interior or decorative uses. In the wire and cable industry, thermoplastics serve to protect by providing electrical insulation, flame resistance, durability, water resistance, and color coding to wire coatings and connectors. In the transportation industry, plastic has proven to be durable, lightweight and corrosion resistant while offering fuel savings, design flexibility and high performance, often replacing traditional materials such as metal and glass. In the medical industry, plastics are used for a vast array of devices and equipment, including blood and intravenous bags, medical tubing, catheters, lead replacement for radiation shielding, clamps and connectors to bed frames, curtains and sheeting, electronic enclosures and equipment housings. In the electronics industry, plastic enclosures and connectors not only enhance safety through electrical insulation, but thermally and electrically conductive plastics provide heat transferring, cooling, antistatic, electrostatic discharge, and electromagnetic shielding performance for critical applications including integrated circuit chip packaging.

Various additives can be formulated with a base resin and further engineered into a structure to provide them with greater versatility and performance. Polymer formulations and structures have advantages over metals, wood, rubber, glass and other traditional materials, which have resulted in the replacement of these materials across a wide spectrum of applications that range from automobile parts to construction materials. These specialized polymers offer advantages compared to traditional materials that include design freedom, processability, weight reduction, chemical resistance, flame retardance and lower cost. Plastics are renowned for their durability, aesthetics, ease of handling and recyclability.

### **PolyOne Segments**

We operate in five reportable segments: (1) Color, Additives and Inks; (2) Specialty Engineered Materials; (3) Designed Structures and Solutions; (4) Performance Products and Solutions; and (5) PolyOne Distribution.

On December 9, 2015, the Company completed the acquisition of specialty color concentrates of Magenta Master Fibers (Magenta) for \$18.3 million, net of cash acquired. The Magenta acquisition complements our Color business by providing specialty solid color concentrates in a wide-range of applications, including clothing and apparel, outdoor equipment, high-performance products and the transportation industry. Magenta's results are included within the Color, Additives and Inks segment.

On December 1, 2014, the Company completed the acquisition of specialty assets of Accella Performance Materials (Accella) for \$47.2 million, net of cash acquired. The Accella acquisition complements the existing specialty business portfolio by providing specialty coating solutions and value-added services in a wide-range of applications, including consumer products, interior and under-the-hood automotive parts, outdoor recreational equipment and food packaging. Accella's results are included within the Color, Additives and Inks segment.

On May 30, 2013, we sold our vinyl dispersion, blending and suspension resin assets (Resin Business) to Mexichem Specialty Resins Inc. (Mexichem). As a result of the sale, the Resin Business has been removed from the Performance Products and Solutions segment and is presented as a discontinued operation in all periods presented.

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On March 13, 2013, PolyOne acquired Spartech Corporation (Spartech), a supplier of sustainable plastic sheet, color and engineered materials, and packaging solutions. The acquisition of Spartech has provided substantial synergies through enhanced operational cost efficiencies and has expanded PolyOne's specialty portfolio.

Spartech's results have been reflected within our Consolidated Statements of Income and within our Designed Structures and Solutions segment, as well as within our Specialty Engineered Materials, Color, Additives and Inks and Performance Products and Solutions segments, since the date of acquisition.

Our segments are further discussed in Note 16, *Segment Information*.

#### **Color, Additives and Inks**

Color, Additives and Inks is a leading provider of specialized custom color and additive concentrates in solid and liquid form for thermoplastics, dispersions for thermosets, as well as specialty inks, plastisols, and vinyl slush molding solutions. Color and additive solutions include an innovative array of colors, special effects and performance-enhancing and eco-friendly solutions. When combined with a non-base resin, our solutions help customers achieve differentiated specialized colors and effects targeted at the demands of today's highly design-oriented consumer and industrial end markets. Our additive concentrates encompass a wide variety of performance and process enhancing characteristics and are commonly categorized by the function that they perform, such as UV stabilization, antimicrobial, anti-static, blowing or foaming, antioxidant, lubricant, and productivity enhancement. Our colorant and additives concentrates are used in a broad range of polymers, including those used in medical and pharmaceutical devices, food packaging, personal care and cosmetics, transportation, building products, wire and cable markets. We also provide custom-formulated liquid systems that meet a variety of customer needs and chemistries, including vinyl, natural rubber and latex, polyurethane and silicone. Our offerings also include proprietary inks and latexes for diversified markets such as recreational and athletic apparel, construction and filtration, outdoor furniture and healthcare. Our liquid polymer coatings and additives are largely based on vinyl and are used in a variety of markets, including building and construction, consumer, healthcare, industrial, packaging, textiles, appliances, transportation, and wire and cable. Color, Additives and Inks has manufacturing, sales and service facilities located throughout North America, South America, Europe, Asia and Africa.

#### **Specialty Engineered Materials**

Specialty Engineered Materials is a leading provider of specialty polymer formulations, services and solutions for designers, assemblers and processors of thermoplastic materials across a wide variety of markets and end-use applications. Our product portfolio, which we believe to be one of the most diverse in our industry, includes specialty formulated high-performance polymer materials that are manufactured using thermoplastic resins and elastomers, which are then combined with advanced polymer additives, reinforcement, filler, colorant and/or biomaterial technologies. Our technical and market expertise enables us to expand the performance range and structural properties of traditional engineering-grade thermoplastic resins to meet evolving customer needs. Specialty Engineered Materials has manufacturing, sales and service facilities located throughout North America, Europe, Asia and South America. Our product development and application reach is further enhanced by the capabilities of our Innovation Centers in the United States, Germany and China, which produce and evaluate prototype and sample parts to help assess end-use performance and guide product development. Our manufacturing capabilities are targeted at meeting our customers' demand for speed, flexibility and critical quality.

#### **Designed Structures and Solutions**

On March 13, 2013, the Company completed the acquisition of Spartech, a supplier of plastic sheet, color and engineered materials, and packaging solutions. As a result of the acquisition, a new reportable segment, "Designed Structures and Solutions", was created. We believe PolyOne's Designed Structures and Solutions segment is a market leader in providing specialized, full service and innovative solutions in engineered polymer structures, rigid barrier packaging and specialty cast acrylics. We utilize a variety of polymers, specialty additives and processing technologies to produce a complete portfolio of sheet, custom rollstock and specialty film, laminate and acrylic solutions. Our solutions can be engineered to provide structural or functional performance in an application or design and visual aesthetics to meet our customers' needs. Our offerings also include a wide range of sustainable, cost-effective stock and custom packaging solutions for various industry processes used in the food, medical, and consumer markets. In addition to packaging, we also work closely with customers to provide solutions for transportation, building and construction, healthcare and consumer markets. Designed Structures and Solutions has manufacturing, sales and service facilities located throughout North America.

## **Performance Products and Solutions**

Performance Products and Solutions is comprised of the Geon Performance Materials (Geon) and Producer Services business units. The Geon business delivers an array of products and services for vinyl molding and extrusion processors located in North America and Asia. The Geon™ brand name carries strong recognition globally. Geon's products are sold to manufacturers of durable plastic parts and consumer-oriented products. We also offer a wide range of services including materials testing, component analysis, custom formulation development, colorant and additive services, part design assistance, structural analysis, process simulations, mold design and flow analysis and extruder screw design. Vinyl is used across a broad range of markets and applications, including, but not limited to: healthcare, wire and cable, building and construction, consumer and recreational products and transportation and packaging. The Producer Services business unit offers contract manufacturing and outsourced polymer manufacturing services to resin producers and polymer marketers, primarily in the United States and Mexico, as well as its own proprietary compounds for pressure pipe and drip irrigation applications. As a strategic and integrated supply chain partner, Producer Services offers resin producers a capital-efficient way to effectively develop custom products for niche markets by leveraging its extensive process technology expertise, broad manufacturing capabilities and geographic locations.

## **PolyOne Distribution**

The PolyOne Distribution business distributes more than 3,500 grades of engineering and commodity grade resins, including PolyOne-produced solutions, principally to the North American and Asian markets. These products are sold to over 6,000 custom injection molders and extruders who, in turn, convert them into plastic parts that are sold to end-users in a wide range of industries. Representing over 25 major suppliers, we offer our customers a broad product portfolio, just-in-time delivery from multiple stocking locations and local technical support. Recent expansion in Central America and Asia have bolstered PolyOne Distribution's ability to serve the specialized needs of customers globally.

## **Competition**

The production of plastics and the manufacturing of custom and proprietary formulated color and additives systems for the plastics industry are highly competitive. Competition is based on service, performance, product innovation, product recognition, speed, delivery, quality and price. The relative importance of these factors varies among our products and services. We believe that we are the largest independent formulator of plastic materials and producer of custom and proprietary color and additive systems in the United States and Europe, with a growing presence in Asia and South America. Our competitors range from large international companies with broad product offerings to local independent custom producers whose focus is a specific market niche or product offering.

The distribution of polymer resin is also highly competitive. Speed, service, reputation, product line, brand recognition, delivery, quality and price, are the principal factors affecting competition. We compete against other national independent resin distributors in North America, along with other regional distributors. Growth in the polymer distribution market is highly correlated with growth in the base polymer resins market. We believe that the strength of our company name and reputation, the broad range of product offerings from our suppliers and our speed and responsiveness, combined with the quality of products and agility of our distribution network, allow us to compete effectively.

## **Raw Materials**

The primary raw materials used by our manufacturing operations are polyvinyl chloride (PVC) resin, polyolefin and other thermoplastic resins, plasticizers, inorganic and organic pigments, all of which we believe are in adequate supply. We have a long-term supply contract with Oxy Vinyls LP, a former equity investment affiliate, under which the majority of our PVC resin is supplied. This contract contains a year-by-year evergreen renewal provision, unless terminated by either party with a one-year advance notice. We believe this contract assures the availability of adequate amounts of PVC resin. We also believe that the pricing under this contract provides PVC resins to us at a competitive cost. See the discussion of risks associated with raw material supply and costs in Item 1A, "Risk Factors".

## **Patents and Trademarks**

We own and maintain a number of patents and trademarks in the United States and other key countries that contribute to our competitiveness in the markets we serve because they protect our inventions and product names against infringement by others. Patents exist for 20 years from filing date, and trademarks have an indefinite life based upon continued use. While we view our patents and trademarks to be valuable because of the broad scope of our products and services and brand recognition we enjoy, we do not believe that the loss or expiration of any

single patent or trademark would have a material adverse effect on our results of operations, financial position or cash flows. Nevertheless, we have management processes designed to protect our inventions and trademarks.

### **Seasonality and Backlog**

Sales of our products and services are slightly seasonal as demand is generally slower in the first and fourth calendar quarters of the year. Because of the nature of our business, we do not believe that our backlog is a meaningful indicator of the level of our present or future business.

### **Working Capital Practices**

Our products are generally manufactured with a short turnaround time, and the scheduling of manufacturing activities from customer orders generally includes enough lead time to assure delivery of an adequate supply of raw materials. We offer payment terms to our customers that are competitive. We generally allow our customers to return merchandise if pre-agreed quality standards or specifications are not met; however, we employ quality assurance practices that seek to minimize customer returns. Our customer returns are immaterial.

### **Significant Customers**

No customer accounted for more than 2% of our consolidated revenues in 2015, and we do not believe we would suffer a material adverse effect to our consolidated financial statements if we were to lose any single customer.

### **Research and Development**

We have substantial technology and development capabilities. Our efforts are largely devoted to developing new product formulations to satisfy defined market needs, by providing quality technical services to evaluate alternative raw materials, assuring the continued success of our products for customer applications, providing technology to improve our products, processes and applications, and providing support to our manufacturing plants for cost reduction, productivity and quality improvement programs. We operate research and development centers that support our commercial development activities and manufacturing operations. These facilities are equipped with state-of-the-art analytical, synthesis, polymer characterization and testing equipment, along with pilot plants and polymer manufacturing operations that simulate specific production processes that allow us to rapidly translate new technologies into new products. Our investment in product research and development from continuing operations was \$53.0 million in 2015, \$53.4 million in 2014 and \$52.6 million in 2013. On a constant currency basis, our investment in research and development from continuing operations for 2015 was \$55.5 million compared to \$53.4 million in 2014.

### **Methods of Distribution**

We sell products primarily through direct sales personnel, distributors, including our PolyOne Distribution segment, and commissioned sales agents. We primarily use truck carriers to transport our products to customers, although some customers pick up product at our manufacturing facilities or warehouses. We also ship some of our manufactured products to customers by rail.

### **Employees**

As of December 31, 2015, we employed approximately 6,900 people. Approximately 4% of our employees are represented by labor unions under collective bargaining agreements. We believe that relations with our employees are good, and we do not anticipate significant operating issues to occur as a result of current negotiations, or when we renegotiate collective bargaining agreements as they expire.

### **Environmental, Health and Safety**

We are subject to various environmental laws and regulations that apply to the production, use and sale of chemicals, emissions into the air, discharges into waterways and other releases of materials into the environment and the generation, handling, storage, transportation, treatment and disposal of waste material. We endeavor to ensure the safe and lawful operation of our facilities in the manufacture and distribution of products, and we believe we are in material compliance with all applicable laws and regulations.

We maintain a disciplined environmental and occupational safety and health compliance program and conduct periodic internal and external regulatory audits at our facilities to identify and correct potential environmental exposures, including compliance matters and operational risk reduction opportunities. This effort can result in process or operational modifications, the installation of pollution control devices or cleaning up grounds or facilities. We believe that we are in material compliance with all applicable requirements.

We are strongly committed to safety as evidenced by our injury incidence rate of 0.74 per 100 full-time workers per year in 2015, compared to 0.84 in 2014. The 2014 average injury incidence rate for our NAICS Code (326 Plastics and Rubber Products Manufacturing) was 4.6.

In our operations, we must comply with product-related governmental law and regulations affecting the plastics industry generally and also with content-specific law, regulations and non-governmental standards. We believe that compliance with current governmental laws and regulations and with non-governmental content-specific standards will not have a material adverse effect on our financial position, results of operations or cash flows. The risk of additional costs and liabilities, however, is inherent in certain plant operations and certain products produced at these plants, as is the case with other companies in the plastics industry. Therefore, we may incur additional costs or liabilities in the future. Other developments, such as increasingly strict environmental, safety and health laws, regulations and related enforcement policies, including those under the Restrictions on the Use of Certain Hazardous Substances (RoHS), Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), the Dodd-Frank Wall Street Reform and Consumer Protection Act (covering Conflict Minerals), and the Consumer Product Safety Improvement Act, the implementation of additional content-specific standards, discovery of unknown conditions, and claims for damages to property, persons or natural resources resulting from plant emissions or products, could also result in additional costs or liabilities.

A number of foreign countries and domestic communities have enacted, or are considering enacting, laws and regulations concerning the use and disposal of plastic materials. Widespread adoption of these laws and regulations, along with public perception, may have an adverse impact on sales of plastic materials. Although many of our major markets are in durable, longer-life applications that could reduce the impact of these kinds of environmental regulations, more stringent regulation of the use and disposal of plastics may have an adverse effect on our business.

We have been notified by federal and state environmental agencies and by private parties that we may be a potentially responsible party (PRP) in connection with the investigation and remediation of certain environmental sites. While government agencies frequently assert that PRPs are jointly and severally liable at these sites, in our experience, the interim and final allocations of liability costs are generally made based on the relative contribution of waste. We initiate corrective and preventive environmental projects of our own to ensure safe and lawful activities at our operations. We believe that compliance with current governmental regulations at all levels will not have a material adverse effect on our financial position, results of operations or cash flows.

We incurred environmental expenses, before insurance recoveries, of \$9.3 million in 2015, \$10.3 million in 2014 and \$61.2 million in 2013. Our environmental expense in 2015, 2014 and 2013 related mostly to ongoing remediation projects. The 2013 expense also included a \$47.0 million adjustment to our Calvert City reserve, which is discussed further in Note 13, *Commitments and Contingencies*. In 2015, 2014 and 2013, we recognized gains associated with insurance recoveries of \$3.5 million, \$3.7 million and \$23.5 million, respectively, as reimbursement of previously incurred environmental remediation costs.

We also conduct investigations and remediation at certain of our active and inactive facilities and have assumed responsibility for the resulting environmental liabilities from operations at certain sites we, or our predecessors, formerly owned or operated. We believe that our potential continuing liability at these sites will not have a material adverse effect on our results of operations, financial position or cash flows. As of December 31, 2015, our reserves totaled \$119.9 million, covering probable future environmental expenditures that we can reasonably estimate related to previously contaminated sites. This amount represents our best estimate of probable costs, based upon the information and technology currently available. We continue to pursue available insurance coverage related to these matters and recognize gains as we receive reimbursement. No receivable has been recognized for future recoveries.

Refer to Note 13, *Commitments and Contingencies*, for further discussion of our environmental liabilities.

We expect 2016 environmental cash expenditures to approximate \$10.2 million.

### **International Operations**

Our international operations are subject to a variety of risks, including currency fluctuations and devaluations, exchange controls, currency restrictions and changes in local economic conditions. While the impact of these risks is difficult to predict, any one or more of them could adversely affect our future operations. For more information about our international operations, see Note 16, *Segment Information*, to the accompanying consolidated financial statements.



## Where You Can Find Additional Information

Our principal executive offices are located at 33587 Walker Road, Avon Lake, Ohio 44012, and our telephone number is (440) 930-1000. We are subject to the information reporting requirements of the Exchange Act, and, in accordance with these requirements, we file annual, quarterly and other reports, proxy statements and other information with the SEC relating to our business, financial results and other matters. The reports, proxy statements and other information we file may be inspected and copied at prescribed rates at the SEC's Public Reference Room and via the SEC's website (see below for more information).

You may inspect a copy of the reports, proxy statements and other information we file with the SEC, without charge, at the SEC's Public Reference Room, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, and you may obtain copies of the reports, proxy statements and other information we file with the SEC, from those offices for a fee. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Our filings are available to the public at the SEC's website at <http://www.sec.gov>.

Our Internet address is [www.polyone.com](http://www.polyone.com). Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act are available, free of charge, on our website ([www.polyone.com](http://www.polyone.com), select Investors and then SEC Edgar filings) or upon written request, as soon as reasonably practicable after we electronically file or furnish them to the SEC. The contents of our website are not part of this Annual Report on Form 10-K, and the reference to our website does not constitute incorporation by reference into this Form 10-K of the information contained at that site.

## ITEM 1A. RISK FACTORS

The following are certain risk factors that could affect our business, results of operations, financial position or cash flows. These risk factors should be considered along with the forward-looking statements contained in this Annual Report on Form 10-K because these factors could cause our actual results or financial condition to differ materially from those projected in forward-looking statements. The following discussion is not an all-inclusive listing of risks, although we believe these are the more material risks that we face. If any of the following occur, our business, results of operations, financial position or cash flows could be adversely affected.

***Demand for and supply of our products and services may be adversely affected by several factors, some of which we cannot predict or control.***

Several factors may affect the demand for and supply of our products and services, including:

- economic downturns in the significant end markets that we serve;
- product obsolescence or technological changes that unfavorably alter the value/cost proposition of our products and services;
- competition from existing and unforeseen polymer and non-polymer based products;
- declines in general economic conditions or reductions in industrial production growth rates, both domestically and globally, which could impact our customers' ability to pay amounts owed to us;
- changes in environmental regulations that would limit our ability to sell our products and services in specific markets;
- changes in laws and regulations regarding the disposal of plastic materials; and
- inability to obtain raw materials or supply products to customers due to factors such as supplier work stoppages, supply shortages, plant outages or regulatory changes that may limit or prohibit overland transportation of certain hazardous materials and exogenous factors, like severe weather.

If any of these events occur, the demand for and supply of our products and services could suffer and potentially lead to asset impairment.

***Our manufacturing operations are subject to hazards and other risks associated with polymer production and the related storage and transportation of raw materials, products and wastes.***

The occurrence of an operating problem at our facilities (e.g., an explosion, mechanical failure, chemical spills or discharges) may have a material adverse effect on the productivity and profitability of a particular manufacturing or distribution facility or on our operations as a whole, during and after the period of these operating difficulties. Operating problems may cause personal injury and/or loss of life, customer attrition and severe damage to or destruction of property and equipment and environmental damage. We are subject to present claims and potential

future claims with respect to workplace exposure, workers' compensation and other matters. Our property and casualty insurance, which we believe is of the types and in the amounts that are customary for the industry, may not fully insure us against all potential hazards that are incident to our business or otherwise could occur.

***Extensive environmental, health and safety laws and regulations impact our operations and financial statements.***

Our operations on, and ownership of, real property are subject to extensive environmental, health and safety laws and regulations at the national, state and local governmental levels. The nature of our business exposes us to compliance costs and risks of liability under these laws and regulations due to the production, storage, transportation, recycling or disposal and/or sale of materials that can cause contamination and other harm to the environment or personal injury if they are improperly handled and released. Environmental compliance requirements on us and our vendors may significantly increase the costs of these activities involving raw materials, energy, finished products and wastes. We may incur substantial costs, including fines, criminal or civil sanctions, damages, remediation costs or experience interruptions in our operations for violations of these laws.

***Our operations could be adversely affected by various risks inherent in conducting operations worldwide.***

We have extensive operations outside of the United States, that are subject to risks; including, but not limited to, the following:

- changes in local government regulations and policies including, but not limited to foreign currency exchange controls or monetary policy, repatriation of earnings, expropriation of property, duty or tariff restrictions, investment limitations and tax policies;
- political and economic instability and disruptions, including labor unrest, civil strife, acts of war, guerrilla activities, insurrection and terrorism;
- legislation that regulates the use of chemicals;
- disadvantages of competing against companies from countries that are not subject to U.S. laws and regulations, including the Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act;
- compliance with international trade laws and regulations, including export control and economic sanctions;
- difficulties in staffing and managing multi-national operations;
- limitations on our ability to enforce legal rights and remedies;
- reduced protection of intellectual property rights; and
- other risks arising out of foreign sovereignty over the areas where our operations are conducted.

In addition, we could be adversely affected by violations of the FCPA, U.K Bribery Act and similar worldwide anti-bribery laws as well as export controls and economic sanction laws. The FCPA, U.K. Bribery Act and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. Our policies mandate compliance with these laws. We operate in many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. We cannot assure you that our internal controls and procedures will always protect us from the reckless or criminal acts committed by our employees or agents. If we are found to be liable for FCPA, U.K Bribery Act, export control or sanction violations, we could suffer from criminal or civil penalties or other sanctions, including loss of export privileges or authorization needed to conduct aspects of our international business, which could have a material adverse effect on our business.

Any of these risks could have an adverse effect on our international operations by reducing demand for our products.

***We engage in acquisitions and joint ventures, and may encounter unexpected difficulties integrating those businesses.***

Attainment of our strategic plan objectives require, in part, strategic acquisitions or joint ventures intended to complement or expand our businesses globally or add product technology that accelerates our specialization strategy, or both. Success will depend on our ability to complete these transactions or arrangements, and integrate the businesses acquired in these transactions as well as develop satisfactory working arrangements with our strategic partners in the joint ventures. Unexpected difficulties in integrating recent and future acquisitions with our existing operations and in managing strategic investments could occur. Furthermore, we may not realize the degree, or timing, of benefits initially anticipated.

***We are undergoing restructurings that may cause disruption or could have an adverse effect on our business and operations.***

We are undergoing certain restructurings that are intended to realize certain synergies. There can be no assurance that such restructurings and reorganizations will be successful or properly implemented. If any of such internal restructurings are not successful or properly implemented, we may fail to realize the potential synergies of the acquisition, which may harm our business and results of operations or cause disruptions to our operations, including disruption in our supply chain or loss of customers.

***Natural gas, electricity, fuel and raw material costs and other external factors that are also beyond our control can cause volatility in our results.***

The cost of our natural gas, electricity, fuel and raw materials, and other costs, may not correlate with changes in the prices we receive for our products, either in the direction of the price change or in absolute magnitude. Natural gas and raw materials costs represent a substantial part of our manufacturing costs. Most of the raw materials we use are commodities and the price of each can fluctuate widely for a variety of reasons, including changes in availability because of major capacity additions or reductions or significant facility operating problems. Other external factors beyond our control can cause volatility in raw materials prices, demand for our products, product prices, sales volumes and margins.

***Volatility of end markets that PolyOne serves.***

PolyOne's segment results have varied in the past and may vary from quarter to quarter in the future. Profitability can be negatively impacted by volatility in the end markets that PolyOne serves. The Company has undertaken measures to reduce the impact of this volatility through diversification of markets it serves and expansion of geographic regions in which it operates. Future downturns in any of the markets could adversely affect our results.

Additionally, our products used in housing, transportation and building and construction markets are impacted by changes in demand in these sectors, which may be significantly affected by changes in economic and other conditions such as gross domestic product levels, employment levels, demographic trends, legislative actions and consumer confidence. These factors can lower the demand for and pricing of our products.

***We face competition from other companies and alternative technologies.***

We encounter competition in price, payment terms, delivery, service, performance, product innovation, product recognition and quality, depending on the product involved.

We expect that our competitors will continue to develop and introduce new and enhanced products, which could cause a decline in the market acceptance of our products. In addition, our competitors could cause a reduction in the selling prices of some of our products as a result of intensified price competition. Competitive pressures can also result in the loss of customers.

Additionally, some of our customers may already be or may become large enough to justify developing in-house production capabilities. Any significant reduction in customer orders as a result of a shift to in-house production could adversely affect our sales and operating profits.

***A major failure of our information systems could harm our business.***

We depend on integrated information systems to conduct our business. We may experience operating problems with our information systems as a result of system failures, viruses, computer hackers or other causes. Any significant disruption or slowdown of our systems could cause customers to cancel orders or cause standard business processes to become inefficient or ineffective.

***Increased information systems security threats and more sophisticated and targeted computer crime could pose a risk to our systems, networks, and products.***

Increased global information systems security threats and more sophisticated and targeted computer crime pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data and communications. While we attempt to mitigate these risks by employing a number of measures, including employee training, comprehensive monitoring of our networks and systems, and maintenance of backup and protective systems, our systems, networks and products remain potentially vulnerable to advanced persistent threats. Depending on their nature and scope, such threats could potentially lead to the compromising of confidential information and communications, improper use of our systems and networks, manipulation and destruction of data, defective products, production downtimes and operational disruptions, which in turn could adversely affect our reputation, competitiveness and results of operations.

***Significant movements in foreign currency exchange rates or change in monetary policy may harm our financial results.***

We are exposed to fluctuations in foreign currency exchange rates. Any significant change in the value of the currencies of the countries in which we do business against the U.S. dollar could affect our ability to sell products competitively and control our cost structure, which could have a material adverse effect on our business, financial condition and results of operations. For additional detail related to this risk, see Item 7A, "Quantitative and Qualitative Disclosure About Market Risk."

***Disruptions in the global credit and financial markets could limit our access to credit, which could negatively impact our business.***

Global credit and financial markets have experienced volatility in recent years, including volatility in security prices, liquidity and credit availability, declining valuations of certain investments and significant changes in the capital and organizational structures of certain financial institutions. These market conditions may limit our ability to access the capital necessary to grow and maintain our business. Accordingly, we may be forced to delay raising capital, issue shorter tenors than we prefer or pay unattractive interest rates, which could increase our interest expense, decrease our profitability and significantly reduce our financial flexibility.

***The agreements governing our debt, including our revolving credit facility, term loan and other debt instruments, contain various covenants that limit our ability to take certain actions and also require us to meet financial maintenance tests, failure to comply with which could have a material adverse effect on us.***

The agreements governing our revolving credit facility and our secured term loan, and the indentures and credit agreements governing other debt, contain a number of customary restrictive covenants that, among other things, limit our ability to: consummate asset sales, incur additional debt or liens, consolidate or merge with any entity or transfer or sell all or substantially all of our assets, pay dividends or make certain other restricted payments, make investments, enter into transactions with affiliates, create dividend or other payment restrictions with respect to subsidiaries, make capital investments and alter the business we conduct.

In addition, these agreements require us to comply with specific financial tests, under which we are required to achieve certain or specific financial and operating results. Our ability to comply with these provisions may be affected by events beyond our control. A breach of any of these covenants would result in a default under certain of these agreements and instruments, which in turn could be a default under all of these agreements and instruments. In the event of any default, our lenders could elect to declare all amounts borrowed under the agreements, together with accrued interest thereon, to be due and payable. In such event, we cannot assure that we would have sufficient assets to pay debt then outstanding under the agreements governing our debt. Any future refinancing of the revolving credit facility or other debt may contain similar restrictive covenants.

***To service our indebtedness, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control.***

Our ability to pay interest on our debt and to satisfy our other debt obligations will depend in part upon our future financial and operating performance and that of our subsidiaries and upon our ability to renew or refinance borrowings. Prevailing economic conditions and financial, business, competitive, legislative, regulatory and other factors, many of which are beyond our control, will affect our ability to make these payments. While we believe that cash flow from our current level of operations, available cash and available borrowings under our revolving credit facilities will provide adequate sources of liquidity for at least the next twelve months, a significant drop in operating cash flow resulting from economic conditions, competition or other uncertainties beyond our control could create the need for alternative sources of liquidity. If we are unable to generate sufficient cash flow to meet our debt service obligations, we will have to pursue one or more alternatives, such as reducing or delaying capital or other expenditures, refinancing debt, selling assets, or raising equity capital.

***We have a significant amount of goodwill, and any future goodwill impairment charges could adversely impact our results of operations.***

As of December 31, 2015, we had goodwill of \$597.7 million. For additional information, see Note 3, *Goodwill and Intangible Assets*, to the accompanying consolidated financial statements. The future occurrence of a potential indicator of impairment, such as a significant adverse change in legal factors or business climate, an adverse action or assessment by a regulator, unanticipated competition, a material negative change in relationships with customers, strategic decisions made in response to economic or competitive conditions, loss of key personnel or a more-likely-than-not expectation that a reporting unit or a significant portion of a reporting unit will be sold or disposed of, could result in goodwill impairment charges, which could adversely impact our results of operations.

We have recorded goodwill impairment charges in the past, and such charges materially impacted our historical results of operations and financial condition. Based on our 2015 interim impairment test, performed as of December 31, 2015, our Custom Engineered Structures (CES) reporting unit, which is included in our Designed Structures and Solutions segment, was identified as being at risk of impairment. For additional information, see "Critical Accounting Policies" included in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

***Risks related to our pension plans may adversely impact our results of operations, cash flows and financial position.***

Significant changes in the actual investment return on pension assets, discount rates, and other factors have and may continue to adversely affect our results of operations, financial position and pension contributions in future periods. U.S. generally accepted accounting principles require that we calculate income or expense for the plans using actuarial valuations. These valuations reflect assumptions about financial markets and interest rates. Changes in these assumptions have resulted in material gains and losses to income in recent years and may continue to do so in future periods. For a discussion regarding the significant assumptions used to estimate pension expense, including discount rate, expected long-term rate of return on plan assets and mortality, and how our financial statements can be affected by pension plan accounting policies, see "Critical Accounting Policies" and estimates included in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Poor investment performance by our pension plan assets resulting from a decline in prices in the equity and/or fixed income markets could impact the funded status of our plans. Should the assets earn an average return less than our assumed rate, future pension expenses and funding requirements could increase. Further, we cannot predict whether changing market or economic conditions, regulatory changes or other factors will further increase our pension expense or funding obligations, diverting funds we would otherwise apply to other uses.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Headquartered in Avon Lake, Ohio we operate globally with principal locations consisting of 76 manufacturing sites and eight distribution facilities in North America, South America, Europe and Asia. We own the majority of our manufacturing sites and lease our distribution facilities. We believe that the quality and production capacity of our facilities is sufficient to maintain our competitive position for the foreseeable future. The following table identifies the principal facilities of our segments:

Performance Products and Solutions	Specialty Engineered Materials	Color, Additives and Inks	PolyOne Distribution	Designed Structures and Solutions
1. Carson, California	1. McHenry, Illinois	1. Glendale, Arizona	1. Rancho Cucamonga,	1. Cape Girardeau,
2. Terre Haute, Indiana	2. Avon Lake, Ohio	2. Kennesaw, Georgia	California	Missouri
3. Louisville, Kentucky	Dyersburg, Tennessee <sup>(1)</sup>	Suwanee, Georgia <sup>(3)</sup>	2. Chicago, Illinois	2. Goodyear, Arizona
4. Avon Lake, Ohio	3. North Haven, Connecticut	3. Elk Grove Village, Illinois	3. Eagan, Minnesota	3. Greenville, Ohio
5. Clinton, Tennessee	Seabrook, Texas <sup>(1)</sup>	4. St. Louis, Missouri	4. Edison, New Jersey	4. Hackensack,
6. Dyersburg, Tennessee	4. Gaggenau, Germany	5. Massillon, Ohio	5. Statesville, North	New Jersey
7. Pasadena, Texas	5. Istanbul, Turkey	6. Norwalk, Ohio	Carolina	5. La Mirada, California
8. Seabrook, Texas	6. Barbastro, Spain	7. North Baltimore, Ohio	6. Elyria, Ohio	6. Manitowoc, Wisconsin
9. Orangeville, Ontario,	7. Melle, Germany	8. Lehigh, Pennsylvania	7. La Porte, Texas	7. McMinnville, Oregon
Canada	8 & 9. Suzhou, China <sup>(2)</sup>	9. Mountain Top,	8. Brampton, Ontario,	8. Muncie, Indiana
10. St. Remi de Napierville,	10. Shenzhen, China	Pennsylvania	Canada	9. Newark, New Jersey
Quebec, Canada	11. Birmingham, Alabama	10. Vonore, Tennessee	(8 Distribution Facilities)	10. Paulding, Ohio
11. Dongguan, China	Shanghai, China <sup>(3)</sup>	11. Toluca, Mexico		11. Pleasant Hill, Iowa
12. Lockport, New York	(11 Manufacturing Plants)	12. Assesse, Belgium		12. Ripon, Wisconsin
13. Ramos Arizpe, Mexico		13. Cergy, France		13. Salisbury, Maryland
(13 Manufacturing Plants)		14. Tossiat, France		14. Portage, Wisconsin
		15. Gyor, Hungary		15. Sheboygan Falls,
		16. Milan, Italy		Wisconsin
		17. Kutno, Poland		16. Stamford, Connecticut
		18. Pune, India		17. Wichita, Kansas
		19. Pamplona, Spain		Maryland Heights,
		20. Bangkok, Thailand		Missouri <sup>(3)</sup>
		21. Pudong (Shanghai),		(17 Manufacturing Plants)
		China		
		22. Jeddah, Saudi Arabia		
		Shenzhen, China <sup>(1)</sup>		
		23. Tianjin, China		
		24. Novo Hamburgo, Brazil		
		25. Berea, Ohio		
		26. Richland Hills, Texas		
		27. Bethel, Connecticut		
		28. Barberton, Ohio		
		29. Knowsley, United		
		Kingdom		
		30. Eindhoven, Netherlands		
		31. Suzhou, China		
		32 & 33. Shanghai, China <sup>(4)</sup>		
		34. Itupeva, Brazil		
		35. Odkarby, Finland		
		Manitowoc, Wisconsin <sup>(1)</sup>		
		(35 Manufacturing Plants)		

(1) Facility is not included in manufacturing plants total as it is also included as part of another segment.  
(2) There are two manufacturing plants located at Suzhou, China.  
(3) Facility is not included in manufacturing plants total as it is a design center/lab.  
(4) There are two manufacturing plants located at Shanghai, China

### **ITEM 3. LEGAL PROCEEDINGS**

Information regarding other legal proceedings can be found in Note 13, *Commitments and Contingencies*, to the consolidated financial statements and is incorporated by reference herein.

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

### **EXECUTIVE OFFICERS OF THE REGISTRANT**

Executive officers are elected by our Board of Directors to serve one-year terms. The following table lists the name of each person currently serving as an executive officer of the Company, their age as of February 12, 2016 and current position with the Company.

Name	Age	Position
Stephen D. Newlin	63	Executive Chairman
Robert M. Patterson	43	President and Chief Executive Officer
Bradley C. Richardson	57	Executive Vice President and Chief Financial Officer
Richard N. Altice	51	Senior Vice President, President of Designed Structures and Solutions
Mark D. Crist	57	Senior Vice President, President of Distribution
Michael A. Garratt	52	Senior Vice President, President of Performance Products and Solutions
Michael E. Kahler	58	Senior Vice President, Chief Commercial Officer
Lisa K. Kunkle	47	Senior Vice President, General Counsel and Secretary
M. John Midea, Jr.	51	Senior Vice President, Global Operations and Process Improvement
Craig M. Nikrant	54	Senior Vice President, President of Specialty Engineered Materials
Joel R. Rathbun	43	Senior Vice President, Mergers & Acquisitions
Ana G. Rodriguez	48	Senior Vice President, Chief Human Resource Officer
John V. Van Hulle	58	Senior Vice President, President of Color, Additives and Inks

**Stephen D. Newlin:** Executive Chairman, May 2014 to date. Chairman, President and Chief Executive Officer, February 2006 to May 2014. President — Industrial Sector of Ecolab Inc. (a global developer and marketer of cleaning and sanitizing specialty chemicals, products and services) from 2003 to 2006. Mr. Newlin served as President and a Director of Nalco Chemical Company (a manufacturer of specialty chemicals, services and systems) from 1998 to 2001, and was Chief Operating Officer and Vice Chairman from 2000 to 2001. Mr. Newlin serves on the Boards of Directors of Oshkosh Corporation, The Chemours Company and Univar Inc.

**Robert M. Patterson:** President and Chief Executive Officer, May 2014 to date. Executive Vice President and Chief Operating Officer, March 2012 to May 2014. Executive Vice President and Chief Financial Officer, January 2011 to March 2012. Senior Vice President and Chief Financial Officer, May 2008 to January 2011. Vice President and Treasurer of Novelis, Inc. (an aluminum rolled products manufacturer) from 2007 to May 2008. Vice President, Controller and Chief Accounting Officer of Novelis from 2006 to 2007. Mr. Patterson served as Vice President and Segment Chief Financial Officer, Thermal and Flow Technology Segments of SPX Corporation (a multi-industry manufacturer and developer) from 2005 to 2006 and as Vice President and Chief Financial Officer, Cooling Technologies and Services of SPX from 2004 to 2005. Mr. Patterson served as Vice President and Chief Financial Officer of Marley Cooling Tower Company, a cooling tower manufacturer and subsidiary of SPX, from 2002 to 2004.

**Bradley C. Richardson:** Executive Vice President and Chief Financial Officer, November 2013 to date. Executive Vice President and Chief Financial Officer of Diebold, Incorporated (an integrated self-service delivery manufacturer for the banking industry and security systems) from November 2009 through November 2013. Executive Vice President, Corporate Strategy and Chief Financial Officer at Modine Manufacturing Company (a manufacturer of thermal management systems and components) from 2003 to 2009. Vice President, Performance Management Planning and Control, Chief Financial Officer, Upstream, BP Amoco, London, (a producer of oil, natural gas, and petro chemicals) 2000 to 2003. Mr. Richardson serves on the Board of Directors of Brady Corporation and is Chair of its Audit Committee.

**Richard N. Altice:** Senior Vice President, President of Designed Structures and Solutions, May 2015 to date. Vice President, Epoxy Specialties Resins of Hexion Inc. (a global manufacturer of thermoset resins) from June 2013 to May 2015. Operating Partner, Quinpario Partners LLC (a private equity firm specializing in investments in specialty chemical businesses) from September 2012 to June 2013. Mr. Altice served as President & General Manager, Technical Specialties of Solutia Inc. (a global manufacturer of performance materials and specialty chemicals) from October 2011 to September 2012, as Vice President, Business Management of Solutia Inc. from August 2010 to October 2011, as Vice President, Commercial Services of Solutia Inc. from May 2009 to August 2010, as Global

Commercial Director, Fluids of Solutia Inc. from October 2008 to May 2009, and as Fluids Specialist of Solutia Inc. from March 2008 to October 2008. Mr. Altice served as Regional Sales Director of Strongwell Corporation (a manufacturer of fiber reinforced polymer) from 2001 to 2008.

Mark D. Crist: Senior Vice President, President of Distribution, June 2014 to date. Vice President, Global Key Accounts and Vice President of Asia January 2012 to May 2014. Global Commercial Director of Geon Performance Materials June 2008 to December 2011. General Manager Nalco Chemical Company Europe (a manufacturer of specialty chemicals, services and systems) from April 2006 to March 2008. General Manager Nalco Chemical Company North America June 2003 to March 2006. Marketing Manager Nalco Europe December 1999 to May 2003. Regional Sales Manager Nalco Chemical Company March 1997 to November 1999.

Michael A. Garratt: Senior Vice President, President of Performance Products and Solutions, September 2013 to date. President, Marmon Utility (a manufacturer of medium-high voltage utility, subsea and down-hole power cables and molded insulator systems), March 2011 to September 2013. Chief Operating Officer, Excel Polymers (a custom thermoset rubber formulator), November 2009 to December 2010. Vice President and General Manager - Americas Compounding and Performance Additives, Excel Polymers, March 2009 to November 2009. Vice President and General Manager - Industrial and Consumer, Excel Polymers, December 2005 to March 2009. From August 1994 to June 2005, Mr. Garratt worked for DuPont Dow Elastomers, a joint venture of Dupont and Dow (global manufacturers of engineered thermoset rubber and thermoplastic elastomer materials) in market development and product management positions, culminating in a regional commercial leadership role for Europe, the Middle East and Africa.

Michael E. Kahler: Senior Vice President, Chief Commercial Officer, January 2010 to date. Senior Vice President, Commercial Development, May 2006 to January 2010. President, Process Technology Division, Alfa Laval Inc. (a global provider of heat transfer, separation and fluid handling products and engineering solutions) from January 2004 to March 2006. Group Vice President, Nalco Chemical Company (a manufacturer of specialty chemicals, services and systems) from December 1999 to October 2002.

Lisa K. Kunkle: Senior Vice President, General Counsel and Secretary, May 2015 to date. Vice President, General Counsel and Secretary, August 2007 to May 2015, Assistant General Counsel February 2007 to August 2007. Partner, Jones Day (a global law firm), January 2006 to February 2007, Associate, Jones Day, August 1995 to January 2006.

M. John Midea, Jr.: Senior Vice President, Global Operations and Process Improvement, February 2015 to date. President and Chief Executive Officer, Resco Products (a refractory products company) from August 2012 to October 2014. President and Chief Operating Officer, Ennis Traffic Safety Solutions (a traffic safety and infrastructure company) from June 2008 to July 2012. Vice President, North American - General Industrial, Valspar Corporation (a manufacturer of paints and coatings) from June 2007 to May 2008. Vice President and General Manager, Power Coatings, Valspar Corporation from February 2002 to June 2007.

Craig M. Nikrant: Senior Vice President, President of Specialty Engineered Materials, January 2010 to date. Vice President and General Manager, Specialty Engineered Materials, September 2006 to December 2009. General Manager, Specialty Film & Sheet, General Electric Plastics, June 2004 to September 2006. Director, Global Commercial Effectiveness, General Electric Plastics (a former division of General Electric specializing in supplying plastics), December 2003 to June 2004. Six Sigma Master Black Belt, General Electric Company Plastics Business, March 2001 to December 2002. General Manager, Commercial Operations, North Central Region, General Electric Plastics, June 1999 to March 2001.

Joel R. Rathbun: Senior Vice President, Mergers & Acquisitions, January 2016 to date. General Manager, Specialty Engineered Material North America from February 2013 to January 2016. Vice President, Mergers and Acquisitions from June 2011 to February 2013. Mr. Rathbun served as Senior Vice President, Mergers and Acquisitions, Moelis & Company (an American global independent investment bank) from January 2008 to June 2011. He also served as Executive Director, Mergers and Acquisitions of CIBC World Markets (an investment bank in the domestic and international equity and debt capital markets) from 2006 to 2008, as Director, Mergers and Acquisitions of CIBC World Markets from 2003 to 2005, as Associate, Mergers and Acquisitions of CIBC World Markets from 2000 to 2002, and as Analyst, Mergers and Acquisitions of CIBC World Markets from 1998 to 2000.

Ana G. Rodriguez: Senior Vice President, Chief Human Resources Officer, May 2014 to date. Senior Vice President, Global Human Resources, Molex Incorporated (a manufacturer of electronic connectors), September 2008 to March 2014. Vice President, Co-General Counsel and Corporate Secretary, Molex, September 2006 to August 2008, Vice President and Assistant General Counsel, Molex, October 2005 to September 2006. Senior Counsel, Amgen Inc. (a global biotechnology medicines company), May 2003 to September 2005. Senior Counsel



and Assistant Corporate Secretary, Tenet Healthcare Corporation (a health care services company) May 2000 to May 2003.

**John V. Van Hulle:** Senior Vice President, President of Color, Additives and Inks, January 2010 to date. Senior Vice President and General Manager, Specialty Color, Additives and Inks, July 2006 to January 2010. President and Chief Executive Officer — ChemDesign Corporation (a custom chemical manufacturer), December 2001 to July 2006. President, Specialty & Fine Chemicals — Cambrex Corporation (a specialty chemical and pharmaceutical business) August 1994 to November 2000.

## PART II

### **ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

The following table sets forth the range of the high and low sale prices for our common shares, \$0.01 par value per share, as reported by the New York Stock Exchange, where the shares are traded under the symbol "POL," for the periods indicated:

Common share price:	2015 Quarters				2014 Quarters			
	Fourth	Third	Second	First	Fourth	Third	Second	First
High	\$ 36.24	\$ 39.89	\$ 41.20	\$ 40.72	\$ 39.28	\$ 43.34	\$ 42.47	\$ 38.38
Low	\$ 28.97	\$ 29.09	\$ 36.33	\$ 34.41	\$ 32.01	\$ 34.78	\$ 36.02	\$ 32.81

As of February 1, 2016, there were 2,110 holders of record of our common shares.

The following table presents quarterly dividends declared per common share for the fiscal year ended December 31, 2015 and 2014

Quarter Ended:	2015	2014
March 31,	\$ 0.10	\$ 0.08
June 30,	0.10	0.08
September 30,	0.10	0.08
December 31,	0.12	0.10
Total	\$ 0.42	\$ 0.34

The table below sets forth information regarding repurchase of shares of our common shares during the period indicated. For the full year 2015, we repurchased 4.5 million shares at a weighted average share price of \$34.67.

Period	Total Number of Shares Purchased	Weighted Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Program	Maximum Number of Shares that May Yet be Purchased Under the Program <sup>(1)</sup>
October 1 to October 31	100,000	\$ 31.99	100,000	5,097,373
November 1 to November 30	900,000	34.87	900,000	4,197,373
December 1 to December 31	—	—	—	4,197,373
Total	1,000,000	\$ 34.58	1,000,000	

(1) In August 2008, PolyOne's Board of Directors approved a common shares repurchase program authorizing PolyOne to purchase up to 10.0 million shares of its common shares. On October 11, 2011 and October 23, 2012, PolyOne's Board of Directors increased the common shares repurchase authorization by an additional 5.3 million and 13.2 million, respectively. Purchases of common shares may be made by open market purchases or privately negotiated transactions and may be made pursuant to Rule 10b5-1 plans and accelerated share repurchases.

## ITEM 6. SELECTED FINANCIAL DATA

Refer to Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," in Part II of this Annual Report on Form 10-K and the notes to our accompanying consolidated financial statements for additional information regarding the financial data presented below, including matters that might cause this data not to be indicative of our future financial condition, results of operations or cash flows.

(In millions, except per share data)	2015 <sup>(1)</sup>		2014 <sup>(2)</sup>		2013 <sup>(3)</sup>		2012 <sup>(4)</sup>		2011 <sup>(5)</sup>	
Sales	\$	3,377.6	\$	3,835.5	\$	3,771.2	\$	2,860.8	\$	2,709.4
Operating income		250.9		155.1		231.5		137.5		203.0
Net income from continuing operations		144.7		77.2		92.9		53.2		153.4
Net income from continuing operations attributable to PolyOne shareholders		144.6		78.0		94.0		53.3		153.4
Cash dividends declared per common share	\$	0.42	\$	0.34	\$	0.26	\$	0.20	\$	0.16
Earnings per share from continuing operations attributable to PolyOne shareholders:										
Basic	\$	1.65	\$	0.85	\$	0.98	\$	0.60	\$	1.66
Diluted	\$	1.63	\$	0.83	\$	0.97	\$	0.59	\$	1.63
Total assets <sup>(6)</sup>	\$	2,595.1	\$	2,666.3	\$	2,896.6	\$	2,102.0	\$	2,052.7
Long-term debt <sup>(6)</sup>	\$	1,128.0	\$	948.9	\$	961.1	\$	686.5	\$	688.5

- (1) Included in operating income for 2015 are: 1) a mark-to-market adjustment related to our pension and post-retirement health care benefit plans of \$11.6 million, 2) \$41.9 million related to employee separation and restructuring costs and 3) \$5.8 million related to environmental remediation costs, net of insurance recoveries. Included in net income from continuing operations for 2015 is 4) a \$30.7 million net tax benefit as a result of amending U.S. federal income tax returns from 2004 to 2012 to use foreign tax credits.
- (2) Included in operating income for 2014 are: 1) a mark-to-market adjustment related to our pension and post-retirement health care benefit plans of \$56.5 million, 2) \$94.1 million related to employee separation and restructuring costs and reductions in force and 3) \$6.6 million related to environmental remediation costs, net of insurance recoveries.
- (3) Included in operating income for 2013 are: 1) gains of \$26.9 million primarily related to the 2013 SunBelt Chlor Alkali Partnership (SunBelt) earn-out, 2) a mark-to-market gain related to our pension and OPEB plans of \$44.0 million, 3) expenses of \$61.2 million related to environmental remediation costs, 4) insurance recoveries of \$23.5 million, 5) a \$7.0 million gain on commercial litigation, 6) expenses of \$52.0 million related to employee separation and restructuring costs and 7) acquisition-related costs (including inventory fair value adjustments) of \$15.2 million.
- (4) Included in operating income for 2012 are: 1) gains of \$23.4 million for the 2012 SunBelt earn-out, 2) a mark-to-market loss related to our pension and OPEB plans of \$42.0 million, 3) expenses of \$12.8 million related to environmental remediation costs, 4) expenses of \$11.5 million related to employee separation and restructuring costs and 5) acquisition-related costs of \$9.3 million.
- (5) Included in operating income for 2011 are: 1) gains of \$146.3 million related to the sale of our equity interest in SunBelt, which includes the 2011 earn-out of \$18.1 million, 2) a mark-to-market charge related to our pension and OPEB plans of \$83.8 million, 3) environmental remediation costs of \$6.4 million, net of insurance recoveries and 4) acquisition-related costs of \$6.6 million. Included in net income for 2011 is a \$29.5 million tax benefit related to our investment in O'Sullivan Engineered Films and a \$13.0 million tax benefit primarily related with the reversal of valuation allowances.
- (6) All prior periods have been retrospectively adjusted, as a result of accounting standard changes in 2015 related to the balance sheet presentation of debt issuance costs and deferred income tax assets and liabilities. Refer to "Accounting Standards Adopted" within Note 1, *Description of Business and Summary of Significant Accounting Policies*.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Overview**

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is designed to provide information that is supplemental to, and should be read together with, our consolidated financial statements and the accompanying notes contained in this Annual Report on Form 10-K. Information in this Item 7 is intended to assist the reader in obtaining an understanding of our consolidated financial statements, the changes in certain key items in those financial statements from year to year, the primary factors that accounted for those changes, and any known trends or uncertainties that we are aware of that may have a material effect on our future performance, as well as how certain accounting principles affect our consolidated financial statements.

The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to these differences include, but are not limited to, those discussed below and elsewhere in this Annual Report on Form 10-K, particularly in "Cautionary Note on Forward-Looking Statements" and Item 1A, "Risk Factors."

### **Our Business**

We are a premier provider of specialized polymer materials, services and solutions with operations in specialty polymer formulations, color and additive systems, plastic sheet and packaging solutions and polymer distribution. We are also a highly specialized developer and manufacturer of performance enhancing additives, liquid colorants, and fluoropolymer and silicone colorants. Headquartered in Avon Lake, Ohio, with 2015 sales of \$3.4 billion, we have manufacturing sites and distribution facilities in North America, South America, Europe, Asia and Africa. We currently employ approximately 6,900 people and offer more than 35,000 polymer solutions to over 10,000 customers across the globe. We provide value to our customers through our ability to link our knowledge of polymers and formulation technology with our manufacturing and supply chain capabilities to provide value-added solutions to designers, assemblers and processors of plastics (our customers).

### ***Business Model and Key Concepts***

The central focus of our business model is to provide specialized material and service solutions to our customers by leveraging our global footprint, product and technology breadth, manufacturing expertise, fully integrated information technology network, broad market reach and raw material procurement strength. These resources enable us to capitalize on dynamic changes in the end markets we serve, which include transportation, packaging, building and construction, industrial, healthcare, consumer, wire and cable, electrical and electronics and appliance.

### ***Key Challenges***

Our business faces macroeconomic exposures resulting from economic downturns, especially as it relates to cyclical markets such as building and construction, automotive and industrial. In addition, with 52.0% and 49.0% of our Color, Additives and Inks and Specialty Engineered Materials segments' sales outside the United States, we experience volatility related to foreign currency fluctuations, most significantly the Euro. Increasing profitability during periods of raw material price volatility is another challenge. Further, we strive to capitalize on the opportunity to accelerate development of products that meet a growing body of environmental laws and regulations such as lead and phthalate restrictions included in the Restrictions on the Use of Certain Hazardous Substances and the Consumer Product Safety Information Act of 2008.

### ***Strategy and Key Trends***

To address these challenges and achieve our vision, we have implemented a strategy with four core components: specialization, globalization, operational excellence and commercial excellence. Specialization differentiates us through products, services, technology, and solutions that add value. Globalization allows us to service our customers with consistency wherever their operations might be around the world. Operational excellence empowers us to respond to the voice of the customer while focusing on continuous improvement. Commercial excellence enables us to deliver value to customers by supporting their growth and profitability with superior customer service.

As part of our Platinum Vision for 2020, we have established margin improvement targets for all businesses. In the short term, we will maintain our focus on sales growth with expanding margins, with a goal of offsetting weaker foreign currencies and raw material volatility. Longer term, we will continue to focus on accelerating the launch of new products and collaborating with our customers to develop new and unique solutions for their benefit. Capital expenditures will be focused primarily to support sales growth, our continued investment in recent acquisitions, and

other strategic investments. We also continue to consider acquisitions and other synergy opportunities that complement our core platforms. These actions will ensure that we continue to invest in capabilities that advance the pace of our transformation and continue to support growth in key markets and product offerings.

We will continue our enterprise-wide Lean Six Sigma program directed at improving margin, profitability and cash flow by applying proven management techniques and strategies to key areas of the business, such as pricing, supply chain and operations management, productivity and quality. Long-term trends that currently provide opportunities to leverage our strategy include improving health and wellness, protecting the environment, globalizing and localizing and increasing energy efficiency. Examples of how our strategy supports these trends can be found in numerous initiatives: active participation in the medical device market, leveraging our global footprint to deliver consistent solutions globally, lightweighting and metal replacement and development of solutions that respond to ever-changing market needs by offering alternatives to traditional materials.

### **Recent Developments**

On December 9, 2015, the Company completed the acquisition of specialty color concentrates of Magenta, a leading innovative developer in the global fiber industry, for \$18.3 million in cash, net of cash acquired. The results of Magenta since the date of acquisition were not material.

On January 29, 2016, the Company completed the acquisition of certain technologies and assets from Kraton Performance Polymers, Inc (Kraton), to expand its global footprint and expertise in the thermoplastic elastomer (TPE) innovation and design, for \$72.0 million in cash.

### **Highlights and Executive Summary**

A summary of PolyOne's sales, operating income, income from continuing operations net of income taxes, net income from continuing operations attributable to PolyOne common shareholders, liquidity and total debt is included in the following table:

(In millions)	2015	2014	2013
Sales	\$ 3,377.6	\$ 3,835.5	\$ 3,771.2
Operating income	250.9	155.1	231.5
Net income from continuing operations	144.7	77.2	92.9
Net income from continuing operations attributable to PolyOne common shareholders	144.6	78.0	94.0
Liquidity	\$ 621.7	\$ 475.0	\$ 650.9
Long-term debt	\$ 1,128.0	\$ 948.9	\$ 961.1

## Results of Operations

Results of Operations				Variances — Favorable (Unfavorable)			
				2015 versus 2014		2014 versus 2013	
(Dollars in millions, except per share data)	2015	2014	2013	Change	% Change	Change	% Change
Sales	\$ 3,377.6	\$ 3,835.5	\$ 3,771.2	\$ (457.9)	(11.9)%	\$ 64.3	1.7 %
Cost of sales	2,696.1	3,127.6	3,109.0	431.5	13.8 %	(18.6)	(0.6)%
Gross margin	681.5	707.9	662.2	(26.4)	(3.7)%	45.7	6.9 %
Selling and administrative expense	430.6	552.8	457.6	122.2	22.1 %	(95.2)	(20.8)%
Income related to previously owned equity affiliates	—	—	26.9	—	— %	(26.9)	(100.0)%
Operating income	250.9	155.1	231.5	95.8	61.8 %	(76.4)	(33.0)%
Interest expense, net	(64.1)	(62.2)	(63.5)	(1.9)	(3.1)%	1.3	2.0 %
Debt extinguishment costs	(16.4)	—	(15.8)	(16.4)	(100.0)%	15.8	100.0 %
Other expense, net	(2.7)	(4.5)	(1.2)	1.8	40.0 %	(3.3)	(275.0)%
Income from continuing operations, before income taxes	167.7	88.4	151.0	79.3	89.7 %	(62.6)	(41.5)%
Income tax expense	(23.0)	(11.2)	(58.1)	(11.8)	(105.4)%	46.9	80.7 %
Net income from continuing operations	\$ 144.7	\$ 77.2	\$ 92.9	\$ 67.5	87.4 %	\$ (15.7)	(16.9)%
Income from discontinued operations, net of income taxes	—	1.2	149.8	(1.2)	(100.0)%	(148.6)	(99.2)%
Net income	144.7	78.4	\$ 242.7	66.3	84.6 %	(164.3)	(67.7)%
Net (income) loss attributable to noncontrolling interests	(0.1)	0.8	1.1	(0.9)	(112.5)%	(0.3)	(27.3)%
Net income attributable to PolyOne common shareholders	\$ 144.6	\$ 79.2	\$ 243.8	\$ 65.4	82.6 %	\$ (164.6)	(67.5)%

Earnings per share attributable to PolyOne common shareholders - basic:

Continuing operations	\$ 1.65	\$ 0.85	\$ 0.98	
Discontinued operations	—	0.01	1.57	
Total	\$ 1.65	\$ 0.86	\$ 2.55	

Earnings per share attributable to PolyOne common shareholders - diluted:

Continuing operations	\$ 1.63	\$ 0.83	\$ 0.97	
Discontinued operations	—	0.02	1.56	
Total	\$ 1.63	\$ 0.85	\$ 2.53	

## Sales

Sales decreased \$457.9 million, or 11.9%, in 2015 compared to 2014. Sales decreased 6.0% as lower volume associated with the ongoing integration of the legacy Sparteck businesses more than offset new business gains in smaller, niche specialty applications. Sales further declined 2.3% as a result of unfavorable foreign exchange rates and 4.5% due to declining hydrocarbon based raw material costs that led to reduced overall average selling prices, particularly for the Performance Products and Solutions and PolyOne Distribution segments. Partially offsetting these items was the acquisition of Accella, which increased sales 0.9%.

Sales increased \$64.3 million, or 1.7%, in 2014 compared to 2013. The acquisition of Sparteck increased sales 5.2%, while improved mix within our Color, Additives and Inks and Specialty Engineered Materials segments increased sales 3.7%. Partially offsetting these increases were declines of 7.0% primarily a result of softening demand in Europe and the wire and cable end market along with the exit of certain product lines in Brazil.

## Cost of sales

As a percent of sales, cost of sales decreased from 81.5% in 2014 to 79.8% in 2015. This is primarily a result of improved mix within the Color, Additives and Inks and Specialty Engineered Materials specialty segments and \$27.0 million in lower restructuring charges in 2015.

As a percent of sales, cost of sales decreased from 82.4% in 2013 to 81.5% in 2014 primarily due to improved mix within our specialty platform segments and the exiting of certain product lines in Brazil and Sparteck.

### ***Selling and administrative expense***

These costs include selling, technology, administrative functions, corporate and general expenses. Selling and administrative expense in 2015 decreased \$122.2 million, primarily related to lower restructuring charges of \$25.2 million, \$32.4 million as a result of reduced compensation costs, a \$16.6 million reduction due to foreign currency, primarily driven by the weaker Euro, and a \$43.9 million reduction in our pension mark-to-market adjustment. The 2015 adjustment was a result of actual asset returns that were lower than our assumed returns partially offset by the impact of increased discount rates. See Note 12, *Employee Benefit Plans*, for further discussion on our mark-to-market adjustment. The remaining decrease is primarily due to an improved cost structure as a result of restructuring actions.

Selling and administrative expense in 2014 increased \$95.2 million, primarily related to increased restructuring costs of \$11.4 million and a \$96.9 million unfavorable difference in the pension mark-to-market adjustment. In 2014, we recognized a pension charge of \$54.5 million compared to a pension gain of \$42.4 million in 2013. The 2014 mark-to-market adjustment was driven primarily by decreased discount rates and a change in our mortality assumptions. These increases more than offset decreased discretionary spending.

### ***Income Related to Previously Owned Equity Affiliates***

Effective February 28, 2011, we sold our 50% equity investment in SunBelt. During 2013, we recognized a gain of \$26.9 million related to the final earn-out associated with the sale.

### ***Interest expense, net***

Interest expense, net increased \$1.9 million in 2015 compared to 2014 due to increased borrowings on our revolving credit facility during 2015 as compared to 2014.

Interest expense, net decreased \$1.3 million in 2014 compared to 2013, primarily due to the amortization of the Spartech bridge loan commitment fees of \$1.9 million, which impacted 2013.

### ***Debt extinguishment costs***

Debt extinguishment costs of \$16.4 million for 2015 includes \$13.4 of premium and consent payments and \$3.0 million associated with the write-off of unamortized deferred financing costs due to the early repurchase of the remaining \$316.6 million aggregate principal of our 7.375% senior notes due 2020.

Debt extinguishment costs of \$15.8 million for 2013 includes \$5.2 million related to the repurchase of \$43.4 million aggregate principal amount of our 7.375% senior notes due 2020 and \$1.3 million aggregate principal amount of our 7.50% debentures due 2015. Debt extinguishment costs for 2013 also includes \$10.6 million related to the repayment of the outstanding principal amount of \$297.0 million under our senior secured term loan.

### ***Income taxes***

The Company is subject to taxation in the U.S. and numerous foreign jurisdictions. In determining the effective income tax rate, the Company analyzes various factors, including annual earnings, the laws of taxing jurisdictions in which the earnings will be generated, the impact of state and local income taxes, the ability to use tax credits, net operating loss carryforwards, and available tax planning alternatives. Discrete items, including the effect of changes in tax laws, statutory tax rates, and valuation allowances or other non-recurring tax adjustments are reflected in the period in which they occur as an addition to, or reduction from, the income tax provision.

A reconciliation of the U.S. federal statutory tax rate to the consolidated effective income tax rate along with a description of significant reconciling items is included below.

	2015	2014	2013
Income tax expense at 35%	35.0 %	35.0 %	35.0 %
Amended prior period tax returns	(18.3)	(2.3)	—
Foreign tax rate differential	(5.0)	(5.7)	(3.3)
State and local tax, net	2.7	2.8	2.6
Domestic production activities deduction	(2.0)	(2.5)	(1.0)
Permanent tax differences	1.8	(2.1)	4.9
U.S. credit for research activities	(0.7)	(1.2)	(1.4)
Tax benefits on certain foreign investments	(0.7)	(17.0)	—
Uncertain tax positions	0.6	1.0	(0.3)
Changes in valuation allowances	0.3	7.8	2.0
Settlements	—	(3.1)	—
Effective income tax rate	13.7 %	12.7 %	38.5 %

The effective tax rates for all periods differed from the U.S. federal statutory tax rate as a result of permanent items, state and local income taxes and foreign tax rates differences. Permanent items primarily consist of income or expense not taxable or deductible. Significant or unusual items impacting the effective income tax rate are described below.

#### 2015 Significant items

Amending U.S. federal income tax returns for 2004 through 2012 to use foreign tax credits decreased the effective tax rate by 18.3% (\$30.7 million).

Uncertain tax positions increased the effective tax rate by 0.6% (\$1.0 million). The reversal of an uncertain tax position due to the expiration of the statute of limitations decreased the effective tax rate by 5.9% (\$9.9 million). A foreign court ruling, which settled an uncertain position taken in a prior year, increased the effective tax rate by 4.7% (\$7.9 million). Other unfavorable uncertain tax positions more than offset the net decrease in the effective tax rate of these two items.

#### 2014 Significant items

Tax benefits on certain foreign investments decreased the effective tax rate by 17.0% (\$15.0 million) related to the write-off of our investment in certain Brazil subsidiaries for tax purposes and operating losses primarily as a result of restructuring actions to close certain Brazil facilities discussed in Note 4, *Employee Separation and Restructuring Costs*.

Permanent tax differences decreased the effective tax rate by 2.1% (\$1.9 million) primarily related to foreign tax law changes and the utilization of foreign tax credits.

Changes in valuation allowances increased the effective tax rate by 7.8% (\$6.9 million) primarily related to certain Brazilian subsidiaries as a result of cumulative operating losses.

#### 2013 Significant items

Permanent tax differences increased the effective tax rate by 4.9% (\$7.4 million) primarily related to foreign tax law changes and the tax effect of statutory foreign exchange gains.

The U.S. credit for research activities benefit decreased the effective tax rate by 1.4% (\$2.1 million), which included the benefit of two years of the U.S. research and experimentation tax credit due to the extension of the credit in the American Taxpayer Relief Act of 2012 (the Act) as signed into law in January 2013. The Act extended certain tax benefits retroactively to January 1, 2012.

#### Segment Information

Operating income is the primary measure that is reported to our chief operating decision maker for purposes of making decisions about allocating resources to the segments and assessing their performance. Operating income at the segment level does not include: corporate general and administrative costs that are not allocated to segments; intersegment sales and profit eliminations; charges related to specific strategic initiatives, such as the

consolidation of operations; restructuring activities, including employee separation costs resulting from personnel reduction programs, plant closure and phase-in costs; costs incurred directly in relation to acquisitions or divestitures; integration costs; executive separation agreements; share-based compensation costs; environmental remediation costs and other liabilities for facilities no longer owned or closed in prior years; gains and losses on the divestiture of joint ventures and equity investments; actuarial gains and losses associated with our pension and post-retirement benefit plans; and certain other items that are not included in the measure of segment profit or loss that is reported to and reviewed by our chief operating decision maker. These costs are included in *Corporate and eliminations*.

PolyOne has five reportable segments: (1) Color, Additives and Inks; (2) Specialty Engineered Materials; (3) Designed Structures and Solutions; (4) Performance Products and Solutions; and (5) PolyOne Distribution.

Our segments are further discussed in Note 16, *Segment Information*, to the accompanying consolidated financial statements.

### ***Sales and Operating Income — 2015 compared with 2014 and 2014 compared with 2013***

					2015 versus 2014		2014 versus 2013	
(Dollars in millions)	2015	2014	2013	Change	% Change	Change	% Change	
Sales:								
Color, Additives and Inks	810.7	850.8	852.3	(40.1)	(4.7)%	(1.5)	(0.2)%	
Specialty Engineered Materials	542.8	598.3	615.5	(55.5)	(9.3)%	(17.2)	(2.8)%	
Designed Structures and Solutions	453.5	617.5	597.4	(164.0)	(26.6)%	20.1	3.4 %	
Performance Products and Solutions	694.1	816.6	773.2	(122.5)	(15.0)%	43.4	5.6 %	
PolyOne Distribution	1,034.1	1,114.4	1,075.2	(80.3)	(7.2)%	39.2	3.6 %	
Corporate and eliminations	(157.6)	(162.1)	(142.4)	4.5	2.8 %	(19.7)	(13.8)%	
Sales	\$ 3,377.6	\$ 3,835.5	\$ 3,771.2	\$ (457.9)	(11.9)%	\$ 64.3	1.7 %	
Operating income:								
Color, Additives and Inks	135.4	124.9	104.0	10.5	8.4 %	20.9	20.1 %	
Specialty Engineered Materials	79.6	72.4	57.2	7.2	9.9 %	15.2	26.6 %	
Designed Structures and Solutions	13.8	45.1	33.4	(31.3)	(69.4)%	11.7	35.0 %	
Performance Products and Solutions	57.4	63.1	56.0	(5.7)	(9.0)%	7.1	12.7 %	
PolyOne Distribution	68.0	68.2	63.3	(0.2)	(0.3)%	4.9	7.7 %	
Corporate and eliminations	(103.3)	(218.6)	(82.4)	115.3	52.7 %	(136.2)	(165.3)%	
Operating income	\$ 250.9	\$ 155.1	\$ 231.5	\$ 95.8	61.8 %	\$ (76.4)	(33.0)%	
Operating income as a percentage of sales:								
Color, Additives and Inks	16.7%	14.7%	12.2%	2.0% points		2.5% points		
Specialty Engineered Materials	14.7%	12.1%	9.3%	2.6% points		2.8% points		
Designed Structures and Solutions	3.0%	7.3%	5.6%	(4.3)% points		1.7% points		
Performance Products and Solutions	8.3%	7.7%	7.2%	0.6% points		0.5% points		
PolyOne Distribution	6.6%	6.1%	5.9%	0.5% points		0.2% points		
Total	7.4%	4.0%	6.1%	3.4% points		(2.1)% points		

### ***Color, Additives and Inks***

Sales decreased \$40.1 million, or 4.7%, in 2015 compared to 2014 primarily due to unfavorable foreign exchange rate impact of 6.7% and 2.3% due to lower volume from the integration of the legacy Sparteck business offsetting smaller, specialty niche application wins. Partially offsetting these decreases were sales increases of 4.1% due to the Accella acquisition.

Operating income increased \$10.5 million in 2015 compared to 2014. This increase was driven primarily by improved mix of \$14.6 million, \$3.0 million due to the Accella acquisition and \$2.7 million as a result of an improved cost structure primarily due to restructuring actions.

Restructuring savings were largely a result of the closure of a manufacturing plant in Europe and the integration of Sparteck. Partially offsetting these increases was an unfavorable foreign exchange rate impact of \$8.9 million.

Sales decreased \$1.5 million, or 0.2%, in 2014 compared to 2013. Mix improvement of 6.2% and an increase of 2.0% due to the inclusion of Sparteck results for a full year nearly offset lower volumes of 8.0% that were primarily a result of weaker demand conditions in Europe.



Operating income increased \$20.9 million in 2014 compared to 2013. This increase was driven primarily by improved mix of \$9.7 million, \$6.4 million as a result of general and administrative spending reductions and benefits from the restructuring actions noted above and \$2.8 million related to the acquisitions of Accella and Spartech.

The cost savings achieved from the noted restructuring actions above are in-line with our expectations. We do not expect further benefits related to these actions to have a material impact to the Color, Additives and Inks segment going forward.

### **Specialty Engineered Materials**

Sales decreased \$55.5 million, or 9.3%, in 2015 compared to 2014 primarily due to an unfavorable foreign exchange rate impact of 5.1% and mix of 1.8%. Further reducing sales by 2.2% was lower volume as a result of exiting certain business in Brazil and legacy Spartech products, which offset gains in specialty niche applications.

Operating income increased \$7.2 million in 2015 compared to 2014. This increase was driven by favorable mix of \$6.1 million and \$3.6 million of benefits realized from the closure of two manufacturing facilities in Brazil. See further discussion of this restructuring action in Note 4, *Employee Separation and Restructuring Costs*, to the accompanying financial statements. Partially offsetting these increases was an unfavorable foreign exchange rate impact of \$2.6 million.

Sales decreased \$17.2 million, or 2.8%, in 2014 compared to 2013. Improved mix resulted in a 4.8% increase to sales. These increases were more than offset by volume decreases of 7.8% primarily due to exiting certain product lines in Brazil.

Operating income increased \$15.2 million in 2014 compared to 2013. This increase was primarily driven by favorable mix of \$10.1 million, \$2.9 million of benefits realized from the 2013 Spartech realignment actions and \$2.1 million of benefits realized from the improved cost structure as a result of the Brazil restructuring actions. See further discussion of these restructuring actions in Note 4, *Employee Separation and Restructuring Costs*.

Total cost savings achieved for the Spartech realignment and Brazil restructuring actions are in-line with our expectations. We do not expect further benefits related to these actions to have a material impact to the Specialty Engineered Materials segment going forward.

### **Designed Structures and Solutions**

Sales decreased \$164.0 million, or 26.6%, in 2015 compared to 2014. 13.7% was a result of lower volume, while the remaining decline is associated with lower selling prices due to declining hydrocarbon raw material costs.

Operating income decreased \$31.3 million in 2015 compared to 2014. This decline was primarily due to lower sales impacting operating income by \$48.5 million. This was partially offset by \$7.3 million in benefits realized from the 2013 Spartech manufacturing realignment actions and \$7.5 million in lower compensation costs and discretionary spending.

In 2015, PolyOne determined it would close two manufacturing facilities within the Designed Structures and Solutions segment to right size operations as a result of declining results and near term outlook. We expect annual cash savings, beginning primarily in the second half of 2016, of approximately \$5.0 million as a result of these actions. See further discussion of this restructuring action in Note 4, *Employee Separation and Restructuring Costs*.

Sales increased \$20.1 million, or 3.4%, in 2014 compared to 2013. Sales increased 22.1% as a result of the inclusion of Spartech results for the full year in 2014 and 6.5% due to improved mix. Partially offsetting these increases was a 25.0% volume decline resulting from exiting certain products.

Operating income increased \$11.7 million in 2014 compared to 2013. This increase was driven primarily by improved mix of \$19.8 million, benefits of the 2013 Spartech realignment actions of \$7.7 million, \$7.6 million in lower compensation costs and discretionary spending and \$9.7 million related to the inclusion of Spartech results for the full year of 2014. Partially offsetting these increases were lower volumes as a result of exiting certain products of \$35.0 million.

### **Performance Products and Solutions**

Sales decreased \$122.5 million, or 15.0%, in 2015 compared to 2014. Sales declined 10.8% as a result of lower volume related to legacy Spartech business along with customer destocking in the first quarter of 2015. The remaining decrease in sales of 4.2% is a result of declining hydrocarbon based raw material costs that led to reduced overall average selling prices.

Operating income decreased \$5.7 million in 2015 compared to 2014. Lower volume related to legacy Spartech reduced operating income by \$13.2 million. Benefits realized of \$6.3 million related to the 2013 Spartech restructuring actions partially offset this decrease.

Sales increased \$43.4 million, or 5.6%, in 2014 compared to 2013. Sales increased 5.5% as a result of the acquisition of Spartech and 2.1% due to volume increases primarily within the industrial and transportation end markets. Unfavorable mix as a result of a higher volume of contract manufacturing sales partially offset these increases.

Operating income increased \$7.1 million in 2014 compared to 2013. The increase was primarily due to improved volume as a result of the Spartech acquisition of \$4.4 million, while the remaining improvement was a result of the benefits realized from the 2013 Spartech realignment actions.

The cost savings achieved from the restructuring actions noted above are in-line with our expectations. We do not expect further benefits related to these actions to have a material impact to the Performance Products and Solutions segment going forward.

### **PolyOne Distribution**

Sales decreased \$80.3 million, or 7.2%, in 2015 compared to 2014. Sales were reduced by 7.6% due to declining hydrocarbon based raw material costs that led to lower overall average selling prices. Higher volume partially offset this decrease.

Operating income decreased \$0.2 million in 2015 compared to 2014 as a result of higher seller and administrative costs resulting from an investment in commercial resources.

Sales increased \$39.2 million, or 3.6%, in 2014 compared to 2013. An increase of 3.3% was primarily driven by increased raw material costs that led to higher overall average selling prices. The remaining increase in sales was attributable to volume growth.

Operating income increased \$4.9 million in 2014 compared to 2013 primarily due to increased sales and slightly lower selling and administrative expenses.

### **Corporate and Eliminations**

Corporate and eliminations decreased \$115.3 million in 2015 compared to 2014. This decrease was largely due to \$52.2 million of lower restructuring charges primarily associated with our 2013 and 2014 actions that have been completed or are substantially complete in 2015 and a \$44.9 lower mark-to-market adjustment in 2015 as compared to 2014. The 2015 adjustment was a result of actual asset returns that were lower than our assumed returns partially offset by the impact of increased discount rates. See Note 12, *Employee Benefit Plans*, for further discussion on our mark-to-market adjustment. The remaining decrease was primarily due to lower compensation costs.

We expect to incur approximately \$10.0 million of restructuring charges associated with 2015 actions in the first half of 2016. Approximately \$3.0 million of these costs will be non-cash charges.

Corporate and eliminations increased \$136.2 million in 2014 as compared to 2013. This increase was primarily a result of the recognition of a pension charge of \$51.5 million in 2014 compared to a pension gain of \$55.2 million in 2013. The increase was driven primarily by decreased discount rates and a change in our mortality assumptions which unfavorably impacted the mark-to-market adjustment in 2014. Higher restructuring charges of \$42.1 million were related to the Spartech restructuring actions and the closure of two manufacturing facilities in Brazil in 2014. Included in 2013 was a gain of \$26.9 million related to the third and final earn-out related to our sale of a 50% equity interest in SunBelt to Olin Corporation (Olin). These increases were partially offset by lower environmental remediation costs, net of insurance recoveries, of \$31.1 million. See Note 13, *Commitments and Contingencies*, for further discussion on our environmental matters.

### **Liquidity and Capital Resources**

Our objective is to finance our business through operating cash flow and an appropriate mix of debt and equity. By ladder the maturity structure, we avoid concentrations of debt maturities, reducing liquidity risk. We may from

time to time seek to retire or purchase our outstanding debt with cash and/or exchanges for equity securities, in open market purchases, privately negotiated transactions or otherwise. We may also seek to repurchase our outstanding common shares. Such repurchases, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved have been and may continue to be material.

The following table summarizes our liquidity as of December 31, 2015:

(In millions)		
Cash and cash equivalents	\$	279.8
Revolving credit availability		341.9
Liquidity	\$	621.7

As of December 31, 2015, 70% of the Company's cash and cash equivalents resided outside the United States. Repatriation of these funds could result in potential foreign and domestic taxes. To the extent foreign earnings previously treated as indefinitely reinvested were to be repatriated, the potential U.S. tax liability may be reduced by any foreign income taxes paid on these earnings. However, based on the Company's policy of indefinite reinvestment, it is not practicable to determine the U.S. federal income tax liability, if any, due to the complexities associated with this hypothetical calculation and the Company's indefinite reinvestment policy. As of December 31, 2015, the non-U.S. subsidiaries have a cumulative unremitted foreign earnings income position of \$293.5 million, for which no deferred tax liability has been provided.

Based on current projections, we believe that we will be able to continue to manage and control working capital, discretionary spending and capital expenditures and that cash provided by operating activities, along with available borrowing capacity under our revolving credit facilities, will allow us to maintain adequate levels of available capital to fund our operations, meet debt service obligations, continue paying dividends and repurchase outstanding common shares in accordance with our board authorization.

Expected sources of cash in 2016 include cash from operations and available liquidity under our revolving credit facility, if needed. Expected uses of cash in 2016 include interest payments, cash taxes, contributions to our pension plans, dividend payments, share repurchases, environmental remediation costs, restructuring payments and capital expenditures. Capital expenditures are currently estimated to be \$85.0 to \$90.0 million in 2016, primarily to support sales growth, our continued investment in recent acquisitions and other strategic investments.

## Cash Flows

The following summarizes our cash flows from operating, investing and financing activities.

(In millions)	2015	2014	2013
<b>Cash provided by (used by):</b>			
Operating Activities	\$ 227.2	\$ 208.4	\$ 109.0
Investing Activities	(106.5)	(111.8)	(60.1)
Financing Activities	(70.4)	(218.4)	104.8
Effect of exchange rate on cash	(9.1)	(4.8)	1.5
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>\$ 41.2</b>	<b>\$ (126.6)</b>	<b>\$ 155.2</b>

## Operating activities

In 2015, net cash provided by operating activities was \$227.2 million as compared to \$208.4 million in 2014. The increase in net cash provided by operating activities of \$18.8 million is primarily driven by higher earnings and a decrease in working capital of \$18.1 million. Partially offsetting these increases were higher payroll payments of \$12.3 million as a result of payment timing and an increase in pension contributions of \$5.4 million.

Working capital as a percentage of sales, which we define as the average thirteen months of accounts receivable, plus inventory, less accounts payable, divided by full year sales, improved to 9.7% at December 31, 2015 from 9.9% at December 31, 2014. Days sales outstanding as of December 31, 2015 and December 31, 2014 were 45.4 and 46.0, respectively.

In 2014, net cash provided by operating activities was \$208.4 million as compared to \$109.0 million in 2013. The increase in net cash provided by operating activities of \$99.4 million is primarily driven by lower tax payments of \$51.6 million. 2013 included tax payments primarily associated with the gain on sale of the Resin Business, lower pension and post-retirement health care benefit plan payments of \$49.5 million and improved working capital.

### Investing Activities

Net cash used by investing activities during 2015 of \$106.5 million reflects capital expenditures of \$91.2 million and the acquisition of Magenta for \$18.3 million, partially offset by the proceeds from the sale of assets of \$3.0 million.

Net cash used by investing activities during 2014 of \$111.8 million primarily reflects capital expenditures of \$92.8 million and the acquisition of Accella for \$47.2 million. This usage was partially offset by the third and final earn-out payment from the 2011 sale of our equity investment in SunBelt of \$26.8 million and proceeds from the sale of other assets of \$1.4 million.

Net cash used by investing activities during 2013 of \$60.1 million primarily reflects our acquisition of Spartech for \$258.8 million, net of cash acquired, and capital expenditures of \$76.4 million. These cash outflows were partially offset by cash proceeds received of \$275.7 million primarily related to the sale of our Resin Business for \$250.0 million and the \$23.2 million payment for year two of the three year earn-out from the 2011 sale of our equity investment in SunBelt.

### Financing Activities

Net cash used by financing activities in 2015 primarily reflects repayment of long-term debt totaling \$365.3 million, a \$45.5 million net payment under existing credit facilities, repurchases of \$156.1 million of our outstanding common shares and cash dividends paid of \$35.7 million. Partially offsetting these cash outflows was \$547.3 million of proceeds from the new senior secured term loan.

Net cash used in financing activities in 2014 reflects repurchases of \$233.2 million of our outstanding common shares, cash dividends paid of \$29.9 million and the repayment of long-term debt of \$8.0 million. These cash outflows more than offset the tax benefit of \$6.9 million related to the exercise of employee equity awards and a \$45.8 million net draw under existing credit facilities.

Net cash used in financing activities in 2013 reflects repayment of our long-term debt of \$343.3 million, debt financing costs of \$13.0 million, premium on early extinguishment of long-term debt of \$4.6 million, repurchases of \$131.6 million of our outstanding common shares and dividend payments of \$21.5 million. These cash uses were more than offset by proceeds received from the issuance of our 5.25% senior notes due 2023 in the aggregate principal amount of \$600.0 million, net proceeds from borrowings under our credit facilities of \$11.5 million and income tax benefits of \$7.3 million related to the exercise of equity awards.

### Total Debt

The following table summarizes debt as presented at December 31, 2015 and 2014.

(In millions)	December 31, 2015	December 31, 2014
7.500% debentures due 2015	\$ —	\$ 48.6
Revolving credit facility due 2018	—	45.0
7.375% senior notes due 2020	—	313.0
Senior term loan due 2022	541.4	—
5.250% senior notes due 2023	591.7	590.5
Other debt	13.5	13.5
Total debt	\$ 1,146.6	\$ 1,010.6
Less short-term and current portion of long-term debt	18.6	61.7
Long-term debt	\$ 1,128.0	\$ 948.9

On November 12, 2015, PolyOne entered into a senior secured term loan having an aggregate principal amount of \$550.0 million. Net proceeds of \$547.3 million reflected a \$2.7 million issuance discount. \$5.5 million is payable annually while the remaining balance matures on November 12, 2022. The interest rate associated with the term loan is 300 basis points plus the greater of (i) the 1-, 2-, 3- or 6-month LIBOR, at the Company's discretion, or (ii) 75 basis points. The proceeds from the term loan were used to repay in full \$316.6 million aggregate principal amount of our 7.375% senior notes due 2020, repay in full \$48.7 million aggregate principal amount of our 7.50% debentures due 2015 and repay \$106.6 million of the outstanding balance on our revolving credit facility. We recognized \$16.4 million of debt extinguishment costs within *Debt extinguishment costs* in our Consolidated Statements of Income in connection with these repurchases.

The Company maintains a revolving credit facility, which matures on March 1, 2018, with a maximum borrowing facility size of \$400.0 million, subject to a borrowing base with advances against certain U.S. and Canadian

accounts receivable, inventory and other assets as specified in the agreement. We have the option to increase the availability under the facility to \$450.0 million, subject to meeting certain requirements and obtaining commitments for such increase. The revolving credit facility has a U.S. and a Canadian line of credit. Currently there are no borrowings on the U.S. or Canadian portion of the facility. Advances under the U.S. portion of our revolving credit facility bear interest, at the Company's option, at a Base Rate or a LIBOR Rate plus an applicable margin. The Base Rate is a fluctuating rate equal to the greater of (i) the Federal Funds Rate plus one-half percent, (ii) the prevailing LIBOR Rate plus one percent, and (iii) the prevailing Prime Rate. The applicable margins vary based on the Company's daily average excess availability during the previous quarter. The weighted average annual interest rate under this facility for the year ended December 31, 2015 and 2014 were 2.46% and 2.84%, respectively. As of December 31, 2015, we had no borrowings under our revolving credit facility, which had availability of \$338.7 million. Borrowings under this facility as of December 31, 2014 were \$45.0 million.

The agreements governing our revolving credit facility and our secured term loan, and the indentures and credit agreements governing other debt, contain a number of customary restrictive covenants that, among other things, limit our ability to: consummate asset sales, incur additional debt or liens, consolidate or merge with any entity or transfer or sell all or substantially all of our assets, pay dividends or make certain other restricted payments, make investments, enter into transactions with affiliates, create dividend or other payment restrictions with respect to subsidiaries, make capital investments and alter the business we conduct. In addition, these agreements require us to comply with specific financial tests, under which we are required to achieve certain or specific financial and operating results. As of December 31, 2015, we were in compliance with all covenants.

The Company maintains a credit line with Saudi Hollandi Bank for \$16.0 million. The credit line has an interest rate equal to the Saudi Arabia Interbank Offered Rate plus a fixed rate of 0.85% and is subject to annual renewal. The credit line is being used to fund capital expenditures related to the manufacturing facility in Jeddah, Saudi Arabia. As of December 31, 2015, letters of credit under the credit line were \$0.2 million and borrowings were \$12.6 million with an interest rate of 1.78%. As of December 31, 2014, letters of credit under the credit line were \$0.2 million and borrowings were \$13.1 million with an interest rate of 1.85%. As of December 31, 2015 and 2014, there was remaining availability on the credit line of \$3.2 million and \$2.7 million, respectively.

For additional information about our debt obligations, see Note 6, *Financing Arrangements*, to the accompanying consolidated financial statements.

### **Concentrations of Credit Risk**

Financial instruments, including foreign exchange contracts, and trade accounts receivable, subject us to potential credit risk. Concentration of credit risk for trade accounts receivable is limited due to the large number of customers constituting our customer base and their distribution among many industries and geographic locations. We are exposed to credit risk with respect to foreign exchange contracts in the event of non-performance by the counter-parties to these financial instruments. We believe that the risk of incurring material losses related to this credit risk is remote. We do not require collateral to support the financial position of our credit risks.

### **Guarantee of Indebtedness of Others**

On February 28, 2011, we sold our 50% equity interest in SunBelt to Olin. As a result of the sale, Olin assumed our obligations under our guarantee of senior secured notes issued by SunBelt, which were \$12.2 million as of December 31, 2015. Unless the guarantee is formally assigned to Olin, we remain obligated under the guarantee, although Olin has agreed to indemnify us for amounts that we may be obligated to pay under the guarantee. These notes mature in December 2017.

### **Letters of Credit**

Our revolving credit facility provides up to \$50.0 million for the issuance of letters of credit, \$11.5 million of which was used at December 31, 2015. These letters of credit are issued by the bank in favor of third parties and are mainly related to insurance claims.

## Contractual Cash Obligations

The following table summarizes our obligations under debt agreements, operating leases, interest obligations, pension and other post-retirement plan obligations and purchase obligations as of December 31, 2015:

(In millions)	Payment Due by Period				
	Total	2016	2017 & 2018	2019 & 2020	Thereafter
Total debt <sup>(1)</sup>	\$ 1,163.5	\$ 18.6	\$ 11.1	\$ 11.2	\$ 1,122.6
Operating leases	84.6	21.0	29.4	15.1	19.1
Interest on long-term debt obligations <sup>(2)</sup>	419.4	55.5	113.7	116.9	133.3
Pension and post-retirement obligations <sup>(3)</sup>	74.8	25.8	11.3	11.1	26.6
Purchase obligations <sup>(4)</sup>	15.6	12.7	2.6	0.2	0.1
Total	<u>\$ 1,757.9</u>	<u>\$ 133.6</u>	<u>\$ 168.1</u>	<u>\$ 154.5</u>	<u>\$ 1,301.7</u>

(1) Total debt includes both the current and long-term portions of debt.

(2) Represents estimated contractual interest payments for all outstanding debt.

(3) Pension and post-retirement obligations relate to our U.S. and international pension and other post-retirement plans. The expected payments associated with these plans represent an actuarial estimate of future assumed payments based upon retirement and payment patterns. Due to uncertainties regarding the assumptions involved in estimating future required contributions to our pension and non-pension postretirement benefit plans, including: (i) interest rate levels, (ii) the amount and timing of asset returns and (iii) what, if any, changes may occur in pension funding legislation, the estimates in the table may differ materially from actual future payments.

(4) Purchase obligations are primarily comprised of service agreements related to telecommunication, information technology, utilities and other manufacturing plant services and certain capital commitments.

The table excludes the liability for unrecognized income tax benefits, since we cannot predict with reasonable certainty the timing of cash settlements, if any, with the respective taxing authorities. At December 31, 2015, the gross liability for unrecognized income tax benefits, including interest and penalties, totaled \$17.0 million.

## Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K other than the SunBelt debt guarantee described previously in the *Guarantee of Indebtedness of Others* section.

## Critical Accounting Policies and Estimates

Significant accounting policies are described more fully in Note 1, *Description of Business and Summary of Significant Accounting Policies*, to the accompanying consolidated financial statements. The preparation of financial statements in conformity with U.S. generally accepted accounting principles (U.S. GAAP) requires us to make estimates and assumptions about future events that affect the amounts reported in our consolidated financial statements and accompanying notes. We base our estimates on historical experience and assumptions that we believe are reasonable considering the related facts and circumstances. The application of these critical accounting policies involves the exercise of judgment and use of assumptions for future uncertainties. Accordingly, actual results could differ significantly from these estimates. We believe that the following discussion addresses our most critical accounting policies, which are those that are the most important to the portrayal of our financial condition and results of operations and require our most difficult, subjective and complex judgments.

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Environmental Liabilities</b>		
<ul style="list-style-type: none"> <li>Based upon our estimates, we have \$119.9 million accrued at December 31, 2015 for probable future environmental expenditures. Any such provision is recognized using the Company's best estimate of the amount of loss incurred, or at the lower end of an estimated range, when a single best estimate is not determinable. In some cases, the Company recovers a portion of the costs relating to these obligations from insurers or other third parties; however, the Company records such amounts only when they are collected.</li> </ul>	<ul style="list-style-type: none"> <li>This accrual represents our best estimate of the remaining probable costs based upon information and technology currently available. Depending upon the results of future testing, the ultimate remediation alternatives undertaken, changes in regulations, new information, newly discovered conditions and other factors, it is reasonably possible that we could incur additional costs in excess of the amount accrued. However, such additional costs, if any, cannot currently be estimated. Our estimate of this liability may be revised as new regulations or technologies are developed or additional information is obtained.</li> </ul>	<ul style="list-style-type: none"> <li>If further developments or resolution of these matters are not consistent with our assumptions and judgments, we may need to recognize a significant adjustment in a future period.</li> <li>As noted in Note 13, <i>Commitments and Contingencies</i>, we recorded a \$47.0 million adjustment in 2013 related to our ongoing remedial investigation and feasibility study (RIFS) at Calvert City. As we progress through certain benchmarks such as completion of the RIFS, issuance of a record of decision and remedial design, additional information will become available that may require an adjustment to our existing reserves.</li> </ul>

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Pension and Other Post-retirement Plans</b>		
<ul style="list-style-type: none"> <li>We account for our defined benefit pension plans and other post-retirement plans in accordance with FASB ASC Topic 715, <i>Compensation — Retirement Benefits</i>. We immediately recognize actuarial gains and losses in our operating results in the year in which the gains or losses occur. In 2015, we recognized a \$11.6 million charge as a result of the recognition of these actuarial losses, which unfavorably impacted our statement of income, statement of comprehensive income, and the funded status of our pension plans. This charge was mainly driven by lower than expected asset returns.</li> </ul>	<ul style="list-style-type: none"> <li>Asset returns and interest rates significantly affect the value of future assets and liabilities of our pension and post-retirement plans and therefore the funded status of our plans. It is difficult to predict these factors due to the volatility of market conditions.</li> <li>To develop our discount rate, we consider the yields of high-quality corporate bonds with maturities that correspond to the timing of our benefit obligations, referred to as the bond matching approach.</li> <li>To develop our expected long-term return on plan assets, we consider historical and forward looking long-term asset returns and the expected investment portfolio mix of plan assets. The weighted-average expected long-term rate of return on plan assets was 6.87% for 2015, 6.86% for 2014 and 8.41% for 2013.</li> <li>Life expectancy is a significant assumption that impacts our pension and other post-retirement benefits obligation. During 2015, we adopted the MP-2015 mortality improvement scale which was issued by the Society of Actuaries in October 2015.</li> </ul>	<ul style="list-style-type: none"> <li>The weighted average discount rates used to value our pension liabilities as of December 31, 2015 and 2014 were 4.11 % and 3.88%, post-retirement liabilities were 4.12% and 3.75%. As of December 31, 2015, an increase/decrease in the discount rate of 50 basis points, holding all other assumptions constant, would have increased or decreased pre-tax income and the related pension and post-retirement liability by approximately \$26.1 million. An increase/decrease in the discount rate of 50 basis points as of December 31, 2015 would result in a change of approximately \$1.6 million in the 2016 net periodic benefit cost.</li> <li>The expected long-term return on plan assets utilized as of January 1, 2015 and 2014 were 6.87% and 6.86%, respectively. An increase/decrease in our expected long-term return on plan assets of one percent would result in a change of approximately \$4.6 million to 2016 net periodic benefit cost.</li> </ul>
<b>Income Taxes</b>		
<ul style="list-style-type: none"> <li>We account for income taxes using the asset and liability method under ASC Topic 740. Under the asset and liability method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In addition, deferred tax assets are also recorded with respect to net operating losses and other tax attribute carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. Valuation allowances are established when realization of the benefit of deferred tax assets is not deemed to be more likely than not. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.</li> <li>We recognize net tax benefits under the recognition and measurement criteria of ASC Topic 740, Income Taxes, which prescribes requirements and other guidance for financial statement recognition and measurement of positions taken or expected to be taken on tax returns. We record interest and penalties related to uncertain tax positions as a component of income tax expense.</li> </ul>	<ul style="list-style-type: none"> <li>The ultimate recovery of certain of our deferred tax assets is dependent on the amount and timing of taxable income that we will ultimately generate in the future and other factors such as the interpretation of tax laws. This means that significant estimates and judgments are required to determine the extent that valuation allowances should be provided against deferred tax assets. We have provided valuation allowances as of December 31, 2015, aggregating to \$19.3 million against such assets based on our current assessment of future operating results and these other factors. At December 31, 2015, the gross liability for unrecognized income tax benefits, including interest and penalties, totaled \$17.0 million.</li> </ul>	<ul style="list-style-type: none"> <li>Although management believes that the estimates and judgments discussed herein are reasonable, actual results could differ, which could result in income tax expense or benefits that could be material.</li> </ul>

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Goodwill</b>		
<ul style="list-style-type: none"> <li>Goodwill represents the excess of the purchase price over the fair value of the net assets of acquired companies. We follow the guidance in ASC 350, <i>Intangibles — Goodwill and Other</i>, and test goodwill for impairment at least annually, absent a triggering event that would warrant an impairment assessment. On an ongoing basis, absent any impairment indicators, we perform our goodwill impairment testing as of the first day of October of each year.</li> </ul>	<ul style="list-style-type: none"> <li>We have identified our reporting units at the operating segment level, or in some cases, one level below the operating segment level. Goodwill is allocated to the reporting units based on the estimated fair value at the date of acquisition.</li> <li>We estimated fair value using the best information available to us, including market information and discounted cash flow projections using the income approach.</li> <li>The income approach requires us to make assumptions and estimates regarding projected economic and market conditions, growth rates, operating margins and cash expenditures. Sensitivity analyses were performed around these assumptions in order to assess the reasonableness of the assumptions and the resulting estimated fair values.</li> </ul>	<ul style="list-style-type: none"> <li>If actual results are not consistent with our assumptions and estimates, we may be exposed to goodwill impairment charges.</li> <li>Based on our 2015 annual impairment test performed on October 1st, no reporting units were considered at risk of impairment.</li> <li>The fair value of the reporting unit is based on a number of subjective factors including: (a) appropriate consideration of valuation approaches, (b) the consideration of our business outlook for fiscal 2016 and beyond, and (c) discount rates for our estimated cash flows. Declining fourth quarter results along with the near term outlook for the Custom Engineered Structures (CES) reporting unit, included in the Designed Structures and Solutions segment, resulted in updating the assumptions for the fair value of this reporting unit. As a result, the fair value of the reporting unit exceeded the carrying value by 13% as of December 31, 2015. As such, we concluded that the goodwill assigned to the CES business of \$108.8 million was not impaired, but is at-risk of impairment.</li> </ul>

#### Indefinite-lived Intangible Assets

<ul style="list-style-type: none"> <li>At December 31, 2015, our Consolidated Balance Sheet reflected \$96.3 million of indefinite lived trade name assets, which includes, \$33.2 million associated with the trade name acquired as part of the acquisition of GLS and \$63.1 million associated with trade names acquired as part of the ColorMatrix acquisition.</li> </ul>	<ul style="list-style-type: none"> <li>We estimate the fair value of trade names using a “relief from royalty payments” approach. This approach involves two steps: (1) estimating reasonable royalty rate for the trade name and (2) applying this royalty rate to a net sales stream and discounting the resulting cash flows to determine fair value. Fair value is then compared with the carrying value of the trade name.</li> </ul>	<ul style="list-style-type: none"> <li>If actual results are not consistent with our assumptions and estimates, we may be exposed to impairment charges related to our indefinite lived trade names.</li> <li>Based on our 2015 annual impairment test, no trade names were considered at risk.</li> </ul>
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#### Share-Based Compensation

<ul style="list-style-type: none"> <li>We have share-based compensation plans that include non-qualified stock options, incentive stock options, restricted stock units, performance shares and stock appreciation rights (SARs). See Note 15, <i>Share-Based Compensation</i>, to the accompanying consolidated financial statements for a complete discussion of our stock-based compensation programs.</li> <li>We determined the fair value of the SARs granted based on a Monte Carlo simulation method.</li> </ul>	<ul style="list-style-type: none"> <li>Option-pricing models and generally accepted valuation techniques require management to make assumptions and to apply judgment to determine the fair value of our awards. These assumptions and judgments include estimating the future volatility of our stock price, future forfeiture rates and risk-free rates of return.</li> </ul>	<ul style="list-style-type: none"> <li>We do not believe there is a reasonable likelihood there will be a material change in the future estimates or assumptions we use to determine share-based compensation expense.</li> </ul>
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#### Recent and Future Adoption of Accounting Standards

Information regarding recent and future adoption of accounting standards can be found in Note 1, *Description of Business and Summary of Significant Accounting Policies*, to the consolidated financial statements and is incorporated by reference herein.

#### ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to certain market risks as part of our ongoing business operations, including risks from changes in interest rates on debt obligations and foreign currency exchange rates that could impact our financial condition, results of operations and cash flows. We manage our exposure to these and other market risks through regular operating and financing activities, including the use of derivative financial instruments. We intend to use these derivative financial instruments as risk management tools and not for speculative investment purposes.



*Interest rate exposure* — Interest on our revolving credit facility is based upon a Prime rate or LIBOR, plus a margin. Interest on our new senior term secured loan is based upon a fixed rate of 300 basis points plus the greater of (i) the 1-, 2-, 3- or 6-month LIBOR, at the Company's discretion, or (ii) 75 basis points. Interest on the credit line with Saudi Hollandi Bank is based upon SAIBOR plus a fixed rate of 0.85%. There would be no material impact on our interest expense or cash flows from either a 10% increase or decrease in market rates of interest on our outstanding variable rate debt as of December 31, 2015.

*Foreign currency exposure* — We enter into intercompany lending transactions that are denominated in various foreign currencies and are subject to financial exposure from foreign exchange rate movement from the date a loan is recorded to the date it is settled or revalued. To mitigate this risk, we may enter into foreign exchange forward contracts. Gains and losses on these contracts generally offset gains and losses on the assets and liabilities being hedged.

We face translation risks related to the changes in foreign currency exchange rates. Amounts invested in our foreign operations are translated into U.S. dollars at the exchange rates in effect at the balance sheet date. The resulting translation adjustments are recorded as a component of *Accumulated other comprehensive loss* in the Shareholders' equity section of the accompanying Consolidated Balance Sheets. Net sales and expenses in our foreign operations' foreign currencies are translated into varying amounts of U.S. dollars depending upon whether the U.S. dollar weakens or strengthens against other currencies. Therefore, changes in exchange rates may either positively or negatively affect our net sales and expenses from foreign operations as expressed in U.S. dollars.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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## MANAGEMENT'S REPORT

The management of PolyOne Corporation is responsible for preparing the consolidated financial statements and disclosures included in this Annual Report on Form 10-K. The consolidated financial statements and disclosures included in this Annual Report fairly present in all material respects the consolidated financial position, results of operations, shareholders' equity and cash flows of PolyOne Corporation as of and for the year ended December 31, 2015.

Management is responsible for establishing and maintaining disclosure controls and procedures designed to ensure that the information required to be disclosed by the Company is captured and reported in a timely manner. Management has evaluated the design and operation of the Company's disclosure controls and procedures at December 31, 2015 and found them to be effective.

Management is also responsible for establishing and maintaining a system of internal control over financial reporting that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes policies and procedures that provide reasonable assurance that: PolyOne Corporation's accounting records accurately and fairly reflect the transactions and dispositions of the assets of the Company; unauthorized or improper acquisition, use or disposal of Company assets will be prevented or timely detected; the Company's transactions are properly recorded and reported to permit the preparation of the Company's consolidated financial statements in conformity with generally accepted accounting principles; and the Company's receipts and expenditures are made only in accordance with authorizations of management and the Board of Directors of the Company.

Management has assessed the effectiveness of PolyOne's internal control over financial reporting as of December 31, 2015 and has prepared Management's Annual Report On Internal Control Over Financial Reporting contained on page 67 of this Annual Report, which concludes that as of December 31, 2015, PolyOne's internal control over financial reporting is effective and that no material weaknesses were identified.

/s/ ROBERT M. PATTERSON

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Robert M. Patterson  
President and Chief Executive Officer

/s/ BRADLEY C. RICHARDSON

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Bradley C. Richardson  
Executive Vice President and Chief Financial Officer

February 12, 2016

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

### The Board of Directors and Shareholders of PolyOne Corporation

We have audited PolyOne Corporation's internal control over financial reporting as of December 31, 2015, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). PolyOne Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying "Management's Annual Report on Internal Control over Financial Reporting". Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, PolyOne Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2015, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of PolyOne Corporation as of December 31, 2015 and 2014, and the related consolidated statements of income, comprehensive income, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2015 and our report dated February 12, 2016 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Cleveland, Ohio  
February 12, 2016

## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

### **The Board of Directors and Shareholders of PolyOne Corporation**

We have audited the accompanying consolidated balance sheets of PolyOne Corporation as of December 31, 2015 and 2014, and the related consolidated statements of income, comprehensive income, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2015. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of PolyOne Corporation at December 31, 2015 and 2014, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2015, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), PolyOne Corporation's internal control over financial reporting as of December 31, 2015, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 12, 2016 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Cleveland, Ohio  
February 12, 2016

# Consolidated Statements of Income

(In millions, except per share data)	Year Ended December 31,		
	2015	2014	2013
Sales	\$ 3,377.6	\$ 3,835.5	\$ 3,771.2
Cost of sales	2,696.1	3,127.6	3,109.0
Gross margin	681.5	707.9	662.2
Selling and administrative expense	430.6	552.8	457.6
Income related to previously owned equity affiliates	—	—	26.9
Operating income	250.9	155.1	231.5
Interest expense, net	(64.1)	(62.2)	(63.5)
Debt extinguishment costs	(16.4)	—	(15.8)
Other expense, net	(2.7)	(4.5)	(1.2)
Income from continuing operations, before income taxes	167.7	88.4	151.0
Income tax expense	(23.0)	(11.2)	(58.1)
Net income from continuing operations	144.7	77.2	92.9
Income from discontinued operations, net of income taxes	—	1.2	149.8
Net income	144.7	78.4	242.7
Net (income) loss attributable to noncontrolling interests	(0.1)	0.8	1.1
Net income attributable to PolyOne common shareholders	\$ 144.6	\$ 79.2	\$ 243.8
Earnings per share attributable to PolyOne common shareholders - basic:			
Continuing operations	\$ 1.65	\$ 0.85	\$ 0.98
Discontinued operations	—	0.01	1.57
Total	\$ 1.65	\$ 0.86	\$ 2.55
Earnings per share attributable to PolyOne common shareholders - diluted:			
Continuing operations	\$ 1.63	\$ 0.83	\$ 0.97
Discontinued operations	—	0.02	1.56
Total	\$ 1.63	\$ 0.85	\$ 2.53
Cash dividends declared per common share			
	\$ 0.42	\$ 0.34	\$ 0.26
Weighted-average number of common shares outstanding:			
Basic	87.8	92.3	95.5
Diluted	88.7	93.5	96.5

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## Consolidated Statements of Comprehensive Income

(In millions)	Year Ended December 31,		
	2015	2014	2013
Net income	\$ 144.7	\$ 78.4	\$ 242.7
Other comprehensive loss:			
Translation adjustments	(29.1)	(27.5)	(3.7)
Unrealized gain on available-for-sale securities	0.1	—	—
Total other comprehensive loss	(29.0)	(27.5)	(3.7)
Total comprehensive income	115.7	50.9	239.0
Comprehensive (income) loss attributable to noncontrolling interests	(0.1)	0.8	1.1
Comprehensive income attributable to PolyOne common shareholders	<u>\$ 115.6</u>	<u>\$ 51.7</u>	<u>\$ 240.1</u>

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## Consolidated Balance Sheets

(In millions, except par value per share)	Year Ended December 31,	
	2015	2014
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 279.8	\$ 238.6
Accounts receivable, net	347.0	396.8
Inventories, net	287.0	309.0
Other current assets	47.0	54.0
<b>Total current assets</b>	<b>960.8</b>	<b>998.4</b>
Property, net	583.5	596.7
Goodwill	597.7	590.6
Intangible assets, net	344.6	362.7
Other non-current assets	108.5	117.9
<b>Total assets</b>	<b>\$ 2,595.1</b>	<b>\$ 2,666.3</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Short-term and current portion of long-term debt	\$ 18.6	\$ 61.7
Accounts payable	351.6	365.9
Accrued expenses and other liabilities	127.9	172.9
<b>Total current liabilities</b>	<b>498.1</b>	<b>600.5</b>
Long-term debt	1,128.0	948.9
Pension and other post-retirement benefits	77.5	103.7
Deferred income taxes	33.8	57.7
Other non-current liabilities	152.5	178.3
<b>Total non-current liabilities</b>	<b>1,391.8</b>	<b>1,288.6</b>
<b>SHAREHOLDERS' EQUITY</b>		
Preferred stock, 40.0 shares authorized, no shares issued	—	—
Common Shares, \$0.01 par, 400.0 shares authorized, 122.2 shares issued	1.2	1.2
Additional paid-in capital	1,155.6	1,155.4
Retained earnings	367.1	259.7
Common shares held in treasury, at cost, 36.9 shares in 2015 and 32.9 shares in 2014	(748.4)	(597.7)
Accumulated other comprehensive loss	(71.3)	(42.3)
<b>Total PolyOne shareholders' equity</b>	<b>704.2</b>	<b>776.3</b>
Noncontrolling interest	1.0	0.9
<b>Total equity</b>	<b>705.2</b>	<b>777.2</b>
<b>Total liabilities and equity</b>	<b>\$ 2,595.1</b>	<b>\$ 2,666.3</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.



# Consolidated Statements of Cash Flows

(In millions)	Year Ended December 31,		
	2015	2014	2013
<b>Operating activities</b>			
Net income	\$ 144.7	\$ 78.4	\$ 242.7
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	98.1	100.8	97.1
Accelerated depreciation and fixed asset charges associated with restructuring activities	17.6	33.0	13.6
Deferred income tax (benefit) expense	(27.4)	(45.2)	12.9
Debt extinguishment costs	16.4	—	15.8
Share-based compensation expense	9.1	14.2	16.5
Gain on sale of business	—	(1.2)	(223.7)
Income related to previously owned equity affiliates	—	—	(26.9)
Changes in assets and liabilities, net of the effect of acquisitions and divestitures:			
Decrease in accounts receivable	42.6	24.4	26.9
Decrease in inventories	21.4	28.4	20.4
Decrease in accounts payable	(8.3)	(15.2)	(16.6)
(Decrease) increase in pension and other post-retirement benefits	(24.6)	30.0	(124.5)
(Decrease) increase in accrued expenses and other assets and liabilities - net	(62.4)	(39.2)	54.8
Net cash provided by operating activities	227.2	208.4	109.0
<b>Investing activities</b>			
Capital expenditures	(91.2)	(92.8)	(76.4)
Business acquisitions, net of cash acquired	(18.3)	(47.2)	(259.4)
Proceeds from sale of businesses and other assets	3.0	28.2	275.7
Net cash used by investing activities	(106.5)	(111.8)	(60.1)
<b>Financing activities</b>			
Repayment of long-term debt	(365.3)	(8.0)	(343.3)
Premium on early extinguishment of long-term debt	(13.4)	—	(4.6)
Net proceeds from long-term debt	547.3	—	600.0
Debt financing costs	(6.0)	—	(13.0)
Borrowing under credit facilities	891.3	168.6	129.0
Repayment under credit facilities	(936.8)	(122.8)	(117.5)
Purchase of common shares for treasury	(156.1)	(233.2)	(131.6)
Exercise of stock awards	4.3	6.9	7.3
Cash dividends paid	(35.7)	(29.9)	(21.5)
Net cash (used) provided by financing activities	(70.4)	(218.4)	104.8
Effect of exchange rate changes on cash	(9.1)	(4.8)	1.5
Increase (decrease) in cash and cash equivalents	41.2	(126.6)	155.2
Cash and cash equivalents at beginning of year	238.6	365.2	210.0
<b>Cash and cash equivalents at end of year</b>	<b>\$ 279.8</b>	<b>\$ 238.6</b>	<b>\$ 365.2</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## Consolidated Statements of Shareholders' Equity

(In millions)	Common Shares		Shareholders' Equity							
	Common Shares	Common Shares Held in Treasury	Common Shares	Additional Paid-in Capital	Retained Earnings (Deficit)	Common Shares Held in Treasury	Accumulated Other Comprehensive Loss	Total PolyOne shareholders' equity	Non-controlling Interests	Total equity
Balance at January 1, 2013	122.2	(32.7)	\$ 1.2	\$ 1,016.1	\$ (13.0)	\$ (364.1)	\$ (11.1)	\$ 629.1	2.3	\$ 631.4
Net income (loss)					243.8			243.8	(1.1)	242.7
Other comprehensive loss							(3.7)	(3.7)		(3.7)
Noncontrolling interest activity									0.5	0.5
Shares issued in connection with acquisitions		10.0		136.6		117.2		253.8		253.8
Cash dividends declared				(5.4)	(19.2)			(24.6)		(24.6)
Repurchase of common shares		(5.0)				(131.6)		(131.6)		(131.6)
Stock-based compensation and exercise of awards		0.6		2.5		7.5		10.0		10.0
Balance at December 31, 2013	122.2	(27.1)	\$ 1.2	\$ 1,149.8	\$ 211.6	\$ (371.0)	\$ (14.8)	\$ 976.8	\$ 1.7	\$ 978.5
Net income (loss)					79.2			79.2	(0.8)	78.4
Other comprehensive loss							(27.5)	(27.5)		(27.5)
Cash dividends declared					(31.1)			(31.1)		(31.1)
Repurchase of common shares		(6.3)				(233.2)		(233.2)		(233.2)
Stock-based compensation and exercise of awards		0.5		5.6		6.5		12.1		12.1
Balance at December 31, 2014	122.2	(32.9)	\$ 1.2	\$ 1,155.4	\$ 259.7	\$ (597.7)	\$ (42.3)	\$ 776.3	\$ 0.9	\$ 777.2
Net income					144.6			144.6	0.1	144.7
Other comprehensive loss							(29.0)	(29.0)		(29.0)
Cash dividends declared					(37.2)			(37.2)		(37.2)
Repurchase of common shares		(4.5)				(156.1)		(156.1)		(156.1)
Stock-based compensation and exercise of awards		0.5		0.2		5.4		5.6		5.6
Balance at December 31, 2015	122.2	(36.9)	\$ 1.2	\$ 1,155.6	\$ 367.1	\$ (748.4)	\$ (71.3)	\$ 704.2	\$ 1.0	\$ 705.2

The accompanying notes to the consolidated financial statements are an integral part of these statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### Note 1 — DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Description of Business

We are a premier provider of specialized polymer materials, services and solutions with operations in specialty polymer formulations, color and additive systems, plastic sheet and packaging solutions, and polymer distribution. We are also a highly specialized developer and manufacturer of performance enhancing additives, liquid colorants, and fluoropolymer and silicone colorants. Headquartered in Avon Lake, Ohio, we have employees at manufacturing sites and distribution facilities in North America, South America, Europe, Asia and Africa. We provide value to our customers through our ability to link our knowledge of polymers and formulation technology with our manufacturing and supply chain to provide value added solutions to designers, assemblers and processors of plastics (our customers). When used in these notes to the consolidated financial statements, the terms "we," "us," "our", "PolyOne" and the "Company" mean PolyOne Corporation and its consolidated subsidiaries.

Our operations are located primarily in North America, South America, Europe and Asia. Our operations are reported in five reportable segments: Color, Additives and Inks; Specialty Engineered Materials; Designed Structures and Solutions; Performance Products and Solutions; and PolyOne Distribution. See Note 16, *Segment Information*, for more information.

#### Accounting Standards Adopted

In April 2015, the Financial Accounting Standards Board ("FASB") issued Auditing Standards Update 2015-03, "Interest-Imputation of Interest (Subtopic 835-30) - Simplifying the Presentation of Debt Issuance Costs" (ASU 2015-03), which requires unamortized debt issuance costs to be presented as a reduction of the corresponding debt liability rather than a separate asset. The Company adopted ASU 2015-03 during the fourth quarter of 2015 and applied this standard retrospective to 2014. Refer to Note 6, *Financial Arrangements*, for the impact on our Consolidated Balance Sheets.

In August 2015, the FASB issued Auditing Standards Update 2015-15, "Interest-Imputation of Interest (Subtopic 835-30) - Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements" (ASU 2015-15), which added clarification to ASU 2015-03 in allowing debt issuance costs related to line-of-credit arrangements to be presented as an asset and subsequently amortized ratably over the term of the line-of-credit agreement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The Company adopted ASU 2015-15 during the fourth quarter of 2015 and applied this standard retrospective to 2014. Debt issuance costs related to our revolving credit facility due 2018 of \$2.3 million and \$3.2 million for 2015 and 2014, respectively, are reflected in the Consolidated Balance Sheets as other non-current assets.

In September 2015, the FASB issued Accounting Standards Update 2015-16, "Simplifying the Accounting for Measurement-Period Adjustments" (ASU 2015-16). Measurement period adjustments are changes to provisional amounts recorded when the accounting for a business combination is incomplete as of the end of a reporting period. The measurement period can extend for up to a year following the transaction date. The new guidance requires companies to recognize these adjustments, including any related impacts to net income, in the reporting period in which the adjustments are determined. Companies are no longer required to retroactively apply measurement period adjustments to the prior period. This update is effective for annual and interim periods beginning after December 15, 2016. We have early adopted this standard beginning in fiscal 2015. There was no material impact to the Consolidated Financial Statements.

In November 2015, the FASB issued Accounting Standards Update 2015-17, "Balance Sheet Classification of Deferred Taxes" (ASU 2015-17). The new guidance requires that all deferred tax assets and liabilities, along with any related valuation allowance, be classified as noncurrent on the balance sheet. This update is effective for annual and interim periods beginning after December 15, 2016, with early adoption permitted. We have early adopted this standard, as permitted, beginning with fiscal 2015, and applied this standard retrospectively to 2014. The retrospective adoption resulted in the following impact to the Consolidated Balance Sheet as of December 31, 2014: a decrease to other current assets of \$41.4 million, an increase to other non-current assets of \$9.6 million, a decrease in accrued expenses and other liabilities of \$0.7 million and a decrease in deferred income taxes of \$31.1 million.

## **Accounting Standards Not Yet Adopted**

In May 2014, the FASB issued Auditing Standards Update 2014-09, "Revenue from Contracts with Customers" (ASU 2014-09). Under this standard, a company recognizes revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The standard implements a five-step process for customer contract revenue recognition that focuses on transfer of control. It will be effective for us beginning January 1, 2018, with early adoption not permitted. Entities can transition to the standard either retrospectively or as a cumulative-effect adjustment as of the date of adoption. We are currently assessing the impact this standard will have on our consolidated financial statements as well as the method by which we will adopt the new standard.

In July 2015, the FASB issued Accounting Standards Update 2015-11, "Inventory (Topic 300): Simplifying the Measurement of Inventory" (ASU 2015-11), which applies to inventory measured using first-in, first out (FIFO) or average cost. This update proscribes that an entity should measure inventory that is within scope at the lower of cost and net realizable value, which is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. This update is effective for annual and interim periods beginning after December 15, 2016, and should be applied prospectively with early adoption permitted at the beginning of an interim or annual reporting period. We are currently evaluating the impact of the adoption of this guidance on the Consolidated Financial Statements, but do not expect this standard to have a material impact on our Consolidated Financial Statements.

## **Consolidation and Basis of Presentation**

The consolidated financial statements include the accounts of PolyOne and its subsidiaries. All majority-owned affiliates over which we have control are consolidated. Transactions with related parties, including joint ventures, are in the ordinary course of business.

## **Reclassifications**

Certain reclassifications of the prior period amounts and presentation have been made to conform to the presentation for the current period.

## **Use of Estimates**

Preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions in certain circumstances that affect amounts reported in the accompanying consolidated financial statements and notes. Actual results could differ from these estimates.

## **Cash and Cash Equivalents**

We consider all highly liquid investments purchased with a maturity of less than three months to be cash equivalents. Cash equivalents are stated at cost, which approximates fair value.

## **Allowance for Doubtful Accounts**

We evaluate the collectability of receivables based on a combination of factors. We regularly analyze significant customer accounts and, when we become aware of a specific customer's inability to meet its financial obligations to us, such as in the case of a bankruptcy filing or deterioration in the customer's operating results or financial position, we record a specific allowance for bad debt to reduce the related receivable to the amount we reasonably believe is collectible. We also record bad debt allowances for all other customers based on a variety of factors including the length of time the receivables are past due, the financial health of the customer, economic conditions and historical experience. In estimating the allowances, we take into consideration the existence of credit insurance. If circumstances related to specific customers change, our estimates of the recoverability of receivables could be adjusted further. Accounts receivable balances are written off against the allowance for doubtful accounts after a final determination of uncollectability has been made.

## **Inventories**

External purchases of raw materials and finished goods are valued at weighted average cost. Manufactured finished goods are stated at the lower of cost or market using the first-in, first-out (FIFO) method.

## **Long-lived Assets**

Property, plant and equipment is carried at cost, net of depreciation and amortization that is computed using the straight-line method over the estimated useful lives of the assets, which generally ranges from 3 to 15 years for machinery and equipment and up to 40 years for buildings. During 2015 and 2014, we depreciated certain assets

associated with closing manufacturing locations over a shortened life (through a cease-use date). Software is amortized over periods not exceeding 10 years. Property, plant and equipment is generally depreciated on accelerated methods for income tax purposes. We expense repair and maintenance costs as incurred. We capitalize replacements and betterments that increase the estimated useful life of an asset.

We retain fully depreciated assets in property and accumulated depreciation accounts until we remove them from service. In the case of sale, retirement or disposal, the asset cost and related accumulated depreciation balance is removed from the respective account, and the resulting net amount, less any proceeds, is included as a component of income from continuing operations in the accompanying Consolidated Statements of Income.

We account for operating leases under the provisions of FASB Accounting Standards Codification (ASC) Topic 840, *Leases*.

Finite-lived intangible assets, which consist primarily of customer relationships, patents and technology are amortized over their estimated useful lives. The remaining useful lives range up to 21 years.

We assess the recoverability of long-lived assets when events or changes in circumstances indicate that we may not be able to recover the assets' carrying amount. We measure the recoverability of assets to be held and used by a comparison of the carrying amount of the asset to the expected future undiscounted cash flows associated with the asset. We measure the amount of impairment of long-lived assets as the amount by which the carrying value of the asset exceeds the fair value of the asset, which is generally determined based on projected discounted future cash flows or appraised values. No such impairments were recognized during 2015, 2014 or 2013.

### **Goodwill and Indefinite Lived Intangible Assets**

Goodwill is the excess of the purchase price paid over the fair value of the net assets of the acquired business. Goodwill is tested for impairment at the reporting unit level. Our reporting units have been identified at the operating segment level, or in some cases, one level below the operating segment level. Goodwill is allocated to the reporting units based on the estimated fair value at the date of acquisition.

Our annual measurement date for testing impairment of goodwill and indefinite-lived intangibles is October 1st. We completed our testing of impairment as of October 1, noting no impairment in 2015, 2014 or 2013. Additionally, as noted within our "Critical Accounting Policies and Estimates" section of Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations", we completed an interim goodwill impairment assessment as of December 31, 2015 for our Customer Engineered Services reporting unit, which is included in our Designed Structures and Solutions segment, and concluded there was no impairment. The future occurrence of a potential indicator of impairment would require an interim assessment for some or all of the reporting units prior to the next required annual assessment on October 1, 2016. Refer to Note 18, *Fair Value*, for further discussion of our approach for assessing the fair value of goodwill.

### **Litigation Reserves**

FASB ASC Topic 450, *Contingencies*, requires that we accrue for loss contingencies associated with outstanding litigation, claims and assessments for which management has determined it is probable that a loss contingency exists and the amount of loss can be reasonably estimated. We record expense associated with professional fees related to litigation claims and assessments as incurred. Refer to Note 13, *Commitments and Contingencies*, for further information.

### **Derivative Financial Instruments**

FASB ASC Topic 815, *Derivative and Hedging*, requires that all derivative financial instruments, such as foreign exchange contracts, be recognized in the financial statements and measured at fair value, regardless of the purpose or intent in holding them.

We are exposed to foreign currency changes in the normal course of business. We have established policies and procedures that manage this exposure through the use of financial instruments. By policy, we do not enter into these instruments for trading purposes or speculation. These instruments are not designated as hedges and, as a result, are adjusted to fair value, with the resulting gains and losses recognized in the accompanying Consolidated Statements of Income immediately.

### **Pension and Other Post-retirement Plans**

We account for our pensions and other post-retirement benefits in accordance with FASB ASC Topic 715, *Compensation — Retirement Benefits*. We immediately recognize actuarial gains and losses in our operating

results in the year in which the gains or losses occur. Refer to Note 12, *Employee Benefit Plans*, for more information.

### Accumulated Other Comprehensive Loss

Changes in accumulated other comprehensive loss in 2015, 2014 and 2013 were as follows:

(In millions)	Cumulative Translation Adjustment	Pension and other post- retirement benefits	Unrealized gain in available-for- sale securities	Total
Balance at January 1, 2013	\$ (16.5)	\$ 5.2	\$ 0.2	\$ (11.1)
Translation adjustments	(3.7)	—	—	(3.7)
Balance at December 31, 2013	(20.2)	5.2	0.2	(14.8)
Translation adjustments	(27.5)	—	—	(27.5)
Balance at December 31, 2014	(47.7)	5.2	0.2	(42.3)
Translation adjustments	(29.1)	—	—	(29.1)
Unrecognized gain on available-for-sale securities	—	—	0.1	0.1
Balance at December 31, 2015	<u>\$ (76.8)</u>	<u>\$ 5.2</u>	<u>\$ 0.3</u>	<u>\$ (71.3)</u>

### Fair Value of Financial Instruments

FASB ASC Topic 820, *Fair Value Measurements and Disclosures*, requires disclosures of the fair value of financial instruments. The estimated fair values of financial instruments were principally based on market prices where such prices were available and, where unavailable, fair values were estimated based on market prices of similar instruments. See Note 18, *Fair Value*, for further discussion.

### Foreign Currency Translation

Revenues and expenses are translated at average currency exchange rates during the related period. Assets and liabilities of foreign subsidiaries are translated using the exchange rate at the end of the period. The resulting translation adjustments are recorded as accumulated other comprehensive income or loss. Gains and losses resulting from foreign currency transactions, including intercompany transactions that are not considered permanent investments, are included in *Other expense, net* in the accompanying Consolidated Statements of Income.

### Revenue Recognition

We recognize revenue when the revenue is realized or realizable and has been earned. We recognize revenue when a firm sales agreement is in place, shipment has occurred and collectability is reasonably assured.

### Shipping and Handling Costs

Shipping and handling costs are included in cost of sales.

### Research and Development Expense

Research and development costs from continuing operations, which were \$53.0 million in 2015, \$53.4 million in 2014 and \$52.6 million in 2013, are charged to expense as incurred.

### Environmental Costs

We expense costs that are associated with managing hazardous substances and pollution in ongoing operations on a current basis. Costs associated with environmental contamination are accrued when it becomes probable that a liability has been incurred and our proportionate share of the cost can be reasonably estimated. Any such provision is recognized using the Company's best estimate of the amount of loss incurred, or at the lower end of an estimated range, when a single best estimate is not determinable. In some cases, the Company may be able to recover a portion of the costs relating to these obligations from insurers or other third parties; however, the Company records such amounts only when it is probable that they will be collected.

### Share-Based Compensation

We account for share-based compensation under the provisions of FASB ASC Topic 718, *Compensation — Stock Compensation*, which requires us to estimate the fair value of share-based awards on the date of grant. The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service

periods in the accompanying Consolidated Statements of Income. As of December 31, 2015, we had one active share-based employee compensation plan, which is described more fully in Note 15, *Share-Based Compensation*.

## Income Taxes

Deferred income tax liabilities and assets are determined based upon the differences between the financial reporting and tax basis of assets and liabilities and are measured using the tax rate and laws currently in effect. In accordance with FASB ASC Topic 740, *Income Taxes*, we evaluate our deferred income taxes to determine whether a valuation allowance should be established against the deferred tax assets or whether the valuation allowance should be reduced based on consideration of all available evidence, both positive and negative, using a “more likely than not” standard.

## Note 2 — BUSINESS COMBINATIONS

### *Magenta Master Fibers*

On December 9, 2015, the Company completed the acquisition of Magenta Master Fibers (Magenta), a leading innovative developer of specialty color concentrates for the global fiber industry, for approximately \$18.3 million, net of cash acquired. The results of operations of Magenta since the date of acquisition are immaterial. These results are reported in the Color, Additives and Inks segment. The acquisition resulted in preliminary goodwill of \$6.6 million, which is not deductible for tax purposes.

### *Accella Performance Materials*

On December 1, 2014, the Company completed the acquisition of specialty assets of Accella Performance Materials (Accella), a leading North American manufacturer of liquid polymer formulations, for approximately \$47.2 million, net of cash acquired. The results of operations of Accella were included in the Company's Consolidated Statements of Income for the period subsequent to the date of the acquisition and are reported in the Color, Additives and Inks segment. The final purchase price allocation resulted in goodwill of \$24.7 million and intangible assets of \$16.0 million. The goodwill and intangible assets are deductible for tax purposes.

### *Spartech Corporation*

On March 13, 2013, PolyOne acquired Spartech, a supplier of sustainable plastic sheet, color and engineered materials and packaging solutions. At the effective time of the merger, each issued and outstanding share of Spartech common shares was canceled and converted into the right to receive consideration equal to \$2.67 in cash and 0.3167 shares of PolyOne common shares for a purchase price of \$511.1 million. PolyOne funded the cash portion of the consideration, and the repayment of certain portions of Spartech's debt, with a portion of the net proceeds of its issuance of 5.25% senior notes due 2023, discussed in Note 6, *Financing Arrangements*. The table below summarizes the components of the purchase price.

(In millions, except stock price and share data)

PolyOne shares issued	10.0
PolyOne closing stock price on March 13, 2013	\$ 25.05
Total value of PolyOne shares issued	\$ 249.9
Cash consideration transferred to Spartech shareholders	83.4
Fair value of Spartech equity awards, net of deferred tax benefits <sup>(1)</sup>	2.4
Total consideration transferred to Spartech equity holders	335.7
Spartech revolving credit facilities repaid at close <sup>(2)</sup>	77.2
Spartech senior notes repaid at close <sup>(2)</sup>	102.3
Total consideration transferred to debt and equity holders	515.2
Cash acquired	(4.1)
Total consideration transferred to debt and equity holders, net of cash acquired	\$ 511.1

(1) In accordance with ASC 718, *Compensation — Stock Compensation*, the fair value of replacement awards attributable to pre-combination service is recognized as part of purchase consideration. The \$2.4 million represents the fair value of Spartech replacement equity awards of \$3.9 million net of deferred income tax benefits of \$1.5 million. The fair value of awards attributable to post-combination service amounted to \$2.7 million and are being recognized as stock compensation over their requisite service periods within PolyOne's Consolidated Statements of Income.

(2) In accordance with the provisions of Spartech's 7.08% senior notes due 2016 and revolving credit facilities, at the time of closing, PolyOne repaid all borrowings under Spartech's revolving credit facilities, which amounted to \$77.2 million. Additionally, PolyOne repaid \$102.3 million

related to Spartech's 7.08% senior notes due 2016, including \$88.9 million of aggregated principal, \$10.3 million make-whole provisions, and \$3.1 million of interest payable.

The acquisition of Spartech has provided synergies through enhanced operational cost efficiencies and has expanded PolyOne's specialty portfolio. By combining Spartech's leading market positions in sheet, rigid barrier packaging and specialty cast acrylics with PolyOne's capabilities, we have been better able serve our customers and accelerate growth. Spartech's results have been reflected within our Consolidated Statements of Income and within the Designed Structures and Solutions segment, as well as our existing Specialty Engineered Materials, Color, Additives and Inks and Performance Products and Solutions segments since the date of acquisition.

In 2013, we incurred acquisition-related costs totaling of \$7.6 million which have been included within *selling and administrative expense* in our Consolidated Statements of Income.

### Note 3 — GOODWILL AND INTANGIBLE ASSETS

The total purchase price associated with acquisitions is allocated to the fair value of assets acquired and liabilities assumed based on their fair values at the acquisition date, with excess amounts recorded as goodwill.

Goodwill as of December 31, 2015 and 2014, and changes in the carrying amount of goodwill by segment were as follows:

(In millions)	Specialty Engineered Materials	Color, Additives and Inks	Designed Structures and Solutions	Performance Products and Solutions	PolyOne Distribution	Total
Goodwill, gross at January 1, 2014	\$ 112.1	\$ 326.3	\$ 136.3	\$ 186.0	\$ 1.6	\$ 762.3
Accumulated impairment losses	(12.2)	(16.1)	—	(175.0)	—	(203.3)
Goodwill, net at January 1, 2014	99.9	310.2	136.3	11.0	1.6	559.0
Acquisitions of businesses	—	23.5	8.4	0.2	—	32.1
Currency translation	(0.5)	—	—	—	—	(0.5)
Balance at December 31, 2014	99.4	333.7	144.7	11.2	1.6	590.6
Acquisitions of businesses	—	8.6	—	—	—	8.6
Currency translation	(1.4)	(0.1)	—	—	—	(1.5)
Balance at December 31, 2015	\$ 98.0	\$ 342.2	\$ 144.7	\$ 11.2	\$ 1.6	\$ 597.7

At December 31, 2015, PolyOne had \$96.3 million of indefinite-lived intangible assets that are not subject to amortization, consisting of a trade name of \$33.2 million acquired as part of the acquisition of GLS Corporation (GLS) and trade names of \$63.1 million acquired as part of the acquisition of ColorMatrix Group, Inc. (ColorMatrix).

Indefinite and finite-lived intangible assets consisted of the following:

(In millions)	As of December 31, 2015			
	Acquisition Cost	Accumulated Amortization	Currency Translation	Net
Customer relationships	\$ 199.4	\$ (42.1)	\$ —	\$ 157.3
Patents, technology and other	137.0	(45.7)	(0.3)	91.0
Indefinite-lived trade names	96.3	—	—	96.3
Total	\$ 432.7	\$ (87.8)	\$ (0.3)	\$ 344.6

(In millions)	As of December 31, 2014			
	Acquisition Cost	Accumulated Amortization	Currency Translation	Net
Customer relationships	\$ 198.1	\$ (32.6)	\$ —	\$ 165.5
Patents, technology and other	132.9	(35.3)	(0.1)	97.5
Indefinite-lived trade names	96.3	—	—	96.3
In-process research and development	3.4	—	—	3.4
Total	\$ 430.7	\$ (67.9)	\$ (0.1)	\$ 362.7

Amortization of finite-lived intangible assets for the years ended December 31, 2015, 2014 and 2013 was \$19.9 million, \$19.2 million and \$17.8 million, respectively.



We expect finite-lived intangibles amortization expense for the next five years as follows:

	2016	2017	2018	2019	2020
Expected amortization expense	\$20.2	\$20.2	\$20.2	\$20.2	\$16.7

#### **Note 4 — EMPLOYEE SEPARATION AND RESTRUCTURING COSTS**

In 2015, PolyOne determined it would close two manufacturing facilities within the Designed Structures and Solutions segment and take other corporate actions to reduce administrative costs. These actions were taken as a result of Designed Structures and Solutions' declining results and near term outlook. We recognized \$6.2 million of severance costs, \$10.0 million of asset related charges, including accelerated depreciation, and \$0.9 million of other ongoing costs associated with exiting these plants and transferring equipment. We anticipate these actions to result in \$10.0 million of additional charges, primarily incurred in the first half of 2016. Of the additional charges to be incurred, \$3.0 million will be accelerated depreciation.

In June 2014, PolyOne determined it would close its Diadema and Joinville, Brazil facilities that were acquired in 2011 with the acquisition of Uniplen Industria de Polimeros Ltda. These actions were taken to streamline operations and improve our financial performance in Brazil. We recognized \$1.3 million and \$17.0 million related to these actions in 2015 and 2014, respectively. Total costs of \$18.3 million in connection with these actions include \$11.2 million of asset-related charges, including accelerated depreciation, \$2.7 million of severance and \$4.4 million of other associated costs. Of the total charges, approximately \$7.0 million were cash costs.

In 2013, PolyOne determined it would close seven former Spartech manufacturing facilities and one administrative office and relocate operations to other PolyOne facilities. The closure of these manufacturing facilities was part of the Company's efforts to improve service, on time delivery and quality as we align assets with our customers' needs. In addition to these actions, PolyOne incurred severance costs related to former Spartech executives and other employees, as well as fixed asset-related charges and other ongoing costs associated with restructuring actions that were underway prior to PolyOne's acquisition of Spartech.

Since the date of the Spartech acquisition, the Company has incurred \$123.4 million of charges in connection with the 2013 Spartech actions. Costs include \$47.2 million of asset-related charges, including accelerated depreciation and asset write-offs, and total cash charges of \$76.2 million, including \$25.9 million for severance and \$50.3 million of other associated costs. Of the total cash charges, approximately \$64.0 million relates to manufacturing realignment actions initiated by PolyOne.

The following table summarizes restructuring activity related to the Spartech actions initiated in 2013. These actions are complete as of December 31, 2015.

(In millions)	Long-Lived Asset Charges	Employee Separation	Other Ongoing Costs	Total
Accrual balance at December 31, 2012	\$ —	\$ —	\$ —	\$ —
Charged to expense	13.6	21.1	9.4	44.1
Cash payments	—	(6.0)	(9.4)	(15.4)
Non-cash utilization	(13.6)	—	—	(13.6)
Accrual balance at December 31, 2013	\$ —	\$ 15.1	\$ —	\$ 15.1
Charged to expense	27.3	5.1	27.3	59.7
Cash payments	—	(17.5)	(27.3)	(44.8)
Non-cash utilization	(27.3)	—	—	(27.3)
Accrual balance at December 31, 2014	\$ —	\$ 2.7	\$ —	\$ 2.7
Charged to expense	6.3	(0.3)	13.6	19.6
Cash payments	—	(2.3)	(13.6)	(15.9)
Non-cash utilization	(6.3)	—	—	(6.3)
Accrual balance at December 31, 2015	\$ —	\$ 0.1	\$ —	\$ 0.1

During 2014, in addition to the actions noted above, we recognized \$17.4 million of employee separation and restructuring costs primarily in Europe related to the closure of our Bendorf, Germany manufacturing plant along with other reductions in force across Europe.

In 2015, we recognized total employee separation and restructuring charges of \$41.9 million, which included \$27.0 million recognized within *Cost of goods sold* and \$14.9 million recognized in *Selling and administrative expenses*. In 2014, we recognized total employee separation and restructuring charges of \$94.1 million, which included \$54.0 million recognized within *Cost of goods sold* and \$40.1 million recognized in *Selling and administrative expenses*. In 2013, we recognized total employee separation and restructuring charges of \$52.0 million, which included \$16.1 million recognized within *Cost of goods sold* and \$35.9 million recognized in *Selling and administrative expenses*.

#### Note 5 — DISCONTINUED OPERATIONS

On May 30, 2013, PolyOne sold its Resin Business to Mexichem Specialty Resins Inc. for \$250.0 million cash consideration. This sale resulted in the recognition of a pre-tax gain of \$223.7 million (\$139.7 million, net of tax).

PolyOne has classified the Resin Business operating results as a discontinued operation in the accompanying Consolidated Statements of Income for all periods presented.

The Resin Business' sales, income before income taxes and net income were as follows:

(In millions)	Year Ended December 31,	
	2014	2013*
Sales	\$ —	\$ 55.3
Gain on sale	\$ —	\$ 223.7
Income from operations	—	12.2
Income before taxes	—	235.9
Income tax benefit (expense)	1.2	(86.1)
Income from discontinued operations, net of income taxes	\$ 1.2	\$ 149.8

\* Includes the Resin Business' operating results through May 29, 2013.

## Note 6 — FINANCING ARRANGEMENTS

Total debt as of December 31 consisted of the following:

As of December 31, 2015 (In millions)	Principal Amount	Unamortized discount and debt issuance cost	Net debt
Senior term loan due 2022	\$ 550.0	\$ 8.6	\$ 541.4
5.250% senior notes due 2023	600.0	8.3	591.7
Other debt	13.5	—	13.5
Total debt	\$ 1,163.5	\$ 16.9	\$ 1,146.6
Less short-term and current portion of long-term debt	18.6	—	18.6
Long-term debt	\$ 1,144.9	\$ 16.9	\$ 1,128.0

  

As of December 31, 2014 (In millions)	Principal Amount	Unamortized discount and debt issuance cost <sup>(1)</sup>	Net debt
7.500% debentures due 2015	\$ 48.7	\$ 0.1	\$ 48.6
Revolving credit facility due 2018	45.0	—	45.0
7.375% senior notes due 2020	316.6	3.6	313.0
5.250% senior notes due 2023	600.0	9.5	590.5
Other debt	13.5	—	13.5
Total debt	\$ 1,023.8	\$ 13.2	\$ 1,010.6
Less short-term and current portion of long-term debt	61.8	0.1	61.7
Long-term debt	\$ 962.0	\$ 13.1	\$ 948.9

(1) Prior to the adoption of ASU 2015-03, debt issuance costs of \$0.1 million and \$13.1 million were previously reflected in the Consolidated Balance Sheets as other current assets and other non-current assets, respectively.

On November 12, 2015, PolyOne entered into a senior secured term loan having an aggregate principal amount of \$550.0 million. Net proceeds of \$547.3 million reflected a \$2.7 million issuance discount. \$5.5 million is payable annually while the remaining balance matures on November 12, 2022. The interest rate associated with the term loan is 300 basis points plus the greater of (i) the 1-, 2-, 3- or 6-month LIBOR, at the Company's discretion, or (ii) 75 basis points. The proceeds from the term loan were used to repay in full \$316.6 million aggregate principal amount of our 7.375% senior notes due 2020, repay in full \$48.7 million aggregate principal amount of our 7.50% debentures due 2015 and repay \$106.6 million of the outstanding balance on our revolving credit facility. We recognized \$16.4 million of debt extinguishment costs within *Debt extinguishment costs* in our Consolidated Statements of Income in connection with these repurchases.

On February 28, 2013, PolyOne issued \$600.0 million aggregate principal amount of senior notes, which mature on March 15, 2023. The senior notes bear an interest rate of 5.25% per year, payable semi-annually, in arrears, on March 15 and September 15 of each year, which commenced on September 15, 2013. We used a portion of the net proceeds of the offering to pay the cash portion of the Spartech acquisition, and to repay certain Spartech debt, including the \$88.9 million aggregate principal amount of its senior notes due 2016 and related interest and make-whole payments totaling \$13.4 million and all outstanding amounts under its revolving credit facility. We also used a portion of these net proceeds to make a voluntary \$50.0 million contribution to our U.S. qualified defined benefit plan and to repay the outstanding principal amount of \$297.0 million under our senior secured term loan. We incurred debt extinguishment costs of \$10.6 million related to the early retirement of our senior secured term loan, including \$8.2 million of deferred financing cost write-offs and \$2.4 million of discounts that were written off. These costs are presented within *Debt extinguishment costs* in our Consolidated Statements of Income.

The Company maintains a revolving credit facility, which matures on March 1, 2018, with a maximum borrowing facility size of \$400.0 million, subject to a borrowing base with advances against certain U.S. and Canadian accounts receivable, inventory and other assets as specified in the agreement. We have the option to increase the availability under the facility to \$450.0 million, subject to meeting certain requirements and obtaining commitments for such increase. The revolving credit facility has a U.S. and a Canadian line of credit. Currently there are no borrowings on the U.S. or Canadian portion of the facility. Advances under the U.S. portion of our revolving credit facility bear interest, at the Company's option, at a Base Rate or a LIBOR Rate plus an applicable margin. The Base Rate is a fluctuating rate equal to the greater of (i) the Federal Funds Rate plus one-half percent, (ii) the prevailing LIBOR Rate plus one percent, and (iii) the prevailing Prime Rate. The applicable margins vary based on the Company's daily average excess availability during the previous quarter. The weighted average annual interest

rate under this facility for the year ended December 31, 2015 and 2014 were 2.46% and 2.84%, respectively. As of December 31, 2015, we had no borrowings under our revolving credit facility, which had availability of \$338.7 million. Borrowings under this facility as of December 31, 2014 were \$45.0 million.

The agreements governing our revolving credit facility and our secured term loan, and the indentures and credit agreements governing other debt, contain a number of customary restrictive covenants that, among other things, limit our ability to: consummate asset sales, incur additional debt or liens, consolidate or merge with any entity or transfer or sell all or substantially all of our assets, pay dividends or make certain other restricted payments, make investments, enter into transactions with affiliates, create dividend or other payment restrictions with respect to subsidiaries, make capital investments and alter the business we conduct. In addition, these agreements require us to comply with specific financial tests, under which we are required to achieve certain or specific financial and operating results. As of December 31, 2015, we were in compliance with all covenants.

The Company maintains a credit line with Saudi Hollandi Bank for \$16.0 million. The credit line has an interest rate equal to the Saudi Arabia Interbank Offered Rate plus a fixed rate of 0.85% and is subject to annual renewal. The credit line is being used to fund capital expenditures related to the manufacturing facility in Jeddah, Saudi Arabia. As of December 31, 2015, letters of credit under the credit line were \$0.2 million and borrowings were \$12.6 million with an interest rate of 1.78%. As of December 31, 2014, letters of credit under the credit line were \$0.2 million and borrowings were \$13.1 million with an interest rate of 1.85%. As of December 31, 2015 and 2014, there was remaining availability on the credit line of \$3.2 million and \$2.7 million, respectively.

Aggregate maturities of the principal amount of debt for the next five years and thereafter are as follows:

(In millions)		
2016	\$	18.6
2017		5.5
2018		5.6
2019		5.6
2020		5.6
Thereafter		1,122.6
Aggregate maturities	\$	<u>1,163.5</u>

Included in *Interest expense, net* for the years ended December 31, 2015, 2014 and 2013 was interest income of \$1.0 million, \$1.1 million and \$1.3 million, respectively. Total interest paid on debt was \$65.9 million in 2015, \$59.8 million in 2014 and \$50.4 million in 2013.

#### Note 7 — LEASING ARRANGEMENTS

We lease certain manufacturing facilities, warehouse space, machinery and equipment, automobiles, railcars, computers and software under operating leases. Rent expense from continuing operations was \$27.1 million in 2015, \$30.4 million in 2014 and \$24.5 million in 2013.

Future minimum lease payments under non-cancelable operating leases with initial lease terms longer than one year as of December 31, 2015 are as follows:

(In millions)		
2016	\$	21.0
2017		17.2
2018		12.2
2019		8.3
2020		6.8
Thereafter		19.1
Total	\$	<u>84.6</u>

**Note 8 — ACCOUNTS RECEIVABLE, NET**

*Accounts receivable, net* as of December 31 consist of the following:

(In millions)	2015	2014
Trade accounts receivable	\$ 350.0	\$ 399.9
Allowance for doubtful accounts	(3.0)	(3.1)
Accounts receivable, net	<u>\$ 347.0</u>	<u>\$ 396.8</u>

The following table details the changes in allowance for doubtful accounts:

(In millions)	2015	2014	2013
Balance at beginning of the year	\$ (3.1)	\$ (5.2)	\$ (4.3)
Provision for doubtful accounts	(0.2)	(0.4)	(0.2)
Accounts written off	—	2.2	0.2
Currency translation and other adjustments	0.3	0.3	(0.9)
Balance at end of year	<u>\$ (3.0)</u>	<u>\$ (3.1)</u>	<u>\$ (5.2)</u>

**Note 9 — INVENTORIES, NET**

Components of *Inventories, net* are as follows:

(In millions)	December 31, 2015	December 31, 2014
Finished products	\$ 172.7	\$ 187.8
Work in process	5.0	4.1
Raw materials and supplies	109.3	117.1
Inventories, net	<u>\$ 287.0</u>	<u>\$ 309.0</u>

**Note 10 — PROPERTY, NET**

Components of *Property, net* are as follows:

(In millions)	December 31, 2015	December 31, 2014
Land and land improvements	\$ 46.9	\$ 49.2
Buildings	318.3	309.2
Machinery and equipment	1,104.7	1,077.2
Property, gross	1,469.9	1,435.6
Less accumulated depreciation and amortization	(886.4)	(838.9)
Property, net	<u>\$ 583.5</u>	<u>\$ 596.7</u>

Depreciation expense from continuing operations was \$84.4 million in 2015, \$104.7 million in 2014 and \$91.0 million in 2013. Included in depreciation expense from continuing operations was accelerated depreciation of \$6.2 million, \$23.1 million and \$12.7 million during 2015, 2014 and 2013, respectively, related to restructuring actions.

**Note 11 — OTHER BALANCE SHEET LIABILITIES**

Other liabilities at December 31, 2015 and 2014 consist of the following:

(In millions)	Accrued expenses and other liabilities		Other non-current liabilities	
	December 31,		December 31,	
	2015	2014	2015	2014
Employment costs	\$ 76.8	\$ 112.2	\$ 21.7	\$ 23.4
Environmental liabilities	10.2	11.5	109.7	109.6
Accrued taxes	4.2	10.3	—	—
Pension and other post-employment benefits	5.7	5.7	—	—
Accrued interest	12.1	16.1	—	—
Dividends payable	10.3	8.8	—	—
Unrecognized tax benefits	1.5	2.1	14.2	26.0
Other	7.1	6.2	6.9	19.3
Total	<u>\$ 127.9</u>	<u>\$ 172.9</u>	<u>\$ 152.5</u>	<u>\$ 178.3</u>

## Note 12 — EMPLOYEE BENEFIT PLANS

We recognize actuarial gains and losses in our operating results in the year in which the gains or losses occur. These gains and losses are generally only measured annually as of December 31 and, accordingly, are recorded during the fourth quarter of each year. We recognized a charge of \$11.6 million and \$56.5 million in the fourth quarter of 2015 and 2014, respectively, related to the actuarial losses during the year. In the fourth quarter of 2013, we recognized a benefit of \$44.0 million.

All U.S. qualified defined benefit pension plans are frozen, no longer accrue benefits and are closed to new participants. We have foreign pension plans that accrue benefits. The plans generally provide benefit payments using a formula that is based upon employee compensation and length of service.

The following tables present the change in benefit obligation, change in plan assets and components of funded status for defined benefit pension and post-retirement health care benefit plans.

(In millions)	Pension Benefits		Health Care Benefits	
	2015	2014	2015	2014
Change in benefit obligation:				
Projected benefit obligation — beginning of year	\$ 576.8	\$ 537.0	\$ 16.6	\$ 16.4
Service cost	1.7	1.6	—	—
Interest cost	21.3	24.9	0.6	0.7
Actuarial (gain) loss	(18.3)	70.9	(3.6)	1.3
Benefits paid	(51.9)	(54.8)	(1.2)	(1.7)
Other	(2.2)	(2.8)	(0.6)	(0.1)
Projected benefit obligation — end of year	\$ 527.4	\$ 576.8	\$ 11.8	\$ 16.6
Projected salary increases	(1.7)	(3.5)	—	—
Accumulated benefit obligation	\$ 525.7	\$ 573.3	\$ 11.8	\$ 16.6
Change in plan assets:				
Plan assets — beginning of year	\$ 484.0	\$ 472.2	\$ —	\$ —
Actual return on plan assets	(1.2)	47.8	—	—
Company contributions	25.8	20.1	1.2	1.5
Benefits paid	(51.9)	(54.8)	(1.2)	(1.7)
Other	(0.7)	(1.3)	—	0.2
Plan assets — end of year	\$ 456.0	\$ 484.0	\$ —	\$ —
Unfunded status at end of year	\$ (71.4)	\$ (92.8)	\$ (11.8)	\$ (16.6)

Amounts included in the accompanying Consolidated Balance Sheets as of December 31 are as follows:

(In millions)	Pension Benefits		Health Care Benefits	
	2015	2014	2015	2014
Accrued expenses and other liabilities	\$ 4.4	\$ 4.1	\$ 1.3	\$ 1.6
Other non-current liabilities	67.0	88.7	10.5	15.0

As of December 31, 2015 and 2014, we had plans with total projected and accumulated benefit obligations in excess of the related plan assets as follows:

(In millions)	Pension Benefits		Health Care Benefits	
	2015	2014	2015	2014
Projected benefit obligation	\$ 527.4	\$ 566.3	\$ 11.8	\$ 16.6
Accumulated benefit obligation	525.7	562.8	11.8	16.6
Fair value of plan assets	456.0	473.5	—	—

Weighted-average assumptions used to determine benefit obligations at December 31:

	Pension Benefits		Health Care Benefits	
	2015	2014	2015	2014
Discount rate	4.11%	3.88%	4.12%	3.75%
Assumed health care cost trend rates at December 31:				
Health care cost trend rate assumed for next year	N/A	N/A	6.69%	6.88%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	N/A	N/A	4.50%	4.50%
Year that the rate reaches the ultimate trend rate	N/A	N/A	2027	2027

The following table summarizes the components of net periodic benefit cost or gain that was recognized during each of the years in the three-year period ended December 31, 2015.

(In millions)	Pension Benefits			Health Care Benefits		
	2015	2014	2013	2015	2014	2013
Components of net periodic benefit costs (gains):						
Service cost	\$ 1.7	\$ 1.6	\$ 1.7	\$ —	\$ —	\$ —
Interest cost	21.3	24.9	23.9	0.6	0.7	0.6
Expected return on plan assets	(32.7)	(32.2)	(37.4)	—	—	—
Mark-to-market actuarial net losses (gains)	15.2	55.2	(43.0)	(3.6)	1.3	(1.0)
Net periodic benefit cost (gain)	<u>\$ 5.5</u>	<u>\$ 49.5</u>	<u>\$ (54.8)</u>	<u>\$ (3.0)</u>	<u>\$ 2.0</u>	<u>\$ (0.4)</u>

In 2015, we recognized an \$11.6 million mark-to-market charge that was primarily a result of actual asset returns that were \$33.9 million lower than our assumed returns. Partially offsetting the lower asset returns was the increase in our year end discount rates, from 3.88% to 4.11%, and updated mortality assumptions.

In 2014, we recognized a \$56.5 million mark-to-market charge that was primarily a result of the decrease in year end discount rates, from 4.83% to 3.88%, and updated mortality assumptions. During 2014, we adopted the RP-2014 mortality table which was issued by the Society of Actuaries in October 2014.

Weighted-average assumptions used to determine net periodic benefit cost for the years ended December 31:

	Pension Benefits			Health Care Benefits		
	2015	2014	2013	2015	2014	2013
Discount rate*	3.88%	4.83%	4.12%	3.75%	4.38%	3.71%
Expected long-term return on plan assets*	6.87%	6.86%	8.41%	—%	—%	—%
Assumed health care cost trend rates at December 31:						
Health care cost trend rate assumed for next year	N/A	N/A	N/A	6.88%	7.02%	7.39%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	N/A	N/A	N/A	4.50%	4.50%	4.63%
Year that the rate reaches the ultimate trend rate	N/A	N/A	N/A	2027	2027	2025

\*The mark-to-market component of net periodic costs is determined based on discount rates as of year end and actual asset returns during the year.

The expected long-term rate of return on pension assets was determined after considering the historical and forward looking long-term asset returns by asset category and the expected investment portfolio mix.

Our pension investment strategy is to diversify the portfolio among asset categories to enhance the portfolio's risk-adjusted return as well as insulate it from exposure to changes in interest rates. Our asset mix considers the duration of plan liabilities, historical and expected returns of the investments, and the funded status of the plan. The pension asset allocation is reviewed and actively managed based on the funded status of the plan. As the funded status of the plan increases, the asset allocation is adjusted to increase the mix of fixed income investments and match the duration of those investments with the duration of the plan liabilities. Based on the current funded status of the plan, our pension asset investment allocation guidelines are to invest 60% to 70% in fixed income securities, 30% to 40% in equity securities and 0% to 10% in alternative investments and cash. These alternative investments may include funds of multiple asset investment strategies and funds of hedge funds.

The fair values of pension plan assets at December 31, 2015 and 2014, by asset category, are as follows:

Fair Value of Plan Assets at December 31, 2015				
(In millions)	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
<b>Asset category</b>				
Cash	\$ 3.6	\$ —	\$ —	\$ 3.6
Equities	15.8	—	—	15.8
Registered investment companies:				
Non-U.S. equity	38.8	—	—	38.8
Common collective funds:				
Short-term investments	—	3.4	—	3.4
United States equity	—	53.1	—	53.1
Fixed income	—	76.4	—	76.4
United States treasuries	87.3	—	—	87.3
Fixed income securities	137.9	34.9	—	172.8
Other	—	—	4.8	4.8
<b>Totals</b>	<b>\$ 283.4</b>	<b>\$ 167.8</b>	<b>\$ 4.8</b>	<b>\$ 456.0</b>

  

Fair Value of Plan Assets at December 31, 2014				
(In millions)	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
<b>Asset category</b>				
Cash	\$ 6.7	\$ —	\$ —	\$ 6.7
Equities	19.2	—	—	19.2
Registered investment companies:				
Non-U.S. equity	44.3	—	—	44.3
Floating rate income	35.7	—	—	35.7
Common collective funds:				
Short-term investments	—	18.8	—	18.8
United States equity	—	62.6	—	62.6
Fixed income	—	77.0	—	77.0
United States treasuries	74.6	—	—	74.6
Fixed income securities	124.7	5.2	—	129.9
Other	—	—	15.2	15.2
<b>Totals</b>	<b>\$ 305.2</b>	<b>\$ 163.6</b>	<b>\$ 15.2</b>	<b>\$ 484.0</b>

Equities represent U.S. publicly-traded equity securities of companies with a market capitalization typically between than \$1 billion and \$6 billion with a focus on growth or value. International equities primarily represent publicly-traded equity securities of developed international countries and emerging markets with a focus on growth or value. The registered investment company fixed income funds invest primarily in investment grade fixed income securities. The registered investment company non-US equity funds invest in underlying securities that are actively traded in public, non-US markets. The registered investment company floating rate income fund strategy is to invest primarily in a diversified portfolio of first and second lien high-yield senior floating rate loans and other floating rate debt securities. Common collective funds are valued at the net value of units held by the fund at year end. The unit value is determined by the total value of fund assets divided by the total number of units of the fund owned. Short-term investments in common collective funds represent cash and other short-term investments. The equity investments in common collective funds are predominately in equity or investment grade fixed income securities actively traded in public markets based upon readily measurable prices. The United States treasuries and fixed income securities



consist of publicly traded United States and non-United States fixed interest obligations (principally corporate and government bonds and debentures). Other assets are primarily insurance contracts for international plans.

Level 1 assets are valued based on quoted market prices. Level 2 investments included within the respective common collective trust funds are valued using a net asset value per share that is based on quoted market prices and/or other market data for the same or comparable instruments and transactions of the underlying equity or fixed income investments. The insurance contracts included in the other asset category are valued at the transacted price.

The estimated future benefit payments for our pension and health care plans are as follows:

(In millions)	Pension Benefits	Health Care Benefits
2016	\$ 39.8	\$ 1.2
2017	39.2	1.2
2018	39.1	1.2
2019	38.3	1.1
2020	38.3	1.0
2021 through 2025	180.8	4.3

We currently estimate that 2016 employer contributions will be \$24.6 million to all qualified and non-qualified pension plans and \$1.2 million to all healthcare benefit plans.

PolyOne sponsors various voluntary retirement savings plans (RSP). Under the provisions of the plans, eligible employees receive defined Company contributions and are eligible for Company matching contributions based on their eligible earnings contributed to the plan. In addition, we may make discretionary contributions to the plans for eligible employees based on a specific percentage of each employee's compensation.

Following are our contributions to the RSP:

(In millions)	2015	2014	2013
Retirement savings match	\$ 9.9	\$ 9.7	\$ 9.8
Retirement benefit contribution	4.1	4.0	4.0
Total contributions	\$ 14.0	\$ 13.7	\$ 13.8

### Note 13 — COMMITMENTS AND CONTINGENCIES

**Environmental** — We have been notified by federal and state environmental agencies and by private parties that we may be a potentially responsible party (PRP) in connection with the environmental investigation and remediation of certain sites. While government agencies frequently assert that PRPs are jointly and severally liable at these sites, in our experience, the interim and final allocations of liability costs are generally made based on the relative contribution of waste. We may also initiate corrective and preventive environmental projects of our own to ensure safe and lawful activities at our operations. We believe that compliance with current governmental regulations at all levels will not have a material adverse effect on our financial position, results of operations or cash flows.

In September 2007, we were informed of rulings by the United States District Court for the Western District of Kentucky on several pending motions in the case of Westlake Vinyls, Inc. v. Goodrich Corporation, et al., which had been pending since 2003. The Court held that PolyOne must pay the remediation costs at the former Goodrich Corporation Calvert City facility (now largely owned and operated by Westlake Vinyls), together with certain defense costs of Goodrich Corporation. The rulings also provided that PolyOne can seek indemnification for contamination attributable to Westlake Vinyls.

The environmental obligation at the site arose as a result of an agreement between The B.F. Goodrich Company (n/k/a Goodrich Corporation) and our predecessor, The Geon Company, at the time of the initial public offering in 1993, by which the Geon Company became a public company, to indemnify Goodrich Corporation for environmental costs at the site. At the time, neither PolyOne nor The Geon Company ever owned or operated the facility. Following the Court rulings, the parties to the litigation entered into settlement negotiations and agreed to settle all claims regarding past environmental costs incurred at the site. The settlement agreement provides a mechanism to pursue allocation of future remediation costs at the Calvert City site to Westlake Vinyls. While we do not currently assume any allocation of costs in our current reserve, we will adjust our reserve, in the future, consistent with any such future allocation of costs.

A remedial investigation and feasibility study (RIFS) is underway at the Calvert City site. During the third quarter of 2013, we submitted a remedial investigation report to the United States Environmental Protection Agency (USEPA).

Utilizing the preliminary results of a ground water modeling study that we obtained in the fourth quarter of 2013, we were able to develop estimates for potential remedies at Calvert City. Based upon this information, we recorded a \$47.0 million charge in the fourth quarter of 2013 associated with the anticipated remedy. The EPA provided a final remedial investigation report in the third quarter of 2015. Additionally, in the third quarter of 2015, the USEPA assumed responsibility for the completion of the feasibility study. We continue to pursue available insurance coverage related to this matter and recognize gains as we receive reimbursement. No receivable has been recognized for future recoveries.

On March 13, 2013, PolyOne acquired Spartech. One of Spartech's subsidiaries, Franklin-Burlington Plastics, Inc. (Franklin-Burlington), operated a plastic resin compounding facility in Kearny, New Jersey, located adjacent to the Passaic River. The USEPA has requested that companies located in the area of the lower Passaic River, including Franklin-Burlington, cooperate in an investigation of contamination of the lower Passaic River. In response, Franklin-Burlington and approximately 70 other companies (collectively, the Cooperating Parties) agreed, pursuant to an Administrative Order of Consent with the USEPA, to assume responsibility for development of a RIFS of the lower Passaic River. The RIFS costs are exclusive of any costs that may ultimately be required to remediate the lower Passaic River area being studied or costs associated with natural resource damages that may be assessed. By agreeing to bear a portion of the cost of the RIFS, Franklin-Burlington did not admit to any liability or agree to bear any such remediation or natural resource damage costs.

In April 2014, the USEPA released a Focused Feasibility Study for public comment for a portion of the lower Passaic River. The Cooperating Parties, along with other interested parties, have submitted comments, and the USEPA is currently reviewing the comments. In February 2015, the Cooperating Parties submitted to the USEPA a remedial investigation report for the lower Passaic River. In March 2015, Franklin-Burlington, along with nine other PRPs, submitted a de minimis settlement petition to the USEPA, asserting the ten entities contributed little or no impact to the lower Passaic River and seeking a meeting to commence settlement discussions. The USEPA has stated that it views the issuance of a Record of Decision as the appropriate time for de minimis discussions. It is uncertain when such discussions will take place. In April 2015, the Cooperating Parties submitted a feasibility study to the USEPA. The feasibility study does not contemplate who is responsible for remediation nor does it determine how such costs will be allocated to PRPs. The CPG is currently revising its RIFS, which has not yet been approved by the USEPA, as part of continuing technical discussions with the USEPA.

As of December 31, 2015, we have not accrued for remedial costs related to the lower Passaic River. We believe Franklin-Burlington, based on the currently available information, contributed little to no contamination to the lower Passaic River. We are unable to estimate a liability, if any, given the uncertainties related to this matter, including the fact that the final remedial actions and scope, an allocation to Franklin-Burlington, if any, and a final resolution of the de minimis petition or the appropriate legal actions, have not been determined.

Based on our estimates, we had accruals totaling \$119.9 million and \$121.1 million as of December 31, 2015 and 2014, respectively, for probable future environmental expenditures relating to previously contaminated sites. These accruals are undiscounted and included in *Accrued expenses and other liabilities* and *Other non-current liabilities* on the accompanying Consolidated Balance Sheets. The accruals represent our best estimate of probable future costs that we can reasonably estimate, based upon information and technology that is currently available and our view of the most likely remedy. Depending upon the results of future testing, completion and results of remedial investigation and feasibility studies, the ultimate remediation alternatives undertaken, changes in regulations, new information, newly discovered conditions and other factors, it is reasonably possible that we could incur additional costs in excess of the amount accrued at December 31, 2015. However, such additional costs, if any, cannot be currently estimated.

We believe that the probability is remote that losses in excess of amounts we have accrued would be materially adverse to our financial position, results of operations or cash flows.

The following table details the changes in the environmental accrued liabilities:

(In millions)	2015	2014	2013
Balance at beginning of the year	\$ 121.1	\$ 125.9	\$ 75.4
Environmental expenses	9.3	10.3	61.2
Net cash payments	(9.8)	(14.7)	(14.3)
Currency translation and other	(0.7)	(0.4)	3.6
Balance at end of year	\$ 119.9	\$ 121.1	\$ 125.9

Included in *Cost of sales* in the accompanying Consolidated Statements of Income are insurance recoveries received for previously incurred environmental costs of \$3.5 million, \$3.7 million and \$23.5 million in 2015, 2014 and 2013, respectively. Such insurance recoveries are recognized as a gain when received.

**Other Litigation** — We are involved in various pending or threatened claims, lawsuits and administrative proceedings, all arising from the ordinary course of business concerning commercial, product liability, employment and environmental matters that seek remedies or damages. We believe that the probability is remote that losses in excess of the amounts we have accrued would be materially adverse to our financial position, results of operations or cash flows.

**Guarantees** — On February 28, 2011, we sold our 50% equity interest in SunBelt Chlor Alkali Partnership (Sunbelt) to Olin Corporation (Olin). As a result of the sale, Olin assumed our obligations under our guarantee of senior secured notes issued by SunBelt which are \$12.2 million as of December 31, 2015. Unless the guarantee is formally assigned to Olin, we remain obligated under the guarantee, although Olin has agreed to indemnify us for amounts that we may be obligated to pay under the guarantee. The senior secured notes mature in December 2017.

#### Note 14 — INCOME TAXES

Income from continuing operations, before income taxes is summarized below based on the geographic location of the operation to which such earnings are attributable.

Income from continuing operations, before income taxes consists of the following:

(In millions)	2015	2014	2013
Domestic	\$ 93.8	\$ 53.5	\$ 109.1
Foreign	73.9	34.9	41.9
Income from continuing operations, before income taxes	<u>\$ 167.7</u>	<u>\$ 88.4</u>	<u>\$ 151.0</u>

A summary of income tax expense (benefit) from continuing operations is as follows:

(In millions)	2015	2014	2013
Current income tax expense (benefit):			
Federal	\$ 21.6	\$ 36.1	\$ 18.2
State	2.2	3.1	2.8
Foreign	26.6	17.2	22.5
Total current income tax expense (benefit):	<u>\$ 50.4</u>	<u>\$ 56.4</u>	<u>\$ 43.5</u>
Deferred income tax expense (benefit):			
Federal	\$ (33.1)	\$ (36.7)	\$ 11.9
State	4.5	(4.6)	2.8
Foreign	1.2	(3.9)	(0.1)
Total deferred income tax (benefit) expense	<u>\$ (27.4)</u>	<u>\$ (45.2)</u>	<u>\$ 14.6</u>
Total income tax expense (benefit)	<u>\$ 23.0</u>	<u>\$ 11.2</u>	<u>\$ 58.1</u>

Refer to Note 5, *Discontinued Operations*, for income tax expense allocated to discontinued operations.

A reconciliation of the U.S. federal statutory tax rate to the consolidated effective income tax rate along with a description of significant reconciling items is included below.

	2015	2014	2013
Income tax expense at 35%	35.0 %	35.0 %	35.0 %
Amended prior period tax returns	(18.3)	(2.3)	—
Foreign tax rate differential	(5.0)	(5.7)	(3.3)
State and local tax, net	2.7	2.8	2.6
Domestic production activities deduction	(2.0)	(2.5)	(1.0)
Permanent tax differences	1.8	(2.1)	4.9
U.S. credit for research activities	(0.7)	(1.2)	(1.4)
Tax benefits on certain foreign investments	(0.7)	(17.0)	—
Uncertain tax positions	0.6	1.0	(0.3)
Changes in valuation allowances	0.3	7.8	2.0
Settlements	—	(3.1)	—
Effective income tax rate	13.7 %	12.7 %	38.5 %

The effective tax rates for all periods differed from the U.S. federal statutory tax rate as a result of permanent items, state and local income taxes and foreign tax rates differences. Permanent items primarily consist of income or expense not taxable or deductible. Significant or unusual items impacting the effective income tax rate are described below.

#### 2015 Significant items

Amending U.S. federal income tax returns for 2004 through 2012 to use foreign tax credits decreased the effective tax rate by 18.3% (\$30.7 million).

Uncertain tax positions increased the effective tax rate by 0.6% (\$1.0 million). The reversal of an uncertain tax position due to the expiration of the statute of limitations decreased the effective tax rate by 5.9% (\$9.9 million). A foreign court ruling, which settled an uncertain position taken in a prior year, increased the effective tax rate by 4.7% (\$7.9 million). Other unfavorable uncertain tax positions more than offset the net decrease in the effective tax rate of these two items.

#### 2014 Significant items

Tax benefits on certain foreign investments decreased the effective tax rate by 17.0% (\$15.0 million) related to the write-off of our investment in certain Brazil subsidiaries for tax purposes and operating losses primarily as a result of restructuring actions to close certain Brazil facilities discussed in Note 4, *Employee Separation and Restructuring Costs*.

Permanent tax differences decreased the effective tax rate by 2.1% (\$1.9 million) primarily related to foreign tax law changes and the utilization of foreign tax credits.

Changes in valuation allowances increased the effective tax rate by 7.8% (\$6.9 million) primarily related to certain Brazilian subsidiaries as a result of cumulative operating losses.

#### 2013 Significant items

Permanent tax differences increased the effective tax rate by 4.9% (\$7.4 million) primarily related to foreign tax law changes and the tax effect of statutory foreign exchange gains.

The U.S. credit for research activities benefit decreased the effective tax rate by 1.4% (\$2.1 million), which included the benefit of two years of the U.S. research and experimentation tax credit due to the extension of the credit in the American Taxpayer Relief Act of 2012 (the Act) as signed into law in January 2013. The Act extended certain tax benefits retroactively to January 1, 2012.

Components of our deferred tax assets (liabilities) as of December 31, 2015 and 2014 were as follows:

(In millions)	2015	2014
Deferred tax assets:		
Pension and other post-retirement benefits	\$ 29.7	\$ 39.1
Employment costs	34.7	47.2
Environmental reserves	45.8	46.5
Net operating loss carryforwards	33.3	42.0
Foreign tax credit carryforwards	37.4	8.7
Other, net	22.3	21.9
Gross deferred tax assets	\$ 203.2	\$ 205.4
Valuation allowances	(19.3)	(23.6)
Total deferred tax assets, net of valuation allowances	\$ 183.9	\$ 181.8
Deferred tax liabilities:		
Tax and book basis differences associated with property, plant and equipment	\$ (60.3)	\$ (76.9)
Tax and book basis differences associated with intangibles	(135.8)	(135.2)
Other, net	(7.2)	(9.1)
Total deferred tax liabilities	\$ (203.3)	\$ (221.2)
Net deferred tax liabilities	\$ (19.4)	\$ (39.4)

As of December 31, 2015, the Company had \$37.4 million of U.S. foreign tax credit carryforwards that expire between 2016 and 2025. The Company plans to utilize all U.S. foreign tax credits prior to the expiration period.

As of December 31, 2015, we had gross state net operating loss carryforwards of \$203.8 million that expire at various dates from 2016 through 2032. Various foreign subsidiaries have gross net operating loss carryforwards totaling \$102.6 million that expire between 2016 and 2035 with limited exceptions that have indefinite carryforward periods. We have provided valuation allowances of \$18.9 million against certain foreign and state net operating loss carryforwards that are expected to expire prior to utilization. The valuation allowances decreased by \$4.3 million from 2014 to 2015 primarily related to foreign exchange rate changes.

No provision has been made for income taxes on undistributed earnings of consolidated non-U.S. subsidiaries of \$293.5 million as of December 31, 2015, because our intention is to reinvest indefinitely undistributed earnings of our foreign subsidiaries. It is not practicable to estimate the additional income taxes and applicable foreign withholding taxes that would be payable on the remittance of such undistributed earnings.

We made worldwide income tax payments of \$57.7 million and received refunds of \$2.6 million in 2015. We made worldwide income tax payments of \$70.0 million and \$120.3 million in 2014 and 2013, respectively, and received refunds of \$4.2 million and \$2.9 million in 2014 and 2013, respectively. Payments made in 2014 included U.S. federal tax payments related to 2013 U.S. federal income of \$9.7 million. Higher income tax payments made in 2013 primarily related to higher 2013 earnings and the gain recognized related to the divestiture of the Resin Business.

The Company records provisions for uncertain tax positions in accordance with ASC Topic 740, *Income Taxes*. A reconciliation of unrecognized tax benefits is as follows:

(In millions)	Unrecognized Tax Benefits		
	2015	2014	2013
Balance as of January 1,	\$ 28.6	\$ 15.2	\$ 14.5
Increases as a result of positions taken during current year	0.5	1.2	—
Increases as a result of positions taken for prior years	12.6	3.8	—
Balance related to acquired businesses	—	14.2	1.1
Reductions for tax positions of prior years	—	(2.3)	—
Decreases as a result of lapse of statute of limitations	(13.1)	—	(0.6)
Decreases relating to settlements with taxing authorities	(15.3)	(2.3)	(0.3)
Other, net	(0.8)	(1.2)	0.5
Balance as of December 31	\$ 12.5	\$ 28.6	\$ 15.2

We recognize interest and penalties related to uncertain tax positions in the provision for income taxes. As of December 31, 2015 and 2014, we had \$4.5 million and \$8.6 million accrued for interest and penalties, respectively.

Although the timing and outcome of tax settlements are uncertain, it is reasonably possible that during the next twelve months a reduction in unrecognized tax benefits may occur up to \$4.7 million based on the outcome of tax examinations and the expiration of statutes of limitations.

If all unrecognized tax benefits were recognized, the net impact on the provision for income tax expense would be a benefit of \$9.8 million.

The Company is currently being audited by several state and foreign taxing jurisdictions. With the exception of amended tax returns for 2004 to 2010 which are limited in scope to foreign tax credits, we are no longer subject to U.S. federal income tax examinations for periods preceding 2012. With limited exceptions, we are no longer subject to state tax on foreign tax examinations for periods preceding 2010.

## Note 15 — SHARE-BASED COMPENSATION

Share-based compensation cost is based on the value of the portion of share-based payment awards that are ultimately expected to vest during the period. Share-based compensation cost recognized in the accompanying Consolidated Statements of Income includes compensation cost for share-based payment awards based on the grant date fair value estimated in accordance with the provision of FASB ASC Topic 718, *Compensation — Stock Compensation*. Share-based compensation expense is based on awards expected to vest and therefore has been reduced for estimated forfeitures.

### Equity and Performance Incentive Plans

The PolyOne Corporation 2010 Equity and Performance Incentive Plan (2010 EPIP), as amended and restated in 2015, reserved 6.2 million common shares for the award of a variety of share-based compensation alternatives, including non-qualified stock options, incentive stock options, restricted stock, restricted stock units (RSUs), performance shares, performance units and stock appreciation rights (SARs). It is anticipated that all share-based grants and awards that are earned and exercised will be issued from PolyOne common shares that are held in treasury.

Share-based compensation is included in *Selling and administrative expense* in the accompanying Consolidated Statements of Income. A summary of compensation expense by type of award follows:

(In millions)	2015	2014	2013
Stock appreciation rights	\$ 4.4	\$ 5.5	\$ 6.1
Performance shares	0.5	0.7	0.3
Restricted stock units	4.2	8.0	10.1
Total share-based compensation	<u>\$ 9.1</u>	<u>\$ 14.2</u>	<u>\$ 16.5</u>

### Stock Appreciation Rights

During the years ended December 31, 2015, 2014 and 2013, the total number of SARs granted were 0.3 million, 0.3 million and 0.5 million, respectively. Awards vest in one-third increments upon the later of the attainment of stock price targets and time-based vesting over a three-year service period. Awards granted in 2015 and 2014 are subject to an appreciation cap of 200% of the base price. Outstanding SARs have contractual terms ranging from seven to ten years from the date of the grant.

The SARs were valued using a Monte Carlo simulation method as the vesting is dependent on the achievement of certain stock price targets. The SARs have time and market-based vesting conditions but vest no earlier than their three year graded vesting schedule. The expected term is an output from the Monte Carlo model, and are derived from employee exercise assumptions that are based on PolyOne historical exercise experience. The expected volatility was determined based on the average weekly volatility for our common shares for the contractual life of the awards. The expected dividend assumption was determined based upon PolyOne's dividend yield at the time of grant. The risk-free rate of return was based on available yields on U.S. Treasury bills of the same duration as the contractual life of the awards. Forfeitures were estimated at 3% per year based on our historical experience.

The following is a summary of the weighted average assumptions related to the grants issued during 2015, 2014 and 2013:

	2015	2014	2013
Expected volatility	43.0%	48.0%	50.0%
Expected dividends	1.05%	0.91%	1.04%
Expected term (in years)	6.5	6.4	7.4
Risk-free rate	1.95%	2.94%	2.12%
Value of SARs granted	\$13.94	\$14.05	\$10.83

A summary of SAR activity for 2015 is presented below:

Stock Appreciation Rights				
In millions, except per share data)	Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding as of January 1, 2015	1.6	\$ 20.13	6.63	\$ 28.9
Granted	0.3	38.36	—	
Exercised	(0.4)	13.10	—	
Outstanding as of December 31, 2015	1.5	\$ 25.49	6.75	\$ 13.1
Vested and exercisable as of December 31, 2015	0.9	\$ 18.98	5.52	\$ 12.0

The total intrinsic value of SARs exercised during 2015, 2014 and 2013 was \$9.7 million, \$15.0 million and \$14.9 million, respectively. As of December 31, 2015, there was \$2.4 million of total unrecognized compensation cost related to SARs, which is expected to be recognized over the weighted average remaining vesting period of 17 months.

### Restricted Stock Units

RSUs represent contingent rights to receive one common share at a future date provided certain vesting criteria are met.

During 2015, 2014 and 2013, the total number of RSUs granted were 0.1 million, 0.2 million and 0.5 million, respectively. These RSUs, which vest on the third anniversary of the grant date, were granted to executives and other key employees. Compensation expense is measured on the grant date using the quoted market price of our common shares and is recognized on a straight-line basis over the requisite service period.

As of December 31, 2015, 0.7 million RSUs remain unvested with a weighted-average grant date fair value of \$29.94. Unrecognized compensation cost for RSUs at December 31, 2015 was \$5.5 million, which is expected to be recognized over the weighted average remaining vesting period of 10 months.

### Note 16 — SEGMENT INFORMATION

A segment is a component of an enterprise whose operating results are regularly reviewed by the enterprise's chief operating decision maker to make decisions about resources to be allocated to the segment and assess its performance, and for which discrete financial information is available.

Operating income is the primary measure that is reported to our chief operating decision maker for purposes of allocating resources to the segments and assessing their performance. Operating income at the segment level does not include: corporate general and administrative expenses that are not allocated to segments; intersegment sales and profit eliminations; charges related to specific strategic initiatives such as the consolidation of operations; restructuring activities, including employee separation costs resulting from personnel reduction programs, plant closure and phase-in costs; executive separation agreements; share-based compensation costs; asset impairments; environmental remediation costs and other liabilities for facilities no longer owned or closed in prior years; gains and losses on the divestiture of joint ventures and equity investments; actuarial gains and losses associated with our pension and other post-retirement benefit plans; and certain other items that are not included in the measure of segment profit or loss that is reported to and reviewed by our chief operating decision maker. These costs are included in *Corporate and eliminations*.

Segment assets are primarily customer receivables, inventories, net property, plant and equipment, intangible assets and goodwill. Intersegment sales are generally accounted for at prices that approximate those for similar transactions with unaffiliated customers. *Corporate and eliminations* assets and liabilities primarily include cash, debt, pension and other employee benefits, environmental liabilities, retained assets and liabilities of discontinued



operations, and other unallocated corporate assets and liabilities. The accounting policies of each segment are consistent with those described in Note 1, *Description of Business and Summary of Significant Accounting Policies*.

On December 9, 2015, the Company completed the acquisition of specialty color concentrates of Magenta, a leading innovative developer in the global fiber industry, for approximately \$18.3 million in cash, net of cash acquired. Magenta results are included within the Color, Additives and Inks segment.

On December 1, 2014, the Company completed the acquisition of specialty assets of Accella, a leading North American manufacturer of liquid polymer formulations, for \$47.2 million in cash, net of cash acquired. Accella results were included within the Color, Additives and Inks segment.

The following is a description of each of our five reportable segments.

### **Color, Additives and Inks**

Color, Additives and Inks is a leading provider of specialized custom color and additive concentrates in solid and liquid form for thermoplastics, dispersions for thermosets, as well as specialty inks, plastisols, and vinyl slush molding solutions. Color and additive solutions include an innovative array of colors, special effects and performance-enhancing and eco-friendly solutions. When combined with a non-base resin, our solutions help customers achieve differentiated specialized colors and effects targeted at the demands of today's highly design-oriented consumer and industrial end markets. Our additive concentrates encompass a wide variety of performance and process enhancing characteristics and are commonly categorized by the function that they perform, such as UV stabilization, antimicrobial, anti-static, blowing or foaming, antioxidant, lubricant, and productivity enhancement. Our colorant and additives concentrates are used in a broad range of polymers, including those used in medical and pharmaceutical devices, food packaging, personal care and cosmetics, transportation, building products, wire and cable markets. We also provide custom-formulated liquid systems that meet a variety of customer needs and chemistries, including vinyl, natural rubber and latex, polyurethane and silicone. Our offerings also include proprietary inks and latexes for diversified markets such as recreational and athletic apparel, construction and filtration, outdoor furniture and healthcare. Our liquid polymer coatings and additives are largely based on vinyl and are used in a variety of markets, including building and construction, consumer, healthcare, industrial, packaging, textiles, appliances, transportation, and wire and cable. Color, Additives and Inks has manufacturing, sales and service facilities located throughout North America, South America, Europe, Asia and Africa.

### **Specialty Engineered Materials**

Specialty Engineered Materials is a leading provider of specialty polymer formulations, services and solutions for designers, assemblers and processors of thermoplastic materials across a wide variety of markets and end-use applications. Our product portfolio, which we believe to be one of the most diverse in our industry, includes specialty formulated high-performance polymer materials that are manufactured using thermoplastic resins and elastomers, which are then combined with advanced polymer additives, reinforcement, filler, colorant and/or biomaterial technologies. Our technical and market expertise enables us to expand the performance range and structural properties of traditional engineering-grade thermoplastic resins to meet evolving customer needs. Specialty Engineered Materials has manufacturing, sales and service facilities located throughout North America, Europe, Asia and South America. Our product development and application reach is further enhanced by the capabilities of our Innovation Centers in the United States, Germany and China, which produce and evaluate prototype and sample parts to help assess end-use performance and guide product development. Our manufacturing capabilities are targeted at meeting our customers' demand for speed, flexibility and critical quality.

### **Designed Structures and Solutions**

On March 13, 2013, the Company completed the acquisition of Spartech, a supplier of plastic sheet, color and engineered materials, and packaging solutions. As a result of the acquisition, a new reportable segment, "Designed Structures and Solutions", was created. We believe PolyOne's Designed Structures and Solutions segment is a market leader in providing specialized, full service and innovative solutions in engineered polymer structures, rigid barrier packaging and specialty cast acrylics. We utilize a variety of polymers, specialty additives and processing technologies to produce a complete portfolio of sheet, custom rollstock and specialty film, laminate and acrylic solutions. Our solutions can be engineered to provide structural or functional performance in an application or design and visual aesthetics to meet our customers' needs. Our offerings also include a wide range of sustainable, cost-effective stock and custom packaging solutions for various industry processes used in the food, medical, and consumer markets. In addition to packaging, we also work closely with customers to provide solutions for transportation, building and construction, healthcare and consumer markets. Designed Structures and Solutions has manufacturing, sales and service facilities located throughout North America.



## **Performance Products and Solutions**

Performance Products and Solutions is comprised of the Geon Performance Materials (Geon) and Producer Services business units. The Geon business delivers an array of products and services for vinyl molding and extrusion processors located in North America and Asia. The Geon™ brand name carries strong recognition globally. Geon's products are sold to manufacturers of durable plastic parts and consumer-oriented products. We also offer a wide range of services including materials testing, component analysis, custom formulation development, colorant and additive services, part design assistance, structural analysis, process simulations, mold design and flow analysis and extruder screw design. Vinyl is used across a broad range of markets and applications, including, but not limited to: healthcare, wire and cable, building and construction, consumer and recreational products and transportation and packaging. The Producer Services business unit offers contract manufacturing and outsourced polymer manufacturing services to resin producers and polymer marketers, primarily in the United States and Mexico, as well as its own proprietary compounds for pressure pipe and drip irrigation applications. As a strategic and integrated supply chain partner, Producer Services offers resin producers a capital-efficient way to effectively develop custom products for niche markets by leveraging its extensive process technology expertise, broad manufacturing capabilities and geographic locations.

## **PolyOne Distribution**

The PolyOne Distribution business distributes more than 3,500 grades of engineering and commodity grade resins, including PolyOne-produced solutions, principally to the North American and Asian markets. These products are sold to over 6,000 custom injection molders and extruders who, in turn, convert them into plastic parts that are sold to end-users in a wide range of industries. Representing over 25 major suppliers, we offer our customers a broad product portfolio, just-in-time delivery from multiple stocking locations and local technical support. Recent expansion in Central America and Asia have bolstered PolyOne Distribution's ability to serve the specialized needs of customers globally.

Financial information by reportable segment is as follows:

Year Ended December 31, 2015 (In millions)	Sales to External Customers	Intersegment Sales	Total Sales	Operating Income	Depreciation and Amortization <sup>(1)</sup>	Capital Expenditures	Total Assets
Color, Additives and Inks	801.2	9.5	810.7	135.4	42.4	27.3	939.5
Specialty Engineered Materials	493.1	49.7	542.8	79.6	15.9	17.7	353.4
Designed Structures and Solutions	448.8	4.7	453.5	13.8	16.9	18.4	449.5
Performance Products and Solutions	615.8	78.3	694.1	57.4	16.2	9.8	237.4
PolyOne Distribution	1,018.7	15.4	1,034.1	68.0	0.7	0.4	200.0
Corporate and eliminations	—	(157.6)	(157.6)	(103.3)	12.2	17.6	415.3
<b>Total</b>	<b>\$ 3,377.6</b>	<b>\$ —</b>	<b>\$ 3,377.6</b>	<b>\$ 250.9</b>	<b>\$ 104.3</b>	<b>\$ 91.2</b>	<b>\$ 2,595.1</b>

(1) Corporate and eliminations includes accelerated depreciation associated with restructuring actions of \$6.2 million.

Year Ended December 31, 2014 (In millions)	Sales to External Customers	Intersegment Sales	Total Sales	Operating Income	Depreciation and Amortization <sup>(1)</sup>	Capital Expenditures	Total Assets
Color, Additives and Inks	835.0	15.8	850.8	124.9	41.4	28.1	934.2
Specialty Engineered Materials	555.2	43.1	598.3	72.4	16.7	15.2	370.1
Designed Structures and Solutions	616.5	1.0	617.5	45.1	19.8	25.6	490.1
Performance Products and Solutions	728.2	88.4	816.6	63.1	17.7	15.2	265.5
PolyOne Distribution	1,100.6	13.8	1,114.4	68.2	0.6	0.1	214.2
Corporate and eliminations	—	(162.1)	(162.1)	(218.6)	27.7	8.6	392.2
<b>Total</b>	<b>\$ 3,835.5</b>	<b>\$ —</b>	<b>\$ 3,835.5</b>	<b>\$ 155.1</b>	<b>\$ 123.9</b>	<b>\$ 92.8</b>	<b>\$ 2,666.3</b>

(1) Corporate and eliminations includes accelerated depreciation associated with restructuring actions of \$23.1 million.

Year Ended December 31, 2013 (In millions)	Sales to External Customers	Intersegment Sales	Total Sales	Operating Income	Depreciation and Amortization <sup>(1)</sup>	Capital Expenditures <sup>(1a)</sup>	Total Assets
Color, Additives and Inks	844.6	7.7	852.3	104.0	38.8	29.3	960.7
Specialty Engineered Materials	571.9	43.6	615.5	57.2	18.8	14.3	378.4
Designed Structures and Solutions	597.3	0.1	597.4	33.4	21.2	13.4	523.1
Performance Products and Solutions	690.9	82.3	773.2	56.0	15.5	12.4	276.3
PolyOne Distribution	1,066.5	8.7	1,075.2	63.3	0.6	0.3	216.7
Corporate and eliminations	—	(142.4)	(142.4)	(82.4)	13.9	6.5	541.4
<b>Total</b>	<b>\$ 3,771.2</b>	<b>\$ —</b>	<b>\$ 3,771.2</b>	<b>\$ 231.5</b>	<b>\$ 108.8</b>	<b>\$ 76.2</b>	<b>\$ 2,896.6</b>

(1) Excludes \$1.0 million of depreciation expense associated with the Resin Business. Corporate and eliminations includes accelerated depreciation associated with restructuring actions of \$12.7 million.

(1a) Excludes \$0.2 million of capital expenditures associated with the Resin Business.

Our sales are primarily to customers in the United States, Canada, Mexico, Europe, South America and Asia, and the majority of our assets are located in these same geographic areas. Following is a summary of sales and long-lived assets based on the geographic areas where the sales originated and where the assets are located:

(In millions)	2015	2014	2013
<b>Sales:</b>			
United States	\$ 2,244.9	\$ 2,590.4	\$ 2,538.2
Europe	430.1	511.8	519.7
Canada	241.3	277.4	267.8
Asia	235.9	246.2	239.0
Mexico	209.7	178.4	158.1
South America	15.7	31.3	48.4
<b>Total Sales</b>	<b>\$ 3,377.6</b>	<b>\$ 3,835.5</b>	<b>\$ 3,771.2</b>
<b>Long-lived assets:</b>			
United States	\$ 418.1	\$ 421.1	\$ 444.4
Europe	94.0	95.7	103.0
Canada	6.9	12.8	13.2
Asia	40.2	39.5	51.8
Mexico	19.4	19.7	20.5
South America	4.9	7.9	13.3
<b>Total Long-lived assets</b>	<b>\$ 583.5</b>	<b>\$ 596.7</b>	<b>\$ 646.2</b>

## Note 17 — COMMON SHARE DATA

Weighted-average shares used in computing net income per share are as follows:

(In millions)	2015	2014	2013
Weighted-average shares — basic:	87.8	92.3	95.5
Plus dilutive impact of share-based compensation	0.9	1.2	1.0
<b>Weighted-average shares — diluted:</b>	<b>88.7</b>	<b>93.5</b>	<b>96.5</b>

Outstanding share-based awards with exercise prices greater than the average price of the common shares are anti-dilutive and are not included in the computation of diluted net income per share. The number of anti-dilutive options and awards was 0.4 million and 0.3 million at December 31, 2014 and 2013, respectively. Less than 0.1 million options and awards were anti-dilutive for the computation of diluted earnings per common share at December 31, 2015.

We purchased 4.5 million, 6.3 million and 5.0 million shares in 2015, 2014 and 2013, respectively, at an aggregate cost of \$156.1 million, \$233.2 million and \$131.6 million, respectively, under these authorizations.

## Note 18 — FAIR VALUE

Fair value is measured based on an exit price, representing the amount that would be received to sell an asset or paid to satisfy a liability in an orderly transaction between market participants. Fair value is a market-based measurement that is determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, a fair value hierarchy is established, which categorizes the inputs used in measuring fair value as follows: (Level 1) observable inputs such as quoted prices in active markets; (Level 2) inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and (Level 3) unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

Financial instruments accounted for at fair value on a recurring basis as of December 31, 2015 and 2014 include cash of \$279.8 million and \$238.6 million, respectively, and are classified as level 1 assets within the fair value hierarchy.

The estimated fair value of PolyOne's debt instruments at December 31, 2015 and 2014 was \$1,136.2 million and \$1,031.9 million, respectively, compared to carrying values of \$1,146.6 million and \$1,010.6 million as of December 31, 2015 and 2014, respectively. The fair value of PolyOne's debt instruments was estimated using prevailing market interest rates on debt with similar creditworthiness, terms and maturities and represent Level 2 measurements within the fair value hierarchy.

In accordance with the provisions of FASB ASC Topic 350, *Intangibles — Goodwill and Other*, we assess the fair value of goodwill on an annual basis or at an interim date if potential impairment indicators are present. The implied fair value of goodwill is determined based on significant unobservable inputs. Accordingly, these inputs fall within Level 3 of the fair value hierarchy. We use an income approach to estimate the fair value of our reporting units. The income approach uses a reporting unit's projection of estimated operating results and cash flows that is discounted using a weighted-average cost of capital that is determined based on current market conditions. The projection uses management's best estimates of economic and market conditions over the projected period including growth rates in sales, costs and number of units, estimates of future expected changes in operating margins and cash expenditures. Other significant estimates and assumptions include terminal value growth rates, terminal value margin rates, future capital expenditures and changes in future working capital requirements. We validate our estimates of fair value under the income approach by considering the implied control premium and conclude whether the implied control premium is reasonable based on other recent market transactions. No impairment charges were required in 2015, 2014 or 2013.

Indefinite-lived intangible assets primarily consist of the GLS and ColorMatrix trade names. Indefinite-lived intangible assets are tested for impairment annually at the same time we test goodwill for impairment. The implied fair value of indefinite-lived intangible assets is determined based on significant unobservable inputs, as summarized below. Accordingly, these inputs fall within Level 3 of the fair value hierarchy. The fair value of the trade names is calculated using a "relief from royalty" methodology. This approach involves two steps (1) estimating reasonable royalty rates for the trade name and (2) applying this royalty rate to a net sales stream and discounting the resulting cash flows to determine fair value. This fair value is then compared with the carrying value of the trade name. No impairment charges were required in 2015, 2014 or 2013.

## Note 19 — SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

(In millions, except per share data)	2015 Quarters				2014 Quarters			
	Fourth <sup>(2)</sup>	Third <sup>(3)</sup>	Second <sup>(4)</sup>	First <sup>(5)</sup>	Fourth <sup>(6)</sup>	Third <sup>(7)</sup>	Second <sup>(8)</sup>	First <sup>(9)</sup>
Sales	\$ 775.8	\$ 841.6	\$ 887.1	\$ 873.1	\$ 869.3	\$ 958.4	\$ 1,005.5	\$ 1,002.3
Gross Margin	156.9	169.1	185.7	169.8	152.6	182.6	184.5	188.2
Operating income (loss)	31.3	69.2	80.3	70.1	(14.3)	63.6	49.4	56.4
Net income (loss) from continuing operations	3.0	44.5	67.0	30.2	(15.0)	32.3	30.7	29.2
Net income (loss) from continuing operations attributable to PolyOne shareholders	\$ 3.1	\$ 44.5	\$ 66.8	\$ 30.2	\$ (14.6)	\$ 32.3	\$ 30.9	\$ 29.4
Net income from continuing operations per common share attributable to PolyOne common shareholders: <sup>(1)</sup>								
Basic earnings (loss) per share	\$ 0.04	\$ 0.51	\$ 0.75	\$ 0.34	\$ (0.16)	\$ 0.35	\$ 0.33	\$ 0.31
Diluted earnings (loss) per share	\$ 0.04	\$ 0.50	\$ 0.74	\$ 0.34	\$ (0.16)	\$ 0.35	\$ 0.33	\$ 0.31

(1) Per share amounts for the quarter and the full year have been computed separately. The sum of the quarterly amounts may not equal the annual amounts presented because of differences in the average shares outstanding during each period.

- (2) Included for the fourth quarter 2015 are: 1) a mark-to-market pension and other post-retirement charge of \$11.6 million, 2) employee separation and restructuring costs of \$10.1 million and 3) \$16.4 million of debt extinguishment costs primarily due to the repayment in full of \$316.6 million aggregate principal amount of our 7.375% senior notes due 2020.
- (3) Included for the third quarter 2015 are: 1) employee separation and restructuring costs of \$13.7 million and 2) a \$7.5 million benefit related to the reversal of an uncertain tax position due to the expiration of the statute of limitations.
- (4) Included for the second quarter 2015 are: 1) employee separation and restructuring costs of \$7.5 million and 2) a \$26.0 million tax benefit as a result of amending U.S. federal income tax returns from 2005 to 2012 to use foreign tax credits.
- (5) Included for the first quarter 2015 are employee separation and restructuring costs of \$10.6 million.
- (6) Included for the fourth quarter 2014 are: 1) a mark-to-market pension and other post-retirement charge of \$56.5 million, 2) employee separation and restructuring costs of \$23.2 million, 3) environmental remediation costs of \$2.6 million and 5) a gain related to the reimbursement of previously incurred environmental costs of \$2.1 million.
- (7) Included for the third quarter 2014 are: 1) employee separation and restructuring costs of \$17.9 million, 2) environmental remediation costs of \$5.9 million and 3) a gain related to the reimbursement of previously incurred environmental costs of \$1.6 million.
- (8) Included for the second quarter 2014 are: 1) employee separation and restructuring costs of \$35.1 million and 2) a \$5.4 million tax benefit associated with our investments in certain foreign affiliates.
- (9) Included for the first quarter 2014 are employee separation and restructuring costs of \$17.9 million.

## **Note 20 — SUBSEQUENT EVENTS**

On January 29, 2016, the Company completed the acquisition of certain technologies and assets from Kraton Performance Polymers, Inc (Kraton), to expand its global footprint and expertise in the thermoplastic elastomer (TPE) innovation and design, for \$72.0 million in cash. The results will be reported in the Specialty Engineered Materials segment.

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

## **ITEM 9A. CONTROLS AND PROCEDURES**

### **Disclosure controls and procedures**

PolyOne's management, with the participation of the Chief Executive Officer and the Chief Financial Officer, has evaluated the effectiveness of the design and operation of PolyOne's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of December 31, 2015. Based on this evaluation, the Chief Executive Officer and the Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 31, 2015.

### **Management's annual report on internal control over financial reporting**

The following report is provided by management in respect of PolyOne's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934):

1. PolyOne's management is responsible for establishing and maintaining adequate internal control over financial reporting.
2. Under the supervision of and with participation of PolyOne's management, including the Chief Executive Officer and the Chief Financial Officer, we conducted an evaluation of the effectiveness of internal control over financial reporting as of December 31, 2015 based on the guidelines established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (2013 Framework). Management believes that the COSO framework is a suitable framework for its evaluation of financial reporting because it is free from bias, permits reasonably consistent qualitative and quantitative measurements of PolyOne's internal control over financial reporting, is sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of PolyOne's internal control over financial reporting are not omitted and is relevant to an evaluation of internal control over financial reporting.
3. Based on the results of our evaluation, management has concluded that such internal control over financial reporting was effective as of December 31, 2015. There were no material weaknesses in internal control over financial reporting identified by management. The results of management's assessment were reviewed with our Audit Committee.
4. Ernst & Young LLP, who audited the consolidated financial statements of PolyOne for the year ended December 31, 2015, also issued an attestation report on PolyOne's internal control over financial reporting under Auditing Standard No. 5 of the Public Company Accounting Oversight Board. This attestation report is set forth on page 35 of this Annual Report on Form 10-K and is incorporated by reference into this Item 9A.

## Changes in internal control over financial reporting

There were no changes in the Company's internal control over financial reporting that occurred during the quarter ended December 31, 2015 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## Limitations in internal control over financial reporting

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

## ITEM 9B. OTHER INFORMATION

None.

## PART III

## ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information regarding PolyOne's directors, including the identification of the audit committee and audit committee financial experts, is incorporated by reference to the information contained in PolyOne's Proxy Statement with respect to the 2016 Annual Meeting of Shareholders (2016 Proxy Statement). Information concerning executive officers is contained in Part I of this Annual Report on Form 10-K under the heading "Executive Officers of the Registrant."

The information regarding Section 16(a) beneficial ownership reporting compliance is incorporated by reference to the material under the heading "Section 16(a) Beneficial Ownership Reporting Compliance" in the 2016 Proxy Statement.

The information regarding any changes in procedures by which shareholders may recommend nominees to PolyOne's Board of Directors is incorporated by reference to the information contained in the 2016 Proxy Statement.

PolyOne has adopted a code of ethics that applies to its principal executive officer, principal financial officer and principal accounting officer. PolyOne's code of ethics is posted under the Investor Relations tab of its website at [www.polyone.com](http://www.polyone.com). PolyOne will post any amendments to, or waivers of, its code of ethics that apply to its principal executive officer, principal financial officer and principal accounting officer on its website.

## ITEM 11. EXECUTIVE COMPENSATION

The information regarding executive officer and director compensation is incorporated by reference to the information contained in the 2016 Proxy Statement.

The information regarding compensation committee interlocks and insider participation and the compensation committee report is incorporated by reference to the information contained in the 2016 Proxy Statement.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTER

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	1,582,904	\$25.29	2,126,758 <sup>(1)</sup>
Equity compensation plans not approved by security holders	—	—	—
Total	1,582,904	\$25.29	\$2,126,758

<sup>(1)</sup> In addition to options, warrants and rights, the Amended and Restated PolyOne Corporation 2010 Equity and Performance Incentive Plan (the "Restated 2010 EPIP") authorizes the issuance of restricted stock, RSUs, performance shares and awards to Non-Employee Directors. The Restated 2010 EPIP limits the total number of shares that may be issued as one or more of these types of awards to 2.6 million. On May 14, 2015 our shareholders approved an amendment to this plan whereby, among other provisions, a total of 6.2 million common shares are reserved for grant under the Restated 2010 EPIP.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information regarding certain relationships and related transactions and director independence is incorporated by reference to the information contained in the 2016 Proxy Statement.

### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Information regarding fees paid to and services provided by PolyOne's independent registered public accounting firm and the pre-approval policies and procedures of the audit committee is incorporated by reference to the information contained in the 2016 Proxy Statement.

## **PART IV**

### **ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a)(1) Financial Statements:

The following consolidated financial statements of PolyOne Corporation are included in Item 8:

Consolidated Statements of Income for the years ended December 31, 2015, 2014 and 2013

Consolidated Statements of Comprehensive Income for the years ended December 31, 2015, 2014 and 2013

Consolidated Balance Sheets at December 31, 2015 and 2014

Consolidated Statements of Cash Flows for the years ended December 31, 2015, 2014 and 2013

Consolidated Statements of Shareholders' Equity for the years ended December 31, 2015, 2014 and 2013

Notes to Consolidated Financial Statements

All other schedules for which provision is made in Regulation S-X of the SEC are not required under the related instructions or are inapplicable and, therefore, have been omitted.

(a)(3) Exhibits.

Refer to the Exhibit Index, which is incorporated by reference herein.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### POLYONE CORPORATION

February 12, 2016

BY: /S/ BRADLEY C. RICHARDSON  
Bradley C. Richardson Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated and on the dates indicated.

Signature and Title		
<u>/S/ ROBERT M. PATTERSON</u> Robert M. Patterson	President and Chief Executive Officer and Director (Principal Executive Officer)	Date: February 12, 2016
<u>/S/ BRADLEY C. RICHARDSON</u> Bradley C. Richardson	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	Date: February 12, 2016
<u>/S/ STEPHEN D. NEWLIN</u> Stephen D. Newlin	Executive Chairman and Director	Date: February 12, 2016
<u>/S/ RICHARD H. FEARON</u> Richard H. Fearon	Director	Date: February 12, 2016
<u>/S/ GREGORY J. GOFF</u> Gregory J. Goff	Director	Date: February 12, 2016
<u>/S/ WILLIAM R. JELLISON</u> William R. Jellison	Director	Date: February 12, 2016
<u>/S/ SANDRA BEACH LIN</u> Sandra Beach Lin	Director	Date: February 12, 2016
<u>/S/ RICHARD A. LORRAINE</u> Richard A. Lorraine	Director	Date: February 12, 2016
<u>/S/ WILLIAM H. POWELL</u> William H. Powell	Director	Date: February 12, 2016
<u>/S/ KERRY J. PREETE</u> Kerry J. Preete	Director	Date: February 12, 2016
<u>/S/ FARAH M. WALTERS</u> Farah M. Walters	Director	Date: February 12, 2016
<u>/S/ WILLIAM A. WULFSOHN</u> William A. Wulfsohn	Director	Date: February 12, 2016

## EXHIBIT INDEX

Exhibit No.	Exhibit Description
2.1†	Purchase Agreement, dated as of February 28, 2011, by and among PolyOne Corporation, 1997 Chloralkali Venture, LLC, Olin Corporation and Olin SunBelt II, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed March 3, 2011, SEC File No. 1-16091)
2.2†	Agreement and Plan of Merger, dated as of September 30, 2011, among PolyOne Corporation, 2011 ColorNewton Inc., ColorMatrix Group, Inc., and Audax ColorMatrix Holdings, LLC (Incorporated by reference to Exhibit 2.1 to PolyOne Corporation's current report on Form 8-K filed on October 5, 2011, SEC File No. 1-16091)
2.3†	Agreement and Plan of Merger, dated October 23, 2012, by and among PolyOne Corporation, 2012 RedHawk, Inc., 2012 RedHawk, LLC and Spartech Corporation (Incorporated by reference to Exhibit 2.1 to PolyOne Corporation's current report on Form 8-K filed on October 24, 2012, SEC File No. 1-16091)
2.4†	Asset Purchase Agreement, dated as of March 25, 2013, by and between PolyOne Corporation and Mexichem Specialty Resins Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed March 27, 2013, SEC File No. 1-16091)
3.1	Articles of Incorporation (incorporated by reference to Exhibit 3(i) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, SEC File No. 1-16091)
3.2	Amendment to the Second Article of the Articles of Incorporation, as filed with the Ohio Secretary of State, November 25, 2003 (incorporated by reference to Exhibit 3.1a to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, SEC File No. 1-16091)
3.3	Regulations (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 17, 2009, SEC File No. 1-16091)
4.1	Indenture, dated February 28, 2013, between PolyOne Corporation and Wells Fargo Bank, National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on March 5, 2013, SEC File No. 1-16091)
10.1	Amended and Restated Credit Agreement, dated March 1, 2013, among the Company, PolyOne Canada and certain other subsidiaries of the Company, Wells Fargo Capital Finance, LLC, as administrative agent, Bank of America, N.A. and U.S. Bank National Association, as syndication agents, PNC Bank National Association and KeyBank National Association, as documentation agents, and Wells Fargo Capital Finance, LLC and Merrill, Lynch, Pierce, Fenner & Smith Incorporated, as joint lead arrangers and bookrunners (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 5, 2013, SEC File No. 1-16091)
10.2	First Amendment to Amended and Restated Credit Agreement, dated as of March 28, 2014, among the Company, PolyOne Canada Inc. and certain other subsidiaries of the Company, Wells Fargo Capital Finance, LLC, as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2015, SEC File No. 1-16091)
10.3	Second Amendment to Amended and Restated Credit Agreement, dated as of June 3, 2015, among the Company, PolyOne Canada Inc. and certain other subsidiaries of the Company, Wells Fargo Capital Finance, LLC, as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2015, SEC File No. 1-16091)
10.4	Third Amendment to Amended and Restated Credit Agreement, dated as of June 30, 2015, among the Company, PolyOne Canada Inc. and certain other subsidiaries of the Company, Wells Fargo Capital Finance, LLC, as administrative agent, and the lenders party thereto (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2015, SEC File No. 1-16091)
10.5	Fourth Amendment to Amended and Restated Credit Agreement and Release, dated November 12, 2015, by and among PolyOne Corporation, the subsidiaries of PolyOne Corporation party thereto, Wells Fargo Capital Finance, LLC, as agent, and the lenders party thereto**
10.6	Credit Agreement, dated November 12, 2015, by and among PolyOne Corporation, as borrower, Citibank, N.A., as administrative agent, each of Citigroup Global Markets Inc., Wells Fargo Securities LLC, Goldman, Sachs & Co., HSBC Securities (USA) Inc. and Morgan Stanley & Co. LLC, as joint-lead arrangers and joint-book managers, Jefferies Finance LLC, KeyBanc Capital Markets Inc. and SunTrust Robinson Humphrey, Inc., as co-managers, and several other commercial lending institutions that are parties thereto**
10.7+	Form of 2011 Award Agreement under the 2010 Equity and Performance Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, SEC File No. 1-16091)
10.8+	Amended and Restated PolyOne Corporation 2010 Equity and Performance Incentive Plan (incorporated by reference to Appendix B to the Company's definitive proxy statement on Schedule 14A filed on April 3, 2015, SEC File No. 1-16091)
10.9+	Amended and Restated PolyOne Senior Executive Annual Incentive Plan (incorporated by reference to Appendix C to the Company's definitive proxy statement on Schedule 14A filed on April 3, 2015, SEC File No. 1-16091)
10.10+	Form of Grant of Stock-Settled Stock Appreciation Rights under the 2010 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010, SEC File No. 1-16091)
10.11+	Amended and Restated Deferred Compensation Plan for Non-Employee Directors (as amended and restated effective May 20, 2014) (incorporated by reference to Exhibit 10.7 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014, SEC File No. 1-16091)
10.12+	Form of Management Continuity Agreement for Executive Officers prior to 2011 (incorporated by reference to Exhibit 10.13 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, SEC File No. 1-16091)



Exhibit No.	Exhibit Description
10.13+	Form of Management Continuity Agreement for Executive Officers after 2011 (incorporated by reference to Exhibit 10.12 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, SEC File No. 1-16091)
10.14+	Schedule of Executive Officers with Management Continuity Agreements**
10.15+	PolyOne Supplemental Retirement Benefit Plan (As Amended and Restated Effective January 1, 2014) (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, SEC file No. 1-16091)
10.16+	Amended and Restated Letter Agreement, dated as of March 6, 2014, between the Company and Stephen D. Newlin, originally effective as of February 13, 2006 (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014, SEC File No. 1-16091)
10.17+	Assumption of Liabilities and Indemnification Agreement, dated March 1, 1993, amended and restated by Amended and Restated Assumption of Liabilities and Indemnification Agreement, dated April 27, 1993 (incorporated by reference to Exhibit 10.14 to The Geon Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, SEC File No. 1-11804)
10.18+	Unconditional and Continuing Guaranty, between the Company and Olin Corporation and Sunbelt Chlor Alkali Partnership (incorporated by reference to Exhibit 10(c) to The Geon Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996, SEC File No. 1-11804)
10.19+	Asset Contribution Agreement - PVC Partnership (Geon) (incorporated by reference to Exhibit 10.3 to The Geon Company's Current Report on Form 8-K filed on May 13, 1999, SEC File No. 1-11804)
10.20+	PolyOne Corporation 2008 Equity and Performance Incentive Plan (incorporated herein by reference to Appendix A to the Registrant's proxy statement on Schedule 14A (SEC File No. 1-16091), filed on March 25, 2008)
10.21+	Form of 2009 Grant of Stock-Settled Stock Appreciation Rights under the 2009 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, SEC File No. 1-16091)
10.22+	Executive Severance Plan, as amended and restated effective May 15, 2014 (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, SEC File No. 1-16091)
10.23+	Form of 2012 Award Agreement under the PolyOne Corporation 2010 Equity and Performance Incentive Plan, as amended (incorporated by reference to Exhibit 10.38 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, SEC File No. 1-16091)
10.24+	Form of 2013 Award Agreement under the PolyOne Corporation 2010 Equity and Performance Incentive Plan, as amended (incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, SEC File No. 1-16091)
10.25+	Form of Director and Officer Indemnification Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 5, 2006, SEC File No. 1-16091)
10.26+	Form of 2014 Award Agreement under the PolyOne Corporation 2010 Equity and Performance Incentive Plan, as amended (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, SEC File No. 1-16091)
21.1	Subsidiaries of the Company**
23.1	Consent of Independent Registered Public Accounting Firm - Ernst & Young LLP**
31.1	Certification of Robert M. Patterson, President and Chief Executive Officer, pursuant to SEC Rules 13a-14(a) and 15d-14(a), adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**
31.2	Certification of Bradley C. Richardson, Executive Vice President and Chief Financial Officer, pursuant to SEC Rules 13a-14(a) and 15d-14(a), adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**
32.1	Certification pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as signed by Robert M. Patterson, President and Chief Executive Officer**
32.2	Certification pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as signed by Bradley C. Richardson, Executive Vice President and Chief Financial Officer**
101 .INS	XBRL Instance Document**
101 .SCH	XBRL Taxonomy Extension Schema Document**
101 .CAL	XBRL Taxonomy Extension Calculation Linkbase Document**
101 .LAB	XBRL Taxonomy Extension Label Linkbase Document**
101 .PRE	XBRL Taxonomy Extension Presentation Linkbase Document**
101 .DEF	XBRL Taxonomy Definition Linkbase Document**
+	Indicates management contract or compensatory plan, contract or arrangement in which one or more directors or executive officers of the Registrant may be participants
†	The exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request.
**	Filed herewith.

**FOURTH AMENDMENT TO  
AMENDED AND RESTATED CREDIT AGREEMENT AND RELEASE**

This FOURTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT AND RELEASE (this "Amendment") is entered into as of November 12, 2015, is by and among Wells Fargo Capital Finance, LLC, a Delaware limited liability company, in its capacity as agent pursuant to the Credit Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, "Agent"), the lenders party hereto (individually, each a "Lender" and collectively, "Lenders"), PolyOne Corporation, an Ohio corporation (the "Parent"), GLS International, Inc., an Illinois corporation ("GLS"), NEU Specialty Engineered Materials, LLC, an Ohio limited liability company ("NEU", and together with Parent and GLS, each individually a "US Borrower" and collectively, "US Borrowers"), PolyOne Canada Inc., a federally incorporated Canadian corporation ("PolyOne Canada" or "Canadian Borrower", and, together with US Borrowers, each individually a "Borrower" and collectively, "Borrowers"), PolyOne LLC, a Delaware limited liability company ("PO LLC"), Polymer Diagnostics, Inc., an Ohio corporation ("Polymer"), Conexus, LLC, a Nevada limited liability company, f/k/a Conexus, Inc., a Nevada corporation ("Conexus"), M.A. Hanna Asia Holding Company, a Delaware corporation ("Hanna"), The ColorMatrix Corporation, an Ohio corporation ("CMC"), ColorMatrix Holdings, Inc., a Delaware corporation ("CM Holdings"), Chromatics, Inc., a Connecticut corporation ("Chromatics"), ColorMatrix Group, Inc., a Delaware corporation ("CM Group"), ColorMatrix – Brazil, LLC, an Ohio limited liability company ("CM Brazil"), Gayson Silicone Dispersions, Inc., an Ohio corporation ("Gayson"), Glasforms, Inc., a California corporation ("Glasforms"), PolyOne Designed Structures and Solutions LLC, a Delaware limited liability ("PolyOne DSS"), Franklin-Burlington Plastics, Inc., a Delaware corporation ("Franklin"; and, together with each of PO LLC, Polymer, Conexus, Hanna, CMC, CM Holdings, Chromatics, CM Group, CM Brazil, Gayson and PolyOne DSS, each individually a "US Guarantor" and collectively, "US Guarantors"), and PolyOne DSS Canada Inc., a federally incorporated Canadian corporation ("DSS Canada, Inc." and "Canadian Guarantor"; and together with the US Guarantors, each individually a "Guarantor" and collectively, "Guarantors").

WHEREAS, Borrowers, Guarantors, Agent and Lenders are parties to that certain Amended and Restated Credit Agreement dated as of March 1, 2013 (as amended, restated, modified or supplemented from time to time, the "Credit Agreement");

WHEREAS, Parent wishes to incur Indebtedness ("Term Loan Indebtedness") pursuant a term loan credit agreement to be entered into by and among Parent, Citibank, N.A. (or one of its affiliates), as term loan agent ("Term Loan Agent") and certain lenders;

WHEREAS, Borrowers desire use the proceeds of the Term Loan Indebtedness to, among other things, (a) to effectuate the satisfaction and discharge (pursuant to Article Four of the 2015 Note Indenture) of the issued and outstanding 2015 Notes in accordance with the terms of the 2015 Note Indenture and (b) to purchase and/or redeem all the 2020 Notes issued and outstanding under the 2020 Note Indenture;

WHEREAS, subject to terms and conditions hereof, Agent, the Lenders, Borrowers and Guarantors desire to amend the Credit Agreement as more fully described below;

NOW, THEREFORE, for and in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. For purposes of this Amendment, all terms used herein and not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Credit Agreement.

2. Release. In reliance upon the representations and warranties of Borrowers set forth in Section 5 hereof and subject to the satisfaction of the conditions to effectiveness set forth in Section 6 hereof, Agent and each Lender acknowledges, confirms and agrees that (a) each of Hanna and CM Brazil is hereby released from all Obligations under the Security Agreement and each other Loan Document to which it is a party, (b) each of Hanna and CM Brazil shall no longer be, or be deemed to be, a "Guarantor", "Grantor", "Loan Party" or obligor of any nature under or pursuant to the Security Agreement or any other Loan Document, (c) Agent's Liens on any asset of each of Hanna and CM Brazil are hereby released and (d) the pledge of the Equity Interests of each of Hanna and CM Brazil by their respective parent are hereby released except for the pledge of sixty-five percent (65%) of the total outstanding voting Equity Interests thereof. The foregoing release is a limited release and shall not be deemed to constitute a release with respect to any other Guarantor, Grantor, Loan Party or obligor in respect of the Obligations. Upon the effectiveness of this Amendment, (i) Agent agrees to promptly deliver to Administrative Borrower, at Borrowers' expense, (A) such UCC-3 termination statements, terminations, releases, or other documents necessary or reasonably required to effect the foregoing release, (B) the certificates and other instruments representing the Equity Interests of Hanna, CM Brazil, PolyOne (Thailand) Co., Ltd. (f/k/a Star Color Co. Ltd.), ColorMatrix Argentina S.A., ColorMatrix Mexico S.A. de C.V., ColorMatrix South America, Ltd. and ColorMatrix do Sul pledged to Agent pursuant to the Security Agreement and released pursuant to this Amendment, and (C) such additional certificates or other instruments representing the assets owned by Hanna and CM Brazil, as applicable, as may be necessary or reasonably required to release Agent's Lien on such assets, and (ii) Agent authorizes Borrowers to file the UCC-3 termination statements, terminations, releases and other documents delivered by Agent pursuant to the foregoing subpart(i)(A).

3. Amendments. In reliance upon the representations and warranties of Borrowers set forth in Section 5 hereof and subject to the satisfaction of the conditions to effectiveness set forth in Section 6 hereof:

(a) the Credit Agreement is hereby amended to reflect the modifications set forth in the Credit Agreement attached as Exhibit A hereto,

(b) Schedule 1.1 and Schedule 5.1 to the Credit Agreement are each hereby amended to reflect the modifications set forth in Schedule 1.1 and Schedule 5.1 attached as Exhibit B hereto,

(c) Schedule A-3 to the Credit Agreement is hereby amended by deleting the reference to "Jason Peterson" and inserting "Theresa Kuharich" in lieu thereof, and

(d) Exhibit C-1 to the Credit Agreement is hereby amended and restated in its entirety as set forth in Exhibit C hereto.

4. Reaffirmation and Confirmation. After giving effect to the amendments set forth in this Amendment and the release set forth in Section 2 of this Amendment, each Loan Party party hereto hereby (i) ratifies, affirms, acknowledges and agrees that the Credit Agreement and the other Loan Documents represent the valid, enforceable (except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally) and collectible obligations of such Loan Party, (ii) reaffirms its obligations under each Loan Document to which it is a party, including, without limitation, any grant of security interest contained therein, in each case as amended, supplemented or modified prior to or as of the date hereof, and (iii) acknowledges and agrees that there are no existing claims, defenses, personal or otherwise, or rights of setoff whatsoever with respect to the Credit Agreement or any other Loan Document. Except as set forth in Section 2 of this Amendment, each Loan Party hereby agrees that this Amendment in no way acts as a release or relinquishment of the Liens and rights securing payments of the Obligations. After giving effect to this Amendment (including the release in Section 2 hereof), the Liens and rights securing payment of the Obligations are hereby ratified and confirmed by each Loan Party in all respects.

5. Representations and Warranties. In order to induce Agent and Lenders to enter into this Amendment, each Loan Party represents and warrants with and to Agent and Lenders as follows, which representations and warranties shall survive the execution and delivery hereof, immediately after giving effect to this Amendment:

(a) all representations and warranties contained in the Loan Documents to which such Loan Party is a party are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality of dollar thresholds in the text thereof) on and as of the date of this Amendment (except to the extent any representation or warranty expressly related to an earlier date in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality or dollar thresholds in the text thereof) on and as of such earlier date);

(b) no Default or Event of Default has occurred and is continuing;

(c) as of the date hereof and in the reasonable business judgment of the Borrower, Hanna and CM Brazil each constitute a CFC Holding Company for purposes of the Credit Agreement; and

(d) this Amendment and the Loan Documents, as amended hereby, constitute legal, valid and binding obligations of such Loan Party and are enforceable against such Loan Party in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally.

6. Conditions to Effectiveness. This Amendment shall become effective upon the satisfaction of the following conditions precedent:

(a) Agent shall have received a copy of this Amendment executed by Agent, Lenders and the Loan Parties, in form and substance reasonably satisfactory to Agent;

(b) Borrowers shall have paid (or concurrently with the effectiveness of the Amendment shall pay) all Lender Group Expenses incurred in connection with the transactions evidenced by this Amendment for which Borrowers have received an invoice prior to the date hereof;

(c) Borrowers shall have paid to Agent, for the account of the Lenders on a pro rata basis, an amendment fee (the "Amendment Fee") of \$175,000, which fee is due and payable on the date hereof, and fully earned and non-refundable on the date hereof. The Amendment Fee is in addition to and not net of any fees previously paid by Borrowers or any Loan Party pursuant to any Loan Document;

(d) Borrowers shall deliver to Agent true, correct, and complete copies of the Term Loan Credit Agreement, Term Loan Intercreditor Agreement and the other material Term Loan Documents; and

(e) Borrowers shall execute and deliver to Agent each agreement, instrument and document identified on the Closing Checklist attached hereto as Exhibit D, in each case executed by the Loan Parties and other Persons party thereto (as applicable) and each in form and substance reasonably satisfactory to Agent.

7. Other Agreements. Agent and Lenders hereby waive any requirement under the terms of the Credit Agreement of the Loan Parties to provide prior written notice to Agent and Lenders of a prepayment of the 2015 Notes or the 2020 Notes.

8. Miscellaneous.

(a) Expenses. Borrowers agree to pay on demand all reasonable costs and expenses of Agent and the Lenders (including reasonable attorneys' fees) incurred in connection with the preparation, negotiation, execution, delivery and administration of this Amendment and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith. All obligations provided herein shall survive any termination of this Amendment and the Credit Agreement as amended hereby.

(b) Choice of Law and Venue; Jury Trial Waiver; Reference Provision. Without limiting the applicability of any other provision of the Credit Agreement or any other Loan Document, the terms and provisions set forth in Section 12 of the Credit Agreement are expressly incorporated herein by reference.

(c) Counterparts. This Amendment may be executed in any number of counterparts, and by the parties hereto on the same or separate counterparts, and each such counterpart, when executed and delivered, shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Amendment. This Amendment to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including "pdf"), shall be treated in all manner and respects and for all purposes as an original Amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or this Amendment was transmitted

or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense. Receipt by telecopy or electronic mail of any executed signature page to this Amendment shall constitute effective delivery of such signature page.

9. Release.

(a) Release. In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower and each other Loan Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and Lenders, and their successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, each Lender and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, controversies, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which such Borrower or such Loan Party or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment for or on account of, or in relation to, or in any way in connection with any of the Credit Agreement, or any of the other Loan Documents or transactions thereunder or related thereto.

(b) Complete Defense. Each Borrower and each other Loan Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Release Unconditional. Each Borrower and each other Loan Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

10. Authorization re: Term Loan Intercreditor Agreement. Each Lender by its signature thereto hereby (i) consents to the subordination of Liens provided for in the Term Loan Intercreditor Agreement (as defined in the Credit Agreement amended hereby), (ii) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Term Loan Intercreditor Agreement, (iii) authorizes and instructs Agent to enter into the Term Loan Intercreditor Agreement on behalf of such Lender and agrees that Agent may take such actions on its behalf as is contemplated by the terms of the Term Loan Intercreditor Agreement, and (iv) acknowledges that a copy of the Term Loan Intercreditor Agreement will be delivered on or prior to the Term Loan Closing Date, or made available, to such Lender and upon receipt, it will review the Term Loan Intercreditor Agreement. In the event of any conflict between the terms of the Term Loan Intercreditor Agreement and any of the other Loan Documents, the terms of the Term Loan Intercreditor Agreement shall govern and control except as expressly set forth in the Term Loan Intercreditor Agreement.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized and delivered as of the date first above written.

**POLYONE CORPORATION**

By: /s/ Scott J. Leffler  
Name: Scott J. Leffler  
Title: Vice President and Treasurer

**CONEXUS, LLC**  
**GLS INTERNATIONAL, INC.**  
**NEU SPECIALTY ENGINEERED MATERIALS, LLC**  
**POLYMER DIAGNOSTICS, INC.**  
**COLORMATRIX GROUP, INC.**  
**COLORMATRIX HOLDINGS, INC.**  
**THE COLORMATRIX CORPORATION**  
**CHROMATICS, INC.**  
**GAYSON SILICONE DISPERSIONS, INC.**

By: /s/ Scott J. Leffler  
Name: Scott J. Leffler  
Title: Treasurer

**POLYONE LLC**

By: /s/ Scott J. Leffler  
Name: Scott J. Leffler  
Title: Manager

**GLASFORMS, INC.**

By: /s/ Scott J. Leffler  
Name: Scott J. Leffler  
Title: President and Assistant Treasurer

**POLYONE DESIGNED STRUCTURES AND SOLUTIONS, LLC**  
**POLYONE DSS CANADA INC.**

By: /s/ Scott J. Leffler

Name: Scott J. Leffler  
Title: Chief Financial Officer

**POLYONE CANADA INC.**

By: /s/ Scott J. Leffler  
Name: Scott J. Leffler  
Title: Vice President and Treasurer

**FRANKLIN-BURLINGTON PLASTICS, INC.**

By: /s/ Robert K. James  
Name: Robert K. James  
Title: Secretary

**RELEASED GUARANTORS:**

M.A. HANNA ASIA HOLDING COMPANY

By /s/ Robert K. James  
Name Robert K. James  
Title Secretary

COLORMATRIX – BRAZIL, LLC

By The ColorMatrix Corporation, its sole member

By /s/ Scott J. Leffler  
Name Scott J. Leffler  
Title Treasurer

WELLS FARGO CAPITAL FINANCE, LLC, as  
Agent and a Lender

By /s/ Melissa Provost  
Name Melissa Provost  
Title Vice President

WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA, as a Lender

By /s/ Raymond Eghobamien  
Name Raymond Eghobamien  
Title Vice President



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

By /s/ Charles Fairchild  
Name Charles Fairchild  
Title Vice President

BANK OF AMERICA, N.A., CANADA BRANCH,  
as a Lender

By /s/ Sylwia Durkiewicz  
Name Sylwia Durkiewicz  
Title Vice President

U.S. BANK NATIONAL ASSOCIATION, as a  
Lender

By /s/ David Lawrence  
Name David Lawrence  
Title Vice President

U.S. BANK NATIONAL ASSOCIATION,  
CANADA BRANCH, as a Lender

By /s/ John P. Rehob  
Name John P. Rehob  
Title Vice President & Principal Officer

CITIBANK, N.A., as a Lender

By /s/ Matthew Paquin  
Name Matthew Paquin  
Title Vice President and Director

HSBC BANK USA, N.A., as a Lender

By /s/ Joseph D. Donovan  
Name Joseph D. Donovan  
Title Vice President

KEYBANK NATIONAL ASSOCIATION, as a  
Lender

By /s/ Paul K. Steiger  
Name Paul K. Steiger  
Title Vice President

PNC BANK, NATIONAL ASSOCIATION, as a  
Lender

By /s/ Carrie Light  
Name Carrie Light  
Title Vice President

PNC BANK CANADA BRANCH, as a Lender

By /s/ James Bruce  
Name James Bruce  
Title Vice President

THE HUNTINGTON BANK, as a Lender

By /s/ Dennis Hatvany  
Name Dennis Hatvany  
Title SVP

CITIZENS BUSINESS CAPITAL, a Division of  
CITIZENS ASSET FINANCE, INC., a wholly  
owned Subsidiary of CITIZENS BANK, N.A.  
a National Banking Association, fka RBS  
CITIZENS, NATIONAL ASSOCIATION, as a  
Lender

By /s/ James G. Zamborsky  
Name James G. Zamborsky  
Title Vice President

#### **Exhibit A**

#### **Credit Agreement**

**[see attached]**

~~—~~  
~~<CONFORMED THROUGH>~~  
~~<THIRD AMENDMENT>~~<sup>4</sup>

#### **AMENDED AND RESTATED CREDIT AGREEMENT**

**by and among**

**POLYONE CORPORATION**  
**as US Borrower**

**POLYONE CANADA INC.**  
**as Canadian Borrower**

**THE OTHER LOAN PARTIES PARTY HERETO**  
**THE LENDERS THAT ARE SIGNATORIES HERETO**  
**as Lenders**

**WELLS FARGO CAPITAL FINANCE, LLC**  
**as Administrative Agent**

**BANK OF AMERICA, N.A. and**  
**U.S. BANK NATIONAL ASSOCIATION**  
**as Syndication Agents**

**PNC BANK, NATIONAL ASSOCIATION and**  
**KEYBANK NATIONAL ASSOCIATION**  
**as Documentation Agents**

**and**

**WELLS FARGO CAPITAL FINANCE, LLC and**  
**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**  
**as Joint Lead Arrangers and Bookrunners**

**Dated as of March 1, 2013**

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## AMENDED AND RESTATED CREDIT AGREEMENT

**THIS AMENDED AND RESTATED CREDIT AGREEMENT** (this "Agreement"), is entered into as of March 1, 2013, by and among the lenders identified on the signature pages hereof (each of such lenders, together with their respective successors and permitted assigns, are referred to hereinafter as a "Lender", as that term is hereinafter further defined), Wells Fargo Capital Finance, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), PolyOne Corporation, an Ohio corporation ("Parent"), and the subsidiaries of Parent organized under the laws of a jurisdiction in the United States party hereto as borrowers (together with Parent, and certain other subsidiaries of Parent organized under the laws of a jurisdiction in the United States that are or may become party hereto after the date hereof, each individually a "US Borrower" and collectively, "US Borrowers" as hereinafter further defined), PolyOne Canada Inc., a federally incorporated Canadian corporation ("PolyOne Canada", and together with certain other subsidiaries of Parent organized under the laws of a jurisdiction in Canada that are or may become party hereto after the date hereof, each individually a "Canadian Borrower" and collectively, "Canadian Borrowers" as hereinafter further defined and, together with US Borrowers, each individually a "Borrower" and collectively, "Borrowers"), the subsidiaries of Parent organized under the laws of a jurisdiction in the United States party hereto as guarantors (each individually a "US Guarantor" and collectively, "US Guarantors" as hereinafter further defined), those subsidiaries of Parent organized under the laws of a jurisdiction in Canada that may become party hereto as guarantors after the date hereof (each individually a "Canadian Guarantor" and collectively, "Canadian Guarantors" as hereinafter further defined, and together with US Guarantors, each individually a "Guarantor" and collectively, "Guarantors" as hereinafter further defined), Bank of America, N.A. and U.S. Bank National Association, each as Syndication Agents, KeyBank National Association and PNC Bank, National Association, each as Documentation Agents, and Wells Fargo Capital Finance, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, in their respective capacities as Joint Lead Arrangers and Joint Bookrunners.

The parties agree as follows:

### 11. DEFINITIONS AND CONSTRUCTION.

(a) **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

(b) **Accounting Terms.** Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements of Parent most recently received by Agent prior to the date hereof; provided, that, in the event of any change in GAAP after the date hereof that affects the covenants in Section 7 hereof, Administrative Borrower may by notice to Agent, or Agent may, and at the request of Required Lenders shall, by notice to Administrative Borrower request that Agent and Administrative Borrower negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Administrative Borrower shall provide to Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. No consent or amendment fee shall be required to be paid to any Lender in connection with an amendment contemplated by this Section 1.2. Notwithstanding anything to the contrary contained in GAAP or any interpretations or other pronouncements by the Financial Accounting Standards Board or otherwise, the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is unqualified and also does not include any explanation, supplemental comment or other comment concerning the ability of the applicable person to continue as a going concern or the scope of the audit. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Parent" or "Borrowers" is used in respect of a financial covenant or a related definition, it shall be understood to mean Parent or Borrowers and their Restricted Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. For purposes of calculations pursuant to the terms of this Agreement, GAAP will be

deemed to treat operating leases in a manner consistent with the current treatment under GAAP as in effect on the Effective Date, notwithstanding any modification or interpretive changes thereto that may occur hereafter.

(c) **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein and any terms used in this Agreement that are defined in the PPSA and relating to Collateral consisting of assets of the Canadian Loan Parties shall be construed and defined as set forth in the PPSA unless otherwise defined herein; provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

(d) **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any reference herein to "province" or like terms shall be construed to include "territory" and like terms. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 14.1 or is cured if such Event of Default is capable of being cured. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the repayment in full in cash or immediately available funds of all of the Obligations (including the payment of any Lender Group Expenses that have accrued regardless of whether demand has been made therefor), excluding in any case the Obligations described in the following clause (b) of this Section 1.4, and (b) in the case of (i) contingent reimbursement obligations with respect to Letters of Credit, the receipt by Agent of the Letter of Credit Collateralization, (ii) Bank Products other than Hedge Obligations, the receipt by Agent of the Bank Product Collateralization, (iii) checks or other payments provisionally credited to the Obligations and for which Agent or any Lender has not received final payment, the receipt by Agent of cash collateral to secure such amounts (unless Agent shall have received a satisfactory indemnity with respect thereto from another financial institution), (iv) Hedge Obligations, the receipt by Agent of cash collateral to secure such amounts (or, at the option of Agent or the Hedge Provider with respect to such Hedge Agreements, the termination of the applicable Hedge Agreement and the payment in full in cash of the Obligations due and payable in connection with such termination), and (v) other contingent Obligations for which a claim or demand for payment has been made at such time to Agent or any Lender for which Agent or such Lender is entitled to indemnification by any Loan Party, the receipt by Agent of cash collateral to secure such amounts. Unless the context of this Agreement or any other Loan Document clearly requires otherwise or Agent otherwise determines, amounts expressed in US Dollars at any time when used with respect to Foreign Subsidiaries or similar matters shall be deemed to mean the US Dollar Equivalent of such amounts at such time.

(e) **Time References.** Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that, with respect to a computation of fees or interest payable to Agent or any Lender, such period shall include the first day, but not the last day of it so long as payment thereof is received prior to the time specified in Section 2.5, but in any event shall consist of at least one full day.

(f) **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

(g) **Effect of Amendment and Restatement; No Novation.** Upon the effectiveness of this Agreement, the Existing Credit Agreement shall be amended and restated in its entirety by this Agreement. The Existing Obligations shall continue in full force and effect, and the effectiveness of this Agreement shall not constitute a novation or repayment of the Existing Obligations. Such Existing Obligations, together with any and all additional Obligations incurred by any Borrower under this Agreement or under any of the other Loan Documents, shall continue to be secured by, among other things, the applicable portions of the Collateral, whether now existing or hereafter acquired and wheresoever located, all as more specifically set forth in the Loan Documents. Each Borrower and each Guarantor hereby reaffirms its obligations, liabilities, grants of security interests, pledges and the validity of all covenants by it contained in any and all Loan Documents, as amended, supplemented or otherwise modified by this Agreement and by the other Loan Documents delivered prior to the Effective Date. Any and all references in any Loan Documents to the Existing Credit Agreement shall be deemed to be amended to refer to this Agreement.

## 12. LOANS AND TERMS OF PAYMENT.



(a) **Revolving Loans.**

(A) Immediately prior to giving effect to this Agreement, the outstanding principal balance of the US Revolving Loans (as defined in the Existing Credit Agreement) is \$0. Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each US Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("US Revolving Loans") to US Borrowers which in the aggregate any time outstanding shall not exceed the lesser of:

- (1) such US Lender's Commitment, or
- (2) such US Lender's Pro Rata Share of an amount equal to the lesser of:
  - a. the amount equal to (1) the US Maximum Credit less (2) the sum of the US Letter of Credit Usage at such time, plus the principal amount of US Swing Loans outstanding at such time, and
  - b. the amount equal to (1) the US Borrowing Base at such time less (2) the sum of the US Letter of Credit Usage at such time, plus the principal amount of US Swing Loans outstanding at such time.

Each US Revolving Loan shall be a US Dollar Denominated Loan, and shall be either a Base Rate Loan or a LIBOR Rate Loan.

(B) Immediately prior to giving effect to this Agreement, the outstanding principal balance of the Canadian Revolving Loans (as defined in the Existing Credit Agreement) is \$0. Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Canadian Lender with a Canadian Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans ("Canadian Revolving Loans") to Canadian Borrowers which in the aggregate any time outstanding shall not exceed the lesser of:

- (1) such Canadian Lender's Canadian Commitment, or
- (2) such Canadian Lender's Pro Rata Share of an amount equal to the lesser of:
  - a. the amount equal to (1) the Canadian Maximum Credit less (2) the Canadian Letter of Credit Usage at such time, plus the principal amount of Canadian Swing Loans outstanding at such time, and
  - b. the amount equal to (1) the Canadian Borrowing Base at such time less (2) the Canadian Letter of Credit Usage at such time, plus the principal amount of Canadian Swing Loans outstanding at such time.

Each Canadian Revolving Loan shall be either a US Dollar Denominated Loan (which shall be either a Base Rate Loan or a LIBOR Rate Loan) or a Canadian Dollar Denominated Loan (which shall be either a Base Rate Loan or a BA Rate Loan).

(C) Anything to the contrary in this Section 2.1 or otherwise notwithstanding, the aggregate principal amount of all Revolving Loans (including Swing Loans, Protective Advances and Overadvances) plus the Letter of Credit Usage outstanding at any time shall not exceed the Existing Note Secured Debt Limit and/or the Term Loan Debt Limit. Agent may at any time and from time to time require that an Authorized Person execute and deliver to Agent a certificate, in form and substance reasonably satisfactory to Agent, representing the amount of the Existing Note Secured Debt Limit and/or the Term Loan Debt Limit at such time and that the aggregate principal amount of all Revolving Loans (including Swing Loans, Protective Advances and Overadvances) plus the Letter of Credit Usage outstanding at such time (and after giving effect to any of the foregoing that have been requested) does not and will not exceed such Existing Note Secured Debt Limit and/or the Term Loan Debt Limit.

(D) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Loans, together with interest accrued thereon, shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(E) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation), in its Permitted Discretion, to establish, increase, reduce, eliminate, or otherwise adjust reserves (without duplication) from time to time against the US Borrowing Base or the Canadian Borrowing Base in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary, including (i) reserves in an amount equal to the Bank Product Reserve Amount, (ii) reserves in an amount equal to the 2015 Note Reserve Amount, (iii) reserves in an amount equal to the Series G Guarantee Reserve Amount, (iv) reserves in the amount of any Restricted Payment under Section 6.8(h) that has been declared but has not yet been paid, but only if Excess Availability is less than \$100,000,000 at any time during the period commencing with the declaration of such Restricted Payment and ending with the payment thereof, and (v) reserves with respect to (A) sums that Parent or its Subsidiaries are required to pay under this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, and (B) amounts owing by Parent or its Subsidiaries to any Person to the extent secured by a Lien on, or trust or deemed trust over, any of the ~~<First Lien>~~ Revolving Loan Priority Collateral (other than a Permitted Lien under clause (m) of the definition of such term), which Lien, trust or deemed trust, in the Permitted Discretion of Agent likely would be pari passu with, or have a priority superior

to, Agent's Liens (such as Priority Payables or Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes or other amounts that may be pari passu or given priority under applicable law) in and to such item of the ~~<First Lien>~~Revolving Loan Priority Collateral. To the extent that an event, condition or matter as to any Eligible Accounts or Eligible Inventory is addressed pursuant to the treatment thereof within the applicable definition of such terms, Agent shall not also establish a reserve to address the same event, condition or matter. The amount of any reserve established by Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Agent in its Permitted Discretion and to the extent that such reserve is in respect of amounts that may be payable to third parties Agent may, at its option (without duplication), deduct such reserve from the US Maximum Credit or the Canadian Maximum Credit in the event that the US Borrowing Base or Canadian Borrowing Base exceeds the applicable amount. Agent will provide notice to Administrative Borrower three (3) Business Days' prior to the establishment of any new categories of reserves after the date hereof or any change in the methodology for the calculation of an existing reserve after the date hereof, except that such notice shall not be required (i) at any time there is a Cash Dominion Event or, if in the good faith determination of Agent, it is necessary to act sooner to preserve or protect the Collateral or its value or the rights of Agent therein or to otherwise address any event, condition or circumstance that, in the good faith judgment of the Agent, is reasonably likely to cause a diminution in the value of the Collateral or to threaten the ability to realize upon any portion of the Collateral or (ii) if after giving effect to any such new category of reserves or change in methodology there would be an Overadvance. Upon receipt of such notice, Administrative Borrower may take such action as may be required so that the event, condition, or matter that is the basis for the reserve no longer exists. At any time that the event, condition or circumstance that is the basis for the reserve ceases to exist or is otherwise addressed to the satisfaction of Agent, then the applicable reserve will be terminated, including in the case of the 2015 Note Reserve Amount if Agent shall have received evidence, in form and substance reasonably satisfactory to it, that the 2015 Note ~~<Obligations are paid and satisfied in full in cash>~~Discharge has been consummated or that the 2015 Note Obligations are no longer entitled to the benefit of the Lien of Agent.

(F) Without limiting the generality of the foregoing, reserves may be established to reflect any of the following: (i) Inventory shrinkage, (ii) markdowns and cost variances (pursuant to discrepancies between the purchase order price of Inventory and the actual cost thereof), (iii) returns, discounts, claims, credits and allowances of any nature that are not paid pursuant to the reduction of Accounts, (iv) any rental payments, service charges or other amounts due or to become due to owners or lessors of Real Property to the extent Inventory or Records are located in or on such property or in the possession or control of such parties or such Records are needed to monitor or otherwise deal with the Collateral (other than for locations where Agent has received a Collateral Access Agreement executed and delivered by the owner and lessor of such Real Property that Agent has acknowledged in writing is in form and substance satisfactory to Agent), provided, that, the reserves established pursuant to this clause (iv) as to leased locations shall not exceed at any time the aggregate of amounts payable for the next three (3) months to the lessors of such locations, except that such limitation on the amount of the reserves shall not apply at any time that an Event of Default shall exist or have occurred and be continuing, or at any time there is any event of default under the lease by Parent or any Subsidiary of Parent with respect to such location or a notice thereof has been sent or received by or on behalf of any Loan Party, (v) any rental payments, service charges or other amounts due or to become due to lessors of personal property, (vi) an increase in the number of days of the turnover of Inventory or a change in the mix of the Inventory that results in an overall decrease in the value thereof or a deterioration in its nature or quality (but only to the extent not addressed by the lending formulas in a manner satisfactory to Agent), (vii) variances between the perpetual Inventory records of Borrowers and the results of the test counts of Inventory conducted by Agent with respect thereto in excess of the percentage reasonably acceptable to Agent in its Permitted Discretion, (viii) dilution with respect to Accounts (based on the ratio of the aggregate amount of non-cash reductions in Accounts for any period to the aggregate dollar amount of the sales of such Borrower for such period) as calculated by Agent for any period is or is reasonably anticipated to be greater than five percent (5%), (ix) in the event that at any time the aggregate principal amount of all Revolving Loans (including Swing Loans, Protective Advances and Overadvances) plus the Letter of Credit Usage outstanding are more than ten percent (10%) less than the Existing Note Secured Debt Limit or the Term Loan Debt Limit, as applicable, amounts to permit additional Revolving Loans (including Swing Loans, Protective Advances and Overadvances) as may be requested or required so as to avoid exceeding the Existing Note Secured Debt Limit or the Term Loan Debt Limit, as applicable. Except as otherwise specifically provided in this clause (f), any change to the amount of any reserves described above shall be based on changes in the event, condition or circumstance that is basis for such reserves after the date hereof.

**(b) Borrowing Procedures and Settlements.**

(A) **Requests for Revolving Borrowing.** To request a Revolving Loan or Swing Loan, the applicable Borrower (or Administrative Borrower on behalf of such Borrower) shall notify Agent of such request by telephone (a) in the case of a LIBOR Rate Loan or a BA Rate Loan, not later than 1:00 p.m., three (3) Business Days before the date of the proposed LIBOR Rate Loan or a BA Rate Loan or (b) in the case of a Base Rate Loan (including a Swing Loan), not later than 1:00 p.m. on the same Business Day as the date of the proposed Base Rate Loan to be made in US Dollars and not later than 1:00 p.m. on the Business Day before the date of the proposed Base Rate Loan to be made in Canadian Dollars. Each such telephonic request shall be irrevocable and to the extent required by Agent, shall be confirmed promptly by hand delivery or facsimile to Agent of a written request in a form approved by Agent and signed by or on behalf of Borrowers. Each such telephonic and written request shall specify the following information:

(3) the Borrower requesting such Revolving Loan or Swing Loan;

(4) whether such Loan is a Revolving Loan or Swing Loan;

- (5) the aggregate amount of such Revolving Loan or Swing Loan;
- (6) the date of such Revolving Loan or Swing Loan, which shall be a Business Day;
- (7) whether such Revolving Loan or Swing Loan is to be a Base Rate Loan, a BA Rate Loan or a LIBOR Rate Loan;
- (8) in the case of a LIBOR Rate Loan or a BA Rate Loan, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (9) in the case of each Canadian Revolving Loan, whether such Canadian Revolving Loan is to be a US Dollar Denominated Loan or a Canadian Dollar Denominated Loan.

If no election as to whether a Revolving Loan is to be a BA Rate Loan or LIBOR Rate Loan is specified in the applicable request, then the requested Revolving Loan shall be a Base Rate Loan. If no Interest Period is specified with respect to any request for a LIBOR Rate Loan or a BA Rate Loan, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a request for a Revolving Loan in accordance with this Section, Agent shall advise each applicable Lender of the details thereof and of the amount of such Lender's Revolving Loan to be made as part of the request. All Loans and Letters of Credit under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, any Borrower or Guarantor when deposited to the credit of any Borrower or Guarantor or otherwise disbursed or established in accordance with the instructions of any Borrower or Guarantor or in accordance with the terms and conditions of this Agreement.

**(B) Making of Swing Loans.**

(1) **Making of US Swing Loans.** Subject to the terms and conditions contained herein, Swing Lender agrees that it will make a US Revolving Loan (any such US Revolving Loan made solely by Swing Lender pursuant to this Section 2.2(b)(i) being referred to as a "US Swing Loan") to US Borrowers from time to time in amounts requested by any US Borrower (or Administrative Borrower on behalf of US Borrowers) up to the aggregate amount outstanding equal to the US Swing Loan Limit, provided, that, after giving effect to any such US Swing Loan, the aggregate principal amount of the US Revolving Loans, US Swing Loans and US Letter of Credit Usage outstanding at any time shall not exceed the lesser of the US Borrowing Base at such time or US Maximum Credit at such time. Each US Swing Loan shall be deemed to be a US Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other US Revolving Loans, except that all payments on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any US Swing Loan if Swing Lender has actual knowledge that (A) one or more of the applicable conditions precedent set forth in Section 3.1 or 3.2 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (B) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3.1 or 3.2 have been satisfied on the Funding Date applicable thereto prior to making any US Swing Loan. The US Swing Loans shall be secured by Agent's Liens, constitute US Revolving Loans and US Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. Upon the making of a US Swing Loan, without further action by any party hereto, each US Lender shall be deemed to have irrevocably and unconditionally purchased and received from Swing Line Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share in such US Swing Loan. To the extent that there is no Settlement in accordance with Section 2.3(c) hereof, the applicable Swing Line Lender may at any time, require the applicable US Lenders to fund their participations. From and after the date, if any, on which any US Lender has funded its participation in any US Swing Loan, Agent shall promptly distribute to such US Lender, not less than weekly, such Lender's Pro Rata Share of all payments of principal and interest received by Agent in respect of such US Swing Loan.

(2) **Making of Canadian Swing Loans.** Subject to the terms and conditions contained herein, Swing Lender agrees that it will make a Canadian Revolving Loan (any such Canadian Revolving Loan made solely by Swing Lender pursuant to this Section 2.2(b)(ii) being referred to as a "Canadian Swing Loan") to Canadian Borrowers from time to time in amounts requested by any Canadian Borrower (or Administrative Borrower on behalf of Canadian Borrowers) up to the aggregate amount outstanding equal to the Canadian Swing Loan Limit, provided, that, after giving effect to any such Canadian Swing Loan, the aggregate principal amount of the Canadian Revolving Loans, Canadian Swing Loans and Canadian Letter of Credit Usage outstanding at any time shall not exceed the lesser of the Canadian Borrowing Base at such time or Canadian Maximum Credit at such time. Each Canadian Swing Loan shall be deemed to be a Canadian Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Canadian Revolving Loans, except that all payments on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.2(d)(ii), Swing Lender shall not make and shall not be obligated to make any Canadian Swing Loan if Swing Lender has actual knowledge that (A) one or more of the applicable conditions precedent set forth in Section 3.1 or 3.2 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (B) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to

determine whether the applicable conditions precedent set forth in Section 3.1 or 3.2 have been satisfied on the Funding Date applicable thereto prior to making any Canadian Swing Loan. The Canadian Swing Loans shall be secured by Agent's Liens, constitute Canadian Revolving Loans and Canadian Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. Upon the making of a Canadian Swing Loan, without further action by any party hereto, each Canadian Lender shall be deemed to have irrevocably and unconditionally purchased and received from Swing Line Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share in such Canadian Swing Loan. To the extent that there is no Settlement in accordance with Section 2.2(c) hereof, the applicable Swing Line Lender may at any time, require the applicable Canadian Lenders to fund their participations. From and after the date, if any, on which any Canadian Lender has funded its participation in any Canadian Swing Loan, Agent shall promptly distribute to such Canadian Lender, not less than weekly, such Lender's Pro Rata Share of all payments of principal and interest received by Agent in respect of such Canadian Swing Loan.

### **(C) Making of Revolving Loans.**

(1) Promptly after receipt of a request for a Borrowing of a Revolving Loan pursuant to Section 2.3(a), Agent shall notify the applicable Lenders by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each applicable Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account or Agent's Canadian Account, as applicable, not later than 2:00 p.m. on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Revolving Loans from the applicable Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that, subject to the provisions of Section 2.2(d)(ii), Agent shall not request any Lender to make any Revolving Loan if it has knowledge that, and no Lender shall have the obligation to make, any Revolving Loan if (A) one or more of the applicable conditions precedent set forth in Section 3.1 or 3.2 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (B) the requested Borrowing would exceed the Availability on such Funding Date.

(2) Unless Agent receives notice from a Lender prior to 9:00 a.m. on the date of a Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers on such date a corresponding amount. If any Lender shall not have made its full amount available to Agent in immediately available funds and if Agent in such circumstances has made available to Borrowers such amount, such Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.2(c)(ii) shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Lender's Revolving Loan on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Borrowers of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

### **(D) Protective Advances and Optional Overadvances.**

(1) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.2(d)(iv), Agent hereby is authorized by Borrowers and the Lenders, from time to time in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers on behalf of the Lenders that Agent, in its Permitted Discretion deems necessary (A) to preserve or protect the Collateral, or any portion thereof, or (B) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (any of the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"), at any time (1) after the occurrence and during the continuance of a Default or an Event of Default, or (2) that any of the other applicable conditions precedent set forth in Section 3.2 are not satisfied. So long as no Event of Default exists or has occurred and is continuing, Agent shall use reasonable efforts to notify Administrative Borrower of the existence of any Protective Advances on or about the date when made.

(2) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.2(d)(iv), the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby. In any event: (A) if any such Overadvance remains outstanding for more than thirty (30) days, unless otherwise agreed to by the Required Lenders, Borrowers shall immediately repay Revolving Loans (including Swing Loans, if applicable) in an amount sufficient to eliminate all such Overadvances, provided, that, in the event that the Overadvance arises as a result of the establishment of a new category of reserves or the change in the methodology of the calculation of an existing reserve, or as

a result of the making of a Loan other than at the request of a Borrower (or Administrative Borrower on behalf of any Borrower), whether a Protective Advance or by charging the Loan Account, Borrowers shall not be required to repay such Overadvance until ten (10) days after notice thereof by Agent to Administrative Borrower and (B) after the date all such Overadvances have been eliminated, there must be at least five (5) consecutive days without the existence of any such Overadvances before intentional Overadvances are made. The foregoing provisions relating to making Overadvances are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.3. Each Lender with a US Commitment shall be obligated to settle with Agent (or Swing Lender, as applicable) as provided in Section 2.2(e) (or Section 2.13, as applicable) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent (or Swing Lender) to US Borrowers reported to such Lender, any intentional Overadvances to US Borrowers made as permitted under this Section 2.2(d)(ii), and any Overadvances to US Borrowers resulting from the charging to the US Loan Account of interest, fees, or Lender Group Expenses to the extent permitted by Section 2.4(c). Each Lender with a Canadian Commitment shall be obligated to settle with Agent (or Swing Lender, as applicable) as provided in Section 2.2(e) (or Section 2.13, as applicable) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent (or Swing Lender) to Canadian Borrowers reported to such Lender, any intentional Overadvances to Canadian Borrowers made as permitted under this Section 2.2(d)(ii), and any Overadvances to Canadian Borrowers resulting from the charging to the Canadian Loan Account of interest, fees, or Lender Group Expenses to the extent permitted by Section 2.4(c). The Required Lenders may by written notice to Agent revoke the authority of Agent and Swing Lender to make future Overadvances pursuant to this Section 2.2(d) at any time. So long as no Event of Default exists or has occurred and is continuing, Agent shall use reasonable efforts to notify Administrative Borrower of the existence of any Overadvance on or about the date when made.

(3) Any Protective Advance or Overadvance to Canadian Borrowers may be made by Agent or by the Canadian Lender which is an Affiliate of Agent. Each Protective Advance and each Overadvance shall be deemed to be a Revolving Loan hereunder, except that no Protective Advance or Overadvance shall be a LIBOR Rate Loan or BA Rate Loan and, prior to Settlement therefor, all payments on the Protective Advances shall be payable to Agent (or the Canadian Lender which made such Protective Advance) solely for its own account. The Protective Advances and Overadvances shall be repayable on demand, be secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. The ability of Agent to make Protective Advances is separate and distinct from its ability to make Overadvances and its ability to make Overadvances is separate and distinct from its ability to make Protective Advances. For the avoidance of doubt, the limitations on Agent's ability to make Protective Advances do not apply to Overadvances and the limitations on Agent's ability to make Overadvances do not apply to Protective Advances. The provisions of this Section 2.2(d) relating to making Protective Advances and Overadvances are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers in any way.

(4) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, no Overadvance or Protective Advance may be made by Agent if such Revolving Loan would cause (A) the aggregate principal amount of Overadvances and Protective Advances outstanding to exceed an amount equal to ten percent (10%) of the Maximum Credit; (B) the US Revolver Usage (excluding amounts charged to the US Loan Account for interest, fees or Lender Group Expenses) to exceed the US Maximum Credit or (C) the Canadian Revolver Usage (excluding amounts charged to the US Loan Account for interest, fees or Lender Group Expenses) to exceed the Canadian Maximum Credit.

(E) **Settlement.** It is agreed that each US Lender's funded portion of the US Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding US Revolving Loans. It is agreed that each Canadian Lender's funded portion of the Canadian Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Canadian Revolving Loans. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans (including Swing Loans, Overadvances and Protective Advances) shall take place on a periodic basis in accordance with the following provisions:

(1) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Protective Advances or Overadvances, and (3) with respect to the Loan Parties' Collections or payments received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans (including Swing Loans, Overadvances and Protective Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section ~~4.3~~ 2.13): (A) if the amount of the Revolving Loans (including Swing Loans, Overadvances and Protective Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans, Overadvances and Protective Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans, Overadvances and Protective Advances), and (B) if the amount of the Revolving Loans (including Swing Loans, Overadvances and Protective



Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Protective Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account or Agent's Canadian Account, as applicable, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans, Overadvances and Protective Advances). Such amounts made available to Agent under clause (B) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans, Overadvances or Protective Advances and, together with the portion of such Swing Loans, Overadvances or Protective Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(2) In determining whether a Lender's balance of the Revolving Loans, Swing Loans, and Protective Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Revolving Loans, Swing Loans, and Protective Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(3) Between Settlement Dates, Agent, to the extent Protective Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender or the Canadian Lender that is an Affiliate of Agent, as applicable, any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Protective Advances, Overadvances or Swing Loans. Between Settlement Dates, Agent, to the extent no Protective Advances, Overadvances or Swing Loans are outstanding, may pay over to Swing Lender any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, Collections or payments of Loan Parties received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 13), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such 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, Swing Lender with respect to Swing Loans, Agent with respect to Protective Advances and Overadvances, and each Lender with respect to the Revolving Loans other than Swing Loans, Overadvances and Protective Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(4) Anything in this Section 2.2(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to act in accordance with Section 2.13.

(F) ~~<Notation>~~ **Register**. Agent, as a non-fiduciary agent for Borrowers, shall maintain a register (the "Register") showing the principal amount of (and stated interest on) the Revolving Loans, owing to each Lender, including the Swing Loans owing to Swing Lender, and Protective Advances owing to Agent, the names and addresses of each Lender, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate. The Register shall include copies of each Assignment and Assumption delivered to the Agent. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(G) **Independent Obligations.** All Revolving Loans (other than Swing Loans, Overadvances and Protective Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

**(c) Payments; Reductions of Commitments; Prepayments.**

**(A) Payments by Borrowers.**

(3) Except as otherwise expressly provided herein, all payments by any Borrower shall be made to Agent's Account or Agent's Canadian Account, as applicable, for the account of the Lender Group and shall be made in immediately available funds, no later than 1:00 p.m. on the date specified herein. Any payment received by Agent later than 1:00 p.m. shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until (but not including) such following Business Day.

(4) Unless Agent receives notice from Administrative Borrower prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(5) All payments in respect of the Canadian Obligations of Canadian Loan Parties shall be applied first to Canadian Obligations denominated in the same currency as the payments received and second to the Canadian Obligations denominated in the other currency; provided, that, Agent may, at its option (but is not obligated to), convert such currency received to the currency in which the Canadian Obligations are denominated at the Exchange Rate calculated by Agent in good faith on such date and Borrowers shall pay the costs of such conversion (or Agent may, at its option, charge such costs to the loan account of any Borrower maintained by such Agent).

**(B) Apportionment and Application.**

(3) So long as no Application Event has occurred and is continuing and except as otherwise provided herein, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) entitled to such payments and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of the Issuing Lender) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates. All payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied (subject to the Term Loan Intercreditor Agreement), so long as no Application Event has occurred and is continuing, to reduce the balance of the Revolving Loans outstanding and, thereafter, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law (subject to Section 2.3(b)(v) and Section 2.3(e)).

(4) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, subject to the Term Loan Intercreditor Agreement, the 2015 Note Intercreditor Agreement and the Series G Guarantee Lien Acknowledgement, all payments remitted to Agent in respect of the US Obligations and all proceeds of US Collateral received by Agent shall be applied as follows:

- a. first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,
- b. second, to pay any fees then due to Agent (in its capacity as Agent and not as Lender) under the Loan Documents until paid in full,
- c. third, to pay interest due in respect of all Protective Advances made for the account of US Loan Parties until paid in full,
- d. fourth, to pay principal due in respect of all Protective Advances made for the account of US Borrowers until paid in full,
- e. fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the US Lenders under the Loan Documents, until paid in full,
- f. sixth, ratably, to pay any fees then due to any of the US Lenders under the Loan Documents until paid in full,
- g. seventh, to pay interest accrued in respect of the US Swing Loans until paid in full,
- h. eighth, to pay the principal of all US Swing Loans until paid in full,
- i. ninth, ratably, to pay interest accrued in respect of the US Revolving Loans (other than Protective Advances) until paid in full,
- j. tenth, ratably (1) to Agent, for the account of Agent and Lenders, to pay the principal of all US Revolving Loans until paid in full, and (2) to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the US Lenders that have an obligation to pay to Agent, for the account of the Issuing Lender, a share of each US Letter of Credit Disbursement), as cash collateral in an amount up to one hundred three percent (103%) of the US Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any US Letter of Credit Disbursement as

and when such disbursement occurs and, if a US Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such US Letter of Credit shall, during the continuation of an Application Event, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.3(b)(ii), beginning with clause (A) hereof),

k. eleventh, to pay any other US Obligations other than Bank Product Obligations,

l. twelfth, to pay Canadian Obligations in the order and priority set forth in clause (iii) below,

m. thirteenth, to pay any other US Obligations (including being paid, ratably, to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations, with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.3(b)(ii), beginning with clause (A) hereof), and

n. fourteenth, to US Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(5) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, subject to the 2015 Note Intercreditor Agreement, the Term Loan Intercreditor Agreement and the Series G Guarantee Lien Acknowledgement, all payments remitted to Agent in respect of the Canadian Obligations and all proceeds of Canadian Collateral received by Agent shall be applied as follows:

a. first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,

b. second, to pay any fees then due to Agent under the Loan Documents until paid in full,

c. third, to pay interest due in respect of all Protective Advances made for the account of Canadian Borrowers until paid in full,

d. fourth, to pay the principal of all Protective Advances made for the account of Canadian Borrowers until paid in full,

e. fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Canadian Lenders under the Loan Documents, until paid in full,

f. sixth, ratably, to pay any fees then due to any of the Canadian Lenders under the Loan Documents until paid in full,

g. seventh, to pay interest accrued in respect of the Canadian Swing Loans until paid in full,

h. eighth, to pay the principal of all Canadian Swing Loans until paid in full,

i. ninth, ratably, to pay interest accrued in respect of the Canadian Revolving Loans (other than Protective Advances) until paid in full,

j. tenth, ratably (i) to Agent, for the account of Agent and Canadian Lenders, to pay the principal of all Canadian Revolving Loans until paid in full, and (ii) to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Canadian Lenders that have an obligation to pay to Agent, for the account of the Issuing Lender, a share of each Canadian Letter of Credit Disbursement), as cash collateral in an amount up to one hundred three percent (103%) of the Canadian Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Canadian Letter of Credit Disbursement as and when such disbursement occurs and, if a Canadian Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Canadian Letter of Credit shall, during the continuation of an Application Event, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(iii), beginning with clause (A) hereof),

k. eleventh, to pay any other Canadian Obligations other than Bank Product Obligations,

l. twelfth, to pay any other Canadian Obligations (including being paid, ratably, to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations, with any



balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.3(b)(iii), beginning with clause (A) hereof), and

m. thirteenth, to Canadian Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(6) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.2(e).

(7) In each instance, so long as no Application Event has occurred and is continuing, Section 2.3(b)(i) shall not apply to any payment made by any Borrower to Agent and specified by such Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(8) For purposes of Section 2.3(b)(ii) or (iii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(9) In the event of a direct conflict between the priority provisions of this Section 2.3 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.13 and this Section 2.3, then the provisions of Section 2.13 shall control and govern, and if otherwise, then the terms and provisions of this Section 2.3 shall control and govern.

(10) Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents to the contrary, (i) Canadian Loan Parties shall not be liable for any US Obligations, (ii) no Liens granted by Canadian Loan Parties under any of the Loan Documents shall secure any US Obligations, (iii) no amounts payable on account of the Canadian Obligations shall be payable to Agent's Account, and (iv) no US Obligations shall be charged to the Canadian Loan Account.

#### **(C) Reduction of Commitments.**

(5) The US Commitments and the Canadian Commitments shall terminate on the Maturity Date. US Borrowers may reduce the US Commitments to an amount not less than the sum of (A) the US Revolver Usage as of such date, plus (B) the principal amount of all US Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.2(a), plus (C) the amount of all US Letters of Credit not yet issued as to which a request has been given by Borrowers pursuant to Section 2.9(a).

(6) Canadian Borrowers may reduce the Canadian Commitments to an amount not less than the sum of (A) the Canadian Revolver Usage as of such date, plus (B) the principal amount of all Canadian Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.2(a), plus (C) the amount of all Canadian Letters of Credit not yet issued as to which a request has been given by Borrowers pursuant to Section 2.9(a).

(7) Each such reduction shall be in an amount which is not less than \$10,000,000, unless the Commitments are being reduced to zero and the amount of the Commitments in effect immediately prior to such reduction are less than \$10,000,000, shall be made by providing not less than ten (10) Business Days prior written notice to Agent, which notice shall specify whether such reduction is in respect of the US Commitments or the Canadian Commitments and shall be irrevocable. Once reduced, the Commitments may not be increased. Each such reduction of the Commitments shall reduce the Commitments of each Lender proportionately in accordance with its ratable share thereof.

**(D) Optional Prepayments.** Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part, without premium or penalty (other than breakage and related costs associated with LIBOR Rate Loans and BA Funding Losses).

#### **(E) Mandatory Prepayments.**

(1) **Borrowing Base.** If, at any time, the US Revolver Usage on such date exceeds the lesser of the US Borrowing Base or the US Maximum Credit, or the Canadian Revolver Usage on such date exceeds the lesser of the

Canadian Borrowing Base or the Canadian Maximum Credit (any such excess being referred to as the "Overadvance"), then Borrowers shall promptly, but in any event, within one (1) Business Day, prepay the Obligations in accordance with Section 2.3(f) in an aggregate amount equal to any such excess, as applicable, except as otherwise provided in Section 2.2(d). Notwithstanding anything to the contrary set forth in this Agreement or any of the other Loan Documents, Administrative Borrower and the other Borrowers shall not request, and Agent and Lenders shall not be required to make or provide, Revolving Loans or Letters of Credit, at any time that there exists an Overadvance (but without limiting the obligations of Lenders to have participations or to settle in respect of Overadvances or Protective Advances permitted hereunder).

(2) **Indebtedness.** ~~<At>~~ Subject to the Term Loan Intercreditor Agreement, at any time during a Cash Dominion Event, within one (1) Business Day of the date of incurrence by any Loan Party of any Indebtedness (other than Permitted Indebtedness), Borrowers shall prepay the outstanding principal amount of the Obligations in an amount equal to one hundred percent (100%) of the Net Cash Proceeds received by such Person in connection with such incurrence. The provisions of this Section 2.3(e)(ii) shall not be deemed to constitute consent to any such incurrence otherwise prohibited by the terms and conditions of this Agreement.

~~<(iii) Equity. At any time during a Cash Dominion Event, within one (1) Business Day of the date of the issuance by any Loan Party of any of its Equity Interests, Borrowers shall prepay the outstanding principal amount of the Obligations in an amount equal to one hundred percent (100%) of the Net Cash Proceeds received by such Person in connection with such issuance, other than (A) in the event that any Loan Party forms any Subsidiary in accordance with the terms hereof, the issuance by such Subsidiary of Equity Interests to such Loan Party, (B) the issuance of Equity Interests of Parent to directors, officers and employees of Parent pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Board of Directors, and (C) the issuance of Equity Interests of Parent in order to finance the purchase consideration (or a portion thereof) in connection with a Permitted Acquisition, the Spartech Acquisition or a Permitted Investment). The provisions of this Section 2.3(e)(iii) shall not be deemed to constitute consent to any such issuance otherwise prohibited by the terms and conditions of this Agreement.>~~

Reserved.

(3) **Proceeds of Life Insurance Policies.** Within one (1) Business Day of the date of receipt by any Loan Party, any of its Subsidiaries, or Agent of any proceeds of any Eligible Life Insurance Policy, whether such proceeds are received as a result of the death of a Person covered thereby, the surrender and termination of such policy, a policy loan taken out under such policy, or otherwise, 100% of such proceeds shall be used *first* to prepay the outstanding principal amount of the Obligations and *second*, subject to the terms of any applicable Life Insurance Assignment, any additional proceeds shall be returned to the Borrowers. The provisions of this Section 2.3(e)(iv) shall not be deemed to constitute consent to any action otherwise prohibited by the terms and conditions of this Agreement.

(4) **Cash Dominion Event.** Upon the occurrence and during the continuance of a Cash Dominion Event, Borrowers will apply the proceeds of Collateral to the Obligations as set forth in Section 2.3(b)(i), or, if applicable, Section 2.3(b)(ii) or Section 2.3(b)(iii).

(5) **Generally.** The mandatory prepayments required under Section 2.3(e) shall not result in a permanent reduction in the Commitments.

(d) **Interest Rates: Rates, Payments, and Calculations.**

(A) **Interest Rates.** Except as provided in Section 2.4(b), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows:

(11) if the relevant Obligation is a LIBOR Rate Loan, at a per annum rate equal to the LIBOR Rate plus the Applicable Margin for LIBOR Rate Loans,

(12) if the relevant Obligation is a BA Rate Loan, at a rate per annum equal to the BA Rate plus the Applicable Margin for BA Rate Loans,

(13) if the relevant Obligation is a Base Rate Loan, at a rate per annum equal to the Base Rate plus the Applicable Margin for the Base Rate Loans, and

(14) otherwise, at a per annum rate equal to the Base Rate plus the Applicable Margin for Base Rate Loans.

(B) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of the Required Lenders,

(8) all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall, upon two (2) Business Days' prior written notice by Agent to Administrative Borrower,

bear interest on the Daily Balance thereof at a per annum rate equal to two (2) percentage points above the per annum rate otherwise applicable thereunder, and

(9) the Letter of Credit fee provided for in Section 2.8(b) shall, upon two (2) Business Days' prior written notice by Agent to Administrative Borrower, be increased to two (2) percentage points above the per annum rate otherwise applicable hereunder.

(C) **Payment.** All other interest, and all Letter of Credit fees, all other fees payable hereunder or under any of the other Loan Documents, all costs and expenses payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month at any time that Obligations or Commitments are outstanding, except as otherwise provided herein. Each Borrower hereby authorizes Agent to (i) without prior notice, charge to the Loan Account all interest and recurring fees when due and payable hereunder or under any of the other Loan Documents or (ii) charge to the Loan Account costs, expenses and other amounts when due and payable, upon two (2) Business Days' prior notice to Administrative Borrower, provided, that such notice shall not be required at any time during a Cash Dominion Event. All such items properly charged to (i) the US Loan Account shall thereupon constitute US Revolving Loans hereunder and shall initially accrue interest at the rate then applicable to US Revolving Loans that are Base Rate Loans (unless and until converted into LIBOR Rate Loans in accordance with the terms of this Agreement) or (ii) the Canadian Loan Account shall thereupon constitute Canadian Revolving Loans hereunder and shall initially accrue interest at the rate applicable to Canadian Revolving Loans that are Base Rate Loans (unless and until converted into BA Rate Loans in accordance with the terms of this Agreement).

(D) **Computation.** Interest shall be calculated on the basis of (i) in the case of LIBOR Rate Loans, a three hundred sixty (360) day year, (ii) in the case of BA Rate Loans, a three hundred and sixty-five (365) day year, and (iii) in the case of Base Rate Loans, a three hundred and sixty-five (365) or three hundred and sixty-six (366) day year, as applicable, and in each case based on actual days elapsed. The interest rate on non-contingent Obligations (other than LIBOR Rate Loans and BA Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the date any change in such Base Rate is effective. For purposes of disclosure under the Interest Act (Canada), where interest is calculated pursuant hereto at a rate based upon a year of three hundred sixty (360), three hundred and sixty-five (365) or three hundred and sixty-six (366) days, as the case may be (the "First Rate"), the rate or percentage of interest on a yearly basis is equivalent to such First Rate multiplied by the actual number of days in the year divided by three hundred sixty (360), three hundred and sixty-five (365) or three hundred and sixty-six (366), as the case may be.

(E) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Each Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that, anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(e) **Crediting Payments.** The receipt of any payment item by Agent shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or Agent's Canadian Account, as applicable, or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:00 p.m. If any payment item is received into Agent's Account or Agent's Canadian Account, as applicable, on a non-Business Day or after 1:00 p.m. on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

(f) **Designated Account.** Agent is authorized to make the Revolving Loans, and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person and reasonably believed by Agent to be an Authorized Person or, without instructions, if pursuant to Section 2.4(c). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

(g) **Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of US Borrowers (the "US Loan Account") on which US Borrowers will be charged with all US Revolving Loans (including Protective Advances, Overadvances and Swing Loans) made by Agent, Swing Lender, or the Lenders to US Borrowers or for US Borrowers' account, the US Letters of Credit issued or arranged by Issuing Lender for US Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents due and owing by US Loan Parties, including, accrued interest, fees and expenses, and Lender Group Expenses. Agent shall maintain an account on its

books in the name of Canadian Borrowers (the "Canadian Loan Account") on which Canadian Borrowers will be charged with all Canadian Revolving Loans (including Protective Advances and Overadvances) made by Agent or the Lenders to Canadian Borrowers or for Canadian Borrowers' account, the Canadian Letters of Credit issued or arranged by Issuing Lender for Canadian Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents due and owing by Canadian Loan Parties, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.5, the US Loan Account will be credited with all payments received by Agent from US Borrowers or for any US Borrower's account, and the Canadian Loan Account shall be credited with all payments received by Agent from Canadian Borrowers or for any Canadian Borrower's account. Agent shall render monthly statements regarding the Loan Account to Borrowers, including principal, interest, fees, Overadvances and Protective Advances and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within thirty (30) days after receipt thereof by Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

(h) **Fees.**

(A) **Agent Fees.** Borrowers shall pay to Agent the fees set forth in the Fee Letter as and when due and payable under the terms thereof.

(B) **Letter of Credit Fee.** Borrowers shall pay Agent (for the ratable benefit of the Lenders) a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.9(h)) which shall accrue at a per annum rate equal to the Applicable Margin for LIBOR Rate Loans times the Daily Balance of the undrawn amount of all outstanding Letters of Credit.

(C) **Unused Line Fee.** US Borrowers shall pay to Agent, for the account of Lenders, a monthly unused line fee payable in arrears on the first day of each month and on the Payoff Date, in an amount equal to three eighths of one percent (0.375%) per annum multiplied by (A) the aggregate amount of the Maximum Credit minus (B) the average Daily Balance of the US Revolver Usage (other than Swing Loans) plus the Canadian Revolver Usage during the immediately preceding calendar month (or portion thereof), which rate shall be adjusted effective April 1, 2013 and thereafter as of the first day of every three (3) month period to an amount equal to (1) three eighths of one percent (0.375%) per annum if the average Daily Balance of the US Revolver Usage plus the Canadian Revolver Usage in any month during the immediately preceding three (3) month period was less than fifty percent (50%) of the Maximum Credit and (2) one-quarter of one percent (0.25%) per annum if the average Daily Balance of the US Revolver Usage plus the Canadian Revolver Usage in any month during the immediately preceding three (3) month period was equal to or greater than fifty percent (50%) of the Maximum Credit.

(i) **Letters of Credit.**

(A) Subject to the terms and conditions of this Agreement, upon the request of Administrative Borrower made in accordance herewith, the Issuing Lender agrees to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue, a requested Letter of Credit for the account of any Borrower, which Letter of Credit may be related to the business of any Subsidiary of Parent; provided, that, to the extent a Letter of Credit is for the benefit of, or in connection with, the business of a Non-Loan Party (other than in the case of a Letter of Credit for the benefit of the business of Parent and its Subsidiaries generally), as of the date of the issuance of such Letter of Credit and after giving effect thereto, (i) the Borrower for whose account the Letter of Credit is issued would be permitted to make a Permitted Investment in such Non-Loan Party under clause (d)(ii)(D) of the definition of Permitted Investments, such that all of the conditions set forth in clause (d)(ii)(D) of the definition of Permitted Investments shall be satisfied as to any such Letter of Credit, treating such Letter of Credit as a Permitted Investment for this purpose (except for the conditions in clauses (2) and (4) of such clause (d)(ii)(D)), and (ii) the sum of (A) the aggregate amount of all such Letters of Credit, plus (B) the maximum amount of the liability of Parent and the Restricted Subsidiaries under all guarantees of leases of Non-Loan Parties under clause (j) of the definition of Permitted Investments, shall not exceed \$50,000,000 outstanding at any one time. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among, other means, by becoming an applicant with respect to such Letter of Credit or entering into undertakings which provide for reimbursements of such Underlying Issuer with respect to such Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking") with respect to Letters of Credit issued by such Underlying Issuer. By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that Issuing Lender issue or that an Underlying Issuer issue the requested Letter of Credit and to have requested Issuing Lender to issue a Reimbursement Undertaking with respect to such requested Letter of Credit if it is to be issued by an Underlying Issuer (it being expressly acknowledged and agreed by each Borrower that Borrowers are and shall be deemed to be applicants (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Letter of Credit). Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall specify (i) the amount of such Letter of Credit and whether such Letter of Credit shall be a US Letter of Credit or a Canadian Letter of Credit, (ii) in the case of a Canadian Letter of Credit, whether such Canadian Letter of Credit shall be denominated in US Dollars or Canadian Dollars, (iii) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (iv) the proposed expiration date of such

Letter of Credit, (v) the name and address of the beneficiary of the Letter of Credit, and (vi) such other information (including, the conditions of drawing, and in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. Each US Letter of Credit shall be denominated in US Dollars. Anything contained herein to the contrary notwithstanding, the Issuing Lender shall not be required to issue or cause the issuance of a Letter of Credit or to issue a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, that supports the obligations of a Loan Party in respect of a lease of Real Property or an employment contract, (a) in the case of a Letter of Credit in connection with such a lease, in an amount greater than the amount equal to (A) the amount of rent under such lease, without acceleration, for the greater of (1) one year or (2) the amount equal to fifteen percent (15%) of the rent for the then remaining term of such lease, but not to exceed three (3) years, minus (B) the amount of any cash or other collateral to secure the obligations of a Loan Party in respect of such lease and (b) in the case of a Letter of Credit in connection with an employment contract, in an amount greater than the compensation provided by such contract, without acceleration, for a one year period.

(B) The Issuing Lender shall have no obligation to issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(1) the US Letter of Credit Usage would exceed the US Borrowing Base less the outstanding amount of US Revolving Loans (including Swing Loans),

(2) the US Letter of Credit Usage would exceed \$50,000,000 minus the amount of Canadian Letter of Credit Usage at such time,

(3) the US Letter of Credit Usage would exceed the US Maximum Credit less the outstanding amount of US Revolving Loans (including Swing Loans),

(4) the Canadian Letter of Credit Usage would exceed the Canadian Borrowing Base less the outstanding amount of Canadian Revolving Loans,

(5) the Canadian Letter of Credit Usage would exceed \$5,000,000, or

(6) the Canadian Letter of Credit Usage would exceed the Canadian Maximum Credit less the outstanding amount of Canadian Revolving Loans.

(C) Borrowers and the Lender Group hereby acknowledge and agree that all Existing Letters of Credit shall constitute US Letters of Credit under this Agreement on and after the Effective Date with the same effect as if such Existing Letters of Credit were issued by Issuing Lender or an Underlying Issuer at the request of US Borrowers on the Effective Date. Without limiting any of their respective rights or remedies, the Issuing Lender with respect to any such Existing Letter of Credit, and Agent and the other Lenders, shall have recourse to Parent in connection therewith to the same extent as if Parent had been the original applicant and/or account party with respect thereto. Each Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender. If Issuing Lender makes a payment under a US Letter of Credit or an Underlying Issuer makes a payment under a US Underlying Letter of Credit, US Borrowers shall pay to Agent an amount equal to the applicable US Letter of Credit Disbursement on (i) the date such US Letter of Credit Disbursement is made, if Administrative Borrower has received notice of such US Letter of Credit Disbursement prior to 11:00 a.m. on such date, or (ii) the next Business Day if such notice is not received prior to 11:00 a.m. on such date and, in the absence of such payment, the amount of the US Letter of Credit Disbursement immediately and automatically shall be deemed to be a US Revolving Loan hereunder and, initially, shall bear interest at the rate then applicable to US Revolving Loans that are Base Rate Loans. If Issuing Lender makes a payment under a Canadian Letter of Credit or an Underlying Issuer makes a payment under a Canadian Underlying Letter of Credit, Canadian Borrowers shall pay to Agent an amount equal to the applicable Canadian Letter of Credit Disbursement on (i) the date such Canadian Letter of Credit Disbursement is made, if Administrative Borrower has received notice of such Canadian Letter of Credit Disbursement prior to 11:00 a.m. on such date, or (ii) the next Business Day if such notice is not received prior to 11:00 a.m. on such date and, in the absence of such payment on the date when due, the amount of the Canadian Letter of Credit Disbursement immediately and automatically shall be deemed to be a Canadian Revolving Loan hereunder and, initially, unless later converted to BA Rate Loans, shall bear interest at the rate then applicable to Canadian Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3), Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Lender shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.9(d) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(D) Promptly following receipt of a notice of a US Letter of Credit Disbursement pursuant to Section 2.9(c), each Lender with a US Commitment agrees to fund its Pro Rata Share of any US Revolving Loan deemed made pursuant to Section 2.9(c) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a US Letter of Credit or a

Reimbursement Undertaking related thereto (or an amendment, renewal or extension of a US Letter of Credit or a Reimbursement Undertaking related thereto) and without any further action on the part of the Issuing Lender or the Lenders with Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a US Commitment, and each Lender with a US Commitment shall be deemed to have purchased, a participation in each US Letter of Credit issued by Issuing Lender and each Reimbursement Undertaking related thereto, in an amount equal to its Pro Rata Share of such US Letter of Credit or Reimbursement Undertaking, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any US Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable US Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a US Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each US Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Borrowers on the date due as provided in Section 2.9(c), or of any reimbursement payment required to be refunded (or that Agent or Issuing Lender elects, based upon the advice or counsel to refund) to US Borrowers for any reason. Promptly following receipt of a notice of a Canadian Letter of Credit Disbursement pursuant to Section 2.9(c), each Lender with a Canadian Commitment agrees to fund its Pro Rata Share of any Canadian Revolving Loan deemed made pursuant to Section 2.9(c) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Canadian Letter of Credit or a Reimbursement Undertaking related thereto (or an amendment, renewal or extension of a Letter of Credit or a Reimbursement Undertaking related thereto) and without any further action on the part of the Issuing Lender or the Lenders with Canadian Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a Canadian Commitment, and each Lender with a Canadian Commitment shall be deemed to have purchased, a participation in each Canadian Letter of Credit issued by Issuing Lender and each Reimbursement Undertaking related thereto, in an amount equal to its Pro Rata Share of such Canadian Letter of Credit or Reimbursement Undertaking related thereto, and each such Canadian Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any Canadian Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Canadian Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Canadian Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each Canadian Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Borrowers on the date due as provided in Section 2.9(c), or of any reimbursement payment required to be refunded (or that Agent or Issuing Lender elects, based upon the advice or counsel to refund) to Canadian Borrowers for any reason. Each Lender with a Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.9(d) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(E) Each Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, expense, or liability (other than Taxes, which shall be governed by Section 16), and reasonable and documented attorneys' fees of (i) one US counsel to Agent, (ii) one Canadian counsel to Agent, (iii) one regulatory counsel to Agent (if necessary) and (iv) one local counsel in each appropriate jurisdiction selected by Agent (if necessary) and, if an Event of Default has occurred and is continuing (and such additional counsel is necessary as a result of conflicts of interest), one additional counsel to the Lender Group or any Underlying Issuer arising out of or in connection with any Reimbursement Undertaking or any Letter of Credit; provided, that, (i) no Borrower shall be obligated hereunder to indemnify the Lender Group, Issuing Lender or any Underlying Issuer for any loss, cost, expense, or liability that results from the bad faith, gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer as determined pursuant to a final, non-appealable order of a court of competent jurisdiction and (ii) Canadian Borrowers shall not be obligated to indemnify for any such loss, cost, expense or liability arising under or in connection with a US Letter of Credit. Each Borrower agrees to be bound by the Underlying Issuer's regulations and interpretations of any Letter of Credit or by Issuing Lender's interpretations of any Reimbursement Undertaking, and each Borrower agrees that none of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following any Borrower's instructions or those in the Letter of Credit or any modifications, amendments, or supplements thereto. Each Borrower understands that the Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by a Borrower against such Underlying Issuer. Each Borrower hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys' fees and expenses), or liability (other than Taxes, which shall be governed by Section 16) incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, that, (i) no Borrower shall be obligated hereunder to indemnify any such person for any such loss, cost, expense, or liability to the extent that it is caused by the bad faith, gross negligence or willful misconduct of such person as determined pursuant to a final, non-appealable order of a court of competent jurisdiction and (ii) Canadian Borrowers shall not be obligated to indemnify for any such loss, cost, expense or liability arising under or in connection with a US Letter of Credit. Each Borrower hereby acknowledges and agrees that none of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

(F) The obligation of Borrowers to reimburse the Issuing Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (1) any lack of validity or enforceability of such Letter of Credit, this Agreement, or another Loan Document,
- (2) the existence of any claim, counterclaim, setoff, defense or other right that Parent or any of its Subsidiaries may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee maybe acting), the Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction,
- (3) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit,
- (4) any payment by the Issuing Lender under such Letter of Credit against presentation of a draft or certificate that does not substantially or strictly comply with the terms of such Letter of Credit (including, without limitation, any requirement that presentation be made at a particular place or by a particular time of day), or any payment made by the Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit,
- (5) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, Borrowers or any of their Subsidiaries, or
- (6) any Event of Default shall have occurred and be continuing.

(G) Each Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(H) Borrowers shall pay to the Issuing Lender, for its own account, a fronting fee equal to one quarter of one percent (0.25%) per annum, which fee shall be paid monthly in arrears on the first day of each month. Each Borrower acknowledges and agrees that any and all issuance charges, usage charges, commissions, fees, and costs incurred by the Issuing Lender relating to Underlying Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable promptly, but in any event, within one (1) Business Day by Borrowers to Agent for the account of the Issuing Lender.

(I) If by reason of (i) any change after the Effective Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

- (1) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or
- (2) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Letter of Credit or Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, participating in, or maintaining any Reimbursement Undertaking or Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Administrative Borrower, and Borrowers shall pay within thirty (30) days after demand therefor, such amounts as Agent may specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that, (A) no Borrower shall be required to provide any compensation pursuant to this Section 2.9(i) for any such amounts incurred more than one hundred eighty (180) days prior to the date on which the demand for payment of such amounts is first made to Borrowers and (B) if an event or circumstance giving rise to such amounts is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof. The

determination by Agent of any amount due pursuant to this Section 2.9(i), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

**(j) LIBOR Option.**

**(A) Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrowers shall have the option, subject to Section 2.10(b) below (the "LIBOR Option") to have interest on all or a portion of the Revolving Loans be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrowers properly have exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, at the written election of the Required Lenders, Borrowers no longer shall have the option to request that Revolving Loans bear interest at a rate based upon the LIBOR Rate.

**(B) LIBOR Election.**

(1) Borrowers may, at any time and from time to time, so long as Administrative Borrower has not received a notice from Agent, after the occurrence and during the continuance of an Event of Default, of the election of the Required Lenders to terminate the right of Borrowers to exercise the LIBOR Option during the continuance of such Event of Default, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. at least three (3) Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrowers' election of the LIBOR Option for a permitted portion of the Revolving Loans and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. on the same day). Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(2) Each LIBOR Notice shall be irrevocable and binding on each Borrower. In connection with each LIBOR Rate Loan, each Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrowers setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.10 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within thirty (30) days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Agent may, in its sole discretion at the request of Borrowers, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the application of payments to any LIBOR Rate Loan and that, in the event that Agent does not defer such application, Borrowers shall be obligated to pay any resulting Funding Losses.

(3) Borrowers shall have not more than ten (10) LIBOR Rate Loans and/or BA Rate Loans in effect at any given time. Borrowers only may exercise the LIBOR Option for proposed LIBOR Rate Loans of at least \$1,000,000.

**(C) Conversion.** Borrowers may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, that, in the event that LIBOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any prepayment through the required application by Agent of proceeds of Loan Parties' Collections in accordance with Section 2.3(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.10 (b)(ii).

**(D) Special Provisions Applicable to LIBOR Rate.**

(1) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any Eurodollar deposits or increased costs, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Borrowers and Agent notice of



such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.10(b)(ii)).

(2) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (A) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (B) Borrowers shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(3) For purposes of this Section 2.10(d) and Section 2.15(d), the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Basel Committee on Banking Supervision (or any successor or similar authority), the Bank for International Settlements and, in each case, all rules, regulations, orders, requests, guidelines or directives in connection therewith are deemed to have been enacted and become effective after the date of this Agreement.

(E) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

(k) **Capital Requirements.**

(A) If, after the date hereof, any Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change in the interpretation, implementation, or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Administrative Borrower and Agent thereof. Following receipt of such notice, Borrowers agree to pay such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within thirty (30) days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, (A) no Borrower shall be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than one hundred eighty (180) days prior to the date that such Lender notifies Borrowers of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefore and (B) if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. For purposes of this Section 2.11 (a), the Dodd-Frank Wall Street Reform and Consumer Protection, the Basel Committee on Banking Supervision (or any successor or similar authority), the Bank for International Settlements and all rules, regulations, orders, requests, guidelines or directives in connection therewith are deemed to have been enacted and become effective after the date of this Agreement.

(B) If any Lender requests additional or increased costs referred to in Section 2.10(d)(i) or amounts under Section 2.15(d)(i) or sends a notice under Section 2.10(d)(ii) or Section 2.15(d)(ii) relative to changed circumstances (any such Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.10(d)(i) or Section 2.15(d)(i), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans or BA Rate Loans and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.10(d)(i) or Section 2.15(d)(i), as applicable, or to enable Borrowers to obtain LIBOR Rate Loans or BA Rate Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender

under Section 2.10(d)(i) or Section 2.15(d)(i), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.10(d)(i) or Section 2.15(d)(i), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans or BA Rate Loans, may seek a substitute Lender reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's Commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and Commitments, pursuant to an Assignment and Acceptance Agreement, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be a "Lender" for purposes of this Agreement and such Affected Lender shall cease to be a "Lender" for purposes of this Agreement.

**(l) Increase in US Maximum Credit or Canadian Maximum Credit.**

(A) Administrative Borrower may, at any time, deliver a written request to Agent to increase the US Maximum Credit or the Canadian Maximum Credit, as applicable. Any such written request shall specify the amount of the increase in the US Maximum Credit or the Canadian Maximum Credit, as applicable, that Borrowers are requesting, provided, that, (i) in no event shall the aggregate amount of any such increase cause the aggregate amount of the US Maximum Credit and the Canadian Maximum Credit to exceed an amount equal to \$450,000,000, (ii) such request shall be for an increase of not less than \$10,000,000, (iii) any such request shall be irrevocable, (iv) in no event shall there be more than one such increase in any calendar quarter, (v) in no event shall there be more than four (4) such increases during the term of this Agreement, and (vi) no Event of Default shall exist or have occurred and be continuing.

(B) Upon the receipt by Agent of any such written request, Agent shall notify each of the US Lenders or each of the Canadian Lenders, as applicable, of such request and each US Lender and each Canadian Lender, as applicable, shall have the option (but not the obligation) to increase the amount of its US Commitment or Canadian Commitment, as applicable, by an amount up to its Pro Rata Share of the amount of the increase thereof requested by Administrative Borrower as set forth in the notice from Agent to such US Lender or Canadian Lender. Each US Lender or each Canadian Lender, as applicable, shall notify Agent within fifteen (15) days after the receipt of such notice from Agent whether it is willing to so increase its US Commitment or Canadian Commitment, as applicable, and if so, the amount of such increase; provided, that, (i) the minimum increase in the US Commitments of each such US Lender providing the additional US Commitments, or in the Canadian Commitments of each such Canadian Lender providing the additional Canadian Commitments, shall equal or exceed \$2,500,000, and (ii) no US Lender or Canadian Lender, as applicable, shall be obligated to provide such increase in its US Commitment or Canadian Commitment and the determination to increase the US Commitment of a US Lender or the Canadian Commitment of a Canadian Lender shall be within the sole and absolute discretion of such US Lender or Canadian Lender. If the aggregate amount of the increases in the US Commitments received from the US Lenders or the aggregate amount of the increases in the Canadian Commitments received from the Canadian Lenders, as applicable, does not equal or exceed the amount of the increase in the US Maximum Credit or Canadian Maximum Credit, as applicable, requested by Borrowers, Agent may seek additional increases from US Lenders or Canadian Lenders, as applicable, or US Commitments or Canadian Commitments, as applicable, from such Eligible Transferees as it may determine, after consultation with Borrowers. In the event US Lenders or Canadian Lenders, as applicable (or US Lenders or Canadian Lenders, as applicable, and any such Eligible Transferees, as the case may be), have committed in writing to provide increases in their US Commitments or Canadian Commitments, as applicable, or new US Commitments or new Canadian Commitments in an aggregate amount in excess of the increase in the US Maximum Credit or Canadian Maximum Credit requested by Administrative Borrower or permitted hereunder, Agent shall then have the right to allocate such commitments, first to US Lenders or Canadian Lenders, as applicable, and then to Eligible Transferees, in such amounts and manner as Agent may determine, after consultation with Borrowers.

(C) The US Maximum Credit or the Canadian Maximum Credit, as applicable, shall be increased by the amount of the increase in the applicable US Commitments or Canadian Commitments from Lenders or new US Commitments or Canadian Commitments, as applicable, from Eligible Transferees, in each case selected in accordance with Section 2.12(b) above, for which Agent has received Assignment and Acceptances thirty (30) days after the date of the request by Administrative Borrower for the increase or such earlier date as Agent and Administrative Borrower may agree (but subject to the satisfaction of the conditions set forth below), whether or not the aggregate amount of the increase in US Commitments and new US Commitments, as the case may be, or in Canadian Commitments and new Canadian Commitments, as the case may be less than, equal to or exceed the amount of the increase in the US Maximum Credit or Canadian Maximum Credit, as applicable, requested by Administrative Borrower in accordance with the terms hereof (provided, that, in the event that the aggregate amount of the increase in Commitments and/or new Commitments offered by Lenders or Eligible Transferees in response to the request of Agent as described above is greater than the aggregate amount requested, Administrative Borrower may, at its option, elect to increase the Commitments to such greater amount, so long as Administrative Borrower gives prompt and timely written notice to Agent of the exercise of such option), effective on the date that each of the following conditions have been satisfied:

(7) Agent shall have received from each US Lender or Canadian Lender, as applicable, or Eligible Transferee that is providing an additional US Commitment or Canadian Commitment as part of the increase in the US Maximum Credit or Canadian Maximum Credit, an Assignment and Acceptance duly executed by such US Lender or Canadian Lender, as applicable, or Eligible Transferee and Borrowers, provided, that, the aggregate US Commitments or Canadian Commitments set forth in such Assignment and Acceptance(s) shall be not less than \$1,000,000;

(8) the conditions precedent to the making of Revolving Loans set forth in Section 3.2 shall be satisfied as of the date of the increase in the US Maximum Credit or the Canadian Maximum Credit, both before and after giving effect to such increase;

(9) such increase in the US Maximum Credit or the Canadian Maximum Credit, as applicable, on the date of the effectiveness thereof, shall not violate any applicable law, regulation or order or decree of any court or other Governmental Authority and shall not be enjoined, temporarily, preliminarily or permanently;

(10) there shall have been paid to each US Lender or Canadian Lender, as applicable, and Eligible Transferee providing an additional US Commitment or Canadian Commitment in connection with such increase in the US Maximum Credit or Canadian Maximum Credit all fees and expenses due and payable to such Person on or before the effectiveness of such increase; and

(11) there shall have been paid to Agent, for the account of the Agent and US Lenders or Canadian Lenders, as applicable (in accordance with any agreement among them) all fees and expenses (including reasonable fees and expenses of counsel) due and payable pursuant to any of the Loan Documents on or before the effectiveness of such increase.

(D) As of the effective date of any such increase in the US Maximum Credit or Canadian Maximum Credit, each reference to the term US Commitments and US Maximum Credit herein, as applicable, or the term Canadian Commitments and Canadian Maximum Credit, as applicable, and in any of the other Loan Documents shall be deemed amended to mean the amount of the US Commitments and US Maximum Credit or the amount of the Canadian Commitments and Canadian Maximum Credit, as applicable, specified in the most recent written notice from Agent to Administrative Borrower of the increase in the US Commitments and US Maximum Credit, as applicable, or in the increase in the Canadian Commitments and Canadian Maximum Credit, as applicable.

(E) Effective on the date of each increase in the US Maximum Credit pursuant to this Section 2.12, each reference in this Agreement to an amount of US Excess Availability shall, automatically and without any further action, be deemed to be increased so that the ratio of the amount of US Excess Availability to the amount of the US Maximum Credit after such increase in the US Maximum Credit remains the same as the ratio of such the amount of US Excess Availability to the amount of the US Maximum Credit prior to such increase in the US Maximum Credit.

(F) Effective on the date of each increase in the Canadian Maximum Credit pursuant to this Section 2.12, each reference in this Agreement to an amount of Canadian Excess Availability shall, automatically and without any further action, be deemed to be increased so that the ratio of the amount of Canadian Excess Availability to the amount of the Canadian Maximum Credit after such increase in the Canadian Maximum Credit remains the same as the ratio of such the amount of Canadian Excess Availability to the amount of the Canadian Maximum Credit prior to such increase in the Canadian Maximum Credit.

**(m) Defaulting Lenders.**

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

(4) Waivers and Amendments. Such 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 the definitions of Required Lenders and Supermajority Lenders and as set forth in Section 14.1(e).

(5) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Agent from a Defaulting Lender pursuant to Section 16.1 shall be applied at such time or times as may be determined by Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to Issuing Lender or Swing Lender hereunder; third, to provide cash collateral for the Issuing Lender's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.13(e) below; fourth, as Administrative Borrower may request (so long as no Default or Event of Default exists or has occurred and is continuing), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent; fifth, if so determined by Agent and Administrative Borrower, to be held in a Deposit Account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans (including Swing Loans, Protective Advances and Overadvances) under this Agreement and (B) provide cash collateral for the benefit of Issuing Lender with respect to future Fronting Exposure of Issuing Lender; sixth, to the payment of any amounts owing to Lenders, the Issuing Lender or Swing Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or Swing Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default shall exist or have occurred and be continuing, to the payment of any amounts owing to Parent as a result of any judgment of a court of

competent jurisdiction obtained by Parent against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (A) such payment is a payment of the principal amount of any Revolving Loans or Letter of Credit Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (B) such Revolving Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 3.2 were satisfied and waived, such payment shall be applied solely to pay the Revolving Loans of, and Letter of Credit Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or Letter of Credit Disbursements owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded participations in Obligations in respect of Letters of Credit and Swing Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to Section 2.13(a)(iv). 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 Section 2.13(e) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(6) Certain Fees.

a. No Defaulting Lender shall be entitled to receive any unused line fee under Section 2.8(c) for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

b. Each Defaulting Lender shall be entitled to receive letter of credit fees under Section 2.8(b) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to Section 2.13(e).

c. With respect to any Letter of Credit fee not required to be paid to any Defaulting Lender pursuant to clause (i) or (ii) above, Borrowers shall (A) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Obligations in respect of Letters of Credit or Swing Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (c) below, (B) pay to Issuing Lender and Swing Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to Issuing Lender's or Swing Lender's Fronting Exposure to such Defaulting Lender, and (C) not be required to pay the remaining amount of any such fee.

(7) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit and Swing Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (A) the conditions set forth in Section 3.2 are satisfied at the time of such reallocation (and, unless Borrowers shall have otherwise notified the Agent at such time, Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (B) such reallocation does not cause the aggregate outstanding Revolving Loans and participations in Letters of Credit, Swing Loans and Overadvances of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(8) Cash Collateral, Repayment of Swing Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (A) first, prepay Swing Loans in an amount equal to Swing Lender's Fronting Exposure and (B) second, provide cash collateral for the Issuing Lender's Fronting Exposure in accordance with Section 2.13(e).

(B) **Defaulting Lender Cure.** If Borrowers, Agent, Swing Lender and Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, 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 at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Loans to be held pro rata by the Lenders in accordance with the Commitments (without giving effect to Section 2.13(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided, that, (i) no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and (ii) 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.

(C) **New Swing Loans/Letters of Credit.** So long as any Lender is a Defaulting Lender, (i) Swing Lender shall not be required to fund any Swing Loan unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Loan and (ii) no Issuing Lender or Underlying Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(D) **Counterparties.** So long as any Lender is a Defaulting Lender, such Lender shall not be a counterparty with respect to any Hedge Agreement which gives rise to a Hedge Obligation entered into while such Lender was a Defaulting Lender.

(E) **Cash Collateral.** At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Agent or Issuing Lender (with a copy to Agent), Borrowers shall provide cash collateral to secure the Fronting Exposure of the Issuing Lender with respect to such Defaulting Lender (determined after giving effect to [Section 2.13\(a\)](#) (iv) above and any cash collateral provided by such Defaulting Lender) in an amount not less than one hundred three percent (103%) of the Fronting Exposure of the Issuing Lender.

(3) **Grant of Security Interest.** Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to, for the benefit of the Issuing Lender, and agrees to maintain, a first priority security interest in all such cash collateral as security for such Defaulting Lender's obligation to fund participations in respect of Obligations in connection with Letters of Credit, to be applied pursuant to clause (e)(ii) below. If at any time Agent determines that such cash collateral is subject to any right or claim of any Person other than Agent and Issuing Lender as herein provided (other than the Permitted Liens), or that the total amount of such cash collateral is less than the amount specified above, Borrowers shall, promptly upon demand by Agent, pay or provide to Agent additional cash collateral in an amount sufficient to eliminate such deficiency (after giving effect to any cash collateral provided by the Defaulting Lender).

(4) **Application.** Notwithstanding anything to the contrary contained in this Agreement, cash collateral provided under this [Section](#) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Obligations in connection with Letters of Credit (including, as to cash collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the cash collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(5) **Termination of Requirement.** Cash collateral (or the appropriate portion thereof) provided to reduce Issuing Lender's Fronting Exposure shall no longer be required to be held as cash collateral pursuant to this [Section](#) following (A) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (B) the determination by Agent and Issuing Lender that there exists excess cash collateral; provided that, (1) the Person providing cash collateral and Issuing Lender may agree that cash collateral shall be held to support future anticipated Fronting Exposure or other obligations and (2) to the extent that such cash collateral was provided by Borrowers, such cash collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(n) **Joint and Several Liability of [US](#) Borrowers.**

(A) Each US Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other [US](#) Borrowers to accept joint and several liability for the Obligations.

(B) Each US Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers [to the extent required hereunder](#), with respect to the payment and performance of all of the Obligations (including any Obligations arising under this [Section 2.14](#)), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each [US](#) Borrower without preferences or distinction among them.

(C) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other US Borrowers will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are paid in full.

(D) The Obligations of each Borrower under the provisions of this [Section 2.14](#) constitute the absolute and unconditional, full recourse Obligations of ~~each~~ [such](#) Borrower enforceable against ~~each~~ [such](#) Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this [Section 2.14\(d\)](#)) or any other circumstances whatsoever.

(E) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability [to the extent provided in this Section 2.14](#), notice of any Revolving Loans or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations [for which it may become liable under this Section 2.14](#), the acceptance of any payment of any of the Obligations [for which it may become liable under this Section 2.14](#), the acceptance of any partial payment thereon, any waiver,

consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations for which it may become liable under this Section 2.14, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations for which it may become liable under this Section 2.14 or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.14 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.14, it being the intention of each Borrower that, so long as any of the Obligations (or Canadian Obligations in the case of Canadian Borrowers) hereunder remain unsatisfied, the Obligations of ~~each~~ such Borrower under this Section 2.14 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.14 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender.

(F) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of the US Borrowers or the Canadian Borrowers or both, as applicable, and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations for which such Borrower may become liable under this Section 2.14. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of ~~<Borrowers>~~ the financial condition of the US Borrowers or Canadian Borrowers or both, as applicable, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations for which such Borrower may become liable under this Section 2.14.

(G) The provisions of this Section 2.14 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.14 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.14 will forthwith be reinstated in effect, as though such payment had not been made.

(H) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other US Borrower or Canadian Borrower or both, as applicable, with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(I) Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for Agent, and such Borrower shall deliver any such amounts to Agent for application to the Obligations in accordance with Section 2.3(b).

For the avoidance of doubt, each member of the Lender Group and each Borrower acknowledges and agrees that notwithstanding anything to the contrary in this Agreement or any of the other Loan Documents, and notwithstanding that each US Borrower may be jointly and severally liable for all Obligations (including the Canadian Obligations), the Obligations of the Canadian Borrowers under the Loan Documents shall be separate and distinct from the US Obligations and are expressly limited to the Canadian Obligations. In furtherance of the foregoing, each member of the Lender Group and each Borrower acknowledges and agrees that the liability of any Canadian Borrower for the payment and performance of its covenants, representations and warranties set forth in this Agreement and the other Loan Documents shall be several from but not joint with the Obligations of the US Borrowers; the Canadian Borrowers shall not guarantee any US Obligations; and the Canadian Collateral shall not secure or be applied in satisfaction, by way of payment, prepayment, or otherwise, of all or any portion of the US Obligations.



(o) **BA Rate Option.**

(A) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Canadian Borrowers shall have the option, subject to Section 2.15(b) below (the "BA Rate Option") to have interest on all or a portion of the Canadian Revolving Loans to be made in Canadian Dollars be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a BA Rate Loan, or upon continuation of a BA Rate Loan as a BA Rate Loan) at a rate of interest based upon the BA Rate. Interest on BA Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; (ii) the date on which all or any portion of the Obligations become due and payable pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Canadian Borrowers properly have exercised the BA Rate Option with respect thereto, the interest rate applicable to such BA Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans in Canadian Dollars. At any time that an Event of Default has occurred and is continuing, at the written election of the Required Lenders, Borrowers no longer shall have the option to request that Canadian Revolving Loans made in Canadian Dollars bear interest at a rate based upon the BA Rate.

(B) **BA Rate Election.**

(1) Canadian Borrowers may, at any time and from time to time, so long as Borrowers have not received a notice from Agent, after the occurrence and during the continuance of an Event of Default, of the election of the Required Lenders to terminate the right of Canadian Borrowers to exercise the BA Rate Option during the continuance of such Event of Default, elect to exercise the BA Rate Option by notifying Agent prior to 11:00 a.m., at least three (3) Business Days prior to the commencement of the proposed Interest Period (the "BA Rate Deadline"). Notice of Canadian Borrowers' election of the BA Rate Option for a portion of the Revolving Loans to be made in Canadian Dollars and an Interest Period pursuant to this Section 2.15(b) shall be made by delivery to Agent of a BA Rate Notice received by Agent before the BA Rate Deadline, or by telephonic notice received by Agent before the BA Rate Deadline (to be confirmed by delivery to Agent of a BA Rate Notice received by Agent prior to 5:00 p.m., on the same day). Promptly upon its receipt of each such BA Rate Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(2) Each BA Rate Notice shall be irrevocable and binding on Borrowers. In connection with each BA Rate Loan, Borrowers shall, jointly and severally (subject to Section 2.14(j)) indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any BA Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any BA Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any BA Rate Loan on the date specified in any BA Rate Notice delivered pursuant hereto (such losses, costs, or expenses, "BA Funding Losses"). A certificate of Agent or a Lender delivered to Administrative Borrower setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.15 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within thirty (30) days of the date of its receipt of such certificate. If a payment of a BA Rate Loan on a day other than the last day of the applicable Interest Period would result in a BA Funding Loss, Agent may, in its sole discretion at the request of Administrative Borrower, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable BA Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the application of payments to any BA Rate Loan and that, in the event that Agent does not defer such application, Borrowers shall be obligated to pay any resulting BA Funding Losses.

(3) Borrowers shall have not more than ten (10) BA Rate Loans and/or LIBOR Rate Loans in effect at any given time. Borrowers may only exercise the BA Rate Option for proposed BA Rate Loans of at least C\$1,000,000.

(C) **Conversion.** Borrowers may convert Base Rate Loans in Canadian Dollars to BA Rate Loans at any time by exercising the BA Rate Option. Borrowers may convert BA Rate Loans to Base Rate Loans at any time; provided, that, in the event that BA Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of proceeds of Borrowers' and their Restricted Subsidiaries' Collections in accordance with Section 2.3(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrowers shall, jointly and severally (subject to Section 2.14(j)) indemnify, defend, and hold Agent and the Lenders harmless against any and all BA Funding Losses in accordance with Section 2.15(b)(ii).

(D) **Special Provisions Applicable to BA Rate.**

(1) The BA Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any funding for BA Rate Loans or increased costs, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the BA Rate. In any such event, the affected Lender shall give Administrative Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its

receipt of the notice from the affected Lender, Administrative Borrower may, by notice to such affected Lender (A) require such Lender to furnish to Administrative Borrower a statement setting forth the basis for adjusting such BA Rate and the method for determining the amount of such adjustment, or (B) repay the BA Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.15(b)(ii)).

(2) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain BA Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the BA Rate, such Lender shall give notice of such changed circumstances to Agent and Administrative Borrower and Agent promptly shall transmit the notice to each other Lender and (A) in the case of any BA Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such BA Rate Loans, and interest upon the BA Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (B) Borrowers shall not be entitled to elect the BA Rate Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(E) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to issue bills of exchange or depository notes to fund or otherwise match fund any Obligation as to which interest accrues at the BA Rate.

### 13. **CONDITIONS; TERM OF AGREEMENT.**

(a) **Conditions Precedent to the Initial Extension of Credit.** ~~<Subject to Section 3.6, the>~~The obligation of each Lender to make its initial extension of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the conditions precedent set forth on Schedule 3.1 (the delivery to Agent of an executed signature page to this Agreement by a Lender being conclusively deemed to be its satisfaction with, or waiver of, the conditions precedent).

(b) **Conditions Precedent to all Extensions of Credit.** ~~<Subject to Section 3.6, the>~~The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to issue any Letter of Credit or amend or extend any Letter of Credit) at any time shall be subject to the following conditions precedent:

(F) as of the date of any such Revolving Loan (or other extension of credit) and after giving effect thereto, the representations and warranties of Parent or its Subsidiaries contained in this Agreement or in the other Loan Documents that are qualified as to materiality or Material Adverse Effect shall be true and correct and the representations and warranties that are not so qualified shall be true and correct in all material respects on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(G) as of the date of any such Revolving Loan (or other extension of credit) and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing;

(H) as of the date of any such Revolving Loan (or other extension of credit) and after giving effect thereto, the (i) the outstanding principal amount of US Revolving Loans and US Swing Loans plus the US Letter of Credit Usage shall not exceed the lesser of the US Borrowing Base or the US Maximum Credit and (ii) outstanding principal amount of Canadian Revolving Loans and Canadian Swing Loans plus the Canadian Letter of Credit Usage shall not exceed the lesser of the Canadian Borrowing Base or the Canadian Maximum Credit; and

(I) as of the date of any such Revolving Loan (or other extension of credit) and after giving effect thereto, (i) the outstanding principal amount of the Loans plus the Letter of Credit Usage shall not exceed the Existing Note Secured Debt Limit and upon Agent's request, Agent shall have received such certificate in form and substance reasonably satisfactory to Agent, from an Authorized Person so stating and (ii) ~~the outstanding principal amount of the Loans plus the Letter of Credit Usage shall not exceed the Term Loan~~ Debt Limit and upon Agent's request, Agent shall have received such certificate in form and substance reasonably satisfactory to Agent, from an Authorized Person so stating (~~provided, that,~~ in the event of an Overadvance as a result of the establishment of a new category of reserves or a change in the methodology of the calculation of an existing reserve, or as a result of the making of a Loan other than at the request of a Borrower (or Administrative Borrower on behalf of any Borrower), whether a Protective Advance or by charging the Loan Account, such amounts shall only be required to be included in the certificate to the extent Agent has provided notice thereof to Administrative Borrower or Administrative Borrower otherwise has knowledge thereof).

(c) **Maturity.** This Agreement shall continue in full force and effect for a term ending on March 1, 2018 (the "Maturity Date"), subject to the rights of the Lender Group to terminate the Commitments as provided in Section 9 and the rights of Borrowers as provided in Section 3.5.

(d) **Effect of Maturity.** On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without



notice or demand and Borrowers shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of Liens previously filed by Agent and Loan Parties shall execute and deliver to Agent a release of Agent and Lenders in form and substance reasonably satisfactory to Agent.

(e) **Early Termination by Borrowers.** Borrowers have the option, at any time upon reasonable prior written notice to Agent (but in any event not less than three (3) Business Days), to terminate this Agreement and terminate the Commitments hereunder by repaying to Agent all of the Obligations in full.

~~3.6. <Certain Funds><><. Notwithstanding anything to the contrary in this <Article 3, to the extent that any Collateral (or the creation or perfection of any security interest therein), in each case intended to be made or granted is not or cannot be made or granted on the Effective Date, or with respect to the Spartech Acquisition or any Permitted Acquisition, before the closing date thereof (other than (i) Code and PPSA lien searches, (ii) the pledge and perfection of Collateral with respect to which a Lien may be perfected upon the Effective Date or such closing date, as applicable, solely by the filing of financing statements under the Code or the PPSA or by the filing of an notice with the United States Patent and Trademark Office, the United States Copyright Office or the Canadian Intellectual Property Office and (iii) the pledge and perfection of Liens on the Equity Interests of each Domestic Subsidiary and each Foreign Subsidiary organized under the laws of Canada or a Province thereof, of a Loan Party (other than an Excluded Subsidiary) in each case with respect to which a Lien may be perfected upon the Effective Date or such closing date, as applicable, by the delivery of a stock certificate to the extent such Equity Interests are evidenced by a stock certificate) after use by Loan Parties of commercially reasonable efforts to do so or without undue burden or expense, then the provision of any such Collateral (or creation or perfection of a security interest therein) shall not constitute a condition precedent to the initial funding under this Agreement on the Effective Date, or such closing date, as applicable, but shall be required to be delivered within the time periods specified in Schedule 5.16 for the types of Collateral described therein. It is acknowledged and agreed that the >Loan Documents,< other documents and tasks to be completed set forth in Schedule 5.16 shall not be provided or completed on the Effective Date or such closing date, as applicable, but shall be delivered or completed within the periods specified in Schedule 5.16 (or in each case, such longer period as the Agent, in its reasonable discretion, shall hereafter agree).>~~

#### 14. **REPRESENTATIONS AND WARRANTIES.**

In order to induce the Lender Group to enter into this Agreement, each Loan Party makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Effective Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Loan (or other extension of credit) made thereafter, as though made on and as of the date of such Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

(a) **Due Organization and Qualification; Subsidiaries.**

(J) Each Loan Party (i) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (ii) has all requisite corporate or other organizational power and authority to (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transactions and the Fourth Amendment Transactions, and (iii) is duly qualified and is licensed and, as applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; in each case referred to in clause (ii)(A) or (iii), where the failure to do so has, or could reasonably be expected to have, a Material Adverse Effect.

(K) As of the Effective Date, Parent has no Subsidiaries other than those specifically disclosed in Schedule 4.1, and as of the Effective Date all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable (in each case, to the extent such concept is applicable under applicable Law) and are owned by a Loan Party in the amounts specified on Schedule 4.1 free and clear of all Liens except those created under the Loan Documents, the 2015 Note Security Agreement, the Series G Guarantee Security Agreements and any Liens described in clause (c) of the definition of the term Permitted Liens, if any. As of the Term Loan Closing Date, such Equity Interests shall be free and clear of all Liens except those created under the Loan Documents, the Term Loan Documents and Permitted Liens.

(b) **Due Authorization; No Conflict.**

(F) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or organizational action on the part of such Loan Party.

(G) Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party nor the consummation of the [Transactions or the Fourth Amendment](#) Transactions, nor compliance with the terms and provisions hereof or thereof by any of them will conflict with, constitute a default under or result in (a) any breach of (i) the terms and conditions of the certificate of incorporation, bylaws, certificate of limited partnership, limited partnership agreement, partnership agreement, certificate of formation, limited liability company agreement or other Governing Documents of any Loan Party or (ii) any Law or any material agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any of its Subsidiaries is a party or by which it or any of its Subsidiaries is bound or to which it is subject, where such conflict or default has, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (b) the creation or enforcement of any Lien upon any property (now or hereafter acquired) of any Loan Party or any of its Subsidiaries (other than those created under the Loan Documents, the 2015 Note Security Agreement~~←and→~~, [the Term Loan Documents](#), the Series G Guarantee Security Agreements [and any agreement governing Incremental Equivalent Debt or any agreements governing any Refinancing Indebtedness thereof](#)).

(c) **Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the transactions contemplated thereby, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Loan Documents, or (c) the perfection of the Liens created under the Loan Documents (including the first priority nature thereof to the extent required by the Loan Documents) except (i) for those registrations, exemptions, orders, authorizations, consents, approvals, notices or other actions that have been made, obtained, given or taken, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing and/or recordation~~←, as of the Effective Date,→~~ or (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make does not have, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) **Binding Obligations; Perfected Liens.**

(A) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(B) The Liens in the Collateral granted to Agent pursuant to the Loan Documents constitute, to the extent required by the Loan Documents, valid and perfected first priority Liens, subject to the Permitted Liens. Except for filings contemplated on the Effective Date or such later date as is contemplated by this Agreement and the Loan Documents, no filings are required to perfect such Liens.

(e) **Title to Assets; No Encumbrances.**

(A) Each of the Loan Parties and its Restricted Subsidiaries has (i) with respect to interests in owned Real Property, good record and marketable legal and insurable fee simple title, subject only to the Permitted Liens, (ii) with respect to leasehold interests in real or personal property, valid leasehold interests, subject only to the Permitted Liens, and (iii) with respect to all other property, good and marketable title to such assets, except (A) as to Real Property for minor defects in title that do not materially interfere with such Loan Party's or Subsidiary's ability to conduct its business and to utilize such assets for their intended purposes and (B) as to any property, the failure to have such title or other property interests does not have, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(B) The property of each Loan Party is subject to no Liens, other than Permitted Liens.

(C) [Schedule 4.5\(c\)](#) sets forth as of the Effective Date a complete and accurate list of all Real Property owned by each Loan Party, showing as of the date hereof the street address, county or other relevant jurisdiction, state, record owner and book value (or, if available, fair market value) thereof.

(D) [Schedule 4.5\(d\)](#) sets forth as of the Effective Date a complete and accurate list of all leases and subleases of Real Property, where Collateral having value in excess of \$100,000 is located, under which Parent or any other Loan Party is the lessee or comparable party, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor and lessee.

(f) **Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number.**

(D) The name (within the meaning of the Code or PPSA, as applicable) and jurisdiction of organization of each Loan Party and each of its Subsidiaries, as of the Effective Date, is set forth on [Schedule 4.6\(a\)](#).

(E) The chief executive office of each Loan Party as of the Effective Date, is located at the address indicated on Schedule 4.6(b).

(F) Each Loan Party's tax identification or business numbers (or in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation or residence for tax purposes) and organizational identification numbers, if any, are identified on Schedule 4.6(c) as of the Effective Date.

(g) **Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrowers, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against a Loan Party or any of its Subsidiaries that (a) individually or in the aggregate, if adversely determined, has or would reasonably be expected to have a Material Adverse Effect or (b) purport to affect or pertain to this Agreement, any other Loan Document, or the consummation of the transactions contemplated under this Agreement, other than any proceeding brought by a Loan Party against a Defaulting Lender in respect of such Defaulting Lender's action or inaction under this Agreement.

(h) **Compliance with Laws.** Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, (a) except in such instances where such requirement of Law or order, writ, injunction or decree is subject to a Permitted Protest or (b) where the failure to comply therewith, either individually or in the aggregate, has, or would reasonably be expected to have, a Material Adverse Effect.

(i) **Financial Statements; No Material Adverse Effect.**

(C) The audited financial statements of Parent and its Subsidiaries for the fiscal year ending December 31, 2012 (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness, in each case to the extent required by GAAP.

(D) Since December 31, 2012, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(j) **Solvency.**

(G) Each Borrower, individually, is Solvent and Parent and its Subsidiaries, on a consolidated basis, are Solvent.

(H) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

(k) **Employee Benefits.**

(F) Each Plan is in compliance with the applicable provisions of ERISA, the IRC and other federal or state laws, where the failure to so comply has, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the IRC and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the IRC, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of Borrowers, nothing has occurred that would prevent or cause the loss of such tax qualified status where any such occurrence has, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(G) There are no pending or, to the knowledge of Borrowers, threatened claims, actions or lawsuits, or actions by any Governmental Authority, with respect to any Plan that has, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(H) Except as set forth in Schedule 4.11, hereto, (i) no ERISA Event has occurred, and neither Parent nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event; (ii) Parent and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained in respect of any Pension Plan; and (iii) neither Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA with respect to any Pension Plan, except, with respect to subsections (i) through (iii) above, as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(I) As of the Effective Date, no Loan Party nor any of its Subsidiaries maintains, sponsors, administers, contributes to, participates in or has any liability in respect of any Specified Canadian Pension Plan, nor has any such Person ever maintained, sponsored, administered, contributed or participated in any Specified Canadian Pension Plan. Except as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (a) the Canadian Pension Plans are duly registered under the Income Tax Act (Canada) and any other applicable Laws which require registration, have been administered in accordance with the Income Tax Act (Canada) and such other applicable Law and no event has occurred which could cause the loss of such registered status, (b) all obligations of the Loan Parties and their Subsidiaries (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans and the funding agreements relating thereto have been performed on a timely basis, and (c) all contributions, premiums or payments required to be made or paid by the Loan Parties and their Subsidiaries to the Canadian Pension Plans have been made on a timely basis in accordance with the terms of such plans and all applicable Laws.

**(l) Environmental Condition.**

(J) Parent, for itself and the other Loan Parties, conducts in the ordinary course of business a review of the effect of existing Environmental Laws relating to remedial obligations and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrowers have reasonably concluded that such effect of existing Environmental Laws relating to remedial actions and claims alleging potential liability or responsibility for violation of any Environmental Law that has, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (including for this purpose taking into account any reserves).

(K) Except as otherwise set forth in Schedule 4.12 or where such status or condition could not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect: (i) none of the properties currently or, to the knowledge of the Loan Parties, formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and have never been any underground or above ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; (iv) Hazardous Materials have not been released, discharged or disposed of on any property currently owned or operated by any Loan Party or any of its Subsidiaries; (v) neither any Loan Party nor any of its Subsidiaries is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and (vi) all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner that would not reasonably be expected to result in liability to any Loan Party.

**(m) Reserved.**

**(n) Reserved.**

**(o) Reserved.**

(p) **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and will not omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Agent on January 31, 2013 represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, that no assurances can be given that such Projections will be realized, and that actual results may differ in a material manner from such Projections).

**(q) Reserved.**

(r) **Patriot Act; Anti-Corruption Laws.** To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the

United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"); and (c) the Proceeds of Crime Money Laundering and Terrorist Finance Act (Canada) and the regulations promulgated thereunder. No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, (i) 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 FCPA, or (ii) in any other manner that would cause a violation in any material respect of any applicable anti-bribery laws. No Loan Party nor any of its Subsidiaries, nor to the knowledge of any Loan Party, any director or officer, or any employee, agent or Affiliate of, any Loan Party or any of its Subsidiaries, has taken any action, directly or indirectly, that would result in a violation in any material respect by such persons of any applicable anti-bribery law. Furthermore, each Loan Party and, to the knowledge of each Loan Party, its Affiliates have conducted their businesses in compliance in all material respects with the UK Bribery Act, the FCPA and similar laws, rules or regulations, in each case, to the extent applicable to the Loan Parties and, in their reasonable business judgment, have instituted and maintain policies and procedures designed to ensure continued compliance therewith.

(s) **Reserved.**

(t) **Taxes.** All material federal, state, provincial, local and other tax returns required to have been filed with respect to each Loan Party and each Restricted Subsidiary of each Loan Party have been filed (or extensions have been obtained), and payment or adequate provision has been made for the payment of all taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns ~~<or to>~~ and all other material taxes and assessments ~~<received,>~~ owing by a Loan Party except to the extent that such taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made.

(u) **Margin Stock.** No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock (within the meaning of Regulation U issued by the Federal Reserve Board), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the loans made to Borrowers will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

(v) **Investment Company Act.** None of Parent, any Person controlling Parent, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940 or is subject to regulation under the Investment Company Act.

(w) **OFAC.** No Loan Party nor any of its Subsidiaries is in violation of any Sanctions applicable to the Loan Parties. No Loan Party nor any of its Subsidiaries, nor to the knowledge of any Loan Party, any director or officer, or any employee, agent or Affiliate of, any Loan Party or any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities, or (d) is located, organized or a resident of a country or territory that is, or whose government is, the subject of Sanctions. No proceeds of any Revolving Loan (including any Swing Loan, Protective Advance or Overadvance) or any Letter of Credit will be used by a Loan Party (i) to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including without limitation any Person participating in Revolving Loans or Letters of Credit).

(x) **Employee and Labor Matters.** There is (i) no unfair labor practice complaint pending or, to the knowledge of Borrowers, threatened against Parent or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against Parent or its Restricted Subsidiaries which arises out of or under any collective bargaining agreement and that, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against Parent or its Subsidiaries that, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar Laws, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Parent or its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, where such violations have or would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All material payments due from Parent or its Restricted Subsidiaries on account of wages and employee health and welfare insurance, employer and employee deductions and premiums and other benefits have been paid or accrued as a liability on the books of Parent, where the failure to do so, individually or in the aggregate, has or would reasonably be expected to have a Material Adverse Effect.

(y) **Reserved.**



(z) **Eligible Accounts.** As to each Account that is identified by any Borrower as an Eligible Account in a US Borrowing Base Certificate or a Canadian Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of Borrowers' business, (b) owed to one or more of the Borrowers, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

(aa) **Eligible Inventory.** As to each item of Inventory that is identified by any Borrower as Eligible Inventory in a US Borrowing Base Certificate or a Canadian Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Agent-discretionary criteria) set forth in the definition of Eligible Inventory.

(bb) **Locations of Inventory and Equipment.** As of the Effective Date, the Inventory and Equipment (other than vehicles or Equipment out for repair) of the Loan Parties are not stored with a bailee, warehouseman, or similar party other than those identified on Schedule 4.28(a) and are otherwise located only at, or in-transit between or to, the locations identified on Schedule 4.28(b).

(cc) **Inventory Records.** Each Loan Party keeps correct and accurate records in all material respects itemizing and describing the type, quality, and quantity of its Inventory and the book value thereof.

(dd) **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.

(ee) **Insurance.** The properties of the Loan Parties are insured with financially sound insurance companies, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Parent or the applicable Loan Party operates.

(ff) **Common Enterprise.** Borrowers and Guarantors make up a related organization of various entities constituting a single economic and business enterprise so that Borrowers and Guarantors share an identity of interests such that any benefit received by any one of them benefits the others. Certain Borrowers and Guarantors render services to or for the benefit of the other Borrowers and/or Guarantors, as the case may be, purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of the other Borrowers and Guarantors (including inter alia, the payment by Borrowers and Guarantors of creditors of the other Borrowers or Guarantors and guarantees by Borrowers and Guarantors of indebtedness of the other Borrowers and Guarantors and provide administrative, marketing, payroll and management services to or for the benefit of the other Borrowers and Guarantors). Borrowers and Guarantors have the same chief executive office, centralized accounting and legal services, certain common officers and directors and generally do not provide consolidating financial statements to creditors.

## 15. AFFIRMATIVE COVENANTS.

Each Loan Party covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties shall and shall cause each of their Restricted Subsidiaries to comply with each of the following:

### (a) Financial Statements, Reports, Certificates.

(H) (i) Deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein, (ii) maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Parent or such Subsidiary, as the case may be, and (iii) cause each Subsidiary of a Loan Party to have the same fiscal year as Parent.

(I) Documents required to be delivered pursuant to this Section 5.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Parent posts such documents, or provides a link thereto on Parent's website on the Internet at the website address listed on Schedule 5.1; or (ii) on which such documents are posted on Parent's behalf on an Internet or intranet website, if any, to which each Lender and Agent have access (whether a commercial, third-party website or whether sponsored by Agent); provided, that: (i) upon the written request of Agent, Parent shall deliver paper copies of such documents to Agent or any Lender that requests Parent to deliver such paper copies until a written request to cease delivering paper copies is given by Agent or such Lender and (ii) Parent shall notify Agent (by telecopier or electronic mail) of the posting of any such documents and provide to Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance Parent shall be required to provide paper copies of the Compliance Certificates required by this Section 5.1 to Agent. Except for such Compliance Certificates, 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 Parent 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.

(J) Parent hereby acknowledges that (i) Agent and/or the Arrangers will make available to the Lenders materials and/or information provided by or on behalf of Parent hereunder (collectively, "Borrower Materials") by posting Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to Parent or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Parent hereby agrees that so long as Parent is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (A) 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; (B) by marking Borrower Materials "PUBLIC," Parent shall be deemed to have authorized Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Parent or its securities for purposes of United States federal and state securities laws (provided, that, to the extent such Borrower Materials constitute Confidential Information, they shall be treated as set forth in Section 17.9); (C) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (D) Agent and the 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 Side Information."

(b) **Collateral Reporting.** Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the reports set forth on Schedule 5.2 at the times specified therein. In addition, each Borrower agrees to use commercially reasonable efforts in cooperation with Agent to facilitate and establish a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

(c) **Existence.** Except as otherwise permitted under Section 6.3 or Section 6.4, at all times maintain and preserve in full force and effect its existence (including being in good standing in its jurisdiction of organization) and all rights and franchises, licenses and permits material to its business where the failure to do so has or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided, that, no Loan Party or any of its Restricted Subsidiaries shall be required to preserve any such right or franchise, licenses or permits if such Person's Board of Directors (or similar governing body) shall determine that the failure to preserve it could not reasonably be expected to result in a Material Adverse Effect.

(d) **Maintenance of Properties.** ~~<Maintain>~~ Except as otherwise permitted under Section 6.3 or Section 6.4, maintain and preserve all of its assets that are necessary for the proper conduct of its business in good working order and condition, except for (a) ordinary wear, tear, and casualty, (b) Permitted Dispositions, or (c) in the case of assets other than the ~~<First Lien>~~ Revolving Loan Priority Collateral where the failure to do so has or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and comply with the provisions of all leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, (i) unless such provisions are the subject of a Permitted Protest, or (ii) where the failure to so comply has or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) **Taxes.** Cause all material assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax. Parent will and will cause each of its Subsidiaries to make timely payment or deposit with the appropriate taxing authority of all tax payments and withholding taxes ~~<required of it and>~~ made by it and them and all other material taxes required to be paid or deposited by it or them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, provincial and federal income taxes, and will, upon request, furnish Agent with proof reasonably satisfactory to Agent indicating that each Loan Party and its Subsidiaries have made such payments or deposits.

(f) **Insurance.**

(J) **Property, Business Interruption and Liability Insurance.** At Borrowers' expense, maintain insurance respecting each of the Loan Parties' assets wherever located, covering liabilities, losses or damage as customarily are insured against by other Persons engaged in the same or similar businesses. All such policies of insurance shall be with financially sound insurance companies and in such amounts (after giving effect to any self-insurance maintained consistent with the standards provided for herein) as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event, as to any ~~<First Lien>~~ Revolving Loan Priority Collateral, in amounts, adequacy and scope reasonably satisfactory to Agent (and Agent acknowledges that based on the information provided to it on or prior to the date hereof with respect thereto, as to insurance coverage for the ~~<First Lien>~~ Revolving Loan Priority Collateral in effect on the date hereof, the amounts, adequacy and scope are reasonably satisfactory to it). ~~<All>~~ Subject to the Term Loan Intercreditor Agreement, all property insurance policies covering the Collateral are to be made payable to Agent, as its interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard noncontributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any

payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than thirty (30) days (ten (10) days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If any Borrower fails to maintain such insurance, Agent may arrange for such insurance, but at such Borrower's expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrowers shall give Agent prompt notice of any loss of (i) Revolving Loan Priority Collateral exceeding \$3,000,000 and (ii) Collateral exceeding \$6,000,000, in each case, covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default and subject to the Term Loan Intercreditor Agreement, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or any successor act thereto), then Parent shall, or shall cause each Loan Party to, maintain, or cause to be maintained, with a financially sound insurer, flood insurances with respect to Mortgaged Property, as required by applicable Laws.

**(K) Life Insurance.** At Borrowers' expense, maintain each Life Insurance Policy. If any Borrower fails to maintain any such insurance, to the extent any such insurance has not been paid for in full, Agent may pay the premiums thereon or otherwise arrange for such insurance, but at such Borrower's expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Notwithstanding anything in any Life Insurance Assignment to the contrary, Borrowers agree that any such payments made by Agent at Borrowers' expense shall constitute Obligations chargeable to the Loan Account hereunder and bear interest at a per annum rate equal to the Base Rate plus the Applicable Margin for Base Rate Loans. Borrowers shall give Agent prompt notice of the death of any Person covered by any Life Insurance Policy. Agent shall have the sole right to file claims under any Life Insurance Policy, to collect the net proceeds of any such policy, to surrender any such policy, to obtain policy loans thereon from the insurer, to receive, receipt and give acquittance for any payments that may be payable thereunder (including without limitation, the right to collect and receive all distributions or shares of surplus, dividend deposits or additions to such policy made or apportioned thereto, and to exercise any and all options contained in such policy with respect thereto), to exercise all nonforfeiture rights under such policy, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policy. Borrowers shall take all action requested by Agent and necessary to cause each Life Insurance Policy to be at all times subject to an effective Life Insurance Assignment.

**(g) Inspection, Field Examinations, and Appraisals.** Permit Agent and each of its duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to conduct appraisals and valuations, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Agent may designate and, so long as no Event of Default exists and is continuing, with reasonable prior notice to Administrative Borrower all at such times and intervals as Agent may request, all at Borrower's expense, in each case subject to Section 17.9; provided, that, (a) as to field examinations, there shall be (i) no more than one (1) field examination in any twelve (12) month period at the expense of Borrowers so long as (A) Excess Availability during such twelve (12) month period is not less than twenty percent (20%) of the Maximum Credit or (B) US Excess Availability is not less than seventeen and one-half percent (17.5%) of the Maximum Credit for any three (3) consecutive Business Days during such twelve (12) month period, (ii) no more than three (3) field examinations in any twelve (12) month period at the expense of Borrowers if at any time Excess Availability or US Excess Availability during such twelve (12) month period is less than the applicable amount specified in clause (a)(i) above, and (iii) such other field examinations as Agent may request at any time an Event of Default exists or has occurred and is continuing at the expense of Borrowers or otherwise at any other times during usual business hours and upon reasonable prior notice at the expense of Agent and Lenders to conduct such field examinations in accordance with Agent's customary practices and procedures and (b) as to appraisals, there shall be (i) no more than one (1) appraisal of each type of Collateral in any twelve (12) month period at the expense of Borrowers so long as (A) Excess Availability during such twelve (12) month period is not less than fifteen percent (15%) of the Maximum Credit or (B) US Excess Availability is not less than twelve and one-half percent (12.5%) of the Maximum Credit for any three (3) consecutive Business Days during such twelve (12) month period, (ii) no more than two (2) appraisals of each type of Collateral in any twelve (12) month period at the expense of Borrowers if at any time Excess Availability or US Excess Availability during such twelve (12) month period is less than the applicable amount specified in clause (b)(i) above, and (c) such other appraisals as Agent may request at any time a Default or an Event of Default exists or has occurred and is continuing at the expense of Borrowers or otherwise at any other times during usual business hours and upon reasonable prior notice at the expense of Agent and Lenders, with such appraisals to be performed in accordance with Agent's customary practices and procedures.

**(h) Compliance with Laws.** Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, has, or could reasonably be expected to have, a Material Adverse Effect.

**(i) Environmental.**



(I) Keep any property either owned or operated by Parent or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens where the failure to do so, individually or in the aggregate, has or would reasonably be expected to have a Material Adverse Effect,

(J) Comply with Environmental Laws where the failure to do so, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect, and provide to Agent documentation of such compliance which Agent reasonably requests,

(K) Promptly notify Agent of any release of which any Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Parent or its Subsidiaries where any such release, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect, and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law where the failure to do so, individually or in the aggregate, has or would reasonably be expected to have a Material Adverse Effect, and

(L) Promptly, but in any event within five (5) Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of Parent or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Parent or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority where any such violation, citation or other administrative order, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

(j) **Reserved.**

(k) **Further Assurances.**

(L) At the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary (other than a Subsidiary organized or incorporated under the laws of a jurisdiction other than a State of the United States, the United States, the District of Columbia, or a Province or Territory of Canada or Canada and other than any Excluded Subsidiary or an Unrestricted Subsidiary) after the Effective Date, such Loan Party shall (i) within thirty (30) days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) cause any such new Subsidiary to provide to Agent a joinder agreement to this Agreement, the Guaranty and the Security Agreement, together with such other security documents ~~<->~~ (and concurrently with the delivery of any mortgages provided to the Term Loan Agent to secure the Indebtedness under the Term Loan Credit Agreement, mortgages with respect to any such Real Property owned by such new Subsidiary and securing such Indebtedness, other than the Avon Lake Real Property) as well as appropriate financing statements (and with respect to all Real Property subject to a Mortgage, fixture filings), and supplements and amendments hereto, all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary constituting ~~<First Lien>~~ Revolving Loan Priority Collateral ~~<->~~ and a second priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary constituting ~~<Second Lien>~~ Collateral other than Revolving Loan Priority Collateral, in each case, including to make such Subsidiary a party to this Agreement as a "Borrower" if so agreed by Administrative Borrower and Agent, and otherwise as a "Guarantor"; provided, that, the foregoing shall not be required to be provided to Agent with respect to any Subsidiary of any Loan Party that is an Excluded Subsidiary, (ii) within thirty (30) days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) provide to Agent a pledge agreement (or an addendum to the Security Agreement or Canadian Security Documents) and, subject to the Term Loan Intercreditor Agreement, appropriate certificates and powers (which may be delivered to the Term Loan Agent as bailee for Agent pursuant to and to the extent required by the terms of the Term Loan Intercreditor Agreement) or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to Agent; provided, that, only sixty-five percent (65%) of the total outstanding voting Equity Interests of any ~~<first tier>~~ >Subsidiary of any Loan Party that is a CFC or CFC Holding Company (and none of the Equity Interests of any Subsidiary of such CFC or CFC Holding Company) shall be required to be pledged, and (iii) within sixty (60) days of such formation or acquisition (or such later date as permitted by Agent in its discretion) provide to Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall be a Loan Document).

(M) At any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to perfect Agent's Liens in all of the assets of Parent and its Subsidiaries constituting Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), other than Excluded Subsidiaries and Unrestricted Subsidiaries, to create and perfect Liens in favor of Agent in any Real Property acquired by Parent or its Subsidiaries (other than an Excluded Subsidiary or an Unrestricted Subsidiary) to the extent the Term Loan Agent is granted a Lien on such Real Property (other than the Avon Lake Real Property) and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if Parent or any of its Subsidiaries (other than Excluded Subsidiaries and Unrestricted Subsidiaries) refuses or

fails to execute or deliver any reasonably requested Additional Documents related to any Revolving Loan Priority Collateral within a reasonable period of time following the request to do so, Parent (on behalf of itself and such Subsidiaries) hereby authorizes Agent to execute any such Additional Documents to the extent related to Revolving Loan Priority Collateral in the applicable Loan Party's or such Subsidiary's name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time so that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the Collateral of Parent and its Subsidiaries (other than the Excluded Subsidiaries and Unrestricted Subsidiaries) to the extent of, and in any event subject to, the exceptions and limitations provided for herein.

Notwithstanding the foregoing or anything contained herein or in any other Loan Document to the contrary, it is understood and agreed that to the extent that the Term Loan Agent is satisfied with or agrees to any deliveries in respect of Term Loan Priority Collateral, Agent shall be deemed to be satisfied with such deliveries that are substantially the same as those delivered to the Term Loan Agent and the Loan Parties shall not be required to deliver any Additional Documents with respect thereto other than those documents or certificates required to be delivered to Agent or a Lender under any applicable law or regulation. Furthermore, in the event the Term Loan Credit Agreement has not been terminated, notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, if there is a delivery or control obligation with respect to any Term Loan Priority Collateral and such delivery or grant of control cannot be made by the applicable Loan Agent to both Agent and Term Loan Agent, such delivery requirement shall be satisfied by delivery by the applicable Grantor to Term Loan Agent.

(l) ~~<Second Lien Collateral>~~ Reserved.

~~(a) <If at any time any Loan Party> (other than an Excluded Subsidiary or an Unrestricted Subsidiary) <grants a Lien to any Person on any of such Loan Party's Equipment or Real Property as security for any Indebtedness incurred by such Loan Party to such Person (any such Person providing Indebtedness to a Loan Party is hereinafter referred to as a "Fixed Asset Lender"); such Loan Party will, contemporaneously with such grant, (i) grant a Lien to Agent on such Equipment or >Real Property (other than <(a) the Spartech Fixed Assets and (b) Equipment or >Real Property <securing Permitted Purchase Money Indebtedness); junior only to the Lien granted to such Fixed Asset Lender on such Equipment or Real Property and other Permitted Liens, (ii) execute and/or deliver to Agent any and all financing statements, fixture filings, security agreements, mortgages, deeds of trust, hypothecs, charges, opinions of counsel, evidence of corporate (or other applicable) authority, and all other documents (the "Additional Second Lien Documents") that Agent may reasonably request> in form and substance reasonably satisfactory to Agent, <to create, perfect, and continue perfected, Agent's Lien in such Equipment or Real Property (other than (a) the Spartech Fixed Assets and (b) Equipment or Real Property securing Permitted Purchase Money Indebtedness), and (iii) execute and deliver to Agent, and cause to be executed and delivered to Agent by the applicable Fixed Asset Lender, an intercreditor agreement with respect to such Liens, in form and substance reasonably acceptable to Agent, or, in the case of Liens granted to a Fixed Asset Lender on the Spartech Fixed Assets, a mortgagee's waiver with respect to such Spartech Fixed Assets, in form and substance reasonably acceptable to Agent. Any Equipment or Real Property that is subjected to a Lien in favor of a Fixed Asset Lender is hereinafter referred to as "Second Lien Collateral").>~~

~~(b) <If any Second Lien Collateral consists of Material Real Property, the Additional Second Lien Documents will include, in addition to those specified in clause (a) above, policies of title insurance, ALTA surveys, and such additional documentation as Agent shall reasonably require in connection with the creation, perfection and priority of Agent's Lien on such Material Real Property. In addition, if> any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or any successor act thereto), then Parent shall, or shall cause each Loan Party to, maintain, or cause to be maintained, with a financially sound insurer, flood insurances with respect to <such> Mortgaged Property, as required by applicable Laws.~~

~~<(c) Nothing contained in this Section 5.12 shall constitute a consent to the incurrence by any Loan Party of any Indebtedness other than Permitted Indebtedness or the existence of any Lien other than Permitted Liens.>~~

(m) **Location of Inventory and Equipment.** Keep each Loan Parties' Inventory and Equipment (other than vehicles, Inventory and Equipment out for repair or in-transit) only at the locations identified on Schedule 4.28(a) and 4.28(b) and their chief executive offices only at the locations identified on Schedule 4.6(b) and any other locations, provided, that, (a) with respect to any location where Inventory or Equipment of the Loan Parties with a value in excess of \$250,000 is or is to be located, Administrative Borrower shall provide written notice to Agent not less than ten (10) days prior to the date on which such Inventory or Equipment is moved to such new location or such chief executive office is relocated, (b) in the case of US Loan Parties, such new location is within the continental United States and in the case of Canadian Loan Parties, such new location is within Canada, (c) the aggregate amount of all Inventory at locations where Agent has not received such notice shall not exceed \$2,500,000 and (d) at the time of such written notification, such Borrower uses its commercially reasonable efforts to provide Agent a Collateral Access Agreement with respect thereto. Borrowers agree that, except as Agent may otherwise determine, any Inventory at such new locations for which Agent has not received such written notice, shall not constitute Eligible Inventory.

(n) **Applications under Insolvency Statutes.** Each Loan Party acknowledges that its business and financial relationships with Agent and Lenders are unique from its relationship with any other of its creditors, and agrees that it shall

not file any plan of arrangement under the CCAA or make any proposal under the BIA which provides for, or would permit directly or indirectly, Agent or any Lender to be classified with any other creditor as an "affected" creditor for purposes of such plan or proposal or otherwise.

(o) **Preparation of Environmental Reports.** If the Required Lenders have a reasonable basis to believe, based on information that is publicly available or provided to the Administrative Agent or the Lenders, that a material Environmental Liability has arisen at or in connection with any Mortgaged Property, then at the written request of the Required Lenders, the Borrower shall cause to be prepared an environmental site assessment report for any such Mortgaged Property described in such request, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance, removal or remedial action required under any applicable Environmental Law in connection with any Hazardous Materials on such properties.

~~5.16. <Post-Closing Matters><><. Execute and deliver the documents and complete the tasks set forth on Schedule 5.16, in each case within the time limits specified on such schedule (unless Agent, in its reasonable discretion, shall have agreed to any particular longer period).>~~

**Reserved.**

**Incurrence of Indebtedness under the Term Loan Credit Agreement.** On the Term Loan Closing Date, but in any event no later than December 15, 2015, cause the 2015 Note Discharge to be made.

**Discharge and Termination of 2020 Note Indenture.** On or prior to the first to occur of the "Initial Payment Date" and the "Settlement Date" (each as defined in the 2020 Note Offer), but in no event later than December 31, 2015, cause the 2020 Note Purchase Payment to be made. On or prior to the "Settlement Date" (as defined in the 2020 Note Offer) but in no event later than December 31, 2015, cause the 2020 Note Delayed Purchase Payment to be made. On or before December 31, 2015, cause the 2020 Note Redemption to be made.

**The 2020 Note Deposit Account.** On the Term Loan Closing Date, fund the 2020 Note Deposit Account with proceeds of the Indebtedness incurred under the Term Loan Credit Agreement in an amount sufficient to purchase or redeem, as applicable, in full the 2020 Notes (excluding, if the 2020 Note Purchase Payment occurs on the Term Loan Closing Date, the amount necessary to make the 2020 Note Purchase Payment) in accordance with the terms of the 2020 Note Indenture and the 2020 Note Offer, as applicable. Each Loan Party hereby agrees that it shall not use the funds in the 2020 Note Deposit Account for any other purpose other than to effectuate the 2020 Note Purchase Payment (if the 2020 Note Purchase Payment is made after the Term Loan Closing Date), the 2020 Note Delayed Purchase Payment and the 2020 Note Redemption. Agent and Lenders hereby agree that the 2020 Note Deposit Account shall be not required to be subject to a Control Agreement; provided that promptly after the 2020 Redemption Date, any remaining funds deposited in the 2020 Note Deposit Account are transferred to a bank account that is subject to a Control Agreement and the 2020 Note Deposit Account is closed.

**16. NEGATIVE COVENANTS.**

Each Loan Party covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties will not and will not permit any of their Restricted Subsidiaries to do any of the following:

(a) **Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

(b) **Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

**(c) Restrictions on Fundamental Changes.**

(E) Merge, dissolve, liquidate, consolidate or amalgamate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as on the date of any of the foregoing and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing:

(4) (A) any Non-Loan Party may merge, consolidate, amalgamate or liquidate with or into another Non-Loan Party, whether to effect a corporation reorganization or otherwise and (B) any Non-Loan Party or any Loan Party may merge, consolidate, amalgamate or liquidate with or into another Loan Party, including any such merger, consolidation or amalgamation, the purpose of which is to effect a corporate reorganization or to change the jurisdiction of Parent or any Subsidiary, so long as (1) in the case of any merger, consolidation or amalgamation of a Loan Party with a Non-Loan Party, the Loan Party is the surviving corporation and (2) in any merger, consolidation or amalgamation of a US Loan Party the survivor remains organized under the laws of a State within the United States and in the case of any Canadian Loan Party the survivor remains organized under the laws of a jurisdiction in Canada, and in any case the Loan Parties are in compliance with, and comply with, the Loan Documents,

(5) any Loan Party may sell or otherwise dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Parent or to another Loan Party,

(6) any Non-Loan Party may dispose of all or substantially all its assets (including any disposition that is in the nature of a liquidation) to (A) another Non-Loan Party or (B) to a Loan Party, provided, that, other than Eligible Acquired Business Accounts and Eligible Acquired Business Inventory, any Accounts or Inventory acquired by a Borrower pursuant to such disposition shall not be Eligible Accounts or Eligible Inventory until such time as Agent shall have completed an Acceptable Field Exam with respect thereto and, in the case of Inventory of an Acquired Business, an Inventory appraisal, and such other due diligence reasonably requested by Agent, in a manner and with results reasonably satisfactory to Agent,

(7) Parent and its Subsidiaries may consummate the Spartech Acquisition, subject to the provisions of clause (x) of the definition of the term Permitted Investments,

(8) in connection with any Permitted Acquisition, any Subsidiary of Parent may merge into, or consolidate or amalgamate with, any other Person or permit any other Person to merge into, or consolidate or amalgamate with, it; provided that (A) the Person surviving such merger, consolidation or amalgamation shall be a Subsidiary of Parent and (B) in the case of any such merger, consolidation or amalgamation to which any Loan Party (other than Parent) is a party, such Loan Party is the surviving Person, and

(9) Parent and its Subsidiaries may consummate any Permitted Disposition, or

(F) suspend or terminate all or a substantial portion of its or their business, except as permitted pursuant to this Section 6.3 or in connection with the transactions permitted pursuant to Section 6.4.

(d) **Disposal of Assets.** Convey, sell, lease, license, assign, transfer, or otherwise dispose of any assets of Parent or any of its Restricted Subsidiaries, except for Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.11.

(e) **Nature of Business.** Engage in any business or activity if as a result thereof, the general nature of the business of Parent and its Restricted Subsidiaries, taken as a whole, would be changed in any material respect from the general nature of the business engaged in by them as of the Effective Date; provided, however, that the foregoing shall not prevent the acquisition by Parent or any of its Restricted Subsidiaries of, or the entry by Parent or any of its Restricted Subsidiaries into, any line of business that is related, complementary or a logical extension to the business in which they are engaged on the Effective Date.

**(f) Certain Payments of Debt and Amendments.**

(F) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (including by sinking fund payment or other acquisition for value), or otherwise set aside or deposit funds with a trustee therefor or hold restricted cash for such purpose before the date required for the purpose of paying any portion of such Indebtedness when due) any of its Indebtedness, or make any payment in violation of any subordination terms of any Indebtedness, except with respect to:

(1) the Indebtedness hereunder or under the other Loan Documents,

(2) as to payments in respect of any other Permitted Indebtedness not subject to the provisions below in this Section 6.6, regularly scheduled or mandatory repayments or redemptions as and when due in respect of such Indebtedness in accordance with the terms thereof (and in the case of Subordinated Debt if such payment is permitted at such time under the subordination terms and conditions set forth therein or applicable thereto),

(3) the Indebtedness of any Non-Loan Party,

(4) ~~<{Reserved}>~~ regularly scheduled payments of principal and interest or other mandatory payments, in each case, as and when due in accordance with the terms of the Term Loan Documents and the agreements evidencing Incremental Equivalent Debt or any Refinancing Indebtedness thereof,

(5) optional prepayments, purchases and redemptions of Indebtedness; provided, that, as to any such optional prepayment or redemption, each of the following conditions is satisfied:

a. as of the date of such optional prepayment or redemption, and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing,

b. (1) the daily average of the Excess Availability during the immediately preceding forty-five (45) consecutive day period shall have been not less than twenty percent (20%) of the Maximum Credit, (2) the Excess Availability at all times time during the immediately preceding forty-five (45) consecutive day period shall have been not less than ten percent (10%) of the Maximum Credit, (3) the daily average of the US Excess Availability during the immediately preceding forty-five (45) consecutive day period shall have been



not less than fifteen percent (15%) of the Maximum Credit and (4) the US Excess Availability at all times time during the immediately preceding forty-five (45) consecutive day period shall have been not less than ten percent (10%) of the Maximum Credit, and after giving effect to any such payment in respect thereof, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability and the US Excess Availability shall be not less than the applicable amounts specified above,

c. Agent shall have received reasonably satisfactory monthly projections for the period that is the lesser of six (6) months or until the end of the then current fiscal year after the date of such payment showing, on a pro forma basis after giving effect to the payment, (1) minimum Excess Availability at all times during such period of not less than twenty percent (20%) of the Maximum Credit and (2) minimum US Excess Availability at all times during such period of not less than fifteen percent (15%) of the Maximum Credit; provided, that, this clause (C) shall not be applicable so long as: (x) the amount of any such prepayment or redemption is less than \$20,000,000 and the aggregate amount of all such optional prepayments or redemption in any fiscal year of Parent are less than \$30,000,000 and (y) at the time of making any such optional prepayment or redemption, the sum of the Excess Availability plus Qualified Cash is greater than \$150,000,000, ~~<and>~~

d. Agent shall have received prior written notice of any such prepayment or redemption specifying the Indebtedness such prepayment or redemption is related to, the amounts and the anticipated date of the prepayment or redemption, provided, that, this clause (D) shall not be applicable so long as: (x) the amount of any such prepayment or redemption is less than \$20,000,000 and the aggregate amount of all such optional prepayments or redemption in any fiscal year of Parent are less than \$30,000,000 and (y) at the time of making any such optional prepayment or redemption, the sum of the Excess Availability plus Qualified Cash is greater than \$150,000,000, and

~~<(vi) so long as no Default or Event of Default exists or has occurred and is continuing, optional prepayments of principal in respect of Indebtedness evidenced by the 2015 Notes,>~~

in the case of an optional purchase of Indebtedness, such Indebtedness is immediately cancelled, on the Term Loan Closing Date, the 2015 Note Discharge,

(6) the termination, satisfaction or defeasance of the Series G Guarantee,

(7) prepayments in respect of Indebtedness with proceeds of Refinancing Indebtedness as permitted in the definition of the term Permitted Indebtedness,

(8) optional prepayments and redemptions of Indebtedness solely with the proceeds of the issuance and sale of Equity Interests of Parent, provided, that, as of the date of any such prepayment or redemption, and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing, ~~<and>~~

(9) optional prepayments by a Loan Party of Indebtedness owing to another Loan Party, optional prepayments by a Non-Loan Party of Indebtedness owing to another Non-Loan Party and optional prepayments by a Non-Loan Party of Indebtedness owing to a Loan Party~~<=>~~,

on or before December 31, 2015, the 2020 Note Purchase Payment; provided, that, to the extent the 2020 Note Purchase Payment is made after the Term Loan Closing Date, the 2020 Note Purchase Payment is made solely with proceeds of the 2020 Note Deposit Account, and

on or before December 31, 2015, the 2020 Note Purchase Delayed Payment and the 2020 Note Redemption solely with proceeds of the 2020 Note Deposit Account.

(G) directly or indirectly, to amend, modify, or change (or permit the amendment, modification or other change in any manner of) any of the terms or provisions of:

(4) any agreements, documents or instruments in respect of any Subordinated Debt or any agreements related to the Indebtedness permitted under clauses (b), (o), and (p) of the definition of Permitted Indebtedness, except (A) to the extent permitted under any intercreditor or subordination agreement applicable thereto or (B) with written notice to Agent prior to or contemporaneously therewith, any amendment, modification or other change to the terms thereof to make the terms thereof in any manner materially adverse to Agent or Lenders taken as a whole (it being understood that if the Weighted Average Life to Maturity of such Indebtedness after giving effect thereto is less than the Weighted Average Life to Maturity immediately prior to giving effect thereto in any material respect, or if the change is to make the covenants and events of default more restrictive or burdensome, in each case in any material respect taken as a whole as to any such amendments effective at or about the same time, or to adversely affect the ability of a Loan Party to borrow hereunder or to

amend, modify, renew or supplement the terms of this Agreement or any of the other Loan Documents, it shall in any event be so materially adverse) and in the case of Subordinated Debt, only after prior written notice to Agent, or

(5) the Governing Documents of any Loan Party, except for amendments, modifications or other changes that are not materially adverse to Agent and Lenders taken as a whole and do not adversely affect in any material respect the ability of a Loan Party to borrow hereunder or to amend, modify, renew or supplement the terms of this Agreement or any of the other Loan Documents.

(g) **Burdensome Agreements.** Enter into or permit to exist any encumbrance or restriction (other than this Agreement or any other Loan Document, ~~the Term Loan Documents~~ or documents governing the 2015 Notes, the 2020 Notes, the Current Notes ~~and~~, the Series G Guarantee ~~and any Incremental Equivalent Debt~~) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to any Loan Party or to otherwise transfer property to or invest in any Loan Party, (ii) of any Subsidiary to guarantee the Indebtedness of any Loan Party or (iii) of Parent or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, that, this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Permitted Purchase Money Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided, that, this Section 6.7 shall not prohibit (i) restrictions contained in any agreement in effect (A) (1) on the date hereof and set forth on Schedule 6.7 and (2) to the extent the restrictions permitted by clause (1) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any Refinancing Indebtedness in respect of such Indebtedness so long as such renewal, extension or refinancing does not expand the scope of the restrictions described in clause (a) or (b) that are contained in such agreement or (B) at the time any Subsidiary becomes a Subsidiary of Parent, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of Parent, (ii) restrictions that are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such restriction was not entered into in contemplation of such Person becoming a Restricted Subsidiary, (iii) restrictions that arise in connection with any Permitted Disposition, (iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Permitted Investments, (v) any restrictions imposed by any agreement related to Indebtedness constituting Permitted Indebtedness under clause (t) of the definition of such term or Refinancing Indebtedness with respect thereto, to the extent such restrictions are not more restrictive, taken as a whole, than the restrictions contained in this Agreement and in any event permit Liens on the Collateral to secure the Obligations, (vi) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions may relate to the assets subject thereto, (vii) comprise restrictions or Liens imposed by any agreement relating to Permitted Purchase Money Indebtedness to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest or (ix) any restrictions imposed by any agreement related to Refinancing Indebtedness constituting Permitted Indebtedness, to the extent such restrictions are not more restrictive, taken as a whole, than the restrictions contained in this Agreement and in any event permit Liens on the Collateral to secure the Obligations.

(h) **Restricted Payments.** Declare or make, or pay, directly or indirectly, any Restricted Payment, except:

(M) each Restricted Subsidiary of Parent may make Restricted Payments to a Loan Party,

(N) each Non-Loan Party may make Restricted Payments to another Non-Loan Party or to a Loan Party,

(O) Parent and each Subsidiary may declare and make dividend payments or other distributions payable solely in Equity Interests of such Person (other than Disqualified Equity Interests),

(P) Parent and each Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests,

(Q) any Subsidiary of Parent may pay or make distributions to Parent that are used to make substantially contemporaneous payments to, and Parent may make payments to, repurchase or redeem Equity Interests and options to purchase Equity Interests of Parent held by officers, directors or employees or former officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of Parent pursuant to any management equity subscription agreement, employee agreement or stock option agreement or other agreement with such officer, director or employee or former officer, director or employee; provided, that, the aggregate cash consideration paid for all such payments, repurchases or redemptions shall not in any fiscal year of Parent exceed \$2,000,000,

(R) Parent may repurchase its Equity Interests to the extent such repurchase is deemed to occur upon (i) the non-cash exercise of stock options to the extent such Equity Interests represents a portion of the exercise price of such options and (ii) the withholding of a portion of such Equity Interests to pay taxes associated therewith,

(S) the purchase of fractional shares of Equity Interests of Parent or any Subsidiary arising out of stock dividends, splits or combinations or business combinations,

(T) Loan Parties may make other Restricted Payments not otherwise expressly provided for in this Section 6.8 in the case of any such Restricted Payments, provided, that, each of the following conditions is satisfied:

(1) as of the date of such Restricted Payment, and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing,

(2) (A) the daily average of the Excess Availability during the immediately preceding forty-five (45) consecutive day period shall have been not less than twenty percent (20%) of the Maximum Credit, (B) the Excess Availability at all times during the immediately preceding forty-five (45) consecutive day period shall have been not less than ten percent (10%) of the Maximum Credit, (C) the daily average of the US Excess Availability during the immediately preceding forty-five (45) consecutive day period shall have been not less than fifteen percent (15%) of the Maximum Credit, and (D) the US Excess Availability at all times during the immediately preceding forty-five (45) consecutive day period shall have been not less than ten percent (10%) of the Maximum Credit, and after giving effect to any such Restricted Payment in respect thereof, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability and the US Excess Availability shall be not less than the applicable amounts specified above,

(3) Agent shall have received reasonably satisfactory monthly projections for the period that is the lesser of six (6) months or until the end of the then current fiscal year after the date of such Restricted Payment showing, on a pro forma basis after giving effect to the Restricted Payment, (A) minimum Excess Availability at all times during such period of not less than twenty percent (20%) of the Maximum Credit and (B) minimum US Excess Availability at all times during such period of not less than fifteen percent (15%) of the Maximum Credit, provided, that, this clause (iii) shall not be applicable in respect of the repurchase by Parent of its Equity Interests so long as the aggregate amount of all such Restricted Payments in the 2013 and 2014 fiscal years of Parent are less than the lesser of \$250,000,000 and the fair market value of 10,000,000 shares of common Equity Interests of Parent, or are less than \$40,000,000 in any fiscal year after the 2014 fiscal year, and

(4) Agent shall have received prior written notice of any such Restricted Payment specifying the amounts, the type of payment (such as dividend, repurchase of shares, redemption of shares or other type), the shares in respect of which the dividend is being paid or the shares that are being repurchased or redeemed and the anticipated date of the payment (or, if prior written notice is not required pursuant to the following proviso, Administrative Borrower shall use commercially reasonable efforts to provide Agent notice within five (5) Business Days after such Restricted Payment is made), provided, that, (A) the prior written notice required under this clause (iv) shall not be applicable so long as the aggregate amount of all such Restricted Payments made during the 2013 and 2014 fiscal years of Parent are less than the lesser of \$250,000,000 and the fair market value of 10,000,000 shares of common Equity Interests of Parent, (B) at all times after the aggregate amount of all such Restricted Payments made during the 2013 and 2014 fiscal years of Parent exceeds \$40,000,000, Agent shall receive written notice from Administrative Borrower within three (3) Business Days after the end of each month during the 2013 and 2014 fiscal years of Parent, of all such Restricted Payments made during such month and (C) the prior written notice required under this clause (iv) shall not be applicable in any of the 2015, 2016, 2017 or 2018 fiscal years of Parent, so long as the aggregate amount of all such Restricted Payments made during such fiscal year are less than \$40,000,000;

provided, that if a Restricted Payment under this clause (h) constituting a dividend would satisfy the foregoing conditions at the time such Restricted Payment is declared by Parent, it may be paid by Parent within 100 days of the date of declaration, regardless of whether the foregoing conditions would be satisfied at the time of payment, provided, that the full amount of such Restricted Payment has been the subject of a reserve thereof from the time of declaration through the time of payment, to the extent required under Section 2.1(e) of ~~the~~ this Agreement, and

(U) any transaction permitted under Section 6.3 or a Permitted Disposition to the extent constituting a Restricted Payment.

(i) **Accounting Methods.** Modify or change its fiscal year or its method of accounting (other than as may be permitted under, and in accordance with, GAAP); provided, that, in the event of any such modification or change to the method of accounting after the date hereof that affects the covenants in Section 7 hereof, Administrative Borrower may by notice to Agent, or Agent may, and at the request of Required Lenders shall, by notice to Administrative Borrower request that Agent and Administrative Borrower negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such modification or change (subject to the approval of the Required Lenders); provided, that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with the method of accounting under GAAP prior to such modification or change and (b) Administrative Borrower shall provide to Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such modification or change.

(j) **Investments.** Directly or indirectly, make or acquire any Investment, except for Permitted Investments.

(k) **Transactions with Affiliates.** Directly or indirectly, enter into any transaction of any kind with an Affiliate of Parent, whether or not in the ordinary course of business, other than on fair and reasonable terms no less favorable to Parent or such Subsidiary than Parent or such Subsidiary would obtain in a comparable arm's length transaction with a Person that is not an Affiliate, except for:

(F) any employment, consulting, severance or compensation arrangement or agreement, employee benefit plan or arrangement, officer or director indemnification agreement or any similar arrangement or other compensation arrangement entered into by Parent or any of its Subsidiaries in the ordinary course of business and payments, issuance of securities or awards pursuant thereto, and including the grant of stock options, restricted stock, stock appreciation rights, phantom stock awards or similar rights to employees and directors in each case approved by the Board of Directors of such Parent or such Subsidiary,

(G) transactions exclusively between or among Loan Parties (or any person becoming a Loan Party upon the consummation of such transaction), and transactions exclusively between or among Non-Loan Parties (or any Person becoming a Subsidiary of Parent upon the consummation of such transaction), provided that such transactions are not otherwise prohibited by this Agreement, and

(H) the direction by Parent of the environmental remediation activities with respect to certain Real Property of Altona Properties Pty Ltd., and including making arrangements for the payment of the costs of remediation with the proceeds of Permitted Investments by Parent and its Subsidiaries in such Person.

(l) **Use of Proceeds.** Use the proceeds of any Loan made hereunder for any purpose other than (a) on the Effective Date, (i) to replace by amendment and restatement the Existing Obligations, (ii) to pay transactional fees, costs, and expenses incurred in connection with this Agreement and the other Loan Documents and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and general corporate purposes, including without limitation to finance Permitted Acquisitions, Permitted Investments and the Spartech Acquisition; provided, that no part of the proceeds of the Loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

(m) **Specified Canadian Pension Plans.** Maintain, sponsor, administer, contribute to, participate in or assume or incur any liability in respect of any Specified Canadian Pension Plan, or acquire an interest in any Person if such Person sponsors, administers, contributes to, participates in or has any liability in respect of, any Specified Canadian Pension Plan.

(n) **Designation of Senior Debt.** ~~Designate any Indebtedness (other than)~~ Fail at any time to designate the Indebtedness under the Loan Documents ~~(-) of Parent or any of its Subsidiaries~~ as "Designated Senior Debt" (or any similar term) under, and as defined in, any Subordinated Debt.

(o) **2020 Notes and Current Notes.** Permit or give rise to any Indebtedness or obligation that will require the granting of a Lien to holders of the 2020 Notes, the Current Notes, any Refinancing Indebtedness with respect to the ~~<2020 Notes, the~~ >Current Notes or any subsequent Refinancing Indebtedness relating thereto.

(p) **Eligible Life Insurance Policies.**

(A) Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable for any Indebtedness or any other advances made against any Life Insurance Policy (except as permitted under clause (a) of the definition of Permitted Indebtedness),

(B) without at least thirty (30) days' prior written notice to Agent (or such shorter period as agreed to by Agent in writing) and provided that no Default or Event of Default under Section 8.1, Section 8.6 or Section 8.7 has occurred and is continuing or would be caused thereby, directly or indirectly, amend, modify, or change (or permit the amendment, modification or other change in any manner of) any of the terms or provisions of any Life Insurance Policy, or

(C) without at least thirty (30) days' prior written notice to Agent (or such shorter period as agreed to by Agent in writing) and provided that no Default or Event of Default under Section 8.1, Section 8.6 or Section 8.7 has occurred and is continuing or would be caused thereby, directly or indirectly, elect or cause to be elected, any mode of optional settlement under any Life Insurance Policy, terminate or cancel, or cause to be terminated or cancelled, any Life Insurance Policy, or surrender or cause to be surrendered, any Life Insurance Policy, or

(D) without at least thirty (30) days' prior written notice to Agent (or such shorter period as agreed to by Agent in writing) and provided that (i) no Default or Event of Default under Section 8.1, Section 8.6 or Section 8.7 has occurred and is continuing or would be caused thereby, and (ii) Borrowers have prepaid to Agent outstanding Obligations such that no Overadvance shall exist at the time of such release, request that any key person life insurance policy shall no longer constitute a "Life Insurance Policy" hereunder or under any other Loan Document and that the Agent release or terminate any Life Insurance Assignment executed in connection therewith.



## 17. FINANCIAL COVENANTS.

Each Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations:

(a) **Fixed Charge Coverage Ratio.** At any time that (i) Excess Availability is less than ten percent (10%) of the Maximum Credit for any one (1) Business Day, (b) US Excess Availability is less than seven and one-half percent (7.5%) of the Maximum Credit for any one (1) Business Day, (c) Excess Availability is less than twelve and one-half percent (12.5%) of the Maximum Credit for any three (3) consecutive Business Days or (d) US Excess Availability is less than ten percent (10%) of the Maximum Credit for any three (3) consecutive Business Days, the Fixed Charge Coverage Ratio of Parent and its Subsidiaries (on a consolidated basis), for the most recently ended period of twelve (12) consecutive months for which Agent has received financial statements, shall not be less than 1.00 to 1.00.

## 18. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

(a) **Non-Payment.** Borrowers or any other Loan Party fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the principal of the Obligations (b) pay within three (3) days after the same becomes due, any of the Obligations consisting of interest, or any fee due hereunder, or (iii) pay within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document.

(b) **Specific Covenants.** Any Loan Party or any of its Restricted Subsidiaries fails to perform or observe any covenant or other agreement contained in any of (a) Sections 5.1, 5.2, 5.3 (solely as it relates to good standing in its jurisdiction of organization), 5.6, 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit such Borrower's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss such Borrower's affairs, finances, and accounts with officers and employees of such Borrower as required by such Section), 5.11(a), 5.17, 5.18 or ~~5.13~~ 5.19 of this Agreement, (b) Sections 6.1 through 6.15 of this Agreement, (c) Section 7 of this Agreement, (d) Sections 3.4, 6.2(b) and (d), 6.3 and 6.4 of the Security Agreement, or (e) Sections 3.4, 6.2(b) and (d), 6.3 and 6.4 of the Canadian Security Agreement.

### (c) Other Defaults.

(L) Any Loan Party fails to perform or observe any covenant or other agreement contained in Section 5.13 of this Agreement, and such failure continues for a period of five (5) Business Days in the case of a new location of a chief executive office or of Inventory having a value in excess of \$250,000 (or if the Inventory for which Agent has failed to receive notice of the location exceeds \$2,500,000 in the aggregate).

(M) Any Loan Party or any of its Restricted Subsidiaries fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty (30) days after the earlier of (a) an Authorized Officer of any Loan Party becoming aware of such default or (b) receipt by such Loan Party of notice from Agent or any Lender of such default.

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith that is qualified as to materiality or Material Adverse Effect shall be incorrect or misleading and any of the same that is not so qualified shall be incorrect or misleading in any material respect, in each case when made or deemed made.

(e) **Cross-Default.** Any Loan Party or any of its Restricted Subsidiaries (a) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$35,000,000, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (including the beneficiary or beneficiaries of any Indebtedness arising pursuant to a guarantee, or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause (whether or not exercised), with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or otherwise to become payable or cash collateral in respect thereof to be demanded, provided, that, this Section shall not apply to secured Indebtedness that becomes due (and is paid in full and otherwise discharged within five (5) Business Days of initially

becoming 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.

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) commences any Insolvency Proceeding or any Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occurs: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within sixty (60) calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein.

(g) **Inability to Pay Debts; Attachment.** (a) Any Loan Party or any of its Restricted Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (b) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy or a stay of enforcement thereof is not in effect.

(h) **Judgments.** There is entered against any Loan Party or any of its Restricted Subsidiaries (a) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$35,000,000 or which in the aggregate with the amounts of any liabilities described in Section 8.9 below, exceeding \$50,000,000 (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute or decline coverage), or (b) any one or more final judgments other than for the payment of money, that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (i) enforcement proceedings are commenced by any creditor upon such judgment or order, (ii) there is a period of thirty (30) consecutive days at any time after the entry of any such judgment, order, or award during which the same is not discharged, satisfied, vacated, or bonded pending appeal, or (iii) a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect.

(i) **ERISA.** (a) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA in an aggregate amount in excess of the \$35,000,000, or which in the aggregate with amounts described in Section 8.8 and Section 8.9(b) below, are in excess of \$50,000,000 or (b) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA in an aggregate amount in excess of \$35,000,000, or which in the aggregate with amounts described in Section 8.8 and Section 8.9(a) above, are in excess of \$50,000,000.

(j) **Invalidity of Loan Documents.** The validity or enforceability of any provisions of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent or other than as a result of a transaction expressly permitted hereunder or after the payment in full of the Obligations) cease to be in full force and effect or be declared to be null and void, or any Loan Party or its Subsidiaries purport to revoke, terminate or rescind any provision of any Loan Document, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document.

(k) **Change of Control.** There occurs any Change of Control.

(l) **Collateral Documents.** The Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent set forth in the Term Loan Intercreditor Agreement, and except to the extent of Permitted Liens that have priority, first priority Lien on any of (a) ~~<any of the First Lien>~~the Revolving Loan Priority Collateral purported to be covered thereby or (b) ~~<Second Lien>~~Collateral~~<, if any>~~ other than Revolving Loan Priority Collateral, in any one case or in the aggregate as to such ~~<Second Lien>~~Collateral under this clause (b), having a fair market value in excess of \$35,000,000 (except in each case as a result of a transaction permitted under this Agreement), or the subordination provisions contained in any agreement related to any Subordinated Debt shall cease to be in full force and effect or to give Agent or Lenders the rights, powers and privileges purported to be created thereby.

(m) **Forfeiture of Collateral.** The indictment by any Governmental Authority, or indictment threatened in writing, by any Governmental Authority of any Loan Party of which any Loan Party or Agent receives notice, as to which there is a reasonable possibility of an adverse determination, under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against such Loan Party, in each case pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (a) any of the ~~<First Lien>~~Revolving Loan Priority Collateral, (b) any of the ~~<Second Lien>~~Collateral, other than Revolving Loan Priority Collateral, in any one case or in the aggregate as to such ~~<Second Lien>~~Collateral under this clause (b), having a value in excess of \$35,000,000 or (c) any other property of any Loan Party which is necessary or material to the conduct of its business.

## 19. RIGHTS AND REMEDIES.

(a) **Rights and Remedies.** Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall (in each case under clauses (a) or (b) by written notice to Administrative Borrower), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(G) declare the Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower;

(H) declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Lender hereunder to make Revolving Loans, (ii) the obligation of Swing Lender to make Swing Loans, and (iii) the obligation of the Issuing Lender to issue Letters of Credit; and

(I) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents or applicable law.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.6, in addition to the remedies set forth above, without any notice to any Borrower or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of all accrued and unpaid interest thereon and all fees and all other amounts owing under this Agreement or under any of the other Loan Documents, shall automatically and immediately become due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by each Loan Party.

At any time that (i) there is a "Guarantor Event of Default" (as defined in the Series G Guarantee) or (ii) an "Event of Default" (as defined in the Note Purchase Agreement with respect to the Series G Notes) or (iii) any other event or occurrence that gives rise to the rights or remedies of any holder or holders of the Series G Notes (or party or parties entitled to the benefit of the Series G Guarantee) that are the same (or substantially the same or in any event requires payment under the Series G Guarantee) as the events described in clauses (i) and (ii), or (iv) in the event of the actual exercise by any of the holders of the Series G Notes or other party entitled to the benefit of the Series G Guarantee of any rights or remedies under the terms of the Series G Guarantee or the Series G Guarantee Security Agreement or otherwise as a secured creditor (including as the holder of a judgment lien) of any Loan Party against a material portion of the Collateral (provided, that, such exercise is not subject to any stay or otherwise enjoined at the time of the payment referred to below), Agent may, at its election, or at the direction of Required Lenders shall, (a) in the event that the Company is required to make a payment under Section 2.1 of the Series G Guarantee, make payment of all amounts owing under or in respect of the Series G Guarantee to any such holders or beneficiaries (or agent or other representative of such holders or beneficiaries) or to any court to hold for the benefit of such holders or beneficiaries or (b) in the event of a Guarantor Event of Default, purchase on behalf of the Company the Series G Notes as provided in Section 2.2 of the Series G Guarantee, in which case such Series G Notes shall become the property of the Company. In the event that the payment is a result of a Guarantor Event of Default, then to the extent that such payment may be deemed a purchase of the Series G Notes under Section 2.2 of the Series G Guarantee, the Series G Notes so purchased shall be the property of the Company.

Upon such payment, the amount of the Series G Guarantee Reserve shall be reduced by the amount of such payment and such payment shall be deemed a Revolving Loan hereunder and part of the Obligations, notwithstanding the existence of any Event of Default or the failure of any other condition precedent. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, Agent is authorized by Borrowers and the Lenders to make such Revolving Loans. Such Revolving Loans shall bear interest at the rate applicable to Base Rate Loans.

Loan Parties waive any claims against Agent and Lenders in connection with any such payment and agree not to assert any claims against Agent or any Lender in connection with such payment, except in the case of gross negligence or willful misconduct of Agent or such Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction.

(b) **Remedies Cumulative.** The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, the PPSA, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

(c) **Appointment of a Receiver.** Upon the occurrence and during the continuance of an Event of Default, Agent may seek the appointment of a receiver, manager or receiver and manager (a "Receiver") under the Laws of Canada or any province thereof to take possession of all or any portion of the Collateral of any Loan Party or to operate same and, to the maximum extent permitted by law, may seek the appointment of such a Receiver without the requirement of prior notice or a hearing. Any such Receiver shall, to the extent permitted by law, so far as concerns responsibility for his/her acts, be deemed to be an agent of such Loan Party and not Agent and the Lenders, and Agent and the Lenders shall not be in any way responsible for any misconduct, negligence or nonfeasance on the part of any such Receiver, or his/her servants or employees,

absent the gross negligence, bad faith or willful misconduct of the Agent or the Lenders as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of Collateral of any Loan Party, to preserve Collateral of such Loan Party or its value, to carry on or concur in carrying on all or any part of the business of such Loan Party and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of Collateral of such Loan Party. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including a Loan Party, enter upon, use and occupy all premises owned or occupied by a Loan Party wherein Collateral of such Loan Party may be situated, maintain Collateral of a Loan Party upon such premises, borrow money on a secured or unsecured basis and use Collateral of a Loan Party directly in carrying on such Loan Party's business or as security for loans or advances to enable the Receiver to carry on such Loan Party's business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Agent, all money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to Agent. Every such Receiver may, in the discretion of Agent, be vested with all or any of the rights and powers of Agent and the Lenders. Agent may, either directly or through its nominees, exercise any or all powers and rights given to a Receiver by virtue of the foregoing provisions of this paragraph.

**(d) Collection Allocation Mechanism.**

(E) On the first date after the Effective Date on which there shall occur an Event of Default under Section 8.6 or the acceleration of Obligations pursuant to Section 9 (the "CAM Exchange Date"), (i) each Lender shall immediately be deemed to have acquired (and shall promptly make payment therefor to the Agent in accordance with Section 2.2(b) or 2.2(e)) participations in the Swing Loans, in an amount equal to such Lender's Pro Rata Share of each US Swing Loan outstanding on such date, (ii) each Lender shall immediately be deemed to have acquired (and shall promptly make payment therefor to the Agent in accordance with Section 2.9) participations in the Obligations with respect to each Letter of Credit in an amount equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit, and (iii) the Lenders shall automatically and without further act be deemed to have exchanged interests in the Revolving Loans and participations in the Swing Loans and Letters of Credit, such that in lieu of the interest of each Lender in each Revolving Loan and the Obligations with respect to each Swing Loan and Letter of Credit in which it shall participate as of such date (including such Lender's interest in the Obligations, Guaranties and Collateral of each Loan Party in respect thereof), such Lender shall hold an interest in every one of the Revolving Loans and a participation in all of the Obligations in respect of Swing Loans and Letters of Credit (including the Obligations, Guaranties and Collateral of each Loan Party in respect thereof), whether or not such Lender shall previously have participated therein, equal to such Lender's CAM Percentage thereof (the foregoing exchange being referred to as the "CAM Exchange"). Each Lender and each Loan Party hereby consents and agrees to the CAM Exchange, and each Lender agrees that the CAM Exchange shall be binding upon its successors and assigns and any person that acquires a participation in its interests in any Revolving Loan or any participation in any Swing Loan or Letter of Credit. Each Loan Party agrees from time to time to execute and deliver to the Agent all such promissory notes and other instruments and documents as the Agent shall reasonably request to evidence and confirm the respective interests of the Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it in connection with its Revolving Loans hereunder to the Agent against delivery of any promissory notes evidencing its interests in the Revolving Loans so executed and delivered; provided, that, the failure of any Loan Party to execute or deliver or of any Lender to accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange.

(F) As a result of the CAM Exchange, upon and after the CAM Exchange Date, each payment received by Agent pursuant to any Loan Document in respect of any of the Obligations related to the Revolving Loans, the Letters of Credit and the Swing Loans, and all fees, costs and expenses arising out of or related to any of the foregoing, in each case as provided in the Loan Documents, and each distribution made by the Agent in respect of such Obligations, shall be distributed to the Lenders pro rata in accordance with their respective CAM Percentages. Any direct payment received by a Lender upon or after the CAM Exchange Date, including by way of setoff, in respect of an Obligation shall be paid over to the Agent for distribution to the Lenders in accordance herewith.

(G) The provisions of this Section 9.4 are solely an agreement among the Lenders and Agent for the purpose of allocating risk and the Loan Parties have no additional obligations with respect thereto.

(H) For purposes of this Section 9.4, "CAM Percentage" means, as to each Lender, a fraction, expressed as a percentage, of which (i) the numerator shall be the US Dollar Equivalent of the aggregate amount of any Obligations owed to such Lender pursuant to the Loan Documents in respect of Revolving Loans, Letters of Credit and Swing Loans (including, without duplication, as to participations in Letters of Credit and Swing Loans), and fees, costs and expenses with respect to any of the foregoing, whether or not then due and payable, in each case immediately prior to the CAM Exchange Date, and (ii) the denominator shall be the US Dollar Equivalent of the aggregate amount of any Obligations owed to Lenders pursuant to the Loan Documents in respect of Revolving Loans, Letters of Credit and Swing Loans (including, without duplication, as to participations in Letters of Credit and Swing Loans), and fees, costs and expenses with respect to any of the foregoing, whether or not then due and payable, in each case immediately prior to the CAM Exchange Date.

**20. WAIVERS; INDEMNIFICATION.**

(a) **Demand; Protest; etc.** Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group pursuant to the Loan Documents on which such Borrower may in any way be liable.

(b) **The Lender Group's Liability for Collateral.** Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code and the PPSA, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrowers.

(c) **Indemnification.** Borrowers shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of one counsel retained by Agent on behalf of the Indemnified Persons, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided that Borrowers shall not be liable for costs and expenses (including attorneys' fees) of any Lender (other than WFCF) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Parent's and its Subsidiaries' compliance with the terms of the Loan Documents (provided, that, the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders or (ii) disputes solely between or among the Lenders and their respective Affiliates; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any ~~Taxes~~ taxes or any costs attributable to ~~Taxes~~ taxes, which shall be governed by Section 16), (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Parent or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of Parent or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents as determined pursuant to a final non-appealable order of a court of competent jurisdiction. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which any Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

## 21. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Loan Parties or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to Loan Parties:	PolyOne Corporation 33587 Walker Road Avon Lake, Ohio 44012 Attn: Treasurer Fax No. (440) 930-3064
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With copies to:	PolyOne Corporation 33587 Walker Road
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Avon Lake, Ohio 44012  
Attn: Secretary  
Fax No. (440) 930-3064

If to Agent:

Wells Fargo Capital Finance, LLC  
One Boston Place  
Boston, Massachusetts 02108  
Attn: Portfolio Manager - PolyOne  
Fax No. (~~617~~ 855) ~~523~~ 477-~~307~~ 5033

With copies to:

Goldberg Kohn Ltd.  
55 East Monroe Street, Suite 3300  
Chicago, Illinois 60603  
Attn: David L. Dranoff, Esq.  
Fax No. (312) 863-7439

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile 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) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

## **22. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.**

(I) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(J) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(K) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH LOAN PARTY AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH LOAN PARTY AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(L) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS

23. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.**

**(a) Assignments and Participations.**

(V) Any Lender may at any time assign to one or more Eligible Transferees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Obligations at the time owing to it and its participation interests in Letters of Credit, Swing Loans and Overadvances), provided, that, any such assignment shall be subject to the following conditions:

(1) The aggregate amount of the Commitment or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Obligations of the assigning Lender subject to such assignment shall be not less than \$5,000,000, unless the Agent otherwise consents, except that such minimum amount shall not apply to (A) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender or an Related Fund or (B) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or (C) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or Obligations at the time owing to it;

(2) Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(3) No consent shall be required for any assignment except: (A) the consent of Administrative Borrower shall be required, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that (1) Administrative Borrower shall be deemed to have consented to a proposed assignment unless it objects thereto by written notice to Agent within ten (10) Business Days after having received notice thereof and (2) no consent of Administrative Borrower shall be required for an assignment to another Lender, an Affiliate of a Lender, a Related Fund or, if an Event of Default has occurred and is continuing and (B) the consent of the Agent shall be required, other than for an assignment to another Lender, an Affiliate of a Lender or a Related Fund;

(4) The parties to each assignment shall execute and deliver to the Agent an Assignment and Acceptance, together with a processing fee of \$3,500, provided, that Agent may, in its discretion, elect to reduce or waive such processing fee in the case of any assignment, and the assignee, if it is not a Lender, shall deliver to the Agent an administrative questionnaire in a form reasonably satisfactory to Agent;

(5) No such assignment shall be made to (A) a Loan Party or an Affiliate of a Loan Party, (B) any Defaulting Lender or any of its Subsidiaries or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or one of its Subsidiaries, (C) a natural Person and (D) any holder of Subordinated Debt of a Loan Party to the extent Agent has written notice that such Person is a holder of such Subordinated Debt; and

(6) Borrowers and Agent may continue to deal solely and directly with a Lender in connection with the interest so assigned to an Assignee until (A) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Administrative Borrower and Agent by such Lender and the Assignee, (B) such Lender and its Assignee have delivered to Administrative Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with this Section 13.1(b) and the satisfaction of the other conditions herein.

(W) No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register. From and after the date that Agent notifies the assigning Lender (with a copy to Borrowers) that it has received an executed Assignment and Acceptance and recorded the same in the Register and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that, nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(X) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality,

validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or the performance or observance by any Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender 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 decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(Y) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(Z) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that, (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, and (v) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Loan Parties, the Collections of Loan Parties, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loan or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(AA) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Parent and its Subsidiaries and their respective businesses.

(BB) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(b) **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that, no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void ab initio. No consent to assignment by the



Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

## **24. AMENDMENTS; WAIVERS.**

### **(a) Amendments and Waivers.**

(J) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements or the Fee Letter), and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that, (i) no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby (which, in the case of all clauses below except clauses (A), (B) and (C), will require the consent of all Lenders), and all of the Loan Parties that are party thereto, do any of the following:

- a. increase the amount of or extend the expiration date of any Commitment of any Lender,
- b. extend, postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due to any Lender hereunder or under any other Loan Document,
- c. reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable to any Lender hereunder or under any other Loan Document (except (1) in connection with the waiver of applicability of Section 2.4(b) (which waiver shall be effective with the written consent of the Required Lenders), and (2) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),
- d. amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,
- e. amend, modify, or eliminate Section 15.11,
- f. release Agent's Lien in and to any of the Collateral, except as permitted by Section 15.11,
- g. amend, modify, or eliminate the definition of "Supermajority Lenders", "Required Lenders" or "Pro Rata Share",
- h. except as otherwise permitted by Section 15.11(a), contractually subordinate any of Agent's Liens,
- i. release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents, except in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents or if such Person constitutes an Excluded Subsidiary or Unrestricted Subsidiary,
- j. amend, modify, or eliminate any of the provisions of Section 2.2(d) or Section 2.3(b)(i), (ii) or (iii), Section 2.3(c)(i), or Section 3.1,
- k. amend, modify, or eliminate any of the provisions of Section 13.1(a) to permit a Loan Party or an Affiliate of a Loan Party to be permitted to become an Assignee, or

(2) no such waiver, amendment, or consent shall, unless in writing and signed by the Supermajority Lenders, amend, modify, or eliminate the definition of US Borrowing Base or Canadian Borrowing Base or any of the defined terms that are used in such definition (including the definitions of Eligible Accounts and Eligible Inventory) to the extent that any such change results in more credit being made available to Borrowers based upon the US Borrowing Base or Canadian Borrowing Base, but not otherwise, or the definitions of US Maximum Credit or Canadian Maximum Credit, or change Sections 2.1(e) or (f) (but exclusive of the right of Agent to eliminate or reduce the amount of reserves).

(K) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive (i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders), and (ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the consent of Loan

Parties and Lenders shall not be required for the exercise by Agent of any of its rights under this Agreement in accordance with the terms of this Agreement with respect to reserves, or the US Borrowing Base or Canadian Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts and Eligible Inventory) that are used therein.

(L) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Agent, Borrowers, and the Required Lenders,

(M) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders,

(N) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) (A), (B) or (C),

**(b) Replacement of Certain Lenders.**

(N) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five (5) Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(O) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of such Letters of Credit.

(c) **No Waivers; Cumulative Remedies.** No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by each Loan Party of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

**25. AGENT; THE LENDER GROUP.**

(a) **Appointment and Authorization of Agent.** Each Lender hereby designates and appoints WFCF as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to

Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), 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 Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, 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 that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Parent and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Parent and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of Parent and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Parent or its Subsidiaries, the Obligations, the Collateral, the Collections of Parent and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

(b) **Delegation of Duties.** Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

(c) **Liability of Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Parent or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Parent or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) 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 books and records or properties of Parent or its Subsidiaries.

(d) **Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

(e) **Notice of Default or Event of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has

actual knowledge, unless Agent shall have received written notice from a Lender or any Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that, unless and until Agent has received any such request, 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.

(f) **Credit Decision.** Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Parent and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person 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 investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

(g) **Costs and Expenses; Indemnification.** Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. To the extent any Loan Parties are required to reimburse Agent for such Lender Group Expenses, Agent is authorized and directed to deduct and retain sufficient amounts from the Collections of Parent and its Subsidiaries received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by Parent or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that, no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's Pro Rata Share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. Notwithstanding anything to the contrary contained herein, Lenders shall be liable and indemnify Agent-Related Persons only for Indemnified Liabilities and other costs and expenses that relate to or arise from an Agent-Related Person acting as or for Agent (in its capacity as Agent). The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

(h) **Agent in Individual Capacity.** WFCF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking,

trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFCF were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFCF or its Affiliates may receive information regarding Borrowers or their Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrowers or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFCF in its individual capacity.

(i) **Successor Agent.** Agent may resign as Agent upon thirty (30) days prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Administrative Borrower (unless such notice is waived by Borrowers) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Administrative Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as the Issuing Lender or Swing Lender, such resignation shall also operate to effectuate its resignation as the Issuing Lender or Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, to cause the Underlying Issuer to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Administrative Borrower, a successor Agent from among Lenders (unless no Lender is willing to accept such appointment, then otherwise as Agent determines). If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

(j) **Lender in Individual Capacity.** Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Parent or their Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

**(k) Collateral Matters.**

(A) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any of the Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations, or (ii) constituting property being sold or disposed of if Administrative Borrower or any Loan Party certifies to Agent that the sale or disposition is not prohibited by Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), or (iii) constituting property in which any Loan Party did not own an interest at the time the security interest, mortgage or lien was granted or at any time thereafter, or (iv) having a value in the aggregate in any twelve (12) month period of less than \$5,000,000, and to the extent Agent may release its Lien on any such Collateral pursuant to the sale or other disposition thereof, such sale or other disposition shall be deemed consented to by Lenders, or (v) if required or permitted under the terms of any of the other Loan Documents, including any intercreditor agreement, or (vi) constituting property leased to a Loan Party under a lease that has expired or is terminated, or (vii) subject to Section 14.1 and the Security Agreement, if the release is approved, authorized or ratified in writing by the Required Lenders. In no event shall the consent or approval of an Issuing Lender to any release of Collateral be required. Nothing contained herein shall be construed to require the consent of any Bank Product Provider to any release of any Collateral or termination of security interests in any Collateral. Upon request by Agent or any Borrower at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this

Section 15.11; provided, that, (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Borrower in respect of) all interests retained by any Loan Party, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(B) The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (A) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code or other bankruptcy or insolvency laws, including under Section 363 of the Bankruptcy Code, (B) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code or the PPSA, including pursuant to Sections 9-610 or 9-620 of the Code, or (C) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase).

(C) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by a Loan Party or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

#### **(I) Restrictions on Actions by Lenders; Sharing of Payments.**

(A) Each of the Lenders agrees that it shall not, without the express written consent of Agent and only to the extent it is lawfully entitled to do so, set off against the Obligations, any amounts owing by such Lender to Parent or its Subsidiaries or any Deposit Accounts of Parent or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(B) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that, to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment. Notwithstanding anything to the contrary contained herein, to the extent that cash collateral has been specifically pledged by a Borrower to a Lender prior to the date hereof to secure the Bank Product Obligations owing to such Lender, such Lender may apply such cash collateral to such Bank Product Obligations, after notice to Agent, and shall only be required to comply with this Section 15.12(b) as to such cash collateral to the extent that the amount of such cash collateral exceeds the applicable Bank Product Obligations.

(m) **Agency for Perfection.** Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code or in accordance with the PPSA can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

(n) **Payments by Agent to the Lenders.** All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

(o) **Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider). Each Lender hereby authorizes Agent, on behalf of such Lender, to execute the certain First Amendment to Security Agreement of even date herewith among Agent and the US Loan Parties, the certain First Amendment to Security Agreement of even date herewith among Agent and the Canadian Loan Parties and each other amendment to a Loan Document to be executed and delivered on the Effective Date. Each Lender hereby authorizes Agent, on behalf of such Lender, to execute the certain Second Amendment to Security Agreement dated as of the Term Loan Closing Date among Agent and the US Loan Parties, the first Amendment to the Guaranty dated of the Term Loan Closing Date by the US Loan Parties in favor of Agent, the certain Second Amendment to Security Agreement as of the Term Loan Closing Date among Agent and the Canadian Loan Parties and each other amendment to a Loan Document to be executed and delivered on in connection with the Transaction and the Fourth Amendment Transactions.

(p) **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.**

(A) By becoming a party to this Agreement, each Lender:

(1) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting Parent or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(2) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(3) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Parent and its Subsidiaries and will rely significantly upon Parent's and its Subsidiaries' books and records, as well as on representations of each Borrower's personnel,

(4) agrees to keep all Reports and other material, non-public information regarding Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(5) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any 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 Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who obtains all or part of any Report through the indemnifying Lender.

(B) In addition to the foregoing, any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Parent or any Subsidiary of Parent to Agent that has not been contemporaneously provided by Parent or its Subsidiaries to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (i) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Parent or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of such



Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Parent or its Subsidiaries, Agent promptly shall provide a copy of same to such Lender, and (ii) any time that Agent renders to any Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

**(q) Agent May File Proofs of Claim.**

(A) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding or other Insolvency Proceeding relative to any Loan Party, Agent (irrespective of whether the principal of any Obligations or amounts owing in respect of Letters of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Obligations and all other Obligations (other than obligations under Bank Products to which Agent is not a party) that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, Issuing Lender and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Issuing Lender and Agent and their respective agents and counsel and all other amounts due Lenders, Issuing Lender and Agent allowed in such judicial proceeding; and

(2) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to Lenders and Issuing Lender, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent.

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

(r) **Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

(s) **Appointment for the Province of Quebec.** Without prejudice to Section 15.1 above, each member of the Lender Group hereby appoints WFCF as the person holding the power of attorney (fonde pouvoir) of the Lender Group as contemplated under Article 2692 of the Civil Code of Quebec, to enter into, to take and to hold on their behalf, and for their benefit, any deed of hypothec ("Deed of Hypothec") to be executed by any of the Borrowers or Guarantors granting a hypothec pursuant to the laws of the Province of Quebec (Canada) and to exercise such powers and duties which are conferred thereupon under such deed. All of the Lender Group hereby additionally appoints Agent as agent, mandatary, custodian and depositary for and on behalf of the Lender Group (a) to hold and to be the sole registered holder of any bond ("Bond") issued under the Deed of Hypothec, the whole notwithstanding any other applicable law, and (b) to enter into, to take and to hold on their behalf, and for their benefit, a bond pledge agreement ("Pledge") to be executed by such Borrower or Guarantor pursuant to the laws of the Province of Quebec and creating a pledge of the Bond as security for the payment and performance of, inter alia, the Obligations. In this respect, (i) Agent as agent, mandatary, custodian and depositary for and on behalf of the Lender Group, shall keep a record indicating the names and addresses of, and the pro rata portion of the obligations and indebtedness secured by the Pledge, owing to each of the members of the Lender Group for and on behalf of whom the Bond is so held from time to time, and (ii) each of the members of the Lender Group will be entitled to the benefits of any property or assets charged under the Deed of Hypothec and the Pledge and will participate in the proceeds of realization of any such property or assets. WFCF, in such aforesaid capacities shall (A) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to WFCF, as fonde de pouvoir, with respect to the property or assets charged under the Deed of Hypothec and to Agent with respect to the property and assets charged under the Pledge, any other applicable law or otherwise, and (B) benefit from and be subject to all provisions hereof



with respect to Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lender Group, the Borrowers or the Guarantors. The execution prior to the date hereof by WFCF, as fonde de pouvoir, or Agent of any Deed of Hypothec, Pledge or other security documents made pursuant to the laws of the Province of Quebec (Canada) is hereby ratified and confirmed. The constitution of WFCF as the Person holding the power of attorney (fonde de pouvoir), and of Agent, as agent, mandatary, custodian and depositary with respect to any bond that may be issued and pledged from time to time to Agent for the benefit of the Lender Group, shall be deemed to have been ratified and confirmed by each Person accepting an assignment of, a participation in or an arrangement in respect of, all or any portion of any of the Lender Group's rights and obligations under this Agreement by the execution of an assignment, including an Assignment and Acceptance Agreement or other agreement pursuant to which it becomes such assignee or participant, and by each successor Agent by the execution of an assignment agreement or other agreement, or by the compliance with other formalities, as the case may be, pursuant to which it becomes a successor Agent hereunder.

**(t) Authorization.**

Each Lender hereby (i) consents to the establishment of the priority of the Liens provided for in the 2015 Note Intercreditor Agreement and the Series G Guarantee Lien Acknowledgement, (ii) agrees that it will be bound by, and will take no actions contrary to, the provisions of the 2015 Note Intercreditor Agreement, (iii) authorizes and instructs Agent to enter into the 2015 Note Intercreditor Agreement and the Series G Guarantee Lien Acknowledgement on behalf of such Lender and agrees that Agent may take such actions on its behalf as is contemplated by the terms of the 2015 Note Intercreditor Agreement and the Series G Guarantee Lien Acknowledgement, and (iv) acknowledges (or is deemed to acknowledge) that a copy of the 2015 Note Intercreditor Agreement and the Series G Guarantee Lien Acknowledgement was delivered, or made available, to such Lender and it has received and reviewed such agreements. In the event of any conflict between the terms of the 2015 Note Intercreditor Agreement and any of the other Loan Documents, the terms of the 2015 Note Intercreditor Agreement shall govern and control except as expressly set forth in the 2015 Note Intercreditor Agreement. In the event of any conflict between the terms of the Series G Guarantee Lien Acknowledgement and any of the other Loan Documents, the terms of the Series G Guarantee Lien Acknowledgement shall govern and control except as expressly set forth in the Series G Guarantee Lien Acknowledgement.

Each Lender hereby (i) consents to the subordination of Liens provided for in the Term Loan Intercreditor Agreement (as defined in the Credit Agreement amended hereby), (ii) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Term Loan Intercreditor Agreement, (iii) authorizes and instructs Agent to enter into the Term Loan Intercreditor Agreement on behalf of such Lender and agrees that Agent may take such actions on its behalf as is contemplated by the terms of the Term Loan Intercreditor Agreement, and (iv) acknowledges that a copy of the Term Loan Intercreditor Agreement will be delivered, or will be made available, on or prior to the Term Loan Closing Date to such Lender and, upon receipt, it will review the Term Loan Intercreditor Agreement. Notwithstanding anything herein to the contrary, the Lien and security interest granted pursuant to this Agreement and the other Loan Documents and the exercise of any right or remedy hereunder are subject to the provisions of the Term Loan Intercreditor Agreement. In the event of any conflict between the terms of the Term Loan Intercreditor Agreement and any of the other Loan Documents, the terms of the Term Loan Intercreditor Agreement shall govern and control except as expressly set forth in the Term Loan Intercreditor Agreement. Furthermore, in the event the Term Loan Credit Agreement has not been terminated, notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, if there is a delivery or control obligation with respect to any Term Loan Priority Collateral and such delivery or grant of control cannot be made by the applicable Loan Agent to both Agent and Term Loan Agent, such delivery requirement shall be satisfied by delivery by the applicable Grantor to Term Loan Agent.

**(u) Release of Life Insurance Policies.** So long as the Loan Parties are in compliance with Section 6.16(d), the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Life Insurance Policy upon at least thirty (30) days (or such shorter period as agreed to by Agent in writing) written notice from Parent that any key person life insurance policy shall not constitute a "Life Insurance Policy" hereunder or under any other Loan Document and in connection therewith, Agent shall release or terminate any Life Insurance Assignment executed in connection with such Life Insurance Policy and take such further actions as reasonably requested by Parent, at the Borrowers' sole cost and expense.

**26. WITHHOLDING TAXES.**

**(a) No Setoff; Payments.** All payments made by any Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrowers shall comply with the next sentence of this Section 16.1. If any Taxes are so levied or imposed, Borrowers agree to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, that, Borrowers shall not be required to increase any such amounts if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrowers will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrowers or such other evidence as is reasonably satisfactory to Agent. Borrowers agree to pay any present or future stamp, value added or documentary taxes or

any other excise or property taxes, similar charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document. The Borrowers shall jointly and severally (subject to the penultimate sentence of this Section 16.1) indemnify each of Agent, Lenders, and Issuing Lender (collectively a "Tax Indemnitee") for the full amount of Taxes imposed on or with respect to any payment made by or on account of any obligation under this Agreement or any other Loan Document or breach thereof by any Loan Party (including, without limitation, any Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16.1) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including reasonable fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, that, Borrowers shall not be required to increase any such amount if the increase in such amount payable results from such Tax Indemnitee's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Notwithstanding the foregoing, no Loan Party that is a CFC or CFC Holding Company (including the Canadian Borrowers) shall be liable under this Section 16.1 with respect to any taxes imposed on or with respect to any payment made by or on account of any obligation of a US Loan Party. The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

**(b) Exemptions.**

(A) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(6) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (1) a "bank" as described in Section 881(c)(3)(A) of the IRC, (2) a ten percent (10%) shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (3) a controlled foreign corporation related to any Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or W-8BEN-E, as applicable, or Form W-8IMY (with proper attachments);

(7) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or W-8BEN-E, as applicable;

(8) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(9) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(10) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax, including under FATCA.

(B) (i) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms ~~← and to →~~, at the time or times prescribed by applicable Law and upon the reasonable request of the Agent or Administrative Borrower and shall promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction. In addition, each Lender, if reasonably requested by the Administrative Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Administrative Borrower or the Agent as will enable the Borrowers or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. The completion, execution and submission of such documentation (other than such documentation set forth in Section 16.2(a) above and this Section 16.2(b)) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(6) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Administrative Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Borrower or the Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such

supplementary documentation as many be prescribed by applicable Law to permit the Borrowers or the Agent to determine the withholding or deduction required to be made.

If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to the Administrative Borrower and Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b) (3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Administrative Borrower or the Agent as may be necessary for the Borrowers and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

Solely for purposes of determining withholding Taxes imposed under FATCA, from and after the Fourth Amendment Effective Date, the Borrowers and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) the Agreement as not qualifying as a "grandfathered obligation" within the meaning of Section 1.1471-2(b)(2)(i) of the Treasury Regulations.

(C) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, that, nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(D) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(~~c~~b) or 16.2(~~d~~c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section ~~16~~ 16.2(b) or 16.2(~~c~~c) or ~~16(d)~~, if applicable. Each Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

### **(c) Reductions.**

(A) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Section 16.2(c) or 16.2(d) are not delivered to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation), then Agent and Borrowers (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(B) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(d) **Refunds.** If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this

Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrowers (but only to the extent of payments made, or additional amounts paid, by Borrowers under this Section 16 with respect to Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such a refund); provided, that Borrowers, upon the request of Agent or such Lender, agree to repay the amount paid over to Borrowers (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the bad faith, willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to any Borrower or any other Person.

## **27. GENERAL PROVISIONS.**

(a) **Effectiveness.** This Agreement shall be binding and deemed effective when executed by each Loan Party, Agent, and each Lender whose signature is provided for on the signature pages hereof

(b) **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

(c) **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Loan Party, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

(d) **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

(e) **Bank Product Providers.** Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, as a result of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents; provided, that, the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in proceeds of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, as a result of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, reduce, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Any Borrower may obtain Bank Products from any Bank Product Provider, although no Borrower is required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

(f) **Debtor-Creditor Relationship.** The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

(g) **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and

all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

(h) **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by any Borrower or Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code (or under any bankruptcy or insolvency laws of Canada, including the BIA and the CCAA) relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of the Lender Group related thereto, the liability of Borrowers or Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

**(i) Confidentiality.**

(D) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Parent and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Administrative Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (A) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (B) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(E) Anything in this Agreement to the contrary notwithstanding, Agent may provide customary information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or for its marketing materials, with such information to consist of deal terms and other information customarily found in such publications or marketing materials and may otherwise use the name, logos, and other insignia of Borrowers and Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent, provided, that, the content of any "tombstones" will be reasonably acceptable to Parent.

(j) **Lender Group Expenses.** Borrowers agree to pay any and all Lender Group Expenses on the earlier of (a) the first day of the month following the date on which such Lender Group Expenses were first incurred (or in the case of out-of-pocket expenses for third parties, following the date that Agent provides the invoice or other notice of such charges to Administrative Borrower) or (b) five (5) days after the date on which demand therefor is made by Agent. Borrowers agree that their respective obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations.



(k) **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, the Issuing Lender, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

(l) **Patriot Act.** Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrowers that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the Patriot Act. In addition, if Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties and (b) OFAC/PEP searches and customary individual background checks for the Loan Parties' senior management and key principals, and each Borrower agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Expenses hereunder and be for the account of such Borrower.

(m) **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

**(n) Administrative Borrower as Agent for Borrowers.**

(C) Each Borrower hereby irrevocably appoints and constitutes Parent ("Administrative Borrower") as its agent and attorney-in-fact to request and receive Loans and Letters of Credit pursuant to this Agreement and the other Loan Documents from Agent or any Lender or Issuing Lender in the name or on behalf of such Borrower. Agent, Lenders and Issuing Lender may disburse the Loans to such bank account of Administrative Borrower or a Borrower or otherwise make such Loans to a Borrower and provide such Letters of Credit to a Borrower as Administrative Borrower may designate or direct, without notice to any other Loan Party. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(D) Administrative Borrower hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 17.14. Administrative Borrower shall ensure that the disbursement of any Loans to each Borrower requested by or paid to or for the account of Parent, or the issuance of any Letter of Credit for a Borrower hereunder, shall be paid to or for the account of such Borrower.

(E) Each Loan Party hereby irrevocably appoints and constitutes Administrative Borrower as its agent to receive statements on account and all other notices from Agent, Lenders and Issuing Lender with respect to the Obligations or otherwise under or in connection with this Agreement and the other Loan Documents.

(F) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any other Loan Party by Administrative Borrower shall be deemed for all purposes to have been made by such Loan Party, as the case may be, and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(G) No resignation or termination of the appointment of Administrative Borrower as agent as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If Administrative Borrower resigns under this Agreement, Borrowers shall be entitled to appoint a successor Administrative Borrower (which shall be a Borrower). Upon the acceptance of its appointment as successor Administrative Borrower hereunder, such successor Administrative Borrower shall succeed to all the rights, powers and duties of the retiring Administrative Borrower and the term "Administrative Borrower" shall mean such successor Administrative Borrower and the retiring or terminated Administrative Borrower's appointment, powers and duties as Administrative Borrower shall be terminated.

(o) **Currency Indemnity.** If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any of the other Loan Documents, it becomes necessary to convert into the currency of such jurisdiction (the "Judgment Currency") any amount due under this Agreement or under any of the other Loan Documents in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the Exchange Rate at which Agent is able, on the relevant date, to purchase the Currency Due with the Judgment Currency prevailing on the Business Day before the day on which judgment is given. In the event that there is a change in the Exchange Rate prevailing between the Business

Day before the day on which the judgment is given and the date of receipt by Agent of the amount due, Borrowers will, on the date of receipt by Agent, pay such additional amounts, if any, as may be necessary to ensure that the amount received by Agent on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by Agent is the amount then due under this Agreement or such other of the Loan Documents in the Currency Due. If the amount of the Currency Due which Agent is able to purchase is less than the amount of the Currency Due originally due to it, Loan Parties shall indemnify and save Agent harmless from and against loss or damage arising as a result of such deficiency. The indemnity contained herein shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any of the other Loan Documents or under any judgment or order.

**(p) Anti-Money Laundering Legislation.**

(A) Each Loan Party acknowledges that, pursuant to the Proceeds of Crime Money Laundering) and Terrorist Financing Act (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, under the laws of Canada (collectively, including any guidelines or orders thereunder, "AML Legislation"), Agent and Lenders may be required to obtain, verify and record information regarding each Loan Party, its respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Loan Party, and the transactions contemplated hereby. Administrative Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent, or any prospective assign or participant of a Lender or Agent, necessary in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(B) If Agent has ascertained the identity of any Loan Party or any authorized signatories of any Loan Party for the purposes of applicable AML Legislation, then the Agent:

(1) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and

(2) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

(C) Notwithstanding the provisions of this Section and except as may otherwise be agreed in writing, each Lender agrees that Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Loan Parties or any such authorized signatory in doing so.

(q) **Quebec Interpretation.** For all purposes of any assets, liabilities or entities located in the Province of Quebec and for all purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (a) "personal property" shall include "movable property", (b) "real property" shall include "immovable property", (c) "tangible property" shall include "corporeal property", (d) "intangible property" shall include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall include a "hypothec", "prior claim" and a "resolutive clause", (f) all references to filing, registering or recording under the Code or PPSA shall include publication under the Civil Code of Quebec, (g) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (i) "goods" shall include corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall include a "mandatary", (k) "construction liens" shall include "legal hypothecs", (l) "joint and several" shall include solidary, (m) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (n) "beneficial ownership" shall include "ownership on behalf of another as mandatary", (o) "easement" shall include "servitude", (p) "priority" shall include "prior claim", (q) "survey" shall include "certificate of location and plan", and (r) "fee simple title" shall include "absolute ownership".

(r) **English Language Only.** The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated hereby be drawn up in the English language only and that all other documents contemplated hereunder or relating hereto, including notices, shall also be drawn up in the English language only. Les parties aux presentes confirment que c'est leur volonte que cette convention et les autres documents de credit soient rediges en langue anglaise seulement et que tous les documents, y compris tous avis, envisages par cette convention et les autres documents peuvent etre rediges en langue anglaise seulement.

(s) **Hedging Liability.** Notwithstanding any provision hereof or in any other Loan Document to the contrary, in the event that any Guarantor is not an "eligible contract participant" as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, at the time (i) any transaction is entered into under a Hedge Obligations or (ii) such Person becomes a Guarantor hereunder, and the effect of the foregoing would be to render a Guaranty by such Guarantor violative of

the Commodity Exchange Act, the Obligations of such Guarantor shall not include (x) in the case of clause (i) above, such transaction and (y) in the case of clause (ii) above, any transactions outstanding under any Hedge Obligations as of the date such Guarantor becomes a Guarantor hereunder.

*[Signature pages to follow.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**U.S. BORROWERS:**

POLYONE CORPORATION

By  
Name  
Title

GLS INTERNATIONAL, INC.  
NEU SPECIALTY ENGINEERED  
MATERIALS, LLC

By  
Name  
Title

**CANADIAN BORROWER:**

POLYONE CANADA INC.

By  
Name  
Title

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[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

**GUARANTORS:**

~~<M.A. HANNA ASIA HOLDING COMPANY>~~

~~<By >~~  
~~<Name >~~  
~~<Title >~~

POLYONE LLC

By  
Name  
Title

CONEXUS, INC.



POLYMER DIAGNOSTICS, INC.  
COLORMATRIX GROUP, INC.  
COLORMATRIX HOLDINGS, INC.  
THE COLORMATRIX CORPORATION  
CHROMATICS, INC.  
GAYSON SILICONE DISPERSIONS, INC.

By  
Name  
Title

GLASFORMS, INC.

By  
Name  
Title

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

~~COLORMATRIX—BRAZIL, LLC~~

By    ~~The ColorMatrix Corporation, its sole member~~

By  
Name  
Title

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~~<[SIGNATURES CONTINUED FROM PREVIOUS PAGE]>~~

WELLS FARGO CAPITAL FINANCE, LLC, as  
Agent, Swing Line Lender and a Lender

By  
Name  
Title

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WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA, as a Lender

By  
Name  
Title

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**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

BANK OF AMERICA, N.A., as a Syndication  
Agent and a Lender

By  
Name  
Title

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**  
**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

BANK OF AMERICA, N.A., CANADA  
BRANCH, as a Lender

By  
Name  
Title

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**  
**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

U.S. BANK NATIONAL ASSOCIATION, as a  
Syndication Agent and a Lender

By  
Name  
Title

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**  
**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

U.S. BANK NATIONAL ASSOCIATION,  
CANADA BRANCH, as a Lender

By  
Name  
Title

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**  
**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

CITIBANK, N.A., as a Lender

By  
Name  
Title

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**  
**[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

HSBC BANK USA, N.A., as a Lender

By  
Name  
Title

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KEYBANK NATIONAL ASSOCIATION, as a  
Documentation Agent and a Lender

By  
Name  
Title

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PNC BANK, NATIONAL ASSOCIATION, as a  
Documentation Agent and a Lender

By  
Name  
Title

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PNC BANK CANADA BRANCH, as a Lender

By  
Name  
Title

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]  
[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

THE HUNTINGTON BANK, as a Lender

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

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]  
[SIGNATURES CONTINUED FROM PREVIOUS PAGE]**

RBS CITIZENS BUSINESS CAPITAL, a  
division of RBS Citizens, N.A., as a Lender

By\_\_

## Exhibit B

### Schedules

[see attached]

#### Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

"Acceptable Field Exam" means a field examination with respect to specified assets or an Acquired Business that is completed in accordance with Agent's customary procedures and practices and as otherwise required by the nature and circumstances of such assets or the business of the Acquired Business, as applicable, the scope and results of which are satisfactory to Agent in its Permitted Discretion.

"Account" means an account (as that term is defined in the Code).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Acquired Business" means any business and assets subject to an Acquisition hereunder.

"Acquired Business Availability Period" means, with respect to any Acquired Business, the period commencing on the date such Acquired Business was acquired in a Permitted Acquisition or a Permitted Investment and ending on the earlier of (a) the 90th day thereafter or (b) the date that an Acceptable Field Exam is completed with respect to such Acquired Business and, in the case of Inventory of an Acquired Business, an Inventory appraisal with respect to such Acquired Business.

"Acquired Indebtedness" means Indebtedness of a Person whose assets or Equity Interests are acquired by a Restricted Subsidiary in a Permitted Acquisition or the Spartech Acquisition; provided, that, such Indebtedness (a) was in existence prior to the date of such Permitted Acquisition or the Spartech Acquisition, as applicable, and (b) was not incurred in connection with, or in contemplation of, such Permitted Acquisition or the Spartech Acquisition, as applicable.

"Acquisition" means (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person (other than of a Subsidiary), or (b) the purchase or other acquisition (whether by means of a merger, consolidation, amalgamation or otherwise) by a Person or its Subsidiaries of all or substantially all of the Equity Interests of any other Person (other than of a Subsidiary).

"Additional Advance Conditions" means, (a) in respect of the incurrence of any Additional Term Loans, that (i) the amount thereof incurred at any time shall not exceed the Incremental Cap in effect at such time, (ii) such Additional Term Loans shall comply in all respects with the applicable terms of Section 2.14 of the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date) and (iii) no Event of Default shall be in existence at the time of issuance thereof or be caused by such issuance and (b) in respect of the incurrence of Incremental Equivalent Debt, that (i) the amount thereof incurred at any time shall not exceed the Incremental Cap in effect at such time, (ii) such Incremental Equivalent Debt shall comply in all respects with the applicable terms of Section 2.14 of the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date), (iii) no Event of Default shall be in existence at the time of issuance thereof or be caused by such issuance, (iv) the Fixed Charge Coverage Ratio (calculated based on the preceding twelve (12) consecutive month period ending on the fiscal month end for which Agent has received financial statements immediately prior to the date of the incurrence of such Indebtedness), on a pro forma basis, immediately after giving effect to such incurrence, shall be not less than 1.00 to 1.00, (v) after giving effect to such incurrence, Excess Availability shall be at least \$100,000,000 and (vi) Agent shall have received a subordination or intercreditor agreement relating to such Incremental Equivalent Debt that is reasonably satisfactory to Agent (it being agreed that the form of the Term Loan Intercreditor Agreement entered into on the Fourth Amendment Effective Date is satisfactory to Agent).

"Additional Documents" has the meaning specified therefor in Section 5.11(b) of the Agreement.

"Additional ~~<Second Lien Documents>~~ Term Loans" has the meaning specified therefor in ~~<Section 5.12 of>~~ the Term Loan Credit Agreement, as in effect on the Fourth Amendment Effective Date.

"Administrative Borrower" has the meaning specified therefor in Section 17.14 of the Agreement.

"Affected Lender" has the meaning specified therefor in Section 2.11(b) of the Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, that, for purposes of the definition of Eligible Accounts and Section 6.11 of the Agreement

(a) any Person which owns directly or indirectly ten percent (10%) or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or ten percent (10%) or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, and (b) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to the Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1.

"Agent's Canadian Account" means the Deposit Accounts of Agent identified on Schedule A-2.

"Agent's Liens" means the Liens granted by any Loan Party to Agent under the Loan Documents.

"Agreement" means the Amended and Restated Credit Agreement to which this Schedule 1.1 is attached.

"AML Legislation" has the meaning specified in Section 17.15 of the Agreement.

"Applicable Margin" means, with respect to Base Rate Loans, BA Rate Loans and LIBOR Rate Loans, the applicable percentage (on a per annum basis) set forth below based on the Quarterly Average Excess Availability for the immediately preceding three (3) month period:

<b>Tier</b>	<b>Quarterly Average Excess Availability</b>	<b>Applicable LIBOR Rate Margin</b>	<b>Applicable Base Rate Margin</b>	<b>Applicable BA Rate Margin</b>
1	Equal to or greater than \$250,000,000	1.50%	0.50%	0.75%
2	Greater than or equal to \$150,000,000 but less than \$250,000,000	1.75%	0.75%	1.00%
3	Less than \$150,000,000	2.00%	1.00%	1.25%

provided, that, (i) the Applicable Margin shall be calculated and established once every three (3) months and shall remain in effect until adjusted for the next three (3) month period, (ii) each adjustment of the Applicable Margin shall be effective as of the first day of each such three (3) month period based on the Quarterly Average Excess Availability for the immediately preceding three (3) month period and (iii) in the event that Borrowers fail to provide any US Borrowing Base Certificate, Canadian Borrowing Base Certificate or other information with respect thereto for any period on the date required hereunder, effective as of the date on which such US Borrowing Base Certificate, Canadian Borrowing Base Certificate or other information was otherwise required, at Agent's option, the Applicable Margin shall be based on the highest rate above until the next Business Day after a US Borrowing Base Certificate, Canadian Borrowing Base Certificate or other information is provided for the applicable period at which time the Applicable Margin shall be adjusted as otherwise provided herein. In the event that at any time after the end of any three (3) month period the Quarterly Average Excess Availability for such three (3) month period used for the determination of the Applicable Margin was greater than the actual amount of the Quarterly Average Excess Availability for such period as a result of the inaccuracy of information provided by or on behalf of Borrowers to Agent for the calculation of Excess Availability, the Applicable Margin for such period shall be adjusted to the applicable percentage based on such actual Quarterly Average Excess Availability and any additional interest for the applicable period as a result of such recalculation shall be promptly paid to Agent. The foregoing shall not be construed to limit the rights of Agent or Lenders with respect to the amount of interest payable after an Event of Default whether based on such recalculated percentage or otherwise. The Series G Guarantee Reserve Amount shall not be included in the calculation of Quarterly Average Excess Availability for purposes of determining the Applicable Margin.

"Application Event" means the occurrence of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.3(b)(ii) of the Agreement.

"Approved Form" with respect to any Life Insurance Policy, means that the form and substance of such Life Insurance Policy is (a) a 65 Whole Life Policy the same in all material respects as the sample 65 Whole Life Policy attached as an exhibit to the most recent Northwestern Mutual Side Letter that has been approved by Agent, (b) a 90 Whole Life Policy the same in all material respects as the sample 90 Whole Life Policy attached as an exhibit to the most recent Northwestern Mutual Side Letter that has been approved by Agent, (c) a Whole Life with Extra Life Protection Policy the same in all material respects as the sample Whole Life with Extra Life Protection Policy attached as an exhibit to the most recent Northwestern Mutual Side Letter that has

been approved by Agent, (d) a Whole Life with Adjustable Term Protection Policy the same in all material respects as the sample Whole Life with Adjustable Term Protection Policy attached as an exhibit to the most recent Northwestern Mutual Side Letter that has been approved by Agent, or (e) another form of policy that has been approved by Agent and is attached as an exhibit to the most recent Northwestern Mutual Side Letter.

"Arrangers" means, collectively, Wells Fargo Capital Finance, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"Assignee" has the meaning specified therefor in Section 13.1(a) of the Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1.

"Authorized Person" means any one of the individuals identified on Schedule A-3, as such schedule is updated from time to time by written notice from Administrative Borrower to Agent.

"Availability" means, as of any date of determination, (a) the lesser of (i) the Borrowing Base or (ii) the Maximum Credit minus (b) the Revolver Usage.

"Avon Lake Real Property" means that certain fee owned Real Property in Avon Lake, Ohio further described on Schedule 4.5(c).

"Bank Product" means any one or more of the following financial products or accommodations extended to Parent or its Subsidiaries by a Bank Product Provider: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called "procurement cards" or "P-cards"), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by Parent or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers), except as Agent may otherwise agree, in an amount determined by Agent as reasonably sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Parent or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Parent or its Subsidiaries; provided, that, in order for any item described in clauses (a) (b), or (c) above, as applicable, to constitute "Bank Product Obligations", the applicable Bank Product must have been provided on or after the Existing Closing Date and Agent shall have received a Bank Product Provider Agreement on or before the Effective Date or otherwise within ten (10) days (or such later date as may be agreed to by Agent) after the date of the provision of the applicable Bank Product to Parent or its Subsidiaries.

"Bank Product Provider" means any Lender or any of its Affiliates; provided, that, no such Person shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent shall have received a Bank Product Provider Agreement from such Person and with respect to the applicable Bank Product within ten (10) days (or such later date as Agent may agree) after the provision of such Bank Product to Parent or its Subsidiaries.

"Bank Product Provider Agreement" means an agreement in substantially the form attached hereto as Exhibit B-2, in form and substance reasonably satisfactory to Agent, duly executed by the applicable Bank Product Provider, Borrowers, and Agent.

"Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of reserves that Agent has determined in its Permitted Discretion to establish (based upon the Bank Product Providers' reasonable determination of their credit exposure to Parent and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding (taking into account any cash collateral then in the possession of a Bank Product Provider).

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"BA Rate" means (a) for a Lender that is a Schedule I chartered bank under the Bank Act (Canada), CDOR and (b) for any other Lender, the lesser of (i) the discount rate at which such Lender is prepared to purchase bankers' acceptances and (ii) CDOR plus ten (10) basis points.

"BA Rate Deadline" has the meaning specified therefor in Section 2.15(b) of the Agreement.

"BA Rate Loan" means each portion of the Canadian Revolving Loans that bears interest at a rate determined by reference to the BA Rate.

"BA Rate Notice" means a notice substantially in the form of Exhibit L-2.

"BA Rate Option" has the meaning specified therefor in Section 2.15 of the Agreement.

"BA Funding Losses" has the meaning specified therefor in Section 2.15 of the Agreement.

"Base Rate" means (a) for Base Rate Loans consisting of Canadian Revolving Loans in Canadian Dollars, the greater of (i) the prime lending rate as quoted by a Schedule I bank in Canada designated from time to time by Agent and (ii) the ninety (90) day BA Rate quoted from time to time, plus one and one-half percent (1.5%) and (b) for Base Rate Loans consisting of US Revolving Loans and for all other purposes, the greatest of (i) the Federal Funds Rate plus one-half percent (1/2%), (ii) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of one (1) month and shall be determined on a daily basis), plus one percent (1%), and (iii) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

"Base Rate Loan" means each portion of the Revolving Loans that bears interest at a rate determined by reference to the Base Rate.

"BIA" means the Bankruptcy and Insolvency Act (Canada), R.S.C. 1985, c. B-3, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all official rules, regulations and interpretations thereunder or related thereto.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Borrower Materials" has the meaning specified therefor in Section 5.1(c) of the Agreement.

"Borrowers" means, collectively, US Borrowers and Canadian Borrowers.

"Borrowing" means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of a Protective Advance.

"Borrowing Base" means, at any time, the sum of the US Borrowing Base plus the Canadian Borrowing Base.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the State of New York, or, in the case of Canadian Revolving Loans, the Province of Ontario except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"CAM Exchange" has the meaning specified therefor in Section 9.4(a) of the Agreement.

"CAM Exchange Date" has the meaning specified therefor in Section 9.4(a) of the Agreement.

"CAM Percentage" has the meaning specified therefor in Section 9.4(d) of the Agreement.

"Canadian Borrowers" means (a) PolyOne Canada Inc., a federally incorporated Canadian corporation, and (b) any other Person that after the Effective Date becomes a Canadian borrower under the Agreement; sometimes being referred to herein individually as a "Canadian Borrower".

"Canadian Borrowing Base" means, at any time, the amount equal to

(A) the amount equal to eighty-five percent (85%) of the amount of Eligible Accounts of each Canadian Loan Party, plus

(B) the amount equal to the lesser of (A) seventy percent (70%) multiplied by the Value of Eligible Inventory of each Canadian Loan Party, (B) eighty-five percent (85%) of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory or (C) sixty percent (60%) of the Canadian Maximum Credit, minus

(C) the aggregate amount of reserves applicable to Canadian Loan Parties, if any, established by Agent under Sections 2.1(e) and (f) of the Agreement.

"Canadian Borrowing Base Certificate" means a certificate in the form of Exhibit B-3.

"Canadian Collateral" means Collateral consisting of assets or interests in assets of Canadian Loan Parties, and the proceeds thereof.

"Canadian Commitment" means, with respect to each Lender, its Canadian Commitment, and, with respect to all Lenders, their Canadian Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Canadian Dollars" or "C\$" means lawful currency of Canada.

"Canadian Dollar Denominated Loan" means a Revolving Loan denominated in Canadian Dollars.

"Canadian Excess Availability" means, as of any date of determination, the amount equal to (a) the lesser of (i) the Canadian Borrowing Base and (ii) the Canadian Maximum Credit (in each case after giving effect to any applicable reserves), minus, without duplication, (b) the amount of the Canadian Revolver Usage.

"Canadian Guarantors" means any Person organized under the laws of a jurisdiction in Canada that becomes a guarantor in respect of the Canadian Obligations after the Effective Date pursuant to the Agreement; sometimes being referred to herein individually as a "Canadian Guarantor".

"Canadian Lender" means, at any time, each Lender having a Canadian Commitment or a Canadian Revolving Loan owing to it or a participating interest in a Canadian Letter of Credit; sometimes being referred to herein collectively as "Canadian Lenders".

"Canadian Letter of Credit Disbursement" means a payment by Issuing Lender or Underlying Issuer pursuant to a Canadian Letter of Credit.

"Canadian Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Canadian Letters of Credit.

"Canadian Letters of Credit" means all Letters of Credit issued for the account of a Canadian Borrower.

"Canadian Loan Account" has the meaning specified therefor in Section 2.7 of this Agreement.

"Canadian Loan Parties" means Canadian Borrowers and Canadian Guarantors.

"Canadian Maximum Credit" means the US Dollar Equivalent of \$50,000,000, as decreased by the amount of reductions in the Canadian Commitments in accordance with Section 2.3(c) of the Agreement or increased by the amount of increases in the Canadian Commitments in accordance with Section 2.12 of the Agreement.

"Canadian Obligations" means all Obligations of Canadian Borrowers.

"Canadian Pension Plan" means any plan, program or arrangement that is a pension plan for the purposes of any applicable pension benefits legislation or any tax laws of Canada or a Province thereof, whether or not registered under any such laws, which is maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Borrower or Guarantor in respect of any Person's employment in Canada with such Borrower or Guarantor.

"Canadian Revolver Usage" means, as of any date of determination, the sum of (a) the principal amount of outstanding Loans to Canadian Borrowers, plus (b) the amount of the Canadian Letter of Credit Usage.

"Canadian Revolving Loans" has the meaning specified therefor in Section 2.1(b) of the Agreement.

"Canadian Security Agreement" means the Security Agreement, dated as of the Existing Closing Date, executed and delivered by the Canadian Loan Parties, as heretofore, now or hereafter amended or modified from time to time.

"Canadian Security Documents" means the Canadian Security Agreement, the Quebec Hypothec and any other Loan Document that grants or purports to grant a Lien on any Canadian Collateral.

"Canadian Swing Loan Limit" means \$5,000,000; provided, that, the aggregate amount of US Swing Loans and Canadian Swing Loans at any time outstanding shall not exceed \$50,000,000.

"Canadian Swing Loan" has the meaning specified therefor in Section 2.2(b)(ii) of the Agreement.

"Canadian Underlying Letter of Credit" means a Canadian Letter of Credit issued by an Underlying Issuer.



"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed (excluding (a) any such expenditure to the extent constituting a Permitted Acquisition or the Spartech Acquisition or made with the proceeds of any sale or other disposition of fixed assets (so long as such proceeds are applied (or committed to be applied pursuant to a written purchase order or contract) within one year of such sale), (b) expenditures made from insurance proceeds or condemnation awards, and (c) expenditures that are accounted for as capital expenditures of such Person and that are actually paid for by a non-Affiliate third party).

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Cash Dominion Event" means at any time (a) the Excess Availability Conditions are not satisfied or (b) an Event of Default shall occur and be continuing; provided, that, (i) to the extent that the Cash Dominion Event has occurred due to clause (a) of this definition, if the Excess Availability Conditions are satisfied for at least sixty (60) consecutive days, the Cash Dominion Event shall no longer be deemed to exist or be continuing until such time as the Excess Availability Conditions may again not be satisfied and (ii) a Cash Dominion Event may not be cured as contemplated by clause (i) more than two (2) times in any twelve (12) month period.

"Cash Equivalents" means any of the following Investments: (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) maturing not more than one year after the date of acquisition; (b) time deposits in and certificates of deposit of any Eligible Bank, provided that such Investments have a maturity date not more than two (2) years after date of acquisition and that the average term of all such Investments is one (1) year or less from the respective dates of acquisition; (c) repurchase obligations with a term of not more than one hundred eighty (180) days for underlying securities of the types described in clause (a) above entered into with any Eligible Bank; (d) direct obligations issued by any State of the United States or any political subdivision or public instrumentality thereof, provided, that, such Investments mature, or are subject to tender at the option of the holder thereof, within three hundred sixty-five (365) days after the date of acquisition and, at the time of acquisition, have a rating of at least A from Standard & Poor's Rating Group ("S&P") or A-2 from Moody's Investors Service, Inc. ("Moody's"), or an equivalent rating by any other nationally recognized rating agency; (e) commercial paper of any Person other than an Affiliate of Parent and other than structured investment vehicles, provided, that, such Investments have one of the two highest ratings obtainable from either S&P or Moody's and mature within one hundred eighty (180) days after the date of acquisition; (f) overnight and demand deposits in and bankers' acceptances of any Eligible Bank and demand deposits in any bank or trust company to the extent insured by the Federal Deposit Insurance Corporation against the Bank Insurance Fund; (g) money market funds substantially all of the assets of which comprise Investments of the types described in clauses (a) through (f); (h) instruments equivalent to those referred to in clauses (a) through (g) above or funds equivalent to those referred to in clause (g) above denominated in U.S. dollars, Euros or any other foreign currency comparable in credit quality and tenor to those referred to in such clauses and customarily used by corporations for cash management purposes in jurisdictions outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction, all as determined in good faith by Parent; (i) investments with guaranteed principal approved by the Board of Directors of Parent (including any standing authorizations) and (j) "Authorized Investment Securities" as defined in the PolyOne Corporation Cash Investment Policy, effective August 31, 2012, and as in effect on the Effective Date. "Eligible Bank" means a Lender or any Affiliate of a Lender or such other bank or trust company that (i) is licensed, chartered or organized and existing under the laws of the United States of America or Canada, or any State, Territory, province or possession thereof, (ii) as of the time of the making or acquisition of an Investment in such bank or trust company, has combined capital and surplus in excess of \$500,000,000 and (iii) the senior Indebtedness of which is rated at least "A-2" by Moody's or at least "A" by S&P.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"CCAA" means the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all official rules, regulations and interpretations thereunder or related thereto.

"CDOR" means, on any day, the annual rate of interest which is the rate equal to the average rate for Canadian Dollar bankers' acceptances issued on such day for a term equal or comparable to the applicable Interest Period or, if no Interest Period is specified, thirty (30) days) for the purpose of calculating the interest rate applicable as such rate appears on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000, definitions, as modified and amended from time to time) rounded to the nearest 1/100th of 1% (with 0.005% being rounded up), as of 10:00 a.m. (Toronto, Ontario time) on such day, or if such day is not a Business Day, then on the immediately preceding Business Day; provided, that, if such rate does not appear on the Reuters Screen CDOR Page as contemplated, then the CDOR Rate on any day shall be the average of the rates applicable to Canadian Dollar bankers' acceptances having an equivalent term quoted by the Schedule I Canadian chartered banks

as of 1000 a.m. (Toronto, Ontario time) on such day, or if such day is not a Business Day, then on the immediately preceding Business Day.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"CFC" means a controlled foreign corporation (as that term is defined in the IRC).

"CFC Holding Company" means any Subsidiary of Parent which is a Domestic Subsidiary that has no material assets or material operations (whether directly or indirectly through entities that are treated as disregarded entities for U.S. federal income tax purposes), other than the Equity Interests of ~~<a>~~one or more CFCs or other CFC Holding Companies.

"Change of Control" means:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of thirty percent (30%) or more of the equity securities of Parent entitled to vote for members of the Board of Directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such "person" or "group" has the right to acquire pursuant to any option right); or

~~<(b) during any period of twelve (12) consecutive months, a majority of the members of the Board of Directors or other equivalent governing body of Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors); or>~~

(a) reserved; or

(b) except as otherwise expressly permitted herein, Parent shall cease to be the direct or indirect holder and owner of one hundred percent (100%) of the Equity Interests of Borrowers; or

(c) a "change of control" or any comparable term under, and as defined in, the Term Loan Credit Agreement, the 2015 Notes, the 2020 Notes, the Current Notes, or other Indebtedness outstanding in an aggregate principal amount in excess of \$35,000,000 shall have occurred (in each case, solely to the extent such Indebtedness is outstanding).

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Parent's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds).

"Commitment" means, with respect to each Lender, its US Commitment or Canadian Commitment, as applicable, and, with respect to all Lenders, their US Commitments or Canadian Commitments, as applicable.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 delivered by the chief financial officer or other senior financial officer of Administrative Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of the Agreement.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of Parent and its Restricted Subsidiaries on a consolidated basis for the most recently completed twelve (12) consecutive fiscal months plus (a) the following to the extent deducted in calculating such Consolidated Net Income (i) Consolidated Interest Expense, (ii) the provision for federal, state, provincial, local and foreign income taxes payable, (iii) depreciation and amortization expense, (iv) other non-recurring expenses reducing such Consolidated Net Income of which the aggregate amount of cash items shall not exceed the lesser of three percent (3%) of Consolidated EBITDA for such period or \$7,500,000 (~~provided, that, the aggregate amount of the non-recurring expenses consisting of cash items referred to in this clause (iv), plus the amount of environmental remediation costs and expenses under clause (xviii) below shall not exceed \$12,000,000~~) or do not represent a cash item in such period or any future period, excluding write-offs or write-downs of Accounts or Inventory, (v) non-cash compensation expense in respect of stock option plans, restricted stock and other employee equity compensation plans, (vi) non-cash goodwill or other intangible asset impairment charges and write-offs of goodwill and other intangible assets, in each case, pursuant to ASC 350 or any similar rule announced by the Financial Accounting Standards Board, (vii) fees and expenses ~~<(including without limitation, if the Spartech Acquisition is consummated, prepayment fees and expenses associated with the repayment, redemption or discharge of any indebtedness of the business of Spartech and its Subsidiaries)>~~ incurred in connection with (A) if incurred prior to or within ninety (90) days after the Fourth Amendment Effective Date, the Transactions~~< and the Fourth Amendment Transactions or~~ (B) the Agreement and the other Loan Documents related to amendments and waivers thereof, including any legal fees in connection therewith~~<, or (C) the Spartech Acquisition>~~, (viii) non-cash restructuring charges, (ix) non-cash effects of changes in accounting principles, (x) losses from asset sales not in the ordinary course of business, (xi) non-cash losses on the early extinguishment of Indebtedness, (xii) non-cash purchase accounting charges required by ASC 805 or any similar rule announced by the Financial Accounting Standards Board, (xiii) non-cash unrealized losses and charges with respect to Hedging Agreements, including such losses and charges which arise from foreign currency losses, (xiv) other non-cash items to the extent such non-cash items are not accruals for future payments, (xv) foreign currency translation losses, (xvi) ~~<non-recurring cash costs and expenses relating to the assimilation and integration of the business of Colormatrix Group, Inc. and its Subsidiaries incurred on or prior to February 28, 2013 in an aggregate amount not to exceed \$5,000,000 (in each case, of or by Parent and its Subsidiaries for such period)>~~ reserved, (xvii) ~~<if the Spartech Acquisition is consummated, non-recurring cash costs and expenses relating to the assimilation and integration of the business of Spartech and its Subsidiaries incurred within twelve months of the closing date of the Spartech Acquisition in an aggregate amount not to exceed \$5,000,000 (in each case, of or by Parent and its Subsidiaries for such period)>~~ reserved, (xviii) non-recurring cash costs and expenses incurred in connection with any Permitted Acquisition that is consummated, incurred within twelve months of the closing date of such Permitted Acquisition and relating to the acquisition and assimilation and integration of the Acquired Business in an aggregate amount not to exceed ten percent (10%) of EBITDA for the prior twelve months of such Acquired Business (in each case, of or by Parent and its Subsidiaries for such period), and (xix) environmental remediation costs and expenses not to exceed \$7,000,000 per fiscal year related to the Real Property at the locations set forth on Schedule C-2, provided, that, (A) the aggregate amount of the non-recurring expenses consisting of cash items referred to in clause (iv) above, plus the amount of environmental remediation costs and expenses under this clause (xviii) shall not exceed \$12,000,000 and (B) to the extent that such environmental remediation costs and expenses in any fiscal year commencing with the fiscal year ending December 31, 2012 are less than \$7,000,000, then such limit for the immediately following year shall be increased by up to \$1,000,000 of such difference; and minus (b) the following to the extent included in calculating such Consolidated Net Income (i) federal, state, provincial, local and foreign income tax credits; (ii) interest income, (ii) any gains from asset sales not in the ordinary course of business, (iii) non-cash effects of changes in accounting principles, (iv) non-cash gains on the early extinguishment of Indebtedness, (v) non-cash unrealized gains with respect to Hedging Agreements, (vi) other non-cash income or gains, and (vii) foreign currency translation gains (in each case of or by Parent and its Restricted Subsidiaries for such period).

"Consolidated Interest Expense" means, for any period, as to any Person, as determined in accordance with GAAP, the amount equal to the consolidated interest expense of such Person for such period, whether paid or accrued (including capitalized interest with respect to Fixed Charges for such period), excluding to the extent related to the Transactions or Fourth Amendment Transactions, all prepayment of any original issue discount and all upfront and arrangement fees due and payable on the Fourth Amendment Effective Date~~<and, if the Spartech Acquisition is consummated, all prepayment fees and expenses associated with the repayment, redemption or discharge of any indebtedness of Spartech and its Subsidiaries>~~.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of Parent and its Restricted Subsidiaries, on a consolidated basis, for the relevant period determined in accordance with GAAP; provided, that, Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses (and any associated tax benefits or costs) for such period, (b) gains or losses in respect of any sale, transfer, exclusive license, lease or other disposition (including any sale and leaseback transaction) of any property by Parent or any of its Restricted Subsidiaries, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or Accounts or any rights and claims associated therewith (net of fees and expenses relating to the transaction giving rise thereto), on an after-tax basis and (c) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Governing Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that Parent's equity in any net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Borrower or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Account Agreement" has the meaning specified therefor in the Security Agreement.

"Copyright Security Agreement" has the meaning specified therefor in the Security Agreement.

"CSV" means, on each date of determination, the amount, as determined for each Eligible Life Insurance Policy, equal to the cash surrender value of such Eligible Life Insurance Policy.

"Currency Due" has the meaning specified in Section 17.15 of this Agreement.

"Current Notes" means the 5.25% Senior Notes due 2023 issued by Parent.

"Current Notes Indenture" means the Indenture dated as of February 28, 2013, by and between Parent and the Current Notes Trustee.

"Current Notes Trustee" means Wells Fargo Bank, National Association, in its capacity as trustee under the Current Notes Indenture.

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Defaulting Lender" means, subject to Section 2.13(b), any Lender that (a) has failed to (i) fund all or any portion of its Revolving Loans or participations in Swing Loans, Protective Advances or Letters of Credit within two (2) Business Days of the date any of the foregoing were required to be funded by it hereunder unless such Lender notifies Agent and Administrative Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent, Issuing Lender, Swing 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 Swing Loans) within two (2) Business Days of the date when due, (b) has notified Administrative Borrower, Agent or Issuing Lender or Swing 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 Revolving 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 the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Agent or Administrative Borrower, to confirm in writing to Agent and Administrative Borrower 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 Agent and Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under the Bankruptcy Code or any 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 jurisdiction, 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent 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 2.13(b)) upon delivery of written notice of such determination to Administrative Borrower, Issuing Lender, Swing Lender and each Lender.

"Defaulting Lender Rate" means (a) for the first three (3) days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Applicable Margin applicable thereto).

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the Deposit Account of Administrative Borrower identified on Schedule D-1.

"Designated Account Bank" has the meaning specified therefor in Schedule D-1.

"Disqualified Equity Interest" means, with respect to any Person, any Equity Interest in such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof) or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interest and cash in lieu of fractional shares of such Equity Interests); or

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interest and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date that is ninety-one (91) days after the Maturity Date; provided, that, an Equity Interest that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an "asset sale" or a "change of control" shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after repayment in full in cash of all of the Obligations, the cancellation or expiration of all Letters of Credit and the termination of the Commitments.

"Dollars" or "\$" means lawful currency of the United States.

"Domestic Subsidiary" means any direct or indirect Subsidiary of a Loan Party other than a Foreign Subsidiary.

"Effective Date" means March 1, 2013.

"Eligible Accounts" means those Accounts created by any Loan Party in the ordinary course of its business, that arise out of the sale of goods or rendition of services by such Loan Party, as the case may be, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded from being Eligible Accounts as a result of the failure to satisfy any of the criteria set forth below. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, taxes, discounts, credits, allowances, rebates and unapplied cash. Eligible Accounts shall not include the following:

(a) Accounts (i) that the Account Debtor (other than Whirlpool) has failed to pay within one hundred and twenty (120) days of the original invoice date or within sixty (60) days of the original due date, or that have payment terms of more than ninety (90) days or (ii) as to which the Account Debtor is Whirlpool and that Whirlpool has failed to pay within one hundred fifty (150) days of the invoice date or that have payment terms of more than one hundred twenty (120) days,

(b) Accounts owed by an Account Debtor (or its Affiliates) where fifty percent (50%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an Affiliate of a Loan Party or an employee or agent of a Loan Party or any Affiliate of a Loan Party,

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional; except, that, up to \$15,000,000 at any time outstanding of Accounts arising from transactions under which the subject goods are pre-billed by not more than five (5) days prior the shipping date and are shipped by a Loan Party FOB destination and which otherwise satisfy all of the requirements of this definition of Eligible Accounts shall constitute Eligible Accounts hereunder,

(e) Accounts that are not payable in Dollars or Canadian Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada unless such Accounts are (A) Eligible Foreign Accounts, (B) Eligible Whirlpool Foreign Accounts or (C) Eligible Credit Insurance Accounts, or (ii) is not organized under the laws of the United States or Canada or any State or province thereof unless such Accounts are either (A) Eligible Foreign Accounts, (B) Eligible Whirlpool Foreign Accounts or (C) Eligible Credit Insurance Accounts, or (iii) 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, unless the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent,

(g) Accounts with respect to which the Account Debtor is either (i) the United States or Canada or any department, agency, or instrumentality thereof (other than Accounts with respect to which Loan Parties have complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727 or the Financial Administration Act (Canada)), or (ii) any State of the United States or province or territory of Canada,

- (h) Accounts with respect to which the Account Debtor is a creditor of a Loan Party, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of the amount of such claim, right of setoff, or dispute,
- (i) Accounts with respect to which (i) the Account Debtor is Whirlpool, if the total obligations owing by Whirlpool to Loan Parties exceeds fifteen percent (15%) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage and (ii) the Account Debtor is any Person or any of its Affiliates (other than Whirlpool) if the total obligations owing by such Person and its Affiliates to Loan Parties exceeds ten percent (10%) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,
- (j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not solvent, has gone out of business, or as to which a Loan Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,
- (k) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,
- (l) Accounts that are not subject to the valid and perfected first priority Agent's Lien, other than, as to priority, the Permitted Liens under clause (c) to the extent such Liens may apply to Accounts,
- (m) Accounts that are subject to any Lien other than Agent's Lien or those permitted in clauses (b) and (c) of the definition of the term Permitted Liens (but only to the extent that Agent has established a reserve in respect thereof) and any other Liens permitted under this Agreement that are subject to an intercreditor agreement in form and substance reasonably satisfactory to Agent between the holder of such Lien and Agent,
- (n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,
- (o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,
- (p) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by Loan Parties of the subject contract for goods or services, or
- (q) Accounts acquired pursuant to a Permitted Acquisition or a Permitted Investment as to which Agent shall have not completed an Acceptable Field Exam, unless such Accounts are Eligible Acquired Business Accounts.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Agent based on either (i) an event, condition or other circumstance arising after the Effective Date, or (ii) an event, condition or other circumstance existing on the Effective Date to the extent that such event, condition or circumstance has not been identified by a Borrower to the field examiners of Agent prior to the Effective Date (except to the extent that it may have been identified but Agent, in consultation with Borrowers, has intentionally elected not to establish a reserve with respect thereto as of the Effective Date), in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Accounts as determined by Agent in its Permitted Discretion. Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral. For avoidance of doubt, any Accounts determined ineligible under more than one clause above shall be calculated without duplication.

"Eligible Acquired Business Accounts" means Accounts (a) acquired by a US Loan Party in connection with a Permitted Acquisition or a Permitted Investment, (b) that satisfy all of the criteria of "Eligible Accounts" other than clause (f) thereof, (c) as to which the Account Debtor maintains its chief executive office in the United States and is organized under the laws of the United States or a State thereof, and (d) owned by an Acquired Business as to which Agent has not yet completed an Acceptable Field Exam.

"Eligible Acquired Business Inventory" means Inventory (a) acquired by a US Loan Party in connection with a Permitted Acquisition or a Permitted Investment, (b) that satisfies all of the criteria of "Eligible Inventory" other than clauses (c) and (l) thereof, (c) that is located at one of a US Loan Party's owned or leased locations in the continental United States, and (d) owned by an Acquired Business as to which Agent has not yet completed an Acceptable Field Exam and an Inventory appraisal reasonably satisfactory to Agent.

"Eligible Credit Insurance Accounts" means Accounts (other than Eligible Foreign Accounts) that would otherwise be Eligible Accounts (other than for the Account Debtor of such Account not maintaining its chief executive office in the United States or not being organized under the laws of the United States or any State thereof) and are covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent; provided, that, the aggregate amount of Accounts

constituting Eligible Credit Insurance Accounts for purposes of the calculation of the Borrowing Base at any time will not exceed \$20,000,000.

"Eligible Domestic In-Transit Inventory" means Inventory that would otherwise be Eligible Inventory (other than for its location) that has been shipped from a location of any Loan Party or from the manufacturer or wholesale distributor thereof within the United States or Canada for receipt at a location of any Loan Party within the United States or Canada and permitted hereunder, within thirty (30) days of shipment, but in either case, which has not yet been delivered to such Loan Party, for which the purchase order is in the name of a Loan Party, title has passed to such Loan Party (and Agent has received such evidence thereof as it has requested) and which is insured in accordance with the terms of the Agreement; provided, that, the aggregate amount of Inventory constituting Eligible Domestic In-Transit Inventory for purposes of the calculation of the Borrowing Base at any time will not exceed \$15,000,000.

"Eligible Foreign Account Debtor" means a Subsidiary of each of the following entities, which Subsidiary does not maintain its chief executive office in the United States or is not organized under the laws of any State of the United States: (a) PPG Industries, (b) Valspar Corporation, (c) Corning Inc., (d) 3M Company, (e) Dow Chemical Company, (f) Meadwestvaco Corporation, (g) Avery Dennison Corporation, (h) Baxter International, (i) The Procter & Gamble Company, (j) Stanley Black & Decker, Inc. and (k) Eaton Corporation.

"Eligible Foreign Accounts" means Accounts that would otherwise be Eligible Accounts (other than for the Account Debtor of such Account not maintaining its chief executive office in the United States or not being organized under the laws of the United States or any state thereof) for which the Account Debtor is an Eligible Foreign Account Debtor; provided, that, (a) such Accounts are invoiced from the United States and payable in US Dollars, (b) such Eligible Foreign Account Debtor maintains a rating from S&P of BBB- or better and (c) the aggregate amount of Accounts constituting Eligible Foreign Accounts for purposes of the calculation of the Borrowing Base at any time will not exceed \$30,000,000, minus the aggregate amount of Accounts constituting Eligible Whirlpool Foreign Accounts at such time.

"Eligible Inventory" means Inventory owned by any Loan Party consisting of finished goods held for sale in the ordinary course of its business and raw materials for such finished goods, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded from being Eligible Inventory as a result of the failure to satisfy any of the criteria set forth below. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with historical accounting practices of Loan Parties, without regard to intercompany profit or increases for currency exchange rates. An item of Inventory shall not be included in Eligible Inventory if:

- (a) a Loan Party does not have good and valid title thereto,
- (b) a Loan Party does not have actual and exclusive possession thereof (either directly or through a bailee or agent of Loan Parties),
- (c) it is not located at one of a Loan Party's owned or leased locations in the continental United States or Canada,
- (d) it is in-transit to or from a location of a Loan Party (other than in-transit between a Loan Party's location in the continental United States or Canada and another Loan Party's location in the continental United States or Canada) unless such Inventory is Eligible Domestic In-Transit Inventory,
- (e) it is located on Real Property leased by a Loan Party (unless Agent has received a satisfactory Collateral Access Agreement executed by the lessor with respect thereto or established a reserve in respect thereof) or in a contract warehouse (unless Agent has received a satisfactory Collateral Access Agreement executed by the warehouseman with respect thereto or established a reserve in respect thereof and is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises of such warehouse) unless such Inventory is Eligible Domestic In-Transit Inventory,
- (f) it is the subject of a bill of lading or other document of title (other than the same delivered to Agent as to goods in transit between locations of Loan Parties as provided in clause (d) above),
- (g) subject to clause (h) below, it is not subject to the valid and perfected first priority Lien of Agent,
- (h) it is subject to any Lien other than Agent's Lien and those permitted in clauses (b), (c) or (d) of the definition of Permitted Liens (but only to the extent that Agent has established a reserve in respect thereof) and any other Liens permitted under this Agreement that are subject to an intercreditor agreement in form and substance reasonably satisfactory to Agent between the holder of such Lien and Agent,
- (i) it consists of goods returned or rejected by a Loan Party's customer,
- (j) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process, or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in Loan Parties' business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment,



(k) it contains or bears any intellectual property rights licensed to a Loan Party unless Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, (iii) incurring any liability with respect to the payment of royalties other than royalties incurred pursuant to the sale of such Inventory under the current licensing agreement (provided, that, as of the date hereof based on the information received by Agent prior to the date hereof, the only license agreements that restrict Agent's ability to dispose of any Inventory are those that Agent has identified to Administrative Borrower on or prior to the date hereof), or

(l) it was acquired in connection with a Permitted Acquisition or a Permitted Investment, until the completion of an appraisal of such Inventory, reasonably satisfactory to Agent and an Acceptable Field Exam with respect to such Inventory (which appraisal and Acceptable Field Exam may be conducted prior to the closing of such Permitted Acquisition or such Permitted Investment, as applicable), unless such Inventory is Eligible Acquired Business Inventory.

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent based on either (i) an event, condition or other circumstance arising after the Effective Date, or (ii) an event, condition or other circumstance existing on the Effective Date to the extent that such event, condition or circumstance has not been identified by a Borrower to the field examiners of Agent prior to the Effective Date (except to the extent that it may have been identified but Agent, in consultation with Borrowers, has intentionally elected not to establish a reserve with respect thereto as of the Effective Date), in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Inventory as determined by Agent in its Permitted Discretion. Any Inventory that is not Eligible Inventory shall nevertheless be part of the Collateral. For avoidance of doubt, any Inventory determined ineligible under more than one clause above shall be calculated without duplication.

"Eligible Life Insurance Policies" means Life Insurance Policies that are not excluded from being Eligible Life Insurance Policies as a result of the failure to satisfy any of the criteria set forth below. Eligible Life Insurance Policies shall not include any Life Insurance Policy:

- (a) which is not in full force and effect with all premiums due having been paid in full;
- (b) which is not owned by a US Loan Party;
- (c) the beneficiary of which is not a US Loan Party;
- (d) which covers the life of any Person other than an officer or employee of a US Loan Party;
- (e) which is not in an Approved Form;
- (f) which has not been collaterally assigned by the applicable US Loan Party to Agent to secure repayment of the Obligations pursuant to a Life Insurance Assignment in form and substance reasonably satisfactory to Agent, and which has been executed by the issuing life insurance company (or for which evidence of recordation with the issuing life insurance company has been provided in form and substance satisfactory to Agent);
- (g) which is subject to a currently effective assignment by any US Loan Party to any other Person;
- (h) which is not referenced in a currently effective Northwestern Mutual Side Letter;
- (i) the existence and cash surrender value of which have not been certified in the most recent US Borrowing Base Certificate; or
- (j) which has any policy loans or advances outstanding against such Life Insurance Policy.

The criteria for Eligible Life Insurance Policies set forth above may only be changed and any new criteria for Eligible Life Insurance Policies may only be established by Agent based on either (i) an event, condition or other circumstance arising after the Third Amendment Effective Date, or (ii) an event, condition or other circumstance existing on the Third Amendment Effective Date to the extent that such event, condition or circumstance has not been identified by a Borrower to Agent prior to the Third Amendment Effective Date (except to the extent that it may have been identified but Agent, in consultation with Borrowers, has intentionally elected not to establish a reserve with respect thereto as of the Third Amendment Effective Date), in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the cash surrender value or loanable or otherwise realizable value of the Life Insurance Policies, as determined by Agent in its Permitted Discretion. Any Life Insurance Policy that is not an Eligible Life Insurance Policy shall nevertheless be part of the Collateral. For avoidance of doubt, any Life Insurance Policy determined ineligible under more than one clause above shall be calculated without duplication.

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or Canada or any State or Province thereof, and having total assets in excess of \$500,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of \$500,000,000, provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance company, or other financial institution or fund that is engaged in making,



purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of \$500,000,000, (d) any Affiliate (other than individuals) of a pre-existing Lender, and (e) any other Person approved by Agent. Nothing in this definition shall be construed to affect the rights of Administrative Borrower to consent to any assignment of any Lender's rights and obligations under the Agreement to an Eligible Transferee to the extent such consent is required in accordance with Section 13.1 of the Agreement.

"Eligible Whirlpool Foreign Accounts" means Accounts owing by a Whirlpool Foreign Affiliate to a US Loan Party that would otherwise be Eligible Accounts (other than for the Account Debtor of such Account not maintaining its chief executive office in the United States or not being organized under the laws of the United States or any state thereof); provided, that, (a) such Accounts are invoiced from the United States by a US Loan Party and payable in US Dollars, (b) such Accounts are paid to the applicable US Loan Party and promptly deposited by such US Loan Party into a Deposit Account in the United States maintained at Wells Fargo or another Lender, which Deposit Account is subject to a Control Agreement and is subject to the valid, enforcement and first priority perfected security interest of Agent, and (c) the aggregate amount of Accounts constituting Eligible Whirlpool Foreign Accounts for purposes of the calculation of the Borrowing Base at any time will not exceed \$15,000,000.

"Environmental Action" means any judicial, administrative or regulatory action, suit or proceeding arising under Environmental Law.

"Environmental Law" means any and all federal, state, provincial, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liabilities" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrowers, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Lien" means a Lien arising under Environmental Law.

"Equipment" means equipment (as that term is defined in the Code).

"Equity Interests" means, with respect to any Person, all of the shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity, ownership or profit interests at any time outstanding, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), but excluding any interests in phantom equity plans and any debt security that is convertible into or exchangeable for such shares, and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with Parent within the meaning of Section 414(b) or (c) of the IRC (and Sections 414(m) and (o) of the IRC for purposes of provisions relating to Section 412 of the IRC).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any US Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a US Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification to a US Loan Party or any ERISA Affiliate that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan, or the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Parent or any ERISA Affiliate.

"Event of Default" has the meaning specified therefor in Section 8 of the Agreement.

"Excess Availability" means, as of any date of determination, the sum of US Excess Availability plus Canadian Excess Availability.

"Excess Availability Conditions" means at any time that either (a) Excess Availability is less than ten percent (10%) of the Maximum Credit for any one (1) Business Day, (b) US Excess Availability is less than seven and one-half percent (7.5%) of the Maximum Credit for any one (1) Business Day, (c) Excess Availability is less than twelve and one-half percent (12.5%) of the Maximum Credit for any three (3) consecutive Business Days or (d) US Excess Availability is less than ten percent (10%) of the Maximum Credit for any three (3) consecutive Business Days.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Exchange Rate" means on any date, as determined by Agent, the spot selling rate posted by Reuters on its website for the sale of the applicable currency for US Dollars or applicable Judgment Currency at approximately 1100 a.m., local time, on such date; provided, that if, for any reason, no such spot rate is being quoted, the spot selling rate shall be determined by reference to such publicly available service for displaying exchange rates as may be reasonably selected by Agent, or, in the event no such service is available, such spot selling rate shall instead be the rate reasonably determined by Agent as the spot rate of exchange in the market where its foreign currency exchange operations in respect of the applicable currency are then being conducted, at or about 1100 a.m., local time, on the applicable date for the purchase of the relevant currency for delivery two (2) Business Days later.

"Excluded Subsidiary" means (a) ~~any CFC if the pledge of its assets or more than sixty-five percent (65%) of its voting shares in favor of Agent would result in adverse tax consequences to Parent, (b) any Subsidiary of a CFC, (c)~~ with respect to the US Obligations, any CFC or CFC Holding Company or any Subsidiary of such CFC or CFC Holding Company and ~~(d)~~ b each Immaterial Subsidiary.

"Existing Closing Date" means December 21, 2011.

"Existing Credit Agreement" means the Credit Agreement dated as of the Existing Closing Date by and among Borrowers, the other Loan Parties party thereto, Agent and the Lenders party thereto, as amended or modified prior to the Effective Date.

"Existing Letters of Credit" means (a) those letters of credit issued for the account of a Borrower by an Issuing Lender and outstanding on the Effective Date, which are described on Schedule E-1 to the Agreement and (b) if the Spartech Acquisition is consummated, those letters of credit issues for the account of Spartech or any of its Subsidiaries and outstanding on the closing date of the Spartech Acquisition, as identified in writing by Administrative Borrower to Agent at such time.

"Existing Note Secured Debt Limit" means, (a) at any time prior to any refinancing of the 2020 Notes in accordance with the terms of the Agreement, the amount of any Indebtedness that may be secured by Permitted Liens (as defined in the 2020 Note Indenture) up to the amounts set forth in clause (i) of such definition thereof (it being understood that as of the Closing Date, the only such limitation that is applicable to the Indebtedness under the Agreement is set forth in Section 4.12 of the 2020 Note Indenture), and (b) at any time on or after the refinancing of the 2020 Notes in accordance with the terms of the Agreement (or any subsequent Refinancing Indebtedness relating thereto), any similar limit in any documentation evidencing such Refinancing Indebtedness which either (i) restricts the amount of Indebtedness or other obligations that may be secured by Permitted Liens or (ii) which, upon incurring Indebtedness or other obligations in excess of a certain amount, would require the granting of a Lien to the holders of such Refinancing Indebtedness.

"Existing Obligations" means the "Obligations" as defined in the Existing Credit Agreement.

"FATCA" means Sections 1471, 1472, 1473 and 1474 of the IRC (and any successor thereto that is substantially similar and not more materially onerous to comply with), the United States Treasury Regulations promulgated thereunder ~~and~~, published guidance with respect thereto, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements entered into by the United States implementing the foregoing.

"FCPA" means the United States Foreign Corrupt Practices Act of 1977, as amended.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means the amended and restated fee letter, dated of even date with the Agreement, among Borrowers and Agent, in form and substance reasonably satisfactory to Agent.

~~"First Lien Collateral" means all personal property of each Loan Party, other than Equipment and other Excluded Property, (as defined in each of the Security Agreement and the Canadian Security Agreement);~~

~~"Fixed Asset Lender" has the meaning specified therefor in Section 5.12 of the Agreement.~~

"Fixed Charge Coverage Ratio" means, for any Person and its Subsidiaries, with respect to any date of determination, the ratio of (a) the amount equal to (i) Consolidated EBITDA of any such Person and its Subsidiaries on a consolidated basis, as of the end of a fiscal month for the immediately preceding twelve (12) consecutive fiscal months for which Agent has received financial statements, minus (ii) Capital Expenditures of such Person and its Subsidiaries during such period to the extent not financed by a third party, to (b) Fixed Charges of such Person and its Subsidiaries for such period.

"Fixed Charges" means, with respect to any fiscal period and with respect to Parent determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) Consolidated Interest Expense paid in cash during such period, (b) principal payments in respect of Indebtedness that are required to be paid in cash during such period (excluding (i) the repayment of the ~~<2012 Notes and the>~~ 2015 Notes, the 2020 Note Purchase Payment, the 2020 Note Delayed Purchase Payment and the 2020 Note Redemption and (ii) other mandatory prepayments made with Net Cash Proceeds arising from the transaction requiring such mandatory prepayment under the terms of the applicable Indebtedness), and (c) all federal, state, provincial, local and foreign income taxes paid in cash during such period, and (d) all Restricted Payments paid in cash during such period, provided, that, so long as at the time of any Restricted Payments used to purchase the common Equity Interests of Parent, and after giving effect thereto, the aggregate amount of Excess Availability plus Qualified Cash is greater than \$150,000,000, such Restricted Payments made during the 2013 and 2014 fiscal years of Parent in an aggregate amount of up to the lesser of \$250,000,000 and the fair market value of 10,000,000 shares of common Equity Interests of Parent, shall not be included in Fixed Charges.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC Section 7701(a)(30).

"Foreign Subsidiary" means a direct or indirect Subsidiary of a Loan Party organized or incorporated under the laws of a jurisdiction other than a State of the United States, the United States, the District of Columbia, a Province or Territory of Canada or Canada.

"Fourth Amendment Effective Date" means November 12, 2015.

"Fourth Amendment Transactions" means (a) the incurrence of Indebtedness under the Term Loan Documents, (b) 2015 Note Discharge and (c) the 2020 Note Purchase Payment, the 2020 Note Delayed Purchase Payment and the 2020 Note Redemption.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to Issuing Lender, such Defaulting Lender's Pro Rata Share of the outstanding Letters of Credit with respect to Letters of Credit issued by Issuing Lender other than outstanding Letters of Credit as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or subject to Letter of Credit Collateralization in accordance with the terms hereof, and (b) with respect to Swingline Lender, such Defaulting Lender's Pro Rate Share of outstanding Swing Loans made by Swing Lender other than Swing Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.10(b)(ii) of the Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied; provided, that, all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

"Glasforms Acquisition" means the acquisition by Parent of the Equity Interests of Glasforms, Inc., a California corporation ("Glasforms"), pursuant to the terms of the certain Share Purchase Agreement dated December 19, 2012 by and among Parent, Glasforms, and the holders of the Equity Interests of Glasforms.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, articles of association, by-laws, certificate of formation, limited liability agreement, limited partnership agreement or other organizational documents of such Person.

"Governmental Authority" means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Guarantors" means, collectively, US Guarantors and Canadian Guarantors.

"Guaranty" means the guaranty, dated as of the Existing Closing Date, by US Loan Parties in favor of Agent, for the benefit of the Lender Group and the Bank Product Providers in respect of the US Obligations and the Canadian Obligations, as heretofore, now or hereafter amended or modified from time to time.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other

formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement; sometimes being collectively referred to herein as "Hedge Agreements".

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Parent or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Bank Product Providers.

"Hedge Provider" means any Lender or any of its Affiliates; provided, that, no such Person shall constitute a Hedge Provider unless and until Agent shall have received a Bank Product Provider Agreement from such Person, and with respect to the applicable Hedge Agreement, within ten (10) days after the execution and delivery of such Hedge Agreement with Parent or its Subsidiaries.

"Hedge Termination Value" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender) or by such other method as the Hedge Provider with respect thereto may use for such purposes.

"Immaterial Subsidiary" means, as at any date, any Subsidiary of Parent set forth on Schedule I-1 of the Agreement (as may be amended from time to time by notice from Parent to Agent), provided, that, any Subsidiary designated as an Immaterial Subsidiary (a) did not, as of the last day of the fiscal quarter of Parent most recently ended, have assets with a value in excess of three percent (3%) of total assets or revenues representing in excess of three percent (3%) of total revenues of Parent and its Subsidiaries, in each case, on a consolidated basis as of such date, (b) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of Parent most recently ended, did not have assets with a value in excess of seven and one-half percent (7.5%) of total assets or revenues representing in excess of seven and one-half percent (7.5%) of total revenues of Parent and its Subsidiaries, in each case, on a consolidated basis as of such date, (c) no assets of any such Subsidiary shall be included in the Borrowing Base, and (d) no such Subsidiary shall conduct either manufacturing or sales activities.

"Incremental Cap" has the meaning specified therefor in the Term Loan Credit Agreement, as in effect on the Fourth Amendment Effective Date.

"Incremental Equivalent Debt" has the meaning specified therefor in the Term Loan Credit Agreement, as in effect on the Fourth Amendment Effective Date.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds (other than surety or similar bonds), debentures, notes, loan agreements or other similar instruments,
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments,
- (c) the Hedge Termination Value of any Hedge Agreement,
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) current trade accounts payable in the ordinary course of business in accordance with customary trade practices and (ii) earnouts or similar obligations unless and until such amounts are earned),

(e) indebtedness of others (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse,

(f) all obligations of such Person in respect of Capital Leases and all monetary obligations of such Person under (i) a so-called synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of the Bankruptcy Code or any other debtor relief laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment) and all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of "Indebtedness" or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP,

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in cash, Cash Equivalents or other "Indebtedness" in respect of any Disqualified Equity Interest in such Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, and

(h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above (but specifically excluding the Series G Guarantee other than for purposes of Section 8.5).

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of the Agreement.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code, the CCAA or the BIA or under any other provincial, state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of the Existing Closing Date, executed and delivered by certain Loan Parties, certain of their Subsidiaries and Agent, as heretofore, now or hereafter amended or modified from time to time.

"Interest Period" means, (a) with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending one (1), two (2), or three (3) months thereafter and (b) with respect to each BA Rate Loan, a period commencing on the date of making of such BA Rate Loan (or the continuation of a BA Rate Loan or the conversion of a Base Rate Loan in Canadian Dollars to a BA Rate Loan and ending one (1), two (2), or three (3) months thereafter; provided, that, in each case, (a) interest shall accrue at the applicable rate based upon the LIBOR Rate or BA Rate, as applicable from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one (1), two (2), or three (3) months after the date on which the Interest Period began, as applicable, and (d) Borrowers may not elect an Interest Period which will end after the Maturity Date.

"Inventory" means inventory (as such term is defined in the Code).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit (including a division) or all or substantially all of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

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

"Issuing Lender" means (a) any issuer of Existing Letters of Credit, but only as to such Existing Letters of Credit and not as to any other Letters of Credit, and, if the Spartech Acquisition is consummated, as issuer of certain letters of credit under Spartech's existing credit facilities, and (b) WFCF, Bank of America, N.A., PNC Bank, National Association or any other Lender that, at the request of Administrative Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing Letters of Credit or Reimbursement Undertakings pursuant to Section 2.9 of the Agreement and the Issuing Lender shall be a Lender.

"Judgment Currency" has the meaning specified in Section 17.15 of the Agreement.

"Juffali Investment" means an initial Investment in the amount of approximately \$2,500,000 made by Parent and/or its Subsidiaries in the existing joint venture with E.A. Juffali & Brothers Company Limited, together with any additional Investments made by Parent and/or its Subsidiaries in such joint venture in an amount not to exceed \$20,000,000 in the aggregate.

"Laws" means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" has the meaning set forth in the preamble to the Agreement, shall include the Issuing Lender and Swing Lender, and shall also include any other Person made a party to the Agreement pursuant to the provisions of Section 13.1 of the Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including the Issuing Lender and Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes, and insurance premiums) that were due and owing by Parent or its Subsidiaries and were, in accordance with the provisions of the Loan Documents, paid, advanced, or incurred by the Lender Group, (b) reasonable out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with Parent or its Subsidiaries under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and PPSA and Uniform Commercial Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles, or similar searches with respect to Canadian Loan Parties), filing, recording, publication, appraisal (including periodic collateral appraisals to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (d) out-of-pocket charges paid or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (e) all reasonable and documented out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Agent during the course of periodic field examinations of the Collateral and Borrowers' operations, plus a per diem charge at Agent's then standard rate for Agent's examiners in the field and office (which rate as of the date hereof is \$1,000 per person per day), and a per diem charge at Agent's then standard rate for the establishment of electronic collateral reporting systems, subject to the limitations set forth in Section 5.7 of the Agreement, (f) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents, (g) Agent's and each Arranger's reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees of not more than one primary counsel in the United States, one primary counsel in Canada and one local counsel in each relevant jurisdiction) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating, or amending the Loan Documents, (h) subject to the limitations set forth below in this clause (h), Agent's and each Lender's reasonable out-of-pocket costs and expenses (including reasonable accountants, consultants, and other advisors fees and expenses and reasonable attorneys' fees for not more than one primary counsel in the United States, one primary counsel in Canada and one local counsel in each relevant jurisdiction and up to one additional counsel in the United States and one additional counsel in Canada for all other Lenders taken together) incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Parent or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents, or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral permitted by the Agreement, and including, during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, and (i) usage charges, charges, fees, costs and expenses for amendments, renewals, extensions, transfers, or drawings from time to time imposed by the Underlying Issuer or incurred by the Issuing Lender in respect of Letters of Credit and out-of-pocket charges, fees, costs and expenses paid or incurred by the Underlying Issuer or Issuing Lender in connection with the issuance, amendment, renewal, extension, or transfer of, or drawing under, any Letter of Credit or any demand for payment thereunder.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of the Agreement.



"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit issued by Issuing Lender or a letter of credit issued by Underlying Issuer, as the context requires.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Letter of Credit fee and all usage charges set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding) to be held by Agent in an amount equal to one hundred three percent (103%) of the then existing Letter of Credit Usage, (b) causing the Letters of Credit to be returned to the Issuing Lender, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to one hundred three percent (103%) of the then existing Letter of Credit Usage; it being understood that the Letter of Credit fee and all usage charges set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit.

"Letter of Credit Disbursement" means a US Letter of Credit Disbursement or a Canadian Letter of Credit, Disbursement, as applicable.

"Letter of Credit Usage" means US Letter of Credit Usage or Canadian Letter of Credit Usage, as applicable.

"LIBOR Deadline" has the meaning specified therefor in Section 2.10(b)(i) of the Agreement.

"LIBOR Notice" means a written notice in the form of Exhibit L-1.

"LIBOR Option" has the meaning specified therefor in Section 2.10(a) of the Agreement.

"LIBOR Rate" means the rate per annum rate appearing on Bloomberg L.P.'s (the "Service") Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) two (2) Business Days prior to the commencement of the requested Interest Period, for a term and in an amount comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrowers in accordance with the Agreement, which determination shall be conclusive in the absence of manifest error.

"LIBOR Rate Loan" means each portion of a Revolving Loan that bears interest at a rate determined by reference to the LIBOR Rate.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, hypothec or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Life Insurance Assignments" means, collectively, (a) that certain Assignment of Life Insurance Policy as Collateral dated as of June 22, 2015 by Parent in favor of Agent with respect to the Eligible Life Insurance Policies in effect as of the Third Amendment Effective Date, and (b) any other agreements, instruments and documents reasonably acceptable to Agent pursuant to which Agent has been granted a Lien on the rights of a US Loan Party under any Eligible Life Insurance Policy.

"Life Insurance Policies" means, collectively, each key person life insurance policy that Parent has elected to subject to a Life Insurance Assignment and that is listed on Schedule E-2 (as the such Schedule E-2 may be updated from time to time by Parent) and issued by The Northwestern Mutual Life Insurance Company; provided, however, that any key person life insurance policy that has been released pursuant to Section 15.21 shall not constitute a Life Insurance Policy hereunder.

"Loan Account" means the US Loan Account or the Canadian Loan Account, as the case may be.

"Loan Documents" means the Agreement, any US Borrowing Base Certificate, any Canadian Borrowing Base Certificate, the Controlled Account Agreements, the Control Agreements, the Term Loan Intercreditor Agreement, any Copyright Security Agreement, the Fee Letter, the Guaranty, any Intercompany Subordination Agreement, the Letters of Credit, any Mortgages, any Additional ~~<Documents, any Additional Second Lien>~~ Documents, any Patent Security Agreement, the Security Agreement, any Trademark Security Agreement, the Life Insurance Assignments, any perfection certificate, any note or notes executed by any Borrower in connection with the Agreement and payable to any member of the Lender Group, any Canadian Security Document, any letter of credit application entered into by any Borrower in connection with the Agreement, and any other agreement entered into, now or in the future, by Parent or any of its Subsidiaries in connection with the Agreement.

"Loan Party" means any Borrower or any Guarantor.

"Loans" means Revolving Loans, Swing Loans, Overadvances and Protective Advances.

"Margin Stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) of Parent and its Subsidiaries taken as a whole, or as it relates to representations and warranties specifically relating to the ~~<First Lien>~~ Revolving Loan Priority Collateral, of Loan Parties taken as a whole, (b) a material impairment of the rights and remedies of Agent or any Lender under the Loan Documents taken as a whole, or of the ability of any Loan Party to perform its obligations under the Loan Documents to which it is a party, or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Material Real Property" means fee owned Real Property ~~<with a fair market value in excess of \$5,000,000>~~ which is subject to a mortgage in favor of the Term Loan Agent to secure the Indebtedness under the Term Loan Credit Agreement other than the Avon Lake Real Property.

"Maturity Date" has the meaning specified therefor in Section 3.3 of the Agreement.

"Maximum Credit" means the sum of the US Maximum Credit and the Canadian Maximum Credit, provided, that, in no event shall the Maximum Credit exceed \$400,000,000, as such amount may be decreased by the amount of decreases in the US Commitments in accordance with Section 2.3(c) of the Agreement or as such amount may be increased by the amount of increases in the US Commitments in accordance with Section 2.12 of the Agreement.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Mortgaged Property" means any Material Real Property ~~<that is>~~ owned by ~~<any>~~ the Loan ~~<Party that constitutes Second Lien Collateral>~~ Parties.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Parent or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that at any time encumber any Mortgaged Property.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which Parent or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a plan within the meaning of Section 210(a) of ERISA or Section 413(c) of the IRC to which Parent or any ERISA Affiliate is obligated to make contributions.

"Net Cash Proceeds" means the aggregate cash or Cash Equivalents received by any Loan Party or any Restricted Subsidiary in respect of any sale or other disposition (including any involuntary loss, damage or destruction or involuntary condemnation, seizure or taking or confiscation or requisition) or issuance or incurrence of Indebtedness or issuance of any Equity Interests (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received in cash), net of (a) reasonable and customary fees and expenses associated in connection therewith (including, without limitation, legal, accounting and investment banking fees, sales commissions and placement fees), (b) taxes paid or payable to any taxing authorities by Parent or such Subsidiary in connection with such sale or other disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of Parent or any of its Subsidiaries, and are properly attributable to such transaction, (c) in the case of any such sale or other disposition, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness owing to Agent or any Lender under the Agreement or the other Loan Documents and Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition (including, without limitation, prepayment premiums and/or penalties thereon), (d) in the case of any sale or other disposition, any portion of such proceeds deposited in an escrow account or subject to a similar arrangement in any event in accordance with the terms of such sale or other disposition (provided that such amounts shall be treated as Net Cash Proceeds upon the receipt of cash from such escrow account by such Loan Party or such Subsidiary) and (e) in the case of any sale or other disposition, any portion of any such proceeds which Parent determines in good faith should be reserved for post-closing adjustments and indemnities; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any such sale or other disposition, or issuance or incurrence of Indebtedness of issuance of any Equity Interests.

"Net Recovery Percentage" means the fraction, expressed as a percentage (a) the numerator of which is the amount equal to the recovery on the aggregate amount of the applicable category of Eligible Inventory at such time on a "net orderly liquidation value" basis as set forth in the most recent acceptable Inventory appraisal received by Agent in accordance with the requirements of the Agreement, net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets and (b) the denominator of which is the original cost of the aggregate amount of the Eligible Inventory subject to such appraisal.



"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Loan Party" means a Subsidiary of Parent that is not a Loan Party.

"Northwestern Mutual Side Letter" means that certain letter from The Northwestern Mutual Life Insurance Company to Agent dated as of April 28, 2015 regarding certain information with respect to the Life Insurance Policies, and any renewals, replacements or updates thereof, in each case in form and substance reasonably acceptable to Agent.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means (a) all loans (including the Revolving Loans (inclusive of Protective Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Reimbursement Undertakings or with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, covenants, and duties of any kind and description owing by any Loan Party pursuant to or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations, irrespective of whether contingent) owing by any Borrower or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of Underlying Letters of Credit, and (c) all Bank Product Obligations. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Overadvance" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Parent" has the meaning specified therefor in the preamble to the Agreement.

"Participant" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Participant Register" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Patent Security Agreement" has the meaning specified therefor in the Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.18 of the Agreement.

"Payoff Date" means the first date on which all of the Obligations are paid in full and the Commitments of the Lenders are terminated.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the IRC and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430 and 436 of the IRC and Sections 302 and 303 of ERISA.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) (excluding a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by Parent and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the Pension Funding Rules.

"Permitted Acquisition" means (i) the Glasforms Acquisition and (ii) any Acquisition other than the Spartech Acquisition and the Glasforms Acquisition, so long as, in the case of clause (ii):

(a) as of the date of any such Acquisition and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing,

(b) (i) the Excess Availability at any time during the immediately preceding sixty (60) consecutive day period shall have been not less than twenty percent (20%) of the Maximum Credit and (ii) the US Excess Availability at any time during the immediately preceding sixty (60) consecutive day period shall have been not less than fifteen percent (15%) of the Maximum Credit, and after giving effect to the Acquisition and the making of any payment in respect thereof, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability and the US Excess Availability shall be not less than the applicable amount specified above,

(c) the Acquisition shall be with respect to an operating company or division or line of business that engages in a line of business substantially similar, reasonably related or incidental to, or a reasonable extension of, the business that Parent and its Subsidiaries are engaged in,

(d) in the case of any Acquisition of Equity Interests, the Board of Directors (or other comparable governing body) of the Person to be acquired shall have duly approved such Acquisition and such person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition will violate applicable Law,

(e) in the case of any Acquisition (excluding the Spartech Acquisition) that involves consideration in the aggregate in excess of \$35,000,000 or on and after the aggregate amount of the consideration for all Acquisitions (excluding the Spartech Acquisition) after the [Fourth Amendment](#) Effective Date is in excess of \$75,000,000, as to any Acquisition thereafter that involves consideration in the aggregate in excess of \$5,000,000, Agent shall have received not less than ten (10) Business Days prior to the anticipated closing date of the proposed Acquisition prior written notice of the proposed Acquisition, and including the (i) parties to such Acquisition, (ii) the proposed date and amount of the Acquisition, (iii) description of the assets or shares to be acquired and (iv) the total purchase price for the assets to be purchased and the terms of payment of such purchase price), together with copies of the acquisition agreement and other material documents relative to the proposed Acquisition,

(f) in the case of any Acquisition (excluding the Spartech Acquisition) that involves consideration in the aggregate in excess of \$35,000,000 or on and after the aggregate amount of the consideration for all Acquisitions (excluding the Spartech Acquisition) after the [Fourth Amendment](#) Effective Date is in excess of \$75,000,000, as to any Acquisition thereafter that involves consideration in the aggregate in excess of \$5,000,000, Agent shall have received reasonably satisfactory projections for the period that is the lesser of six (6) months or until the end of the then current fiscal year after the date of such Acquisition showing, on a pro forma basis after giving effect to the Acquisition, (i) minimum Excess Availability at all times during such period of not less than twenty percent (20%) of the Maximum Credit and (ii) minimum US Excess Availability at all times during such period of not less than fifteen percent (15%) of the Maximum Credit,

(g) any such newly-created or acquired Subsidiary shall comply with the requirements of [Section 5.11](#) to the extent applicable,

(h) in the case of any Acquisition (excluding the Spartech Acquisition) that involves consideration in the aggregate in excess of \$35,000,000 or on and after the aggregate amount of the consideration for all Acquisitions (excluding the Spartech Acquisition) after the [Fourth Amendment](#) Effective Date is in excess of \$75,000,000, as to any Acquisition thereafter that involves consideration in the aggregate in excess of \$5,000,000, Parent shall have delivered to Agent, at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated, a certificate of an Authorized Person, in form and substance reasonably satisfactory to Agent and the Required Lenders, certifying that all of the requirements set forth in this definition of Permitted Acquisition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other Acquisition, and

(i) except for Eligible Acquired Business Accounts and Eligible Acquired Business Inventory, if Parent requests that any assets acquired pursuant to such Acquisition be included in the Borrowing Base, Agent shall have completed an Acceptable Field Exam with respect to such Acquired Business and any Accounts or Inventory of the Acquired Business shall only be Eligible Accounts or Eligible Inventory to the extent that Agent has so completed such Acceptable Field Exam with respect thereto and as to Inventory has received a satisfactory appraisal (and has completed customary legal due diligence with respect thereto with results satisfactory to Agent) and the criteria for Eligible Accounts and Eligible Inventory set forth herein are satisfied with respect thereto in accordance with this Agreement (or such other or additional criteria as Agent may, at its option, establish with respect thereto in accordance with the definitions of Eligible Accounts or Eligible Inventory, as applicable, and subject to such reserves as Agent may establish in connection with the Acquired Business in accordance with [Sections 2.1\(e\)](#) and [2.1\(f\)](#) of this Agreement).

"Permitted Discretion" means a determination made in good faith in the exercise of its reasonable business judgment based on how an asset-based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it.

"Permitted Dispositions" means:

(a) sales or other dispositions of obsolete or worn out property or assets that are no longer necessary or required for the operation of the business (including insignificant or immaterial parcels of Real Property), whether now owned or hereafter acquired, in the ordinary course of business,

- (b) sales of Inventory in the ordinary course of business,
- (c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents,
- (d) sales or other dispositions of assets (other than ~~<First Lien>~~ Revolving Loan Priority Collateral) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are reasonably promptly applied to the purchase price of such replacement property,
- (e) the sale or other disposition of property by Parent or any Subsidiary of Parent to any Loan Party or other Subsidiary, provided, that, (i) if the transferor of such property is a Borrower, then the transferee thereof must be another Loan Party, (ii) if the transferor of such property is a Guarantor, then the transferee must be either a Borrower or Guarantor, (iii) to the extent such transaction constitutes an Investment, such transaction is a Permitted Investment and (iv) to the extent of any Lien of Agent with respect to such property prior to its sale or other disposition, the Lien of Agent on such property shall continue in all respects and shall not be deemed released or terminated as a result of such sale or other disposition and Borrowers and Guarantors shall execute and deliver such agreements, documents and instruments as Agent may request with respect thereto,
- (f) the sales or other disposition of property by Parent or any Loan Party to any Subsidiary of Parent that is a Non-Loan Party so long as (i) such sale or other disposition is consummated on fair and reasonable terms (taken as a whole) no less favorable to Parent or such Loan Party than Parent or such Loan Party would obtain in a comparable arm's length transaction with a Person that is not an Affiliate, (ii) no Event of Default is in existence at the time of such sale or other disposition or would be caused thereby and (iii) the consideration for such sale or other disposition consists of cash in at least the amount of the loanable value hereunder (pursuant to the applicable Borrowing Base), if any, of the property being so sold or transferred,
- (g) the sale of Accounts in connection with the collection or compromise thereof in the ordinary course of business consistent with the practices of Parent and its Subsidiaries as of the date hereof,
- (h) the grant by Parent and its Subsidiaries after the date hereof of a non-exclusive license of any intellectual property owned by Parent and its Subsidiaries in the ordinary course of business consistent with past practice,
- (i) the granting of Permitted Liens,
- (j) any involuntary loss, damage or destruction of property, or any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,
- (k) the leasing, subleasing or non-exclusive licensing or sublicensing of tangible assets (which shall not include Inventory) or intangible assets (or an assignment of a lease or license or sublease of assets of any Loan Party in the ordinary course of business that do not materially interfere with the business of Parent and its Restricted Subsidiaries, taken as a whole,
- (l) the abandonment or other disposition of intellectual property in the ordinary course of business consistent with past practices that is not material and is no longer used or useful in the business of Parent or its Subsidiaries,
- (m) the making of a Restricted Payment or a Permitted Investment that in each case is expressly permitted to be made pursuant to the Agreement,
- (n) sales or other dispositions of the Real Property listed on Schedule P-1 or any Specified Real Property,
- (o) sales by Parent or any of its Restricted Subsidiaries of property (other than ~~<First Lien>~~ Revolving Loan Priority Collateral) pursuant to 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, (i) the lease contemplated by such Sale and Lease-Back Transaction is executed within two hundred seventy (270) days of the sale of such property, and (ii) subject to the Term Loan Intercreditor Agreement, to the extent Net Cash Proceeds in excess of \$10,000,000 for any one disposition and in excess of \$50,000,000 for all dispositions in any fiscal year are received, the Net Cash Proceeds resulting from such disposition pursuant to this clause shall be applied to the Obligations to the extent required under Section 2.3(e) hereof, if not otherwise applied to repay ~~<any>~~ Indebtedness under the Term Loan Credit Agreement or any other Indebtedness which is required to be repaid with such Net Cash Proceeds under the terms of such Indebtedness,
- (p) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business (other than any such contractual rights or claims related to Accounts, payment intangibles or Inventory constituting ~~<First Lien>~~ Revolving Loan Priority Collateral),
- (q) the termination of any Hedge Agreement,
- (r) any other sale or other disposition of property by Parent or any Restricted Subsidiary for consideration in any one case not to exceed \$1,000,000, or in the case of any sale or other disposition of ~~<First Lien>~~ Revolving Loan Priority

Collateral, in the aggregate as to all such sales or other dispositions, not to exceed \$2,500,000,

(s) sales of interests in or assets of Unrestricted Subsidiaries or Immaterial Subsidiaries,

(t) sales or other transfers by a Loan Party of any Equity Interests held in a first tier Subsidiary that is organized under the laws of a jurisdiction other than the United States, to a Restricted Subsidiary (including any Excluded Subsidiary), provided, that, one hundred percent (100%) (or sixty-five percent (65%) in the case of any first tier Foreign Subsidiary) of the Equity Interests of the Restricted Subsidiary to whom such Equity Interests are sold or otherwise transferred are subject to the Lien of Agent pursuant to the Loan Documents,

(u) sales or other dispositions of assets of Loan Parties not otherwise subject to the provisions set forth in this definition, provided, that, as to any such sale or other disposition, each of the following conditions is satisfied:

(i) not less than seventy-five percent (75%) of the consideration to be received by the Loan Parties shall be paid or payable in cash and shall be paid contemporaneously with consummation of the transaction,

(ii) the consideration received by such Loan Party in respect of the sale or other disposition of such assets shall be for the fair value of such assets determined in a commercially reasonable manner based on an arm's length transaction,

(iii) in the case of any sale or other disposition of ~~<First Lien>~~ Revolving Loan Priority Collateral, as of the date of such sale or other disposition and after giving effect thereto, using the most recent calculation of the Borrowing Base prior to the date of any such payment, on a pro forma basis, Excess Availability shall be not less than twenty percent (20%) of the Maximum Credit and US Excess Availability shall be not less than fifteen percent (15%) of the Maximum Credit,

(iv) at any time a Cash Dominion Event exists, in the case of any sale or other disposition of ~~<First Lien>~~ Revolving Loan Priority Collateral and subject to the terms of the Term Loan Intercreditor Agreement, the Net Cash Proceeds from any such sale or other disposition shall be applied to the Obligations (without permanent reduction thereof), and in the case of any sale or other disposition of any property other than ~~<First Lien>~~ Revolving Loan Priority Collateral and subject to the terms of the Term Loan Intercreditor Agreement, the Net Cash Proceeds in excess of \$10,000,000 in any one sale or other disposition or in excess of \$50,000,000 for all such sales or other dispositions in any fiscal year, shall be applied to the Obligations,

(v) to the extent that the property being sold or otherwise disposed of consists of Collateral included in the Borrowing Base, the aggregate consideration for all property sold or otherwise disposed of in reliance on this clause (u) shall not exceed \$75,000,000,

(vi) after the aggregate consideration for all property being sold or otherwise disposed of under this clause (u), other than ~~<First Lien>~~ Collateral, exceeds \$75,000,000, Agent shall have received written notice of each such sale or other disposition at least 3 days prior thereto, and

(vii) as of the date of any such sale or other disposition, and in each case after giving effect thereto, no Event of Default shall exist or have occurred and be continuing,

(v) sales or other dispositions of Accounts owing from Valspar Sourcing, Inc. or any other Account Debtor that is reasonably acceptable to Agent pursuant to supply chain finance arrangements that are acceptable to Agent; provided, that, the total obligations owing in respect of all such Accounts shall not exceed \$15,000,000 in the aggregate during any fiscal year,

(w) dispositions permitted by Section 6.3, and

(x) sales or transfers by a Loan Party of any Equity Interests held in another Loan Party, provided, that (i) such sale or other transfer shall be to another Loan Party and (ii) to the extent of any Lien of Agent with respect to such Equity Interests prior to its sale or other disposition, the Lien of Agent on such Equity Interests shall continue in all respects and shall not be deemed released or terminated as a result of such sale or other disposition and Borrowers and Guarantors shall execute and deliver such agreements, documents and instruments as Agent may reasonably request with respect thereto.

"Permitted Indebtedness" means:

(a) Indebtedness under the Loan Documents, and including Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit,

(b) ~~<Reserved>~~ Indebtedness under the Term Loan Credit Agreement advanced on the Fourth Amendment Effective Date, together with Additional Term Loans advanced pursuant to Section 2.14 of the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date) after the Fourth Amendment Effective Date, subject to the prior satisfaction of the Additional Advance Conditions, in each case, subject to the terms of the Term Loan Intercreditor Agreement, and any Refinancing Indebtedness with respect thereto,

(c) Indebtedness outstanding on the date hereof and listed on Schedule P-2 and any Refinancing Indebtedness with respect thereto,

(d) guarantees (i) by a Loan Party of other Permitted Indebtedness of another Loan Party, (ii) by a Non-Loan Party of Permitted Indebtedness of another Non-Loan Party, (iii) by a Non-Loan Party of Permitted Indebtedness of a Loan Party unless such Non-Loan Party shall have also provided a guarantee of the Obligations substantially on the terms set forth in the applicable Guaranty, and (iv) by a Loan Party of Permitted Indebtedness of a Non-Loan Party, provided, that, (A) as of the date of the execution and delivery of any such guarantee under this clause (iv), and after giving effect thereto, such Loan Party would be permitted to make a Permitted Investment in such Non-Loan Party under clause (d)(ii)(D) of the definition of Permitted Investments, such that all of the conditions set forth in clause (d)(ii)(D) of the definition of Permitted Investments shall be satisfied as to any such guarantee treating the guarantee as a Permitted Investment for this purpose, including that (1) the maximum amount of the liability of the Loan Parties under all of such guarantees, plus (2) the amount of the Permitted Investments by Loan Parties under such clause (d)(ii)(D), shall not in the aggregate exceed \$100,000,000 at any time outstanding, and (B) if the Indebtedness being guaranteed is subordinated to the Obligations, such guarantee shall be subordinated to the guarantee of the Obligations on terms at least as favorable to Agent and the Lenders as those contained in the subordination provisions of such Indebtedness,

(e) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness,

(f) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, or similar obligation of the applicable Loan Party incurred in connection with the consummation of the Spartech Acquisition, one or more Permitted Acquisitions or Permitted Investments or one or more Permitted Dispositions,

(g) other Indebtedness of Restricted Subsidiaries that are Non-Loan Parties in an aggregate principal amount for all such Persons not to exceed \$100,000,000 at any time outstanding,

(h) Acquired Indebtedness (i) incurred in connection with a Permitted Acquisition or the Spartech Acquisition in an amount not to exceed \$100,000,000 outstanding at any one time and any Refinancing Indebtedness in respect of such Indebtedness and (ii) incurred in connection with the Spartech Acquisition in an amount not to exceed \$12,500,000 outstanding at any one time and any Refinancing Indebtedness in respect of such Indebtedness,

(i) Indebtedness incurred in the ordinary course of business under customs, stay, performance, surety, statutory, and appeal bonds, and completion guarantees (or obligations in respect of letters of credit related thereto),

(j) Indebtedness consisting of insurance premium financing in the ordinary course of business, except with respect to any Life Insurance Policy,

(k) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with any Loan Party's and its Subsidiaries' operations and not for speculative purposes,

(l) Indebtedness consisting of deferred compensation to employees of Parent or any Restricted Subsidiary in the ordinary course of business and consistent with the current practices of Parent and such Subsidiary,

(m) Indebtedness (including obligations in respect of letters of credit or bank guarantees or similar instruments) incurred by Parent or any Restricted Subsidiary constituting reimbursement obligations in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance; provided, that, upon the drawing of such letters of credit or the incurrence of such Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed within thirty (30) days following such drawing or incurrence,

(n) Indebtedness and other obligations in respect of netting services, overdraft protections and similar arrangements in each case in connection with cash management or treasury services arrangements and Deposit Accounts,

(o) prior to the Term Loan Closing Date, Indebtedness evidenced by the 2015 Notes in an aggregate outstanding principal amount not to exceed \$50,000,000 and any Refinancing Indebtedness with respect thereto,

(p) prior to the 2020 Redemption Date, Indebtedness evidenced by the 2020 Notes in an aggregate outstanding principal amount not to exceed \$360,000,000 and any Refinancing Indebtedness with respect thereto,

(q) Indebtedness arising under the Series G Guarantee in an aggregate outstanding principal amount not to exceed \$30,468,750,

(r) unsecured Indebtedness of any Loan Party owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase by such Loan Party of the



Equity Interests of such Loan Party that has been issued to such Persons, provided, that, the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$2,000,000,

(s) guarantees by PolyOne International Finance Company in respect of Indebtedness otherwise permitted under this Agreement of any Subsidiary that is not a Loan Party,

(t) (i) unsecured Indebtedness (including Subordinated Debt) of Parent or any other Loan Party; provided, that, as to any such Indebtedness, (A) such Indebtedness shall have a maturity date that is at least ninety-one (91) days after the Maturity Date, and shall not include covenants, defaults and remedy provisions that are more restrictive in any material respect to Parent and its Subsidiaries than this Agreement taken as a whole and shall not have any financial maintenance covenants, (B) the Fixed Charge Coverage Ratio (calculated based on the preceding twelve (12) consecutive month period ending on the fiscal month end for which Agent has received financial statements immediately prior to the date of the incurrence of such Indebtedness), on a pro forma basis, immediately after giving effect to such Indebtedness shall be not less than 1.00 to 1.00, (C) as of the date of the incurring of any such Indebtedness and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (D) in the case of any such Indebtedness in an aggregate principal amount in excess of \$50,000,000, such Indebtedness shall not have scheduled amortization payments in excess of one percent (1%) of the principal amount thereof in any fiscal year, and (E) if such Indebtedness is owed to a seller of assets to Parent or any other Loan Party, it is expressly subordinate in right of payment to the prior payment in full in cash of the Obligations and otherwise subject to related subordination provisions on terms reasonably acceptable to Agent, and (ii) any Refinancing Indebtedness in respect of the Indebtedness permitted under clause (i) above,

(u) Indebtedness evidenced by the Current Notes in an aggregate outstanding principal amount not to exceed \$600,000,000 and any Refinancing Indebtedness with respect thereto, ~~and~~

(v) Indebtedness permitted by clause (d) of the definition of Permitted Investments ~~<=>~~, and

(a) Incremental Equivalent Debt, subject to the prior satisfaction of the Additional Advance Conditions, and any Refinancing Indebtedness with respect thereto.

"Permitted Investments" means:

(a) (i) Investments in cash and Cash Equivalents of any Non-Loan Party and (ii) Investments in cash and Cash Equivalents of any Loan Party, so long as (solely in the case of this clause (ii)) if a Cash Dominion Event exists, no Revolving Loans (including Swing Loans, Overadvances and Protective Advances) are then outstanding; except that notwithstanding that any Revolving Loans (including Swing Loans, Overadvances and Protective Advances) are outstanding, Loan Parties may from time to time in the ordinary course of business consistent with their current practices as of the date hereof, (A) make deposits of cash or other immediately available funds in operating demand Deposit Accounts used for disbursements to the extent required to provide funds for amounts drawn or anticipated to be drawn shortly on such Deposit Accounts and such funds may be held in Cash Equivalents consisting of overnight investments until so drawn (so long as such funds and Cash Equivalents are not held more than three (3) Business Days from the date of the initial deposit thereof), and (B) make other Investments in cash or Cash Equivalents in an aggregate amount not to exceed \$10,000,000 at any time,

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$10,000,000 at any time outstanding, for travel, entertainment, relocation packages and analogous ordinary business purposes,

(c) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(d) (i) Investments by Parent and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, and (ii) additional Investments by (A) a Loan Party in another Loan Party, (B) a Non-Loan Party in another Non-Loan Party, (C) a Non-Loan Party in a Loan Party, provided, that, in the case of any such Investments constituting Indebtedness, such Indebtedness shall be subordinated and otherwise subject to the terms and conditions of the Intercompany Subordination Agreement, and (D) additional Investments by a Loan Party in a Non-Loan Party, provided, that, as to any such Investment under this clause (D), each of the following conditions is satisfied (1) as of the date of such Investment and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing, (2) the aggregate amount of all such Investments after the date hereof, plus the maximum amount of the liability of the Loan Parties under all guarantees by Loan Parties of Indebtedness of Non-Loan Parties as provided in clause (d)(iv) of the definition of Permitted Indebtedness, shall not, in the aggregate, exceed \$100,000,000 outstanding at any one time, (3) at any time the aggregate amount of all of such Investments is greater than \$20,000,000 and after giving effect thereto, using the most recent calculation of the Borrowing Base prior to the date of any such Investment, on a pro forma basis, Excess Availability shall be not less than twenty percent (20%) of the Maximum Credit and US Excess Availability shall be not less than ten percent (10%) of the Maximum Credit and (4) Agent shall have received reasonably satisfactory projections for the period that is the lesser of six (6) months or until the end of the then current fiscal year after the date of such Investment showing, on a pro forma basis after giving effect to the Investment, (x) minimum Excess Availability at all times during such period of not less than twenty percent (20%) of the Maximum Credit and (y) minimum US Excess Availability at all times during such period of not less than ten percent (10%) of the Maximum Credit, provided, that, this clause (4) shall not be

applicable so long as the aggregate amount of all such Permitted Investments are less than \$20,000,000, and at the time of making any such Permitted Investment, the sum of the Excess Availability plus Qualified Cash is greater than \$150,000,000,

(e) Investments consisting of extensions of credit in the nature of Accounts or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss,

(f) guarantees permitted under the definition of Permitted Indebtedness,

(g) Investments existing on the date hereof (other than those referred to clause (d)(i) of this definition above) and set forth on Schedule P-3,

(h) Investments (including debt obligations and Equity Interests) received by Parent or any of its Restricted Subsidiaries in connection with (i) the bankruptcy or reorganization of any Person obligated to Parent or such Restricted Subsidiary, (ii) in settlement of obligations of any Person to Parent or such Subsidiary, or disputes by Parent or such Subsidiary with, any Person, in either case arising in the ordinary course of business, provided, that, there shall be no such settlements with respect to Accounts or other ~~<First Lien>~~ Revolving Loan Priority Collateral at any time an Event of Default exists or has occurred or is continuing, except as Agent may otherwise agree, (iii) the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and (iv) the non-cash proceeds of any sale or other disposition to the extent permitted as a Permitted Disposition,

(i) advances of payroll payments to employees in the ordinary course of business consistent with current practices,

(j) guarantees by Parent or any Restricted Subsidiary of leases (other than any Capital Lease) or of other obligations of such Restricted Subsidiary that do not constitute Indebtedness, in each case entered into in the ordinary course of business, provided, that, as of the date of the execution and delivery of any such guarantee under this clause (j), and after giving effect thereto, (i) such Loan Party would be permitted to make a Permitted Investment in such Non-Loan Party under clause (d)(ii)(D) of the definition of Permitted Investments, such that all of the conditions set forth in clause (d)(ii)(D) of the definition of Permitted Investments shall be satisfied as to any such guarantee treating the guarantee as a Permitted Investment for this purpose except for the conditions in clauses (2) and (4) of such clause (d)(ii)(D), and (ii) the sum of (A) the maximum amount of the liability of Parent and such Restricted Subsidiaries under all of such guarantees, plus (B) the amount of Letters of Credit for the benefit of, or in connection with, the business of a Non-Loan Party (other than in the case of a Letter of Credit for the benefit of the business of Parent and its Subsidiaries generally) under Section 2.9(a), shall not in the aggregate exceed \$50,000,000 at any time outstanding,

(k) Investments (other than an Acquisition) to the extent the consideration paid therefor consists of Equity Interests of Parent (other than any Disqualified Equity Interests),

(l) Investments held by a Person acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition or the Spartech Acquisition and were in existence on the date of such Permitted Acquisition or the Spartech Acquisition,

(m) advances made in connection with purchases of goods or services in the ordinary course of business, including advances to suppliers,

(n) deposits of cash made in the ordinary course of business to secure performance of operating leases,

(o) deposits of cash for leases, utilities, worker's compensation and similar matters in the ordinary course of business,

(p) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to Indebtedness arising from Hedge Agreements that is permitted under clause (k) of the definition of Permitted Indebtedness,

(q) the Juffali Investment, provided, that, all of such Investment is made prior to the fifth anniversary of the Existing Closing Date,

(r) promissory notes issued by an Excluded Subsidiary payable to a Loan Party in exchange for Equity Interests of such Loan Party transferred to such Excluded Subsidiary pursuant to a Permitted Disposition under clause (t) of the definition of the term Permitted Disposition,

(s) Investments in Immaterial Subsidiaries or Unrestricted Subsidiaries in an aggregate amount not to exceed \$2,500,000 in any fiscal year in connection with environmental remediation costs and expenses incurred by such Subsidiaries,

(t) Investments constituting Permitted Acquisitions,



(u) Investments by a Loan Party and its Restricted Subsidiaries, including loans and advances to any direct or indirect parent of a Loan Party, if such Loan Party or Restricted Subsidiary would be permitted to make a Restricted Payment in such amount under Section 6.8, provided, that, the amount of any such Investment shall also be deemed to be a Restricted Payment under the applicable clause of Section 6.8 for all purposes of the Agreement,

(v) Investments in the ordinary course of business consisting of (i) endorsements of instruments for collection or deposit or (ii) customary trade arrangements with customers,

(w) Investments by Parent and its Restricted Subsidiaries not otherwise permitted under this definition; provided, that, with respect to each Investment made pursuant to this clause (w):

(i) after giving effect thereto, the aggregate amount of all such Investments pursuant to this clause (w) (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) shall not exceed the amount equal to the sum of (A) \$75,000,000 plus (B) fifty percent (50%) of the Consolidated Net Income for all fiscal quarters of Parent for which Consolidated Net Income is positive and that have ended after the Existing Closing Date (commencing with the fiscal quarter ending on December 31, 2011) and for which annual and quarterly financial statements shall have been received by Agent pursuant to Section 5.1 (treated as one continuous accounting period) prior to the date of determination, less one hundred percent (100%) of the Consolidated Net Income for all fiscal quarters of Parent for which Consolidated Net Income is negative and that have ended after the Existing Closing Date (commencing with the fiscal quarter ending on December 31, 2011) and for which annual and quarterly financial statements shall have been delivered to Agent pursuant to Section 5.1 (treated as one continuous accounting period) prior to the date of determination,

(ii) the Fixed Charge Coverage Ratio (calculated based on the preceding twelve (12) consecutive month period ending on the fiscal month end for which Agent has received financial statements immediately prior to the date of the incurrence of such Indebtedness), on a pro forma basis, immediately after giving effect to such Indebtedness shall be not less than 1.00 to 1.00,

(iii) as of the date of such Investment and after giving effect thereto, using the most recent calculation of the Borrowing Base prior to the date of any such payment, on a pro forma basis, Excess Availability shall be not less than twenty percent (20%) of the Maximum Credit and US Excess Availability shall be not less than fifteen percent (15%) of the Maximum Credit, and

(iv) as of the date of any such Investment, and in each case after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing,

provided, that except for Eligible Acquired Business Accounts and Eligible Acquired Business Inventory, if Parent requests that any assets acquired pursuant to such Investment be included in the Borrowing Base, Agent shall have completed an Acceptable Field Exam with respect to the applicable Acquired Business and any Accounts or Inventory of the Acquired Business shall only be Eligible Accounts or Eligible Inventory to the extent that Agent has so completed such Acceptable Field Exam with respect thereto and as to Inventory has received a satisfactory appraisal (and has completed customary legal due diligence with respect thereto with results satisfactory to Agent) and the criteria for Eligible Accounts and Eligible Inventory set forth herein are satisfied with respect thereto in accordance with the Agreement (or such other or additional criteria as Agent may, at its option, establish with respect thereto in accordance with the definitions of Eligible Accounts or Eligible Inventory, as applicable, and subject to such reserves as Agent may establish in connection with the Acquired Business in accordance with Sections 2.1(e) and 2.1(f) of the Agreement), and

(x) the Investment constituting the Spartech Acquisition; provided, that:

(i) the Spartech Acquisition shall close on or before July 15, 2013, ~~<2013,>~~

(ii) as of the date of the Spartech Acquisition and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing,

(iii) the sum of the Excess Availability and Qualified Cash immediately after the closing of the Spartech Acquisition and after the application of the proceeds of any Revolving Loans, and the issuance of any Letters of Credit, in connection therewith, and after provision for payment of all fees and expenses of the Spartech Acquisition and the other transactions occurring on the same date, shall not be less than \$150,000,000, and not less than fifty percent (50%) of the sum of such amount shall consist of Excess Availability,

(iv) Agent shall have received an update Borrowing Base certificate reflecting the transactions described in clause (iii) above,

(v) Spartech and each of its Subsidiaries shall comply with the requirements of Section 5.11 of the Agreement to the extent applicable, including delivery of all appropriate amendments to, and new Loan Documents necessary to satisfy such requirements, and, in connection therewith, Agent shall have received perfected Liens on the Collateral as provided in Section 5.11(b) of the Agreement,

(vi) Agent and each Lender shall have received all executed Spartech Acquisition Documents,

(vii) the Spartech Acquisition shall be consummated in accordance with the terms of the Spartech Acquisition Documents, without any amendment or waiver thereof that may be materially adverse to the interests of Agent or any Lender, except as otherwise consented to by Agent,

(viii) Agent shall have received releases, terminations and such other documents as Agent may reasonably request to evidence and effectuate the termination of Spartech's existing credit facility and the termination and release of any Liens supporting such facility, each in form and substance reasonably satisfactory to Agent,

(ix) Agent shall have received certification from the chief financial officer of Administrative Borrower to the effect that the Loan Parties are Solvent after giving effect to the Spartech Acquisition and related transactions, including the incurrence of, and assumption of, Indebtedness in connection therewith, in form and substance reasonably satisfactory to Agent,

(x) no "Company Material Adverse Effect" (as defined in the Spartech Acquisition Agreement) shall have occurred since December 31, 2011, and

(xi) all conditions to extensions of credit contained in Section 3.2 of the Agreement shall have been satisfied.

"Permitted Liens" means:

(a) Liens granted to, or for the benefit of, Agent to secure the Obligations,

(b) Liens existing on the Effective Date and listed on Schedule P-4 securing Indebtedness in effect on the Effective Date or any Refinancing Indebtedness in respect thereof,

(c) Liens for unpaid taxes, assessments or similar charges not yet due or which are subject to a Permitted Protest,

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising by operation of law in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are subject to a Permitted Protest,

(e) pledges or deposits of cash in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA,

(f) deposits of cash to secure the performance of bids, trade contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety and appeal bonds, performance bonds, completion guarantees and other obligations of a like nature incurred in the ordinary course of business and obligations in respect of letters of credit issued for the account of Parent or any of its Restricted Subsidiaries for the payment of its obligations under any of the foregoing in the ordinary course of business and consistent with the current practice of Parent and such Subsidiaries,

(g) easements, rights-of-way, survey exceptions, restrictions (including zoning restrictions), covenants, licenses, municipal regulations, reservations of oil, gas and mineral rights, encroachments, protrusions or other minor title deficiencies, and other similar encumbrances with respect to Real Property which do not materially adversely affect the conduct of the business of the applicable Person or the ownership of its properties and which could not individually or in the aggregate reasonably be expected to materially adversely affect the value of said properties or materially impair their use in the operation of the business of the applicable Person,

(h) Liens securing judgments for the payment of money that do not constitute an Event of Default under Section 8.3 of the Agreement,

(i) purchase money Liens securing Indebtedness permitted under clause (c) of the definition of Permitted Indebtedness; provided, that, (i) such Liens do not at any time encumber any property other than the property purchased or acquired financed by such Indebtedness (except that the collateral for the Indebtedness arising from the Purchase Money Indebtedness for one item of Equipment may be collateral for other Purchase Money Indebtedness for other items of Equipment owing to the same Person) and (ii) the Indebtedness secured thereby consists only of the Indebtedness that was incurred to pay the purchase price for the purchase or acquisition of the property and such Indebtedness does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition,

(j) 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,

(k) Liens solely on any cash earnest money deposits made by Parent or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition, the Spartech Acquisition or a Permitted Investment,

(l) Liens on assets subject to a Permitted Disposition prior to the effectiveness of such Permitted Disposition consisting of the agreement by the owner of such assets to sell or otherwise dispose of such asset pursuant to such Permitted Disposition,

(m) prior to the Term Loan Closing Date, Liens in favor of the 2015 Note Trustee in and on the assets and properties of Borrowers and Guarantors constituting Collateral that equally and ratably secure the Indebtedness permitted under clause (o) of the definition of Permitted Indebtedness to the extent such Liens are required under the terms of the 2015 Note Indenture, provided, that, (i) in the event that at any time the obligation of Parent and its Subsidiaries to grant a Lien to secure the 2015 Note Obligations shall cease or no longer be applicable for any reason, then the Liens granted to the Note Trustee to secure the 2015 Note Obligations shall automatically and without further action terminate as to such 2015 Note Obligations and (ii) such Liens are at all times subject to the terms of the 2015 Note Intercreditor Agreement,

(a) Liens in favor of the Term Loan Agent in and on the assets and properties of Borrowers and Guarantors constituting Collateral to secure the Indebtedness permitted under clause (b) of the definition of Permitted Indebtedness; provided, that, such Liens are at all times subject to the terms of the Term Loan Intercreditor Agreement,

(b) ~~(n)~~ Liens in favor of the Series G Noteholders in and on the assets and properties of Borrowers and Guarantors constituting Collateral that equally and ratably secure the Indebtedness permitted under clause (q) of the definition of Permitted Indebtedness to the extent such Liens are required under the terms of the Series G Guarantee, provided, that, (i) in the event that at any time the obligation of Parent and its Subsidiaries to grant a Lien to secure the obligations under the Series G Guarantee shall cease or no longer be applicable for any reason, then the Liens granted to the Series G Noteholders to secure the obligations under the Series G Guarantee shall automatically and without further action terminate as to such obligations and (ii) such Liens are at all times subject to the terms of the Series G Guarantee Lien Acknowledgement,

~~(o)~~ **[Reserved];**

(c) any interest or title of a lessor, sublessor, licensor or sublicensor (or their lenders) under any leases, subleases, licenses or sublicenses of tangible assets (or agreements in connection therewith) or any intellectual property entered into by Parent or any Restricted Subsidiary in the ordinary course of business, and any license or sublicense on a non-exclusive basis of any tangible or intangible asset (including intellectual property) by Parent or any Subsidiary in the ordinary course of business that is a Permitted Disposition and that does not materially interfere with the business of Parent and its Subsidiaries,

(d) Liens (i) of a collecting bank arising under Section 4-208 of the Uniform Commercial Code on the items in the course of collection and (ii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds or assets maintained with a financial institution (including the right of set off) and that are within the general parameters customary in the banking industry, including, without limitation, customary Liens for customary fees and expenses relating to the operation and maintenance of such deposits and (iii) consisting of rights of setoff related to, or Liens on cash subject to, pooling arrangements in connection with cash management,

(e) (i) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums and (ii) Liens on the cash surrender value of existing life insurance policies owned by Parent or any of its Restricted Subsidiaries to secure non-recourse obligations of Parent or such Subsidiary to the issuer of such insurance policies (so that such issuer only has recourse to such cash surrender value),

(f) Liens existing on property (other than ~~<First Lien>~~ Revolving Loan Priority Collateral) at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the date hereof (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary); provided, that, (i) such Lien was not created in contemplation of, or in connection with, such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and after-acquired property subjected to a Lien pursuant to terms existing at the time of such acquisition), and (iii) the Indebtedness secured thereby (or, as applicable, Refinancing Indebtedness thereof) is permitted under clause (h) of the definition of the term Permitted Indebtedness,

(g) Liens arising from precautionary Uniform Commercial Code financing statement filings (or similar filings under other applicable Law) in connection with operating leases, consignment of goods or similar types of transactions,

(h) Liens on assets of Restricted Subsidiaries that are Non-Loan Parties to the extent Indebtedness secured thereby is permitted under clause (g) of the definition of Permitted Indebtedness,

(i) Liens on assets of a Non-Loan Party to secure Indebtedness of such Non-Loan Party to a Loan Party or another Non-Loan Party arising pursuant to Investments permitted under clause (d)(ii) of the definition of Permitted Investments,

(j) options, put and call arrangements, rights of first refusal and similar rights relating to Permitted Investments in joint ventures, partnerships and the like,

(k) if the Spartech Acquisition is consummated, Liens on the Spartech Fixed Assets to secure Indebtedness otherwise permitted under Section 6.1 of the Agreement,

(l) Liens on Accounts pursuant to a disposition permitted by clause (v) of the definition of Permitted Dispositions, ~~and~~

(m) Liens in and on the assets and properties of Borrowers and Guarantors constituting Collateral to secure any Incremental Equivalent Debt incurred pursuant to clause (w) of the definition of Permitted Indebtedness; provided, that, such Liens on Revolving Loan Priority Collateral are subordinate to Agent's Liens on Revolving Loan Priority Collateral and such Liens are at all times subject to the terms of an subordination or intercreditor agreement reasonably satisfactory to Agent (it being agreed that the form of the Term Loan Intercreditor Agreement entered into on the Fourth Amendment Effective Date is satisfactory to Agent), and

(n) ~~(z)~~ other Liens on assets other than the ~~First Lien~~ Revolving Loan Priority Collateral to secure obligations permitted hereunder that does not exceed \$100,000,000 at any time outstanding.

The inclusion of Permitted Liens in this Agreement is not intended to evidence an agreement to subordinate any Lien created by any Loan Document to any Permitted Lien. Notwithstanding anything to the contrary and except as permitted under clauses (a), (m), (n) and (o) of this definition of Permitted Liens, Parent shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly create, incur, assume or suffer to exist any Lien upon (i) the Equity Interest of any Immaterial Subsidiary or any Person in which Parent or any Subsidiary owns any Equity Interests other than a wholly-owned Subsidiary and (ii) Indebtedness of a Non-Loan Party that is owed to a Loan Party.

"Permitted Protest" means the right of Parent or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax Lien or to the exercise of the Canadian federal government supergarnish right), or rental payment, provided that (a) a reserve with respect to such obligation is established on Parent's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Parent or its Subsidiary, as applicable, in good faith, and has the effect (or any orders entered into in connection therewith has the effect) of preventing the forfeiture or sale of the property subject to any Lien with respect thereto, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness incurred after the Effective Date in an aggregate principal amount outstanding at any one time not in excess of \$35,000,000.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan but excluding a Multiple Employer Plan or a Multiemployer Plan), maintained for employees of Parent, any of its Subsidiaries or any ERISA Affiliate or any such Plan to which Parent, any of its Subsidiaries or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified therefor in Section 5.1(c) of the Agreement.

"PPSA" means the Personal Property Security Act (Ontario), the Civil Code of Quebec or any other applicable Canadian Federal or Provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

"Priority Payables" means, as to any Borrower or Guarantor at any time, (a) the full amount of the liabilities of such Borrower or Guarantor at such time which (i) have a trust or deemed trust imposed to provide for payment or a security interest, pledge, lien, hypothec or charge ranking or capable of ranking senior to or pari passu with security interests, liens or charges securing the Obligations under any Law in Canada or (ii) have a right imposed to provide for payment ranking or capable of ranking senior to or pari passu with the Obligations under any Law, including, but not limited to, claims for unremitted and/or accelerated rents, taxes, wages, withholding taxes, VAT and other amounts payable to an insolvency administrator, employee withholdings or deductions and vacation pay, workers' compensation obligations, government royalties or pension fund obligations in each case to the extent such trust or deemed trust, or security interest, lien, hypothec or charge has been or may be imposed and (b) the amount equal to the percentage applicable to Inventory in the calculation of Excess Availability multiplied by the aggregate Value of the Eligible Inventory which Agent, in good faith, considers is or may be subject to retention of title by a supplier or a right of a supplier to recover possession thereof, where such supplier's right has priority over the security interests, hypothecs, liens or charges securing the Obligations, including, without limitation, Eligible Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the Bankruptcy and Insolvency Act (Canada) or any applicable Laws granting revendication or similar rights to unpaid suppliers or any similar Laws of Canada or any other applicable jurisdiction (provided, that, to the extent such Inventory has been identified and has been excluded from Eligible Inventory, the amount owing to the supplier shall not be considered a Priority Payable).

"Pro Forma Financial Statements" has the meaning specified therefor in clause (j) of Schedule 3.1 of the Agreement.

"Projections" means Parent's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Parent's historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make US Revolving Loans and right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the US Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) such Lender's US Commitment, by (B) the aggregate US Commitments of all Lenders, and (ii) from and after the time that the US Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the outstanding principal amount of such Lender's US Revolving Loans by (B) the outstanding principal amount of all US Revolving Loans,

(b) with respect to a Lender's obligation to participate in US Letters of Credit and Reimbursement Undertakings with respect thereto, to reimburse the Issuing Lender with respect thereto, and right to receive payments of fees with respect thereto, (i) prior to the US Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) such Lender's US Commitment, by (B) the aggregate US Commitments of all Lenders, and (ii) from and after the time that the US Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the outstanding principal amount of such Lender's US Revolving Loans by (B) the outstanding principal amount of all US Revolving Loans; provided, that, if all of the US Revolving Loans have been repaid in full and US Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the US Commitments had not been terminated or reduced to zero and based upon the US Commitments as they existed immediately prior to their termination or reduction to zero,

(c) with respect to a Lender's obligation to make Canadian Revolving Loans and right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the Canadian Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) such Lender's Canadian Commitment, by (B) the aggregate Canadian Commitments of all Lenders, and (ii) from and after the time that the Canadian Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the outstanding principal amount of such Lender's Canadian Revolving Loans by (B) the outstanding principal amount of all Canadian Revolving Loans,

(d) with respect to a Lender's obligation to participate in Canadian Letters of Credit and Reimbursement Undertakings with respect thereto, to reimburse the Issuing Lender with respect thereto, and right to receive payments of fees with respect thereto, (i) prior to the Canadian Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) such Lender's Canadian Commitment, by (B) the aggregate Canadian Commitments of all Lenders, and (ii) from and after the time that the Canadian Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the outstanding principal amount of such Lender's Canadian Revolving Loans by (B) the outstanding principal amount of all Canadian Revolving Loans; provided, that, if all of the Canadian Revolving Loans have been repaid in full and Canadian Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Canadian Commitments had not been terminated or reduced to zero and based upon the Canadian Commitments as they existed immediately prior to their termination or reduction to zero, and

(e) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), (i) prior to the Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) such Lender's Commitment, by (B) the aggregate amount of Commitments of all Lenders, and (ii) from and after the time that the Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the outstanding principal amount of such Lender's Revolving Loans, by (B) the outstanding principal amount of all Revolving Loans; provided, that, if all of the Revolving Loans have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Commitments had not been terminated or reduced to zero and based upon the Commitments as they existed immediately prior to their termination or reduction to zero.

"Protective Advances" has the meaning specified therefor in Section 2.2(d)(i) of the Agreement.

"Public Lender" has the meaning specified therefor in Section 5.1(c) of the Agreement.

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within twenty (20) days after, the purchase, lease, construction, replacement, repair or improvement of any personal or Real Property (other than any ~~<First Lien>~~ Revolving Loan Priority Collateral) for the purpose of financing all or any part of the costs of such purchase, lease, construction, replacement, repair or improvement thereof (including pursuant to conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods).

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash or, subject to the terms below, Cash Equivalents of US Loan Parties that are (a) subject to the valid, enforceable and first priority perfected security interest of Agent in Deposit Accounts or in Securities Accounts maintained at Wells Fargo or another Lender, which Deposit Account or Securities Account are subject to a Control Agreement (and for which Agent shall have received evidence, in form and substance reasonably satisfactory to Agent, of the amount of such cash or Cash Equivalents held in such Deposit Account or investment



account as of the date of such determination) (b) free and clear of any other Lien other than (i) those permitted in clause (n) of the definition of the term Permitted Liens (but as to Liens referred to in clause (n) only to the extent that Agent has established a reserve in respect thereof) and (ii) any other Liens permitted under this Agreement that are subject to an intercreditor agreement in form and substance reasonably satisfactory to Agent between the holder of such Lien and Agent. For purposes of this definition, "Qualified Cash" shall only include Cash Equivalents maturing within ninety (90) days from the date of the acquisition thereof.

"Quarterly Average Excess Availability" means, at any time, the daily average of the aggregate amount of the Excess Availability for the immediately preceding three (3) month period, commencing on the first day of such three (3) month period, as calculated by Agent in accordance with the terms of the Agreement.

"Quebec Hypothec" means a hypothec, dated on or about the Existing Closing Date, in form and substance reasonably satisfactory to Agent and all other documents contemplated thereby or delivered in connection therewith, each executed and delivered by the Canadian Loan Parties, and each as heretofore, now or hereafter amended or modified from time to time.

"Quebec Series G Guarantee Security Documents" means the deed of hypothec entered into on the Existing Closing Date by PolyOne Canada, as grantor, in favor of each Series G Noteholder, as fonde de pouvoir under article 2692 of the Civil Code of Quebec, as heretofore, now or hereafter amended or modified from time to time.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party and the improvements thereto.

"Receiver" has the meaning specified therefore in Section 9.3 of the Agreement.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Refinancing Indebtedness" means Indebtedness of any Loan Party arising after the Effective Date issued in exchange for, or the proceeds of which are used to extend, refinance, replace or substitute for, other Indebtedness to the extent permitted hereunder so long as:

(a) in the case of any Indebtedness in excess of \$50,000,000, (i) Agent shall have received not less than five (5) Business Days' prior written notice of the intention to incur such Refinancing Indebtedness, with reasonable detail concerning the terms of such Refinancing Indebtedness and such other information with respect thereto as Agent may reasonably request and (ii) promptly upon Agent's request, Agent shall have received true, correct and complete copies of all agreements, documents and instruments evidencing or otherwise related to such Indebtedness, as duly authorized, executed and delivered by the parties thereto,

(b) the Refinancing Indebtedness shall have a Weighted Average Life to Maturity and a final maturity equal to or greater than the Weighted Average Life to Maturity and the final maturity, respectively, of the Indebtedness being extended, refinanced, replaced, or substituted for,

(c) the Refinancing Indebtedness shall rank in right of payment no more senior than, and be at least subordinated (if already subordinated) to, the Obligations as the Indebtedness being extended, refinanced, replaced or substituted for,

(d) the Refinancing Indebtedness will not have any obligors who were not obligors in respect of the Indebtedness being extended, refinanced, replaced or substituted for,

(e) the negative covenants (including financial covenants) and events of default and collateral (if any) of any Refinancing Indebtedness shall be no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended, taken as a whole considering all of the circumstances at the time of the incurrence of such Refinancing Indebtedness (and if secured, such Refinancing Indebtedness shall be subject to intercreditor terms either (i) when taken as a whole, no less favorable to Agent and Lenders than the terms of the Term Loan Intercreditor Agreement or (ii) otherwise reasonably satisfactory to Agent),

(f) such Indebtedness shall be at rates and with fees or other charges that do not exceed the then applicable market rates,

(g) as of the date of incurring such Refinancing Indebtedness and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing, and

(h) the principal amount of such Refinancing Indebtedness shall not exceed the principal amount of the Indebtedness so extended, refinanced, replaced or substituted for (plus the amount of reasonable refinancing fees and expenses incurred in connection therewith outstanding on the date of such event).

"Register" has the meaning specified therefor in Section 2.2(f) of the Agreement.

"Reimbursement Undertaking" has the meaning specified therefor in Section 2.9(a) of the Agreement.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address the release of Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to the release of Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 2.11(b) of the Agreement.

"Report" has the meaning specified therefor in Section 15.16 of the Agreement.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Required Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (e) of the definition of Pro Rata Shares) exceed fifty percent (50%); provided, that, at any time there are two (2) or more Lenders, "Required Lenders" must include at least two (2) Lenders who are not Affiliates. For purposes of calculating Pro Rata Share, the Commitments of any Defaulting Lender in determining Required Lenders at any time shall be deemed to be zero.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of Parent or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to Parent or such Subsidiary's stockholders, partners or members (or the equivalent Person thereof), or payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of Parent or any of its Subsidiaries, or any setting apart of funds or property for any of the foregoing.

"Restricted Subsidiary" means each Subsidiary of Parent that is not an Unrestricted Subsidiary.

"Revolver Usage" means the sum of US Revolver Usage and Canadian Revolver Usage.

"Revolving Loan Priority Collateral" has the meaning specified therefor in the Term Loan Intercreditor Agreement.

"Revolving Loans" means, collectively, US Revolving Loans and Canadian Revolving Loans.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by the United States government, including without limitation OFAC and the U.S. Department of State, the Canadian government, the United National Security Council, the European Union or the Hong Kong Monetary Authority.

"Sanctioned Person" means any person named on the list of Specially Designated Nationals maintained by OFAC or any analogous list maintained by the U.S. Department of State, the Canadian government, the United National Security Council, the European Union or the Hong Kong Monetary Authority.

"Sanctions" means any economic or trade sanctions (including without limitation any country or list based sanctions) imposed, administered or enforced from time to time by the United States government, including without limitation OFAC and the U.S. Department of State, the Canadian government, the United National Security Council, the European Union or the Hong Kong Monetary Authority.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

~~<"Second Lien >Collateral"~~ has the meaning specified therefor in ~~<Section 5.12 of the >~~Agreement.

"Securities Account" means a securities account (as that term is defined in the Code).

"Security Agreement" means a security agreement, dated as of the Existing Closing Date, executed and delivered by US Loan Parties, as heretofore, now or hereafter amended or modified from time to time.

"Series G Guarantee" means the Guarantee, dated as of December 22, 1997, by Parent in favor of the holders of the Series G Notes, whereby Parent has guaranteed the obligations and liabilities of the SunBelt Chlor Alkali Partnership under the Series G



Notes.

"Series G Guarantee Lien Acknowledgement" means the Lien Acknowledgement, dated as of the Existing Closing Date, by Agent with respect to the Liens granted to the Series G Noteholders pursuant to the Series G Guarantee Security Agreements, as acknowledged and agreed to by Borrowers and Guarantors, acknowledging the equal and ratable Liens of the Series G Noteholders, as heretofore, now or hereafter amended or modified from time to time.

"Series G Guarantee Reserve Amount" means fifty percent (50%) of the amount of the obligations of Parent or any of its Subsidiaries under the Series G Guarantee; provided, that at any time that Excess Availability is less than \$100,000,000, the Series G Guarantee Reserve Amount shall be increased to one hundred percent (100%) of the obligations of Parent or any of its Subsidiaries under the Series G Guarantee.

"Series G Guarantee Security Agreements" means, collectively, (a) the Security Agreement, dated as of the Existing Closing Date, by the Loan Parties, as grantors, in favor of each Series G Noteholder and (b) the Quebec Series G Guarantee Security Documents, as heretofore, now or hereafter amended or modified from time to time.

"Series G Noteholders" means, collectively, each holder of the Series G Notes; sometimes being referred to herein individually as a "Series G Noteholder".

"Series G Notes" means the Guaranteed Secured Senior Notes due 2017, Series G issued by SunBelt Chlor Alkali Partnership.

"Settlement" has the meaning specified therefor in Section 2.2(e)(i) of the Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.2(e)(i) of the Agreement.

"Solvent" means, with respect to any Person on any date of determination, taking into account any right of reimbursement, contribution or similar right available to such Person from other Persons, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Spartech" means Spartech Corporation, a Delaware corporation.

"Spartech Acquisition" means collectively, (a) the merger of 2012 RedHawk, Inc., a Delaware corporation and wholly-owned Subsidiary of Parent, with and into Spartech, and (b) the subsequent merger of Spartech with and into PolyOne Designated Structures and Solutions LLC, a Delaware limited liability company and wholly-owned Subsidiary of Parent, all pursuant to the Spartech Acquisition Documents.

"Spartech Acquisition Agreement" means the Agreement and Plan of Merger dated as of October 23, 2012 by and among Parent, 2012 RedHawk, Inc., a Delaware corporation, 2012 RedHawk, LLC, a Delaware limited liability company, and Spartech.

"Spartech Acquisition Documents" means the Spartech Acquisition Agreement and all other documents related thereto and executed in connection therewith.

"Spartech Fixed Assets" means the Equipment and Real Property of Spartech and its Subsidiaries, as in existence on the Effective Date or thereafter acquired (other than any of such Equipment or Real Property acquired from a Loan Party).

"Specified Canadian Pension Plan" means any Canadian Pension Plan which contains a "defined benefit provision", as defined in subsection 147.1(1) of the Income Tax Act (Canada).

"Specified Real Property" means, in connection with any Permitted Acquisition or the Spartech Acquisition, any Real Property so acquired that may be identified in an Officers' Certificate delivered to the Administrative Agent at the time of such Permitted Acquisition or the Spartech Acquisition or promptly thereafter as "Specified Real Property".

"Subordinated Debt" means any Indebtedness of a Loan Party that is subject to, and subordinate in right of payment to, the right of Agent and Lenders to receive the prior final payment and satisfaction in cash in full of all of the Obligations and subject to such other terms and conditions as Agent may require with respect thereto.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of

Directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Supermajority Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (e) of the definition of Pro Rata Shares) are not less than sixty six and two-thirds percent (66-2/3%); provided, that, at any time there are two (2) or more Lenders, "Supermajority Lenders" must include at least two (2) Lenders who are not Affiliates. For purposes of calculating Pro Rate Share, the Commitments of any Defaulting Lender in determining Supermajority Lenders at any time shall be deemed to be zero.

"Swing Lender" means WFCF or any other US Lender (with respect to US Swing Loans) or Canadian Lender (with respect to Canadian Swing Loans) that, at the request of Administrative Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.2(b) of the Agreement.

"Swing Loans" means, collectively, US Swing Loans and Canadian Swing Loans.

"Taxes" means any taxes, levies, imposts, duties, similar fees, assessments or other similar charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto; provided, that, Taxes shall exclude (i) any tax imposed on or measured by, in whole or in part, the revenue, net income, net profits, net assets, capital or net worth (and franchise taxes imposed in lieu thereof) of any Lender or any Participant (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) (A) in which such Lender or such Participant is organized (B) in which such Lender's or such Participant's principal office is located, (C) in which such Lender or such Participant is doing business, including, for the avoidance of doubt, branch profits taxes and branch interest taxes (other than as a result of entering into any Loan Document or taking any action contemplated thereunder), (D) in which it has a present or former connection other than as a result of the Loan Documents or taking any action contemplated thereunder or (E) in the case of any Foreign Lender, in which its applicable lending office is located, in each case as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under the Agreement or any other Loan Document); (ii) United States federal withholding and Canadian federal withholding taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section ~~<16(e) or (d)> 16.2~~ of the Agreement, (iii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Borrower is ~~<located>~~ a resident for income tax purposes as of the Effective Date, (iv) in the case of a Foreign Lender, any United States federal withholding taxes imposed on amounts payable to such Foreign Lender as a result of such Foreign Lender's failure to comply with FATCA to establish a complete exemption from withholding thereunder, and (v) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section ~~<16(a)> 16.1~~ of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority.

"Tax Indemnitee" has the meaning set forth in Section 16.1.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Term Loan Agent" means Citibank, N.A. (or one of its Affiliates), in its capacity as agent for the Term Loan Lenders, and its successors and assigns including any replacement.

"Term Loan Closing Date" means the date of the initial incurrence of Indebtedness under the Term Loan Credit Agreement.

"Term Loan Credit Agreement" means the Credit Agreement, dated the Term Loan Closing Date, among the Term Loan Agent, the Term Loan Lenders and the Parent, as it may be amended, restated, supplemented, modified, renewed, replaced or refinanced in accordance with the terms of the Term Loan Intercreditor Agreement.

"Term Loan Debt Limit" means (a) at any time prior to any refinancing of the Indebtedness under the Term Loan Credit Agreement in accordance with the terms of the Agreement, the amount of any Indebtedness that may be incurred under the Agreement pursuant to Section 7.02(b)(i) of the Term Loan Credit Agreement (as in existence on the Fourth Amendment Effective Date), which amount shall not in the aggregate exceed at any one time outstanding the greater of (i) \$550,000,000 and (ii) the sum of (A) 50% of the book value of the Inventory of Borrower and its Restricted Subsidiaries and (B) 75% of the Accounts of Borrower and its Restricted Subsidiaries, minus (C) any amounts incurred and outstanding pursuant to a "Qualified Receivables Transaction" (as defined in the Term Loan Credit Agreement) permitted under the definition of Permitted Indebtedness, in each case determined on a consolidated basis as of the most recently ended fiscal quarter of Parent for which financial information in respect thereof is available, and (b) at any time on or after the refinancing of the Indebtedness under the Term Loan Credit in accordance with the terms of the Agreement (or any subsequent Refinancing Indebtedness relating thereto), any similar limit in any documentation evidencing such Refinancing Indebtedness which either restricts the amount of Indebtedness or other obligations

that may be incurred under the Agreement or secured by Permitted Liens or which, upon incurring Indebtedness or other obligations in excess of a certain amount, would require the granting of a Lien to the holders of such Refinancing Indebtedness.

"Term Loan Documents" means, collectively (a) the Term Loan Credit Agreement and (b) all other agreements, documents and instruments executed and delivered to, or in favor of, the Term Loan Agent or the Term Loan Lenders in connection therewith.

"Term Loan Intercreditor Agreement" means (a) the Intercreditor Agreement, dated the Term Loan Closing Date, by and among Agent and the Term Loan Agent, as acknowledged and agreed to by the US Loan Parties, and (b) any intercreditor or subordination agreement entered into by Agent related to any Incremental Equivalent Debt.

"Term Loan Lenders" means the financial institutions from time to time party to the Term Loan Credit Agreement as lenders, together with their respective successors and assigns.

"Term Loan Priority Collateral" has the meaning specified therefor in the Term Loan Intercreditor Agreement.

"Third Amendment Effective Date" means June 30, 2015.

"Trademark Security Agreement" has the meaning specified therefor in the Security Agreement.

"Transactions" means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party and (b) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

~~"2015 Note Obligations" means the Indebtedness of Parent evidenced by the 2015 Notes and governed by the Discharge"~~  
shall mean (x) proceeds of Indebtedness under the Term Loan Credit Agreement in an amount sufficient to cause the satisfaction and discharge (pursuant to Article Four of the 2015 Note Indenture<->

) of the 2015 Notes shall have been irrevocably deposited with the 2015 Note Trustee, and (y) all Liens on the assets of the Loan Party in favor of 2015 Note Trustee in connection with the 2015 Note Indenture shall have been released, or concurrently with "2015 Note Reserve Amount" means the <amount> funding of the Indebtedness and other obligations arising under any existing Indebtedness of the Loan Parties that may at any time receive the benefit of Agent's Liens, including the obligations arising under the 2015 Notes, until such time as Agent has received evidence, in form and substance reasonably satisfactory to Agent, that such Indebtedness is no longer secured by Agent's Liens. incurred under the Term Loan Credit Agreement will be, released.

"2015 Note Indenture" means the Indenture, dated as of December 1, 1995, by and between The Geon Company (predecessor in interest to Parent) and the 2015 Note Trustee.

"2015 Note Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Existing Closing Date, by and between Agent and the 2015 Note Trustee, as acknowledged and agreed to by Borrowers and Guarantors, providing for such parties relative rights and priorities with respect to the assets and properties of Borrowers and Guarantors and related matters, as heretofore, now or hereafter amended or modified from time to time.

"2015 Note Obligations" means the Indebtedness of Parent evidenced by the 2015 Notes and governed by the 2015 Note Indenture.

"2015 Note Reserve Amount" means the amount of the Indebtedness and other obligations arising under any existing Indebtedness of the Loan Parties that may at any time receive the benefit of Agent's Liens, including the obligations arising under the 2015 Notes, until such time as Agent has received evidence, in form and substance reasonably satisfactory to Agent, that such Indebtedness is no longer secured by Agent's Liens.

"2015 Note Security Agreement" means the Security Agreement, dated of <event date herewith> the Existing Closing Date, between the Loan Parties, as grantors, and the 2015 Note Trustee, as collateral agent.

"2015 Note Trustee" means Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the 2015 Note Indenture.

"2015 Notes" means the 7.500% Debentures due 2015 issued by Parent.

~~<"2012 Notes" means the 8.875% Senior Notes due 2012 issued by Parent.>~~

"2020 Note Delayed Purchase Payment" means the irrevocable deposit with The Depository Trust Company of funds from the 2020 Note Deposit Account in an amount sufficient to purchase the 2020 Notes that have been tendered by the holders of the 2020 Notes after the "Early Payment Deadline" (as defined in the 2020 Note Offer) but prior to the "Expiration Date" (as defined in the 2020 Note Offer) in accordance with the 2020 Note Offer.

"2020 Note Deposit Account" means that certain Deposit Account located at Wells Fargo Bank, N.A., as depository institution that on the Term Loan Closing Date is funded with proceeds of Indebtedness incurred under the Term Loan Credit

Agreement in an amount sufficient to purchase or redeem, as applicable, all of the 2020 Notes (excluding any 2020 Notes that are to be purchased in connection with the 2020 Note Purchase Payment if it occurs on the Term Loan Closing Date) in accordance with the terms of the 2020 Note Indenture or the 2020 Note Offer, as applicable.

"2020 Note Indenture" means, collectively, (a) the Indenture, dated as of September 24, 2010, by and between Parent and Wells Fargo Bank, National Association, as trustee with respect to the 2020 Notes and (b) First Supplemental Indenture, dated as of September 24, 2010, by and between Parent and Wells Fargo Bank, National Association, as trustee with respect to the 2020 Notes.

"2020 Note Offer" means that certain Offer to Purchase and Consent Solicitation Statement issued by Parent on or about the Fourth Amendment Effective Date, as amended from time to time.

"2020 Note Purchase Payment" means the irrevocable deposit with The Depository Trust Company, on the Term Loan Closing Date, of proceeds of the Indebtedness incurred under the Term Loan Credit Agreement, in an amount sufficient to purchase the 2020 Notes that have been tendered by the holders of the 2020 Notes pursuant to the terms of the 2020 Note Offer on the first to occur of the "Initial Payment Date" and the "Settlement Date" (as defined in the 2020 Note Offer) in accordance with the 2020 Note Offer.

"2020 Note Redemption" means the irrevocable deposit with the 2020 Note Trustee of funds from the 2020 Note Deposit Account in an amount sufficient to redeem the then outstanding 2020 Notes in accordance with Section 3 of the 2020 Note Indenture.

"2020 Note Trustee" means Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the 2020 Note Indenture.

"2020 Notes" means the 7.375% Senior Notes due 2020 issued by Parent.

"2020 Redemption Date" means the date on which any outstanding 2020 Notes have been redeemed in accordance with the terms of the 2020 Note Indenture.

"UK Bribery Act" means the United Kingdom Bribery Act 2010, as amended.

"Underlying Issuer" means Wells Fargo, Bank of America, N.A. or Bank of Montreal or one of their respective Affiliates.

"Underlying Letter of Credit" means a Letter of Credit that has been issued by an Underlying Issuer.

"Unrestricted Subsidiary" means any Subsidiary of Parent designated by Parent as an Unrestricted Subsidiary hereunder by written notice to Agent; provided, that, Parent shall only be permitted to so designate a Subsidiary as an Unrestricted Subsidiary after the Effective Date and so long as each of the following conditions is satisfied (a) as of the date thereof and after giving effect thereto, no Event of Default exists or has occurred and is continuing, (b) immediately after giving effect to such designation, Borrowers shall be in compliance, on a pro forma basis, with the financial covenants set forth in Section 7, (c) such Subsidiary shall not be a Borrower hereunder, (d) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by Parent or any of its Restricted Subsidiaries) through Investments as permitted by, and in compliance with, Section 6.10, (e) without duplication of clause (c), any assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof shall be treated as Investments pursuant to Section 6.10, (f) such Subsidiary shall have been or will promptly be designated an "unrestricted subsidiary" (or otherwise not be subject to the covenants) under the Term Loan Documents, the 2015 Notes, the 2020 Notes, the Current Notes and any Refinancing Indebtedness with respect to any of the foregoing (or any subsequent Refinancing Indebtedness relating thereto), if applicable, and (g) Agent shall have received an officer's certificate executed by an Authorized Person of Parent, certifying compliance with the requirements of preceding clauses (a) through (f), and containing the calculations and information required by the preceding clause (b), and (2) any subsidiary of an Unrestricted Subsidiary. Parent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary for purposes of the Agreement (each, a "Subsidiary Redesignation"); provided, that, (i) as of the date thereof, and after giving effect thereto, no Event of Default exists or has occurred and is continuing, (ii) immediately after giving effect to such Subsidiary Redesignation, Borrowers shall be in compliance, on a pro forma basis, with the financial covenants set forth in Section 7, (iii) Agent shall have received an officer's certificate executed by an Authorized Person of Parent, certifying compliance with the requirements of preceding clauses (i) and (ii), and containing the calculations and information required by the preceding clause (ii), and (iv) no Unrestricted Subsidiary that has been designated as a Restricted Subsidiary pursuant to a Subsidiary Redesignation may again be designated as an Unrestricted Subsidiary.

"United States" means the United States of America.

"US Borrowers" means, collectively, (a) PolyOne Corporation, an Ohio corporation, (b) GLS International, Inc., an Illinois corporation, (c) NEU Specialty Engineered Materials, LLC, an Ohio limited liability company, and (d) any other Person that after the Effective Date becomes a US Borrower under the Agreement; sometimes being referred to herein individually as a "US Borrower".

"US Borrowing Base" means, at any time, the amount equal to

(a) eighty-five percent (85%) of the amount of Eligible Accounts of each US Loan Party, plus

(b) the least of (A) seventy percent (70%) multiplied by the Value of Eligible Inventory of each US Loan Party, (B) eighty-five percent (85%) of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory or (C) sixty percent (60%) of the US Maximum Credit, plus

(c) during the Acquired Business Availability Period, the lesser of (A) the sum of (i) sixty percent (60%) of the amount of Eligible Acquired Business Accounts of the applicable US Loan Party, plus (ii) fifty percent (50%) of the Net Recovery Percentage (determined pursuant to the most recent acceptable appraisal received by Agent in accordance with the requirements of the Agreement as to the pre-existing Inventory of US Loan Parties) of the applicable US Loan Party multiplied by the Value of Eligible Acquired Business Inventory or (B) ten percent (10%) of the lesser of (i) the Maximum Credit or (ii) the Borrowing Base, plus

(d) the lesser of (i) \$50,000,000 and (ii) ninety percent (90%) of the CSV of Eligible Life Insurance Policies, minus

(e) the aggregate amount of reserves applicable to US Loan Parties, if any, established by Agent under Sections 2.1(e) and (f) of the Agreement.

"US Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"US Collateral" means Collateral consisting of assets or interests in assets of US Loan Parties, and the proceeds thereof.

"US Commitment" means, with respect to each Lender, its US Commitment, and, with respect to all Lenders, their US Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"US Dollar Denominated Loan" means a Revolving Loan denominated in US Dollars.

"US Dollar Equivalent" means at any time (a) as to any amount denominated in US Dollars, the amount thereof at such time, and (b) as to any amount denominated in any other currency, the equivalent amount in US Dollars calculated by Agent in good faith at such time using the Exchange Rate in effect on the Business Day of determination.

"US Dollars", "US\$" and "\$" shall each mean lawful currency of the United States.

"US Excess Availability" means, as of any date of determination, the amount equal to (a) the lesser of (i) the US Borrowing Base and (ii) the US Maximum Credit (in each case after giving effect to any applicable reserves), minus, without duplication, (b) the amount of the US Revolver Usage.

"US Guarantors" means, collectively, the following (together with their respective successors and assigns) (a) PolyOne LLC, a Delaware limited liability company, (b) Polymer Diagnostics, Inc., an Ohio corporation, (c) Conexus, Inc., a Nevada corporation, (d) ~~<MA Hanna Asia Holding Company, a Delaware corporation>~~ reserved, (e) ColorMatrix Holdings, Inc., a Delaware corporation, (f) The ColorMatrix Corporation, an Ohio corporation, (g) Chromatics, Inc., a Connecticut corporation, (h) ColorMatrix Group Inc., a Delaware corporation, (i) ~~<ColorMatrix - Brazil, LLC, an Ohio limited liability company>~~ reserved, (j) Gayson Silicone Dispersions, Inc., an Ohio corporation, (k) Glasforms, Inc., a California corporation, and (l) any other Person that becomes a guarantor in respect of the US Obligations after the Effective Date pursuant to the Agreement; sometimes being referred to herein individually as a "US Guarantor".

"US Lender" means, at any time, each Lender having a US Commitment or a US Revolving Loan owing to it or a participating interest in a US Letter of Credit or US Swing Loan; sometimes being referred to herein collectively as "US Lenders".

"US Letter of Credit Disbursement" means a payment by Issuing Lender or Underlying Issuer pursuant to a US Letter of Credit.

"US Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding US Letters of Credit.

"US Letters of Credit" means all Letters of Credit issued for the account of one or more US Borrowers.

"US Loan Account" has the meaning specified therefor in Section 2.7 of this Agreement.

"US Loan Parties" means US Borrowers and US Guarantors; each sometimes being referred to individually as a "US Loan Party".

"US Obligations" means all Obligations of the US Loan Parties (but excluding the Canadian Obligations).



"US Maximum Credit" means \$400,000,000 minus the then outstanding Canadian Revolver Usage, as decreased by the amount of reductions in the US Commitments in accordance with Section 2.3(c) of the Agreement or increased by the amount of increases in the US Commitments in accordance with Section 2.12 of the Agreement (or if less, at any time the aggregate amount of the US Commitments).

"US Revolver Usage" means, as of any date of determination, the sum of (a) the principal amount of outstanding Loans to US Borrowers, plus (b) the amount of the US Letter of Credit Usage.

"US Revolving Loans" has the meaning specified therefor in Section 2.1(a) of the Agreement.

"US Swing Loan Limit" means, at any time, \$50,000,000 minus the then outstanding amount of Canadian Swing Loans.

"US Swing Loan" has the meaning specified therefor in Section 2.2(b)(i) of the Agreement.

"US Underlying Letter of Credit" means a US Letter of Credit issued by an Underlying Issuer.

"Value" means, as determined by Agent in good faith, with respect to Inventory, the lower of cost computed on a first-in first-out method on a gross book value basis in accordance with GAAP or market value; provided, that, for purposes of the calculation of the Borrowing Base, (i) the Value of Inventory shall not include (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of Inventory received and accepted by Agent prior to the date hereof.

"VAT" means Value Added Tax imposed in Canada (including Goods and Services Tax, Harmonized Sales Tax and Quebec Sales Tax).

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of the Agreement.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding principal amount of such Indebtedness into (b) the total of the product obtained by multiplying (c) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (d) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"WFCF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

"Whirlpool" means, collectively, Whirlpool Corporation and its Affiliates.

"Whirlpool Foreign Affiliate" means an Affiliate of Whirlpool Corporation that is organized or incorporated under the laws of a jurisdiction other than a State of the United

### **Schedule 5.1**

Deliver to Agent, with copies to each Lender, each of the financial statements, reports, or other items set forth set forth below at the following times in form reasonably satisfactory to Agent:

<b><i>17.20: 17.20 Quarterly (as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters during each of Parent's fiscal years) so long as no Revolving Loans are outstanding, but prior to any borrowing under the Agreement, Agent shall have received such items monthly for the immediately preceding month if the request for such borrowing is more than 20 days after such month end, or for the month prior to such immediately preceding month, if the request for such borrowing is less than 20 days after such month end, and monthly (as soon as available, but in any event within 30 days after the end of each month during each of Parent's fiscal years (other than the last month of each fiscal quarter) at all times thereafter</i></b>	<ul style="list-style-type: none"><li>• a consolidated balance sheet of Parent and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of Parent's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year (excluding comparisons to the financial statements of any Acquired Business for any fiscal year ending prior to the fiscal year in which such Acquired Business was acquired) and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of Parent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, and</li><li>(a) a Compliance Certificate.</li></ul>
as soon as available, but in any event	(b) a consolidated balance sheet of Parent and its Subsidiaries as at the end

within 90 days after the end of each of Parent's fiscal years	<p>of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year (excluding comparisons to the financial statements of any Acquired Business for any fiscal year ending prior to the fiscal year in which such Acquired Business was acquired), all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and</p> <p>(c) a Compliance Certificate.</p>
as soon as available, but in any event within 60 days after the end of each of Parent's fiscal years,	(d) forecasts prepared by management of Parent, in form reasonably satisfactory to Agent, of consolidated balance sheets and statements of income or operations and cash flows of Parent and its Subsidiaries on a monthly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs).
as soon as available, but in any event within 30 days after the end of each of Parent's fiscal years,	(e) a certificate summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Agent may reasonably specify.
if and when filed by Parent,	<p>(f) copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which Parent may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to Agent pursuant hereto, and</p> <p>(g) any other information that is provided by Parent to its shareholders generally.</p>
10 days prior written notice of:	(h) any change of the name of any Loan Party (within the meaning of the Code or PPSA, as applicable) or any jurisdiction of organization of each Loan Party at any time on and after the Closing Date.
promptly, but in any event within 2 Business Days after any Loan Party has knowledge of any event or condition that constitutes a Default or an Event of Default,	(i) notice of such event or condition.
promptly after the commencement thereof, but in any event within 5 days after the service of process with respect thereto on Parent or any of its Subsidiaries,	(j) notice of all actions, suits, or proceedings brought by or against Parent or any of its Subsidiaries before any Governmental Authority which reasonably could be expected to have a Material Adverse Effect.
promptly after the assertion or occurrence thereof,	(k) notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Mortgaged Property to be subject to any restrictions on ownership, occupancy, or transferability under any Environmental Law.
upon the request of Agent,	(l) any other information reasonably requested relating to the financial



	condition of Parent or its Subsidiaries.
Promptly with the delivery thereof	<p>(m) any reports and other information delivered by Parent or its Subsidiaries under the Term Loan <a href="#">Credit</a> Agreement that are not routine, and</p> <p>(n) copies of any statement or report furnished by Parent or its Subsidiaries, other than those related to routine administrative matters, to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to this Schedule 5.1.</p>
Together with the delivery of each Compliance Certificate pursuant to this <a href="#">Schedule 5.1</a> ,	(o) a report supplementing Schedules 4.5(b), and 4.5(c), including an identification of all owned and leased real property disposed of by Parent or any Subsidiary thereof during such fiscal year, a description of changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete.

### Exhibit C

#### EXHIBIT C-1

#### FORM OF COMPLIANCE CERTIFICATE

**[on Administrative Borrower's letterhead]**

To: Wells Fargo Capital Finance, LLC,  
as Administrative Agent  
One Boston Place, 18th Floor  
Boston, Massachusetts 02108  
Attention: Portfolio Manager

Re: Compliance Certificate dated [\_\_\_\_\_]

Ladies and Gentlemen:

Reference is hereby made to that certain Amended and Restated Credit Agreement, dated as of March 1, 2013 (as amended, restated, supplemented, or modified from time to time, the "Credit Agreement"), by and among the lenders party thereto (such lenders, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), Wells Fargo Capital Finance, LLC, as administrative agent for the Lenders (together with its successors and assigns in such capacity, "Agent"), PolyOne Corporation ("Parent"), GLS International, Inc. ("GLS"), PolyOne Canada Inc. ("PolyOne Canada") and NEU Specialty Engineered Materials, LLC ("NEU" and, together with Parent, GLS, PolyOne Canada and any Person that may from time to time become a borrower, each a "Borrower" and, collectively, "Borrowers") and certain subsidiaries of Parent. Capitalized terms used in this Compliance Certificate have the meanings set forth in the Credit Agreement unless specifically defined herein.

Pursuant to Schedule 5.1 of the Credit Agreement, the undersigned officer of Administrative Borrower hereby certifies that:

1. The financial information of Parent and its Subsidiaries furnished in Schedule 1 attached hereto, has been prepared in accordance with GAAP (except for year-end adjustments and the lack of footnotes), and fairly presents in all material respects the financial condition of Parent and its Subsidiaries.

2. Such officer has reviewed the terms of the Credit Agreement and has made, or caused to be made under his/her supervision, a review in reasonable detail of the transactions and condition of Parent and its Subsidiaries during the accounting period covered by the financial statements delivered pursuant to Schedule 5.1 of the Credit Agreement.

3. Such review has not disclosed the existence on and as of the date hereof, and the undersigned does not have knowledge of the existence as of the date hereof, of any event or condition that constitutes a Default or Event of Default, except for such conditions or events listed on Schedule 2 attached hereto, specifying the nature and period of existence thereof and what action Parent and its Subsidiaries have taken, are taking, or propose to take with respect thereto.

4. The representations and warranties of Parent and its Subsidiaries set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof (except to the extent they relate to a specified date), except as set forth on Schedule 3 attached hereto.

5. Parent and its Subsidiaries are in compliance with each covenant contained in Section 7 of the Credit Agreement as demonstrated on Schedule 4 hereof.

6. **[The amount by which the Existing Note Secured Debt Limit exceeds the aggregate principal amount of the Loans plus the Letter of Credit Usage outstanding and the calculations that are the basis for the determination of such amount, are set forth on Schedule 5 hereof.]**

7. The amount by which the Term Loan Debt Limit exceeds the aggregate principal amount of the Loans plus the Letter of Credit Usage outstanding and the calculations that are the basis for the determination of such amount, are set forth on Schedule 6 hereof.

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this day of \_\_\_\_\_,  
\_\_\_\_\_.

POLYONE CORPORATION, as Administrative  
Borrower

By  
Name  
Title

#### SCHEDULE 1

Financial Information

#### SCHEDULE 2

Default or Event of Default

#### SCHEDULE 3

Representations and Warranties

#### SCHEDULE 4

Financial Covenants

#### SCHEDULE 5

Existing Note Secured Debt Limit

#### SCHEDULE 6

Term Loan Debt Limit

#### **Exhibit D**

#### **Closing Checklist**

1. Second Amendment to Security Agreement, together with updates to certain Schedules
2. First Amendment to U.S. Guaranty Agreement
3. UCC collateral description amendments identified on Schedule I

4. Omnibus Officer's Certificate for each Loan Party (after giving effect to the Amendment) with respect to:  
 Certified Certificate of Incorporation or Formation (as applicable)  
 Bylaws or Limited Liability Company Agreement (as applicable)  
 Resolutions  
 Incumbency of Officers
5. Good Standing Certificates set forth on Schedule II
6. Amendment to Series G Security Agreement

#### SCHEDULE I

#### ABL AGENT UCC-3 AMENDMENT STATEMENTS TO AMEND THE COLLATERAL DESCRIPTION OF UCC-1 STATEMENTS

<u>Debtor</u>	<u>Secured Party</u>	<u>Jurisdiction</u>	<u>Date of UCC-1 Filing</u>	<u>UCC-1 Filing Number</u>	<u>UCC-3 Amendment Filing Number</u>
Glasforms, Inc.	Wells Fargo Capital Finance, LLC	California Secretary of State	1/30/2013	137346544895	
PolyOne Corporation	Wells Fargo Capital Finance, LLC	Ohio Secretary of State	12/21/2011	OH00154996266	
PolyOne LLC	Wells Fargo Capital Finance, LLC	Delaware Secretary of State	12/21/2011	20114901024	
Polymer Diagnostics, Inc.	Wells Fargo Capital Finance, LLC	Ohio Secretary of State	12/21/2011	OH00154996155	
NEU Specialty Engineered Materials, LLC	Wells Fargo Capital Finance, LLC	Ohio Secretary of State	12/21/2011	OH00154995921	
Conexus, Inc.	Wells Fargo Capital Finance, LLC	Nevada Secretary of State	12/21/2011	2011034380-9	
CONEXUS, LLC	Wells Fargo Capital Finance, LLC	Nevada Secretary of State	06/22/15	2015016330-0	
GLS International, Inc.	Wells Fargo Capital Finance, LLC	IL Secretary of State	12/21/2011	16871567	
ColorMatrix Holdings, Inc.	Wells Fargo Capital Finance, LLC	Delaware Secretary of State	12/21/2011	20114901032	
Chromatics, Inc.	Wells Fargo Capital Finance, LLC	Connecticut Secretary of State	12/21/2011	2851909	
ColorMatrix Group, Inc.	Wells Fargo Capital Finance, LLC	Delaware Secretary of State	12/21/2011	20114901040	
The ColorMatrix	Wells Fargo	Ohio	12/21/2011	OH00154996044	

Corporation	Capital Finance, LLC	Secretary of State			
Gayson Silicone Dispersions, Inc.	Wells Fargo Capital Finance, LLC	Ohio Secretary of State	12/21/2011	OH00154993785	
POLYONE DESIGNED STRUCTURES AND SOLUTIONS LLC	Wells Fargo Capital Finance, LLC	Delaware Secretary of State	03/21/2013	20131079970	
FRANKLIN-BURLINGTON PLASTICS, INC.	Wells Fargo Capital Finance, LLC	Delaware Secretary of State	03/21/2013	20131080002	

**SCHEDULE II**  
**CERTIFICATES OF GOOD STANDING**

<b><u>Loan Party</u></b>	<b><u>Jurisdictions</u></b>
PolyOne	Ohio
GLS	Illinois
NEU	Ohio
Canadian Borrower	Canada
PO LLC	Delaware
Diagnostics	Ohio
Conexus	Nevada
CM Holdings	Delaware
CM Group	Delaware
CM Corp	Ohio
Chromatics	Connecticut
Gayson	Ohio
Glasforms	California
Franklin	Delaware
PolyOne DSS	Delaware
DSS Canada, Inc.	New Brunswick

CREDIT AGREEMENT

Dated as of November 12, 2015

among

POLYONE CORPORATION,  
as the Borrower,

CITIBANK, N.A.,  
as Administrative Agent,

and

The Lenders Party Hereto

CITIGROUP GLOBAL MARKETS INC.  
WELLS FARGO SECURITIES LLC  
GOLDMAN, SACHS & CO.  
HSBC SECURITIES (USA) INC.  
MORGAN STANLEY & CO. LLC,  
as Joint-Lead Arrangers and Joint-Book Managers

JEFFERIES FINANCE LLC  
KEYBANC CAPITAL MARKETS INC.  
SUNTRUST ROBINSON HUMPHREY, INC.,  
as Co-Managers

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## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of November 12, 2015, among POLYONE CORPORATION, an Ohio corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and CITIBANK, N.A., as Administrative Agent.

### PRELIMINARY STATEMENTS:

The Borrower has requested that the Lenders extend credit to the Borrower in the form of Initial Loans (as defined below) on the Closing Date (as defined below), the proceeds of which will be used to, among other things, finance an offer (the "Offer") to purchase for cash any and all of the 2020 Notes (as defined below) and the redemption of any remaining 2020 Notes, to redeem the 2015 Notes (as defined below), to repay certain indebtedness under the ABL Credit Agreement (as defined below), to pay related fees and expenses incurred in connection with the foregoing and for general corporate purposes, and the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

"2015 Notes" means the 7.50% Debentures due 2015 issued by the Borrower.

"2020 Notes" means the 7.375% Senior Notes due 2020 issued by the Borrower.

"2023 Notes" means the 5.25% Senior Notes due 2023 issued by the Borrower.

"ABL Agent" means the administrative agent under the ABL Facility.

"ABL Credit Agreement" means the Credit Agreement dated as of December 21, 2011 among the Borrower, PolyOne Canada Inc., a federally incorporated Canadian corporation, the Subsidiaries of the Borrower from time to time party thereto, Wells Fargo Capital Finance, LLC, as administrative agent thereunder, and the other agents and lenders party thereto as it may be amended, restated, amended and restated, supplemented, modified, renewed, replaced or refinanced on or prior to the date hereof and thereafter, in accordance with the terms of the ABL Intercreditor Agreement.

"ABL Facility" means the commitments, secured loans made and letters of credit issued under the ABL Loan Documents.

"ABL Intercreditor Agreement" means the Intercreditor Agreement dated as of November 12, 2015 between the Administrative Agent and the ABL Agent and acknowledged by the Borrower, as amended, restated, modified, supplemented or replaced from time to time in accordance with this Agreement and the terms of such ABL Intercreditor Agreement.

"ABL Lender" means a lender under the ABL Credit Agreement.

"ABL Loan Documents" means the "Loan Documents" (as defined in the ABL Credit Agreement).

"Acquired Debt" means Debt of a Restricted Subsidiary acquired after the Closing Date and Debt assumed in connection with the acquisition of assets, in each case pursuant to a Permitted Acquisition, which Debt existed at the time of such Permitted Acquisition and was

not created in contemplation of such event.

“Acquisition” has the meaning specified in the definition of “Permitted Acquisition.”

“Additional Commitments” has the meaning specified in Section 2.14(a).

“Additional Commitments Effective Date” has the meaning specified in Section 2.14(b).

“Additional Credit Extension Amendment” means an amendment to this Agreement (which may, at the option of the Administrative Agent in consultation with Borrower, be in the form of an amendment and restatement of this Agreement) providing for any Extension pursuant to Section 2.13, Additional Commitments pursuant to Section 2.14 and/or Refinancing Term Loans pursuant to Section 2.15, which shall be consistent with the applicable provisions of this Agreement and otherwise reasonably satisfactory to the parties thereto; *provided* that at no time shall there be more than five different Classes of Loans outstanding at any time. Each Additional Credit Extension Amendment shall be executed by Administrative Agent, Borrower and the other parties specified in the applicable Section of this Agreement (but not any other Lender not specified in the applicable Section of this Agreement), but shall not effect any amendments that would require the consent of each affected Lender or all Lenders pursuant to the proviso in Section 10.01.

Any Additional Credit Extension Amendment may include conditions for delivery of opinions of counsel and other documentation consistent with the conditions in Section 4.01 and certificates confirming the satisfaction of any applicable conditions precedent, all to the extent reasonably requested by Administrative Agent or the other parties to such Additional Credit Extension Amendment. In addition, any Additional Credit Extension Amendment with respect to any Additional Commitments pursuant to Section 2.14 and/or Refinancing Term Loans pursuant to Section 2.15 shall require the satisfaction of each of the following conditions prior to the establishment of such Additional Commitments or the Incurrence of such Refinancing Term Loans:

(a) (i) no Default or Event of Default then exists or would result therefrom and (ii) all of the representations and warranties contained herein and in the other Loan Documents are true and correct in all material respects at such time (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), in the case of each of clauses (i) and (ii), assuming the relevant Additional Term Loans or Refinancing Term Loans in an aggregate principal amount equal to the full amount of Additional Commitments or Refinancing Term Loan Commitments, as applicable, then provided had been incurred and after giving effect to the use of proceeds thereof; *provided* that, with respect to any Additional Term Loans and Additional Commitments that are established to finance a Permitted Acquisition that is not subject to a financing condition, (x) no Default or Event of Default exists or would result therefrom as of the time of the signing of the definitive documentation relating to such Permitted Acquisition and no Event of Default under Section 8.01(a) or (f) or (g) shall have occurred and be continuing at the time of Incurrence of such Additional Term Loans and (y) clause (ii) above may, at the option of the Borrower and the Lenders providing such Additional Commitments, be subject to customary “SunGard” limitations;

(b) the delivery by the Borrower to the Administrative Agent of an Officer’s Certificate certifying as to compliance with the preceding clause (a);

(c) if requested by the Administrative Agent, the delivery by the Borrower to the Administrative Agent of an acknowledgement in form and substance reasonably satisfactory to the Administrative Agent and executed by each Guarantor (which may be included as part of the Additional Credit Extension Amendment), acknowledging that such Additional Commitments and Additional Term Loans or Refinancing Term Loan Commitment and Refinancing Term Loans, as the case may be, shall constitute (and be included in the definition of) “Guaranteed Obligations” under the Guaranty;

(d) if requested by the Administrative Agent, the delivery by the Borrower to the Administrative Agent of an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, and dated such date, covering such of the matters set forth in the opinions of counsel delivered to the Administrative Agent on the Closing Date pursuant to Section 4.01 as may be reasonably requested by the Administrative Agent, and such other matters incident to the transactions contemplated thereby as the Administrative Agent may reasonably request; and

(e) the delivery by the Borrower and the other Loan Party to the Administrative Agent of such other Officer’s Certificates, board of director resolutions and evidence of good standing as the Administrative Agent shall reasonably request.

“Additional Term Loans” has the meaning specified in Section 2.14(a).

“Administrative Agent” means Citibank, N.A. in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an administrative questionnaire to be completed by each Lender in such form as approved by the Administrative Agent.

“Affiliate” means, with respect to any 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.

“Affiliate Transaction” has the meaning specified in Section 7.08.

“Agent Parties” has the meaning specified in Section 10.02(c).

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Agreement Currency” has the meaning specified in Section 10.18.

“Applicable Percentage” means with respect to any Lender at any time, (x) with respect to the Facility, the percentage (carried out to the ninth decimal place) of the Facility represented by (i) on or prior to the Closing Date, such Lender’s Commitment at such time and (ii) thereafter, the principal amount of such Lenders’ Loans at such time and (y) with respect to any Class of Loans, the percentage (carried out to the ninth decimal place) of such Class represented by (i) on or prior to the Closing Date, such Lender’s Commitment at such time in respect of such Class and (ii) thereafter, the principal amount of such Lenders’ Loans of such Class at such time. The initial Applicable Percentage of each Lender in respect of the Facility and the Initial Loans is set forth opposite the name of such Lender on Schedule 2.01 and such Applicable Percentage shall be modified by the Applicable Percentage set forth in the Assignment and Assumption pursuant to which such Lender becomes a party hereto.

“Applicable Rate” means (x) with respect to the Initial Loans, 2.00% per annum for Base Rate Loans and 3.00% per annum for Eurodollar Rate Loans and (y) with respect to any Additional Term Loans, the Extended Term Loans and the Refinancing Term Loans, the applicable rates set forth in the Additional Credit Extension Amendment establishing such Additional Term Loans, the Extended Term Loans and the Refinancing Term Loans.

“Approved Fund” means any Fund 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.

“Arrangers” means the Lead Arrangers and the Co-Managers, collectively.

“Asset Acquisition” means:

(a) an Investment by the Borrower or any Restricted Subsidiary in any other Person pursuant to which such Person shall become a Restricted Subsidiary, or shall be merged with or into the Borrower or any Restricted Subsidiary; or

(b) the acquisition by the Borrower or any Restricted Subsidiary of the assets of any Person which constitute all or substantially all of the assets of such Person, any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business and consistent with past practices.

“Asset Sale” means any transfer, conveyance, sale, lease or other disposition (including, without limitation, dispositions pursuant to any consolidation or merger) by the Borrower or any of its Restricted Subsidiaries to any Person (other than to the Borrower or one or more of its Restricted Subsidiaries) in any single transaction or series of related transactions of:

(i) Equity Interests in a Restricted Subsidiary (other than directors’ qualifying shares or shares or interests required to be held by foreign nationals pursuant to local law); or

(ii) any other property or assets (other than in the normal course of business, including any sale or other disposition of obsolete or permanently retired equipment);

*provided, however*, that the term “Asset Sale” shall exclude:

(a) any asset disposition permitted by Section 7.04 that constitutes a disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole;

(b) any transfer, conveyance, sale, lease or other disposition of property or assets, the gross proceeds of which (exclusive of indemnities) do not exceed in any one or related series of transactions \$20.0 million;

(c) sales or other dispositions of cash or Cash Equivalents;

(d) sales of interests in or assets of Unrestricted Subsidiaries;

(e) the sale and leaseback of any assets within 90 days of the acquisition thereof;

(f) the disposition of assets that, in the good faith judgment of the Borrower, are no longer used or useful in the business of such entity;

(g) a Restricted Payment or Permitted Investment that is otherwise permitted by this Agreement;

(h) any trade-in of equipment in exchange for other equipment; *provided* that, in the good faith judgment of the Borrower, the Borrower or such Restricted Subsidiary receives equipment having a Fair Market Value equal to or greater than the equipment being traded in;

(i) the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets between the Borrower or any of its Restricted Subsidiaries and another Person to the extent that the Related Business Assets received by the Borrower or its Restricted Subsidiaries are of equivalent or greater Fair Market Value than the Related Business Assets transferred;

(j) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);

(k) leases or subleases in the ordinary course of business to third persons not interfering in any material respect with the business of the Borrower or any of its Restricted Subsidiaries and otherwise in accordance with the provisions of this Agreement;

(l) any disposition by a Subsidiary to the Borrower or by the Borrower or a Subsidiary to a Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) to the extent such transaction constitutes an Investment, such transaction is a Permitted Investment or is otherwise permitted under Section 7.05;

(m) dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business and consistent with past practice;

(n) licensing or sublicensing of intellectual property or other general intangibles in accordance with industry practice in the ordinary course of business;

(o) any transfer of accounts receivable, or a fractional undivided interest therein, by a Receivable Subsidiary in a Qualified Receivables Transaction;

(p) any release of any intangible claims or rights in connection with a lawsuit, dispute or other controversy;

(q) sales of accounts receivable to a Receivable Subsidiary pursuant to a Qualified Receivables Transaction for the Fair Market Value thereof; including cash or other financial accommodation, such as the provision of letters of credit by such Receivable Subsidiary on behalf of or for the benefit of the transferor of such accounts receivable (for the purposes of this clause (q), Purchase Money Notes will be deemed to be cash); or

(r) foreclosures on assets to the extent they would not otherwise result in a Default or Event of Default.

For purposes of this definition, any series of related transactions that, if effected as a single transaction, would constitute an Asset Sale shall be deemed to be a single Asset Sale effected when the last such transaction which is a part thereof is effected.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

“Attributable Debt” means, in respect of a Sale and Leaseback Transaction, at the time of determination, the present value (discounted at the rate of interest implicit in such transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended).

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2014, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Bank Product” means any one or more of the following financial products or accommodations extended to any Loan Party by a Bank Product Provider: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called “procurement cards” or “P-cards”), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

“Bank Product Obligations” means all obligations of any Loan Party pursuant to any Bank Product.

“Bank Product Provider” means any Person that is the Administrative Agent, any Lender or any of their respective Affiliates in its capacity as a party to any Bank Product or Hedge Agreement.

“Base Rate” shall mean, at any time, the highest of (i) the Prime Lending Rate at such time, (ii) 1/2 of 1% per annum in excess of the overnight Federal Funds Rate at such time and (iii) the Eurodollar Rate for a Eurodollar Rate Loan denominated in dollars with a one-month interest period commencing on such day plus 1.00% per annum; *provided* that, notwithstanding the foregoing, the “Base Rate” shall in no event be less than 1.75% per annum. For purposes of this definition, the Eurodollar Rate shall be determined using the Eurodollar Rate as otherwise determined by the Administrative Agent in accordance with the definition of “Eurodollar,” except that (x) if a given day is a Business Day, such determination shall be made on such day (rather than two (2) Business Days prior to the commencement of an Interest Period) or (y) if a given day is not a Business Day, the Eurodollar Rate for such day shall be the rate determined by the Administrative Agent pursuant to the preceding clause (x) for the most recent Business Day preceding such day. Any change in the Base Rate due to a change in the Prime Lending Rate, the Federal Funds Rate or such Eurodollar Rate shall be effective as of the opening of business on the day of such change in the Prime Lending Rate, the Federal Funds Rate or such Eurodollar Rate, respectively.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Board of Directors” means (i) with respect to the Borrower or any Restricted Subsidiary, its board of directors or any duly authorized committee thereof; (ii) with respect to a corporation, the board of directors of such corporation or any duly authorized committee thereof; and (iii) with respect to any other entity, the board of directors or similar body of the general partner or managers of such entity or any duly authorized committee thereof.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capital Lease Obligations” means any obligation of a Person under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP.

“Cash Equivalents” means any of the following Investments: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) maturing not more than one year after the date of acquisition; (ii) time deposits in and certificates of deposit of any Eligible Bank, *provided* that such Investments have a maturity date not more than two years after date of acquisition and that the Weighted Average Life to Maturity of all such Investments is one year or less from the respective dates of acquisition; (iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above entered into with any Eligible Bank; (iv) direct obligations issued by any state of the United States or any political subdivision or public instrumentality thereof, *provided* that such Investments mature, or are subject to tender at the option of the holder thereof, within 365 days after the date of acquisition and, at the time of acquisition, have a rating of at least A from S&P or A-2 from Moody’s (or an equivalent rating by any other nationally recognized rating agency); (v) commercial paper of any Person other than an Affiliate of the Borrower and other than structured investment vehicles, *provided* that such Investments have one of the two highest ratings obtainable from either S&P or Moody’s and mature within 180 days after the date of acquisition; (vi) overnight and demand deposits in and bankers’ acceptances of any Eligible Bank and demand deposits in any bank or trust company to the extent insured by the Federal Deposit Insurance Corporation against the Bank Insurance Fund; (vii) money market funds substantially all of the assets of which comprise Investments of the types described in clauses (i) through (vi); and (viii) instruments equivalent to those referred to in clauses (i) through (vi) above or funds equivalent to those referred to in clause (vii) above denominated in U.S. dollars, Euros or any other foreign currency comparable in credit quality and tenor to those referred to in such clauses and customarily used by corporations for cash management purposes in jurisdictions outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction, all as determined in good faith by the Borrower. “Eligible Bank” means a Lender or any Affiliate of a Lender or such other bank or trust company that (i) is licensed, chartered or organized and existing under the laws of the United States of America or Canada, or any state, territory, province or possession thereof, (ii) as of the time of the making or acquisition of an Investment in such bank or trust company, has combined capital and surplus in excess of \$500.0 million and (iii) the senior Debt of which is rated at least “A-2” by Moody’s or at least “A” by S&P.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“CFC Holdco” means any Subsidiary that holds no material assets other than capital stock of one or more Subsidiaries that are CFCs or other CFC Holdcos.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means:

(1) the Borrower becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) that any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) is or becomes the ultimate “beneficial owner” (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (1) such person or group shall be deemed to have “beneficial ownership” of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the Voting Interests in the Borrower, or

(2) the Borrower sells, conveys, transfers or leases (either in one transaction or a series of related transactions) all or substantially all of its assets to, or merges or consolidates with, a Person other than a Restricted Subsidiary of the Borrower, other than a merger or consolidation where (A) the Voting Interests of the Borrower outstanding immediately prior to such transaction are converted into or exchanged for Voting Interests of the surviving or transferee Person constituting a majority of the outstanding Voting Interests of such surviving or transferee Person (immediately after giving effect to such issuance) and (B) immediately after such transaction, no “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) becomes, directly or indirectly, the beneficial owner of 50% or more of the voting power of the Voting Interests of the surviving or transferee Person.

“Citi” means Citibank, N.A. and its successors.

“Class” means (i) with respect to any Commitment, its character as a commitment to make or otherwise fund Initial Loans, Additional Term Loans, Extended Term Loans and/or Refinancing Term Loans (whether established by way of new Commitments or by way of conversion or extension of existing Commitments or Loans) designated as a “Class” in an Additional Credit Extension Amendment and (ii) with respect to any Loans, its character as an Initial Loans, Additional Term Loans, Extended Term Loans and/or Refinancing Term Loans (whether made pursuant to new Commitments or by way of conversion or extension of existing Loans) designated as a “Class” in an Additional Credit Extension Amendment. Commitments or Loans that have different Maturity Dates, pricing (other than upfront fees) or other terms shall be designated separate Classes; *provided that* at no time shall there be more than five different Classes of Loans outstanding at any time.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Co-Managers” means Jefferies Finance LLC, KeyBank Capital Markets Inc. and SunTrust Robinson Humphrey, Inc., in their capacity as co-managers.

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

“Collateral” means all of the “Collateral” and “Mortgaged Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the Intellectual Property Security Agreement, Security Agreement Supplements, the Mortgages, any Intercreditor Agreement, each of the mortgages, collateral assignments, intellectual property security agreement supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.13, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means, as to each Lender, its obligation to make Loans to the Borrower pursuant to Section 2.01 or Section 2.13 through 2.15 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Commitment” or opposite such caption in the Assignment and Assumption or Additional Credit Extension Amendment pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Common Interests” of any Person means Equity Interests in such Person that do not rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to Equity Interests of any other class in such Person.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Consolidated Cash Flow Available for Fixed Charges” means, with respect to any Person for any period:

- (i) the sum of, without duplication, the amounts for such period, taken as a single accounting period, of:
  - (a) Consolidated Net Income;
  - (b) Consolidated Non-cash Charges;
  - (c) Consolidated Interest Expense to the extent the same was deducted in computing Consolidated Net Income;
  - (d) Consolidated Income Tax Expense;
  - (e) any expenses or charges related to any equity offering, Permitted Investment, recapitalization or Incurrence of Debt permitted to be made under this Agreement (whether or not successful) or related to the Transactions;
  - (f) the amount of any interest expense attributable to minority equity interests of third parties in any non-wholly owned Subsidiary to the extent deducted in such period in computing Consolidated Net Income;
  - (g) any net loss from discontinued operations; and
  - (h) any costs or expenses incurred by the Borrower or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Equity Interests of the Borrower (other than Redeemable Equity Interests); *less*
- (ii) (x) net income from discontinued operations and (y) non-cash items increasing Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to any Person, the ratio of the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of such Person for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the date of the transaction (for purposes of this definition, the “Transaction Date”) giving

rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (such four full fiscal quarter period being referred to herein as the “Four Quarter Period”) to the aggregate amount of Consolidated Fixed Charges of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated Cash Flow Available for Fixed Charges” and “Consolidated Fixed Charges” shall be calculated after giving effect (i) to the cost of any compensation, remuneration or other benefit paid or provided to any employee, consultant, Affiliate, equity owner of the entity involved in any Asset Acquisition to the extent such costs are eliminated or reduced (or public announcement has been made of the intent to eliminate or reduce such costs) prior to the date of such calculation and not replaced; and (ii) on a *pro forma* basis for the period of such calculation, to any Asset Sales or other dispositions or Asset Acquisitions, Investments, mergers, consolidations, discontinued operations (as determined in accordance with GAAP) or designations of any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary occurring during the Four Quarter Period or any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or other disposition or Asset Acquisition (including the Incurrence or assumption of any such Acquired Debt), Investment, merger, consolidation, disposed operation or designation occurred on the first day of the Four Quarter Period. For purposes of this definition, *pro forma* calculations shall be made in accordance with Article 11 of Regulation S-X promulgated under the Securities Act, except that such *pro forma* calculations may also include operating expense reductions for such period resulting from the Asset Sale or other disposition or Asset Acquisition, investment, merger, consolidation or discontinued operation (as determined in accordance with GAAP) for which *pro forma* effect is being given (A) that have been realized or (B) for which steps have been taken or are reasonably expected to be taken within six (6) months of the date of such transaction and are supportable and quantifiable and, in each case, including, but not limited to, (a) reduction in personnel expenses, (b) reduction of costs related to administrative functions, (c) reduction of costs related to leased or owned properties and (d) reductions from the consolidation of operations and streamlining of corporate overhead, *provided* that, in either case, such adjustments are set forth in an Officer’s Certificate signed by the Borrower’s chief financial or similar officer that states (i) the amount of such adjustment or adjustments and (ii) that such adjustment or adjustments are based on the reasonable good faith belief of the Officer executing such Officer’s Certificate at the time of such execution.

Furthermore, in calculating “Consolidated Fixed Charges” for purposes of determining the denominator (but not the numerator) of this “Consolidated Fixed Charge Coverage Ratio”:

(i) interest on outstanding Debt determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Debt in effect on the Transaction Date; and

(ii) if interest on any Debt actually Incurred on the Transaction Date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the Transaction Date will be deemed to have been in effect during the Four Quarter Period.

If such Person or any of its Restricted Subsidiaries directly or indirectly Guarantees Debt of a third Person, the above clause shall give effect to the Incurrence of such Guaranteed Debt as if such Person or such Subsidiary had directly Incurred or otherwise assumed such Guaranteed Debt

“Consolidated Fixed Charges” means, with respect to any Person for any period, the sum of, without duplication, the amounts for such period of:

(i) Consolidated Interest Expense; and

(ii) the product of (a) all cash dividends and other distributions paid or accrued during such period in respect of Redeemable Equity Interests of such Person and its Restricted Subsidiaries (other than dividends paid in Qualified Equity Interests), *times* (b) a fraction, the numerator of which is one and the denominator of which is one *minus* the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal.

“Consolidated Income Tax Expense” means, with respect to any Person for any period the provision for federal, state, local and foreign income taxes of such Person and its Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP paid or accrued during such period, including any penalties and interest related to such taxes or arising from any tax examinations, to the extent the same were deducted in computing Consolidated Net Income

“Consolidated Interest Expense” means, with respect to any Person for any period, without duplication, the sum of:

(i) the total interest expense of such Person and its Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP, including, without limitation:

(a) any amortization of debt discount;

(b) the net cost under any Hedging Obligation or Swap Contract in respect of interest rate protection (including any amortization of discounts);

(c) the interest portion of any deferred payment obligation;

(d) all commissions, discounts and other fees and charges owed with respect to Qualified Receivables Transactions (to the extent payable by the Borrower and its Restricted Subsidiaries to any Person other than the Borrower or a Restricted Subsidiary) and letters of credit and bankers’ acceptance financings; and

(e) all accrued interest;

(ii) the interest component of Capital Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Restricted Subsidiaries during such period determined on a consolidated basis in accordance with GAAP; and



(iii) all capitalized interest of such Person and its Restricted Subsidiaries for such period; less interest income of such Person and its Restricted Subsidiaries for such period; *provided, however*, that Consolidated Interest Expense will exclude (I) the amortization or write-off of debt issuance costs and deferred financing fees, commissions, fees and expenses, (II) any expensing of interim loan commitment and other financing fees and (III) non-cash interest on any convertible or exchangeable notes that exists by virtue of the bifurcation of the debt and equity components of convertible or exchangeable notes and the application FSP APB 14-1 or any similar provision.

“Consolidated Leverage Ratio” means, with respect to any Person, the ratio of the aggregate amount of all Debt less unrestricted cash and Cash Equivalents of such Person and its Restricted Subsidiaries at the end of the most recent fiscal period for which financial information in respect thereof is available immediately preceding the date of the transaction (for purposes of this definition, the “Transaction Date”) giving rise to the need to calculate the Consolidated Leverage Ratio to the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of such Person for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the Transaction Date (such four full fiscal quarter period being referred to herein as the “Four Quarter Period”).

“Consolidated Net Income” means, with respect to any Person for any period, the consolidated net income (or loss) of such Person and its Restricted Subsidiaries for such period as determined in accordance with GAAP, adjusted, to the extent included in calculating such net income, by:

(A) excluding, without duplication

(i) all extraordinary gains or losses (net of fees and expenses relating to the transaction giving rise thereto), income, expenses or charges;

(ii) the portion of net income of such Person and its Restricted Subsidiaries allocable to minority interest in unconsolidated Persons or Investments in Unrestricted Subsidiaries to the extent that cash dividends or distributions have not actually been received by such Person or one of its Restricted Subsidiaries; *provided* that for the avoidance of doubt, Consolidated Net Income shall be increased in amounts equal to the amounts of cash actually received;

(iii) gains or losses in respect of any Asset Sales by such Person or one of its Restricted Subsidiaries (net of fees and expenses relating to the transaction giving rise thereto), on an after-tax basis;

(iv) the net income (loss) from any disposed or discontinued operations or any net gains or losses on disposed or discontinued operations, on an after-tax basis;

(v) solely for purposes of determining the amount available for Restricted Payments under Section 7.06(a)(iii), the net income of any Restricted Subsidiary (other than a Guarantor) or such Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulations applicable to that Restricted Subsidiary or its stockholders; *provided* that for the avoidance of doubt, Consolidated Net Income shall be increased in amounts equal to the amounts of cash actually received;

(vi) any gain or loss realized as a result of the cumulative effect of a change in accounting principles;

(vii) any fees and expenses paid in connection with the Transactions;

(viii) non-cash compensation expense Incurred with any issuance of equity interests to an employee of such Person or any Restricted Subsidiary;

(ix) any net after-tax gains or losses attributable to the early extinguishment or conversion of Debt;

(x) any non-cash impairment charges or asset write-off or write-down resulting from the application of Statement of Financial Accounting Standards No. 142 or Statement of Financial Accounting Standards No. 144, and the amortization of intangibles arising pursuant to Statement of Financial Accounting Standards No. 141 or any related subsequent Statement of Financial Accounting Standards or Accounting Standards Codification;

(xi) non-cash gains, losses, income and expenses resulting from fair value accounting required by Statement of Financial Accounting Standards No. 133 or any related subsequent Statement of Financial Accounting Standards or Accounting Standards Codification;

(xii) accruals and reserves that are established within twelve (12) months after the closing of any acquisition that are so required to be established as a result of such acquisition in accordance with GAAP not to exceed \$10.0 million in any calendar year;

(xiii) any fees, expenses, charges or Integration Costs Incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, Incurrence or repayment of Debt, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument, and including, in each case, any such transaction undertaken but not completed, and any charges or non-recurring merger or acquisition costs Incurred during such period as a result of any such transaction, in each case whether or not successful;

(xiv) any net unrealized gain or loss (after any offset) resulting from currency translation gains or losses related to currency remeasurements of Debt (including any net gain or loss resulting from obligations under Hedging Obligations for currency exchange risk) and any foreign currency translation gains or losses;

(xv) any accruals and reserves that are established for expenses and losses, in respect of equity-based awards compensation expense (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall reduce Consolidated Net Income to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period);

(xvi) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days); and

(xvii) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption; and

(B) including, without duplication, dividends and distributions from joint ventures actually received in cash by the Borrower.

“Consolidated Non-cash Charges” means, with respect to any Person for any period, the aggregate depreciation, amortization (including amortization of goodwill, other intangibles, deferred financing fees, debt issuance costs, commissions, fees and expenses) and other non-cash expenses of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charges constituting an extraordinary item or loss and excluding any such charges constituting an extraordinary item or loss or any charge which requires an accrual of or a reserve for cash charges for any future period).

“Consolidated Secured Leverage Ratio” means, with respect to any Person, the ratio of the aggregate amount of all Debt secured by Liens of such Person and its Restricted Subsidiaries at the end of the most recent fiscal period for which financial information in respect thereof is available immediately preceding the date of the transaction (for purposes of this definition, the “Transaction Date”) giving rise to the need to calculate the Consolidated Secured Leverage Ratio to the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of such Person for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the Transaction Date (such four full fiscal quarter period being referred to herein as the “Four Quarter Period”). In addition to and without limitation of the foregoing, this ratio shall be calculated after giving effect (i) to the cost of any compensation, remuneration or other benefit paid or provided to any employee, consultant, Affiliate, equity owner of the entity involved in any Asset Acquisition to the extent such costs are eliminated or reduced (or public announcement has been made of the intent to eliminate or reduce such costs) prior to the date of such calculation and not replaced; and (ii) on a *pro forma* basis for the period of such calculation, to any Asset Sales or other dispositions or Asset Acquisitions, Investments, mergers, consolidations, discontinued operations (as determined in accordance with GAAP) or designations of any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary occurring during the Four Quarter Period or any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or other disposition or Asset Acquisition (including the Incurrence or assumption of any such Acquired Debt), Investment, merger, consolidation, disposed operation or designation occurred on the first day of the Four Quarter Period. For purposes of this definition, *pro forma* calculations shall be made in accordance with Article 11 of Regulation S-X promulgated under the Securities Act, except that such *pro forma* calculations may also include operating expense reductions for such period resulting from the Asset Sale or other disposition or Asset Acquisition, investment, merger, consolidation or discontinued operation (as determined in accordance with GAAP) for which *pro forma* effect is being given (A) that have been realized or (B) for which steps have been taken or are reasonably expected to be taken within six (6) months of the date of such transaction and are supportable and quantifiable and, in each case, including, but not limited to, (a) reduction in personnel expenses, (b) reduction of costs related to administrative functions, (c) reduction of costs related to leased or owned properties and (d) reductions from the consolidation of operations and streamlining of corporate overhead, *provided* that, in either case, such adjustments are set forth in an Officer’s Certificate signed by the Borrower’s chief financial or similar officer that states (i) the amount of such adjustment or adjustments and (ii) that such adjustment or adjustments are based on the reasonable good faith belief of the Officers executing such Officer’s Certificate at the time of such execution.

“Consolidated Total Assets” of any Person as of any date means the total assets of such Person and its Restricted Subsidiaries as of the most recent fiscal quarter end for which an internal consolidated balance sheet of such Person and its Subsidiaries is available, all calculated on a consolidated basis in accordance with GAAP.

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

“Credit Date” means the date of a Credit Extension.

“Credit Extension” means a Borrowing.

“Debt” means at any time (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person, or non-recourse, the following: (i) all indebtedness of such Person for money borrowed or for the deferred purchase price of property, excluding (A) any trade payables or other current liabilities incurred in the normal course of business and (B) earnouts or similar obligations unless and until such amounts are earned; (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments; (iii) all reimbursement obligations of such Person with respect to letters of credit (other than letters of credit that are secured by cash or Cash Equivalents), bankers’ acceptances or similar facilities (excluding obligations in respect of letters of credit or bankers’ acceptances issued in respect of trade payables) issued for the account of such Person; *provided* that such obligations shall not constitute Debt

except to the extent drawn and not repaid within five Business Days; (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property or assets acquired by such Person; (v) all Capital Lease Obligations of such Person; (vi) the maximum fixed redemption or repurchase price of Redeemable Equity Interests in such Person at the time of determination; (vii) any Swap Contracts and Hedging Obligations of such Person at the time of determination; (viii) Attributable Debt with respect to any Sale and Leaseback Transaction to which such Person is a party; and (ix) all obligations of the types referred to in clauses (i) through (viii) of this definition of another Person, the payment of which, in either case, (A) such Person has Guaranteed or (B) is secured by (or the holder of such Debt or the recipient of such dividends or other distributions has an existing right, whether contingent or otherwise, to be secured by) any Lien upon the property or other assets of such Person, even though such Person has not assumed or become liable for the payment of such Debt. For purposes of the foregoing: (a) the maximum fixed repurchase price of any Redeemable Equity Interests that do not have a fixed repurchase price shall be calculated in accordance with the terms of such Redeemable Equity Interests as if such Redeemable Equity Interests were repurchased on any date on which Debt shall be required to be determined pursuant to this Agreement; *provided, however*, that, if such Redeemable Equity Interests are not then permitted to be repurchased, the repurchase price shall be the book value of such Redeemable Equity Interests; (b) the amount outstanding at any time of any Debt issued with original issue discount shall be the principal amount of such Debt less the remaining unamortized portion of the original issue discount of such Debt at such time as determined in conformity with GAAP, but such Debt shall be deemed Incurred only as of the date of original issuance thereof; (c) the amount of any Debt described in clause (vii) is the net amount payable (after giving effect to permitted set off) if such Swap Contracts or Hedging Obligations are terminated at that time due to default of such Person; (d) the amount of any Debt described in clause (ix)(A) above shall be the maximum liability under any such Guarantee; (e) the amount of any Debt described in clause (ix)(B) above shall be the lesser of (I) the maximum amount of the obligations so secured and (II) the Fair Market Value of such property or other assets; and (f) interest, fees, premium, and expenses and additional payments, if any, will not constitute Debt. For purposes of determining any particular amount of Debt, Guarantees, Liens, obligations with respect to letters of credit and other obligations supporting Debt otherwise included in the determination of a particular amount will not be included.

Notwithstanding the foregoing, the term “Debt” will exclude (a) any endorsements for collection or deposits in the ordinary course of business, (b) any realization of a Permitted Lien, (c) Debt that has been defeased or satisfied in accordance with the terms of the documents governing such Debt, and (d) in connection with the purchase by the Borrower or any Restricted Subsidiary of any business, (x) customary indemnification obligations and (y) post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment is otherwise contingent; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter.

The amount of Debt of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, only upon the occurrence of the contingency giving rise to the obligations, of any contingent obligations at such date; *provided, however*, that in the case of Debt sold at a discount, the amount of such Debt at any time will be the accreted value thereof at such time. If such Person or any of its Restricted Subsidiaries directly or indirectly Guarantees Debt of a third Person, the amount of Debt of such Person shall give effect to the Incurrence of such Guaranteed Debt as if such Person or such Subsidiary had directly Incurred or otherwise assumed such Guaranteed Debt.

“Debt Rating” means, as of any date of determination, the rating as determined by either S&P or Moody’s of the Borrower’s non-credit-enhanced, senior unsecured long-term debt.

“Debtor Relief Laws” means 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 and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans under the Facility *plus* (iii) 2% per annum; *provided, however*, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* 2% per annum.

“Defaulting Lender” means, subject to Section 2.12(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans within one Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower, or the Administrative Agent or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (c) has failed, within one Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, 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, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *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.

“Designated Non-cash Consideration” means the Fair Market Value of non-cash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as “Designated Non-cash Consideration” pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Disposition” means any (x) Asset Sale or (y) Involuntary Disposition.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily

redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified 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 Debt or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date.

“Disqualified Lenders” means (i) competitors of the Borrower and its Subsidiaries that have been specified in writing to the Administrative Agent from time to time by the Borrower and (ii) any of their Affiliates (other than in the case of clause (i), Affiliates that are bona fide debt funds) that are identified in writing from time to time to the Administrative Agent by the Borrower; *provided* that no such updates to the list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation interest in respect of the Loans from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Lenders.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Sections 10.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Engagement Letter” means the letter agreement, dated October 27, 2015, among the Borrower, the Administrative Agent and the Arrangers.

“Environment” shall mean ambient air, indoor air, surface water, groundwater, drinking water, natural land surface, sediments, and subsurface strata & natural resources such as wetlands, flora and fauna.

“Environmental Laws” means any and all Federal, state, local, and foreign Laws relating to pollution and the protection of the Environment or the Release or threatened Release of any Hazardous Materials into the Environment, including those related to exposure to Hazardous Materials, or related to air emissions and discharges to waste water or public sewer systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” in any Person means any and all shares, interests (including Preferred Interests), participations or other equivalents in the equity interest (however designated) in such Person and any rights (other than Debt securities convertible into an equity interest), warrants or options to acquire an equity interest in such Person.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification to the Borrower or any ERISA Affiliate that a Multiemployer Plan is insolvent or in reorganization (within the meaning of Title IV of ERISA); (d) the filing of a notice of intent to terminate a Pension Plan, or the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430 or 432 of the Code or Sections 303 or 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“Eurodollar Rate” means, for any Interest Period with respect to a Eurodollar Rate Loan, (i) the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the commencement of such Interest Period to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other Person which takes over the administration of that rate) for deposits in Dollars by reference to the Reuters Screen LIBOR01 for deposits in Dollars (or such other comparable page as may, in the opinion of the Administrative Agent, replace such page for the purpose of displaying such rates; *provided* that to the extent a comparable or successor rate or successor source is selected by the Administrative Agent, the approved rate will be applied in a manner consistent with market practice) for a period equal to such Interest Period; *provided* further that to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “Eurodollar Rate” shall be the interest rate per annum (rounded upwards to the next 1/100<sup>th</sup> of 1.00%) determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the beginning of such Interest Period,

divided by (ii) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves required by applicable law) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities as defined in Regulation D; *provided* that, notwithstanding the foregoing, in all cases, the “Eurodollar Rate” shall in no event be less than 0.75% per annum.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the Eurodollar Rate.

“Event of Default” has the meaning specified in Section 8.01.

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

“Excluded Subsidiary” means (a) any Subsidiary that is a CFC or CFC Holdco, (b) any Subsidiary of a Subsidiary that is a CFC, and (c) each Immaterial Subsidiary.

“Excluded Swap Obligation” has the meaning assigned to such term in the Guaranty.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) taxes imposed on or measured, by such recipient’s net income (however denominated) and franchise taxes imposed on it in lieu of net income taxes, by any jurisdiction (or any political subdivision thereof) as a result of such recipient being organized or having its principal office located in or, in the case of any Foreign Lender, having its principal Lending Office located in such jurisdiction, or as a result of any other present or former connection with such jurisdiction (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (b) any branch profits taxes imposed under Section 884(a) of the Code, or any other branch profits tax, imposed on such recipient by any jurisdiction described in clause (a), (c) any U.S. federal backup withholding tax imposed under Section 3406 of the Code because such Lender has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Lender, any United States federal withholding tax that is imposed on amounts payable to such Lender pursuant to the Laws in force at the time such Lender becomes a party hereto or designates a new Lending Office, except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new Lending Office (or assignment), to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to Section 3.01(a)(ii) or 3.01(c), (e) any U.S. federal withholding taxes imposed pursuant to FATCA, and (f) any withholding Tax that is attributable to such recipient’s failure to comply with Section 3.01(e).

“Extended Term Loans” has the meaning specified in Section 2.13(a).

“Extension” has the meaning specified in Section 2.13(a).

“Extension Offer” has the meaning specified in Section 2.13(a).

“Facility” means, at any time, (a) on or prior to the Closing Date, the Aggregate Commitments at such time and (b) thereafter, the aggregate principal amount of each Class of Loans and unused Commitments, if any, of all Lenders outstanding at such time.

“Fair Market Value” means, with respect to the consideration received or paid in any transaction or series of transactions, the fair market value thereof as determined in good faith by the Borrower. In the case of a transaction between the Borrower or a Restricted Subsidiary, on the one hand, and a Receivable Subsidiary, on the other hand, if the Borrower determines in its sole discretion that such determination is appropriate, a determination as to Fair Market Value may be made at the commencement of the transaction and be applicable to all dealings between the Receivable Subsidiary and the Borrower or such Restricted Subsidiary during the course of such transaction.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means current Sections 1471-1474 of the Code (and any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations promulgated thereunder, published administrative guidance issued pursuant thereto, any agreement entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above), and any applicable intergovernmental agreements implementing the foregoing.

“FCPA” means the United States Foreign Corrupt Practices Act of 1977, as amended.

“Federal Funds Rate” means, 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 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 Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Citi on such day on such transactions as determined by the Administrative Agent.

“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.

“Foreign Lender” means any Lender that is not a “United States person” as defined in Section 7701(a)(30) of the Code.

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

“Four Quarter Period” has the meaning specified in the definition of “Consolidated Secured Leverage Ratio.”

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

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States, consistently applied, as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Closing Date; *provided*, that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, provincial or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as applied to any Debt of another Person, (i) a guarantee (other than by endorsement of negotiable instruments for collection in the normal course of business), direct or indirect, in any manner, of any part or all of such Debt, (ii) any direct or indirect obligation, contingent or otherwise, of a Person guaranteeing or having the effect of guaranteeing the Debt of any other Person in any manner and (iii) an agreement of a Person, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment (or payment of damages in the event of non-payment) of all or any part of such Debt of another Person (and “Guaranteed” and “Guaranteeing” shall have meanings that correspond to the foregoing); *provided, however*, that the term “Guarantee” shall not include a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute a Permitted Investment.

“Guarantors” means, collectively, the Subsidiaries of the Borrower listed on Schedule 1.01(a) and each other Subsidiary of the Borrower that shall execute and deliver a guaranty or guaranty supplement pursuant to Section 6.13.

“Guaranty” means, collectively, the Guaranty made by the Guarantors in favor of the Secured Parties, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.13.

“Hazardous Materials” means all substances, materials or wastes of any nature regulated pursuant to any Environmental Law, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes.

“Hedge Agreement” means any one or more of the following extended to any Loan Party by a Bank Product Provider: (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement; sometimes being collectively referred to herein as “Hedge Agreements.”

“Hedging Obligations” of any Person means the obligations of such Person pursuant to any interest rate agreement, currency agreement or commodity agreement, excluding commodity agreements relating to raw materials used in the ordinary course of the Borrower’s business.

“Immaterial Subsidiary” means as of any date of determination, any Subsidiary that (i) did not, as of the last day of the fiscal quarter of the Borrower most recently ended, have assets with a value in excess of three percent (3%) of total assets or revenues representing in excess of three percent (3%) of total revenues of the Borrower and its Subsidiaries, in each case, on a consolidated basis as of such date and (ii) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Borrower most recently ended, did not have assets with a value in excess of seven and one-half percent (7.5%) of total assets or revenues representing in excess of seven and one-half percent (7.5%) of total revenues of the Borrower and its Subsidiaries, in each case, on a consolidated basis as of such date.

“Incremental Cap” means, at any date of determination and with respect to the proposed incurrence of any Incremental Debt, an amount equal to the sum of (i) the greater of (x) (1) \$550,000,000 *minus* (2) any Incremental Debt and any loans and commitments Incurred and outstanding under any Specified Credit Facilities previously Incurred in reliance on clause (i) and (y) an amount such that on a *pro forma* basis, the Consolidated Secured Leverage Ratio as of the end of the most recent fiscal quarter of the Borrower for which financial statements have been or were required to have been delivered pursuant to Section 6.01 would be less than or equal to 2.75:1.00 (*provided* that for purposes of calculating the Consolidated Secured Leverage Ratio, any Incremental Equivalent Debt shall be treated as if it were secured, regardless of whether such Debt is actually secured), *plus* (ii) the amount of any voluntary prepayments of the Loans (excluding prepayments financed with the Incurrence of Debt); *provided* that (a) for purposes of determining the ability to Incur Debt under the Incremental Cap (including Section 7.02(b) with respect to borrowings after the Closing Date under the ABL Facility), any revolving loans and commitments Incurred in reliance on the Incremental Cap shall be deemed fully drawn at all times that such loans and commitments remain outstanding and (b) any loans and commitments Incurred and outstanding under the ABL Facility on the Closing Date (determined as if the ABL Facility has been fully drawn on the Closing Date) shall be deemed to have been Incurred in reliance on clause (i) above.

“Incremental Debt” means any Additional Term Loans or Incremental Equivalent Debt.

“Incremental Equivalent Debt” means Debt issued in accordance with Section 2.14(d) consisting of one or more series of *pari passu* notes or *pari passu* loans, junior lien notes or junior lien loans, subordinated notes or subordinated loans or unsecured notes or unsecured loans, in each case, issued in a public offering, Rule 144A or other private placement transaction, a bridge facility in lieu of the foregoing, or secured or unsecured mezzanine Debt or debt securities, in each case, subject to the terms set forth in Section 2.14(e).

“Incur” means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or other obligation on the balance sheet of such Person; *provided, however*, that a change in GAAP or an interpretation thereunder that results in an obligation of such Person that exists at such time becoming Debt shall not be deemed an Incurrence of such Debt. Debt otherwise Incurred by a Person before it becomes a Subsidiary of the Borrower shall be deemed to be Incurred at the time at which such Person becomes a Subsidiary of the Borrower. “Incurrence,” “Incurred,” “Incurable” and “Incurring” shall have meanings that correspond to the foregoing. A Guarantee by the Borrower or a Restricted Subsidiary of Debt Incurred by the Borrower or a Restricted Subsidiary, as applicable, shall not be a separate Incurrence of Debt. In addition, the following shall not be deemed a separate Incurrence of Debt:

- (1) amortization of debt discount or accretion of principal with respect to a non-interest-bearing or other discount security;
- (2) the payment of regularly scheduled interest in the form of additional Debt of the same instrument or the payment of regularly scheduled dividends on Equity Interests in the form of additional Equity Interests of the same class and with the same terms;
- (3) the obligation to pay a premium in respect of Debt arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Debt; and
- (4) unrealized losses or charges in respect of Hedging Obligations.

“Indemnified Taxes” means all Taxes other than Excluded Taxes.

“Indemnitee” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Initial Loans” has the meaning specified in Section 2.01.

“Integration Costs” means, with respect to any acquisition, all costs relating to the integration of the acquired business or operations into the Borrower’s, including labor costs, consulting fees, travel costs and any other expenses relating to the integration process.

“Intellectual Property Security Agreement” has the meaning specified in Section 4.01(a)(v).

“Intercompany Subordination Agreement” means the Intercompany Subordination Agreement to be executed and delivered by each Subsidiary of the Borrower that is not a Loan Party.

“Intercreditor Agreement” means (i) the ABL Intercreditor Agreement or (ii) any other customary intercreditor agreement that is in form and substance reasonably satisfactory to, and entered into by, the Administrative Agent, in each case, as amended, restated, modified, supplemented or replaced from time to time in accordance with this Agreement and the terms of such intercreditor agreements.

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan the last Business Day of each March, June, September and December and the Maturity Date of the Facility.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice or such other period that is twelve months or less requested by the Borrower and consented to by all the Lenders; *provided that*:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date.

“Investment” by any Person means any direct or indirect loan, advance, guarantee for the benefit of (or other extension of credit) or capital contribution to (by means of any transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including, without limitation, the following: (i) the purchase or acquisition of any Equity Interest or other evidence of beneficial ownership in another Person; (ii) the purchase, acquisition or Guarantee of the Debt of another Person; and (iii) the purchase or acquisition of the business or assets of another Person substantially as an entirety but shall exclude: (a) accounts receivable and other extensions of trade credit in accordance with the Borrower’s customary practices; (b) the acquisition of



property and assets from suppliers and other vendors in the normal course of business; and (c) prepaid expenses and workers' compensation, utility, lease and similar deposits in the normal course of business.

“Involuntary Disposition” means any involuntary loss, damage or destruction of property, or any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property.

“IRS” means the United States Internal Revenue Service.

“Joint Venture” means any Person in which the Borrower or any Subsidiary owns any Equity Interests other than a Wholly Owned Subsidiary.

“Judgment Currency” has the meaning specified in Section 10.18.

“Junior Debt” means any unsecured or Subordinated Debt.

“Latest Maturity Date” means, as of any date of determination, the latest Maturity Date of any then existing Loans.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lead Arrangers” mean Citigroup Global Markets Inc., Wells Fargo Securities, LLC, Goldman Sachs & Co., HSBC Securities (USA) Inc. and Morgan Stanley & Co. LLC, in their capacity as the joint lead arrangers and joint bookrunning managers.

“Lender” means at any time, (a) on or prior to the Closing Date, any Lender that has a Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Loans or Commitments at such time.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Lien” means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure Debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or other asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Loans” means the Initial Loans, the Additional Term Loans, the Extended Term Loans and the Refinancing Term Loans.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) any Intercreditor Agreement, (f) the Perfection Certificate and (g) the Intercompany Subordination Agreement.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Master Agreement” has the meaning specified in the definition of “Swap Agreement.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under the Loan Documents, taken as a whole, or of the ability of any Loan Party to perform its obligations under the Loan Documents to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Real Property” means fee owned real property with a fair market value in excess of \$20,000,000 acquired after the Closing Date.

“Maturity Date” means (i) November 12, 2022 with respect to the Initial Loans and (ii) with respect to any other Loans, the date specified as the maturity date for such Loans in the Additional Credit Extension Amendment related to such Loans; *provided, however*, that, in either case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Rate” has the meaning specified in Section 10.09.

“Moody's” means Moody's Investors Service, Inc. and any successor to its rating agency business.

“Mortgage Policy” has the meaning specified in Schedule 6.18.

“Mortgaged Property” means the real property that is owned by any Loan Party on the Closing Date listed on Schedule 1.01(b) and any Material Real Property acquired after the Closing Date.

“Mortgages” means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt (as the same may be amended, amended and restated, supplemented, or otherwise modified from time to time), executed and delivered by the applicable Loan Party in favor of the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, that at any time encumber any Mortgaged Property.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Pension Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means, with respect to any Disposition or issuance of Debt of any Person, cash and Cash Equivalents received, net of (i) all reasonable out-of-pocket costs and expenses of such Person incurred in connection with such a sale, including, without limitation, all legal, accounting, title and recording tax expenses, commissions and other fees and expenses incurred and all federal, state, foreign and local taxes arising in connection with such Disposition or issuance of Debt that are paid or required to be accrued as a liability under GAAP by such Person; (ii)(x) all payments made by such Person on any Debt that is secured by a Lien on any Collateral that is *pari passu* with the Liens on such Collateral securing the Obligations in accordance with the terms of any Lien upon or with respect to such Collateral (*provided* that such amount shall not exceed the product of (I) the amount of such Net Cash Proceeds multiplied by (II) a fraction, the numerator of which is the outstanding principal amount of such Debt secured by a Lien on the Collateral ranking *pari passu* to the Liens on such Collateral securing the Obligations (but without regard to control of remedies) and with respect to which such a requirement to make such payment and the denominator of which is the sum of the outstanding principal amount of such Debt and the outstanding principal amount of Loans) or that must, in order to obtain a necessary consent to such transaction or by applicable law, be repaid to any other Person (other than the Borrower or a Restricted Subsidiary thereof) in connection with such Disposition or issuance of Debt, (y) all payments made by such Person on Revolving Loan Debt (as defined in the ABL Intercreditor Agreement (as in effect on the Closing Date)) from the proceeds of Revolving Loan Priority Collateral (as defined in the ABL Intercreditor Agreement (as in effect on the Closing Date)) or as otherwise set forth in the ABL Intercreditor Agreement (as in effect on the Closing Date) and (z) all other payments made by such Person on any Debt that is secured by a Lien on any Collateral subject to a Disposition that was permitted to be incurred under Section 7.01 and that is senior to the Liens on such Collateral securing the Obligations if such payment is required in accordance with the terms of any such Lien upon or with respect to such Collateral; (iii) all contractually required distributions and other payments made to minority interest holders in Restricted Subsidiaries of such Person as a result of such transaction; (iv) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property disposed of in such Disposition and retained by the Borrower or any Restricted Subsidiary after such Disposition, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Disposition; and (v) payments of unassumed liabilities (not constituting Debt) relating to the property sold at the time of, or within 30 days after, the date of such sale; *provided, however*, that (a) in the event that any consideration for an Asset Sale (which would otherwise constitute Net Cash Proceeds) is required by (I) contract to be held in escrow pending determination of whether a purchase price adjustment will be made or (II) GAAP to be reserved against other liabilities in connection with such Disposition, such consideration (or any portion thereof) shall become Net Cash Proceeds only at such time as it is released to such Person from escrow or otherwise; and (b) any non-cash consideration received in connection with any transaction subsequently converted to cash shall become Net Cash Proceeds only at such time as it is so converted.

“Non-Loan Party” means, any Subsidiary of the Borrower or any other Loan Party that is not a Loan Party.

“Non-Recourse Receivable Subsidiary Debt” has the meaning specified in clause (4) of the definition of “Receivable Subsidiary.”

“Note” means a promissory note made by the Borrower in favor of a Lender, evidencing Loans made by such Lender, substantially in the form of Exhibit B.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means (a) for purposes of this Agreement, all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Loan Party as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (b) for purposes of the Collateral Documents and each Guaranty, (x) all “Obligations” as defined in clause (a) above, (y) all Bank Product Obligations and (z) all Secured Hedge Obligations. Notwithstanding anything herein to the contrary, in no circumstances shall Excluded Swap Obligations constitute Obligations of any Guarantor described in the definition thereof.

“OFAC” means the Office of Foreign Assets Control of the U.S. Treasury Department.

“Officer” means, with respect to any Person, the chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of such Person.

“Officer’s Certificate” means a certificate signed by the chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of the Borrower.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement,

instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future stamp, recording or documentary Taxes or any other excise or property Taxes, similar charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, registration or enforcement of, receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of Loans after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“Participant” has the meaning specified in Section 10.06(d).

“Patriot Act” has the meaning specified in Section 5.18.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Sections 412 and 430 of the Code and Sections 302 and 303 of ERISA.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA) (including a Multiple Employer Plan but excluding a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the Pension Funding Rules.

“Perfection Certificate” shall mean that certain perfection certificate dated November 12, 2015, substantially in the form of Exhibit E hereto, executed and delivered by each Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties, and each other Perfection Certificate (which shall be substantially in the form of the Perfection Certificate with such modifications as are reasonably satisfactory to the Borrower and the Administrative Agent) executed and delivered by the applicable Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties contemporaneously with the execution and delivery of each Security Agreement Supplement executed in accordance with Section 3.5 of the Security Agreement, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement.

“Permitted Acquisitions” means the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person (other than a Subsidiary), or the purchase or other acquisition (whether by means of a merger, consolidation, or otherwise) by a Person or its Subsidiaries of all (other than directors’ qualifying shares) of the Equity Interests of any other Person (other than a Subsidiary) (any such transaction an “Acquisition”); *provided that*:

(a) as of the date of any such Acquisition after giving effect thereto, no Event of Default shall exist or have occurred and be continuing,

(b) any such newly-created or acquired Subsidiary shall comply with the requirements of Section 6.13 within the time periods set forth therein (including after giving effect to any extensions granted by the Administrative Agent as set forth therein),

(c) in the case of any Acquisition that involves aggregate consideration in excess of \$50,000,000, the Administrative Agent shall have received not less than five Business Days prior to the anticipated closing date of the proposed Acquisition (or such shorter period as the Administrative Agent may agree in its sole discretion) prior written notice of the proposed Acquisition, and including the (i) parties to such Acquisition, (ii) the proposed date and amount of the Acquisition, (iii) description of the assets or shares to be acquired and (iv) the total purchase price for the assets to be purchased and the terms of payment of such purchase price), and

(d) in the case of any Acquisition involving cash consideration in excess of \$50,000,000, the Borrower shall have delivered to the Administrative Agent on or prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this definition of Permitted Acquisition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition.

“Permitted Business” means any business similar in nature to any business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date and any business reasonably ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date, in each case, as determined in good faith by the Borrower.

“Permitted Encumbrances” has the meaning specified in the Mortgages.

“Permitted Investments” means:

(a) Investments in existence on the Closing Date and any extensions or replacements thereof on terms no less favorable and in amounts no greater than exist on the Closing Date; *provided that* any Investments in existence on the Closing Date by any Loan Party in any Person that is not a Loan Party in excess of \$20,000,000 shall be set forth on Schedule 7.06;

(b) Investments in cash and Cash Equivalents;

(c) Investments in property and other assets in the ordinary course of business, that are owned or used by the Borrower or any Restricted Subsidiary in the normal course of business;

(d) prepaid expenses, negotiable instruments held for collection, lease, utility, workers' compensation, performance and other similar deposits provided to third parties in the ordinary course of business;

(e) Investments by the Borrower or any of its Restricted Subsidiaries in the Borrower or any Restricted Subsidiary;

(f) Permitted Acquisitions;

(g) Swap Contracts and Hedging Obligations;

(h) receivables owing to the Borrower or any of its Subsidiaries and advances to suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(i) Investments received in settlement of obligations owed to the Borrower or any Restricted Subsidiary and as a result of bankruptcy or insolvency proceedings or upon the foreclosure or enforcement of any Lien in favor of the Borrower or any Restricted Subsidiary;

(j) Investments by the Borrower or any Restricted Subsidiary not otherwise permitted under this definition, in an aggregate amount not to exceed the greater of (x) \$100.0 million and (y) 3.5% of Consolidated Total Assets at any one time outstanding;

(k) loans (and Guarantees of third-party loans) and advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$10.0 million in the aggregate at any one time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(l) Investments the payment for which consists solely of Equity Interests of the Borrower;

(m) any Investment in any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated in compliance with Section 7.05 or any other disposition of property not constituting an Asset Sale;

(n) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and consistent with past practice;

(o) Guarantees by the Borrower or any Restricted Subsidiary of Debt of the Borrower or a Guarantor of Debt otherwise permitted by Section 7.02;

(p) any Investment by the Borrower or any Restricted Subsidiary in a Receivable Subsidiary or any Investment by a Receivable Subsidiary in any other Person in connection with a Qualified Receivables Transaction, so long as any Investment in a Receivable Subsidiary is in the form of a Purchase Money Note or an Investment in Equity Interests;

(q) loans or advances to customers or suppliers in the ordinary course of business; and

(r) Investments in any Person made in exchange for, out of the net cash proceeds of the substantially concurrent sale of, Equity Interests of the Borrower (other than Redeemable Equity Interests).

"Permitted Junior Secured Refinancing Debt" has the meaning specified in Section 2.15(c).

"Permitted Liens" has the meaning specified in Section 7.01.

"Permitted Pari Passu Secured Refinancing Debt" has the meaning specified in Section 2.15(c).

"Permitted Unsecured Refinancing Debt" has the meaning specified in Section 2.15(c).

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

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan but excluding a Multiple Employer Plan or a Multiemployer Plan), maintained for employees of the Borrower or any ERISA Affiliate and to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 6.02.

"Pledged Debt" mean all Intercompany Notes from time to time owed to a Pledgor (as such term is defined in the Security Agreement) that are required to be delivered to the Administrative Agent pursuant to the terms of the Security Agreement.

"Pledged Securities" has the meaning specified in the Security Agreement.

"Preferred Interests," as applied to the Equity Interests in any Person, means Equity Interests in such Person of any class or classes (however designated) that rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Common Interests in such Person.

"Prime Lending Rate" shall mean the rate which the Administrative Agent publicly announces from time to time as its prime lending rate, the Prime Lending Rate to change when and as such prime lending rate changes. The Prime Lending Rate is a reference rate and does not

necessarily represent the lowest or best rate actually charged to any customer by the Administrative Agent, which may make commercial loans or other loans at rates of interest at, above or below the Prime Lending Rate.

“pro forma basis” means, with respect to compliance with any test or covenant hereunder, that all Specified Transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant, and giving effect to any cost savings, expenses and other items projected by the Borrower in good faith which would otherwise be accounted for as an adjustment pursuant to Article 11 of Regulation S-X under the Securities Act of 1933, as amended, which are reasonably factually supportable and certified by a Responsible Officer.

“Pro Forma Financial Statements” has the meaning specified in Section 4.01(a)(ix).

“Projections” means the Borrower’s forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with the Borrower’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“Public Lender” has the meaning specified in Section 6.02.

“Purchase Money Debt” means Debt:

(i) Incurred to finance the purchase or construction (including additions and improvements thereto) of any assets (other than Equity Interests) of such Person or any Restricted Subsidiary; and

(ii) that is secured by a Lien on such assets where the lender’s sole security is to the assets so purchased or constructed; and

in either case that does not exceed 100% of the cost and to the extent the purchase or construction prices for such assets are or should be included in “addition to property, plant or equipment” in accordance with GAAP.

“Purchase Money Note” means a promissory note of a Receivable Subsidiary to the Borrower or any Restricted Subsidiary, which note must be repaid from cash available to the Receivable Subsidiary, other than amounts required to be established as reserves pursuant to agreements, amounts paid to investors in respect of interest, principal and other amounts owing to such investors and amounts paid in connection with the purchase of newly generated receivables. The repayment of a Purchase Money Note may be subordinated to the repayment of other liabilities of the Receivable Subsidiary on terms determined in good faith by the Borrower to be substantially consistent with market practice in connection with Qualified Receivables Transactions.

“Qualified Equity Interests” in any Person means a class of Equity Interests other than Redeemable Equity Interests.

“Qualified Receivables Transaction” means any transaction or series of transactions entered into by the Borrower or any of its Restricted Subsidiaries pursuant to which the Borrower or such Restricted Subsidiary transfers to (a) a Receivable Subsidiary (in the case of a transfer by the Borrower or any of its Restricted Subsidiaries) or (b) any other Person (in the case of a transfer by a Receivable Subsidiary), or grants a security interest in, any accounts receivable (whether now existing or arising in the future) of the Borrower or any of its Restricted Subsidiaries, and any assets related thereto, including, without limitation, all collateral securing such accounts receivable, all contracts and all Guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with an accounts receivable financing transaction; *provided* such transaction is on market terms as determined in good faith by the Borrower at the time the Borrower or such Restricted Subsidiary enters into such transaction.

“Quarterly Payment Date” means the last Business Day of each March, June, September and December.

“Receivable Subsidiary” means a Subsidiary of the Borrower:

(1) that is formed solely for the purpose of, and that engages in no activities other than activities in connection with, financing accounts receivable of the Borrower and/or its Restricted Subsidiaries; *provided* that “accounts receivable” includes providing letters of credit on behalf of or for the benefit of the Borrower and/or its Restricted Subsidiaries;

(2) that is designated by the Board of Directors as a Receivable Subsidiary pursuant to an Officer’s Certificate that is delivered to the Administrative Agent;

(3) that is either (a) a Restricted Subsidiary or (b) an Unrestricted Subsidiary;

(4) no portion of the Debt or any other obligation (contingent or otherwise) of which (a) is at any time Guaranteed by the Borrower or any Restricted Subsidiary (excluding Guarantees of obligations (other than any Guarantee of Debt) pursuant to Standard Securitization Undertakings), (b) is at any time recourse to or obligates the Borrower or any Restricted Subsidiary in any way, other than pursuant to Standard Securitization Undertakings or (c) subjects any asset of the Borrower or any other Restricted Subsidiary of the Borrower, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings (such Debt, “Non-Recourse Receivable Subsidiary Debt”);

(5) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than (a) contracts, agreements, arrangements and understandings entered into in the ordinary course of business on terms no less favorable to the Borrower or such Restricted Subsidiary than those that might reasonably be expected to be obtained at the time from Persons that are not Affiliates of the Borrower in connection with a Qualified Receivables Transaction as determined in good faith by the Board of Directors of the Borrower, (b) fees payable in the ordinary course of business in connection with servicing accounts receivable in connection with such a Qualified Receivables Transaction as determined in good faith by the Board of Directors of the Borrower and (c) any Purchase Money Note issued by such Receivable Subsidiary to the Borrower or a Restricted Subsidiary or

any letters of credit provided by such Receivable Subsidiary on behalf of or for the benefit of the Borrower or any Restricted Subsidiary; and

(6) with respect to which neither the Borrower nor any other Restricted Subsidiary has any obligation (a) to subscribe for additional shares of Equity Interests therein or make any additional capital contribution or similar payment or transfer thereto except in connection with a Qualified Receivables Transaction or (b) to maintain or preserve the solvency or any balance sheet term, financial condition, level of income or results of operations thereof.

“Redeemable Equity Interests” in any Person means any equity security of such Person that by its terms (or by terms of any security into which it is convertible or for which it is exchangeable), or otherwise (including the passage of time or the happening of an event), is required to be redeemed, is redeemable at the option of the holder thereof in whole or in part (including by operation of a sinking fund), or is convertible or exchangeable for Debt of such Person at the option of the holder thereof, in whole or in part, at any time prior to the Latest Maturity Date of the Loans then outstanding; *provided* that only the portion of such equity security which is required to be redeemed, is so convertible or exchangeable or is so redeemable at the option of the holder thereof before such date will be deemed to be Redeemable Equity Interests. Notwithstanding the preceding sentence, any equity security that would constitute Redeemable Equity Interests solely because the holders of the equity security have the right to require the Borrower to repurchase such equity security upon the occurrence of a Change of Control or an Asset Sale will not constitute Redeemable Equity Interests if the terms of such equity security provide that the Borrower may not repurchase or redeem any such equity security pursuant to such provisions unless such repurchase or redemption complies with Section 7.06. The amount of Redeemable Equity Interests deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Redeemable Equity Interests or portion thereof, exclusive of accrued dividends.

“Refinanced Term Loans” has the meaning specified in Section 2.15(c).

“Refinancing Debt” means Debt arising after the date hereof issued in exchange for, or the proceeds of which are used to extend, refinance, replace or substitute for other Debt to the extent permitted hereunder so long as:

(a) the Refinancing Debt shall have a Weighted Average Life to Maturity and a final maturity equal to or greater than the Weighted Average Life to Maturity and the final maturity, respectively, of the Debt being extended, refinanced, replaced, or substituted for,

(b) the Refinancing Debt shall rank in right of payment no more senior than, and be at least as subordinated (if already subordinated) to, the Obligations as the Debt being extended, refinanced, replaced or substituted for,

(c) the Refinancing Debt will not have any obligors other than the Loan Parties who were not obligors in respect of the Debt being extended, refinanced, replaced or substituted for,

(d) such Debt shall be at rates and with fees or other charges that do not exceed the then applicable market rates, and

(e) the principal amount of such Refinancing Debt shall not exceed the principal amount of the Debt so extended, refinanced, replaced or substituted for plus any accrued interest, premiums, fees, costs and expenses related thereto (including any original issue discount or upfront fees).

“Refinancing Equivalent Debt” has the meaning specified in Section 2.15(c).

“Refinancing Term Effective Date” has the meaning specified in Section 2.15(b).

“Refinancing Term Lender” has the meaning specified in Section 2.15(b).

“Refinancing Term Loans” has the meaning specified in Section 2.15(a).

“Register” has the meaning specified in Section 10.06(c).

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Permitted Business; *provided* that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person unless, upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

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

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the Environment or within, from or into any building, structure, facility or fixture.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of (x) the Loans outstanding on such date on such date *plus* (y) the aggregate amount of unused Commitments outstanding on such date; *provided* that the portion of any Loans or Commitments held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have

been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any of the following:

- (a) any dividend or other distribution declared and paid on the Equity Interests in the Borrower or on the Equity Interests in any Restricted Subsidiary of the Borrower that are held by, or declared and paid to, any Person other than the Borrower or a Restricted Subsidiary of the Borrower (other than (i) dividends, distributions or payments made solely in Qualified Equity Interests in the Borrower and (ii) dividends or distributions payable to the Borrower or a Restricted Subsidiary of the Borrower or to other holders of Equity Interests of a Restricted Subsidiary on a *pro rata* basis);
- (b) any payment made by the Borrower or any of its Restricted Subsidiaries to purchase, redeem, acquire or retire any Equity Interests in the Borrower (including the conversion into, or exchange for, Debt, of any Equity Interests) other than any such Equity Interests owned by the Borrower or any Restricted Subsidiary (other than a payment made solely in Qualified Equity Interests in the Borrower);
- (c) any payment made by the Borrower or any of its Restricted Subsidiaries (other than a payment made solely in Qualified Equity Interests in the Borrower) to redeem, repurchase, defease (including an in substance or legal defeasance) or otherwise acquire or retire for value (including pursuant to mandatory repurchase covenants), prior to any scheduled maturity, scheduled sinking fund or mandatory redemption payment, Junior Debt of the Borrower or any Guarantor except payments of principal and interest in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, within one year of the due date thereof;
- (d) any Investment by the Borrower or a Restricted Subsidiary in any Person, other than a Permitted Investment;
- (e) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary.

“Restricted Subsidiary” means each Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

“Revolving Loan Debt” shall have the meaning specified in the ABL Intercreditor Agreement.

“Sale and Leaseback Transaction” means any direct or indirect arrangement pursuant to which property is sold or transferred by the Borrower or a Restricted Subsidiary and is thereafter leased back as a capital lease by the Borrower or a Restricted Subsidiary.

“Sanctions” means any economic or trade sanctions (including without limitation any country or list based sanctions) imposed, administered or enforced from time to time by the United States government, including without limitation OFAC and the U.S. Department of State, the Canadian government, the United National Security Council, the European Union or the Hong Kong Monetary Authority.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by the United States government, including without limitation OFAC and the U.S. Department of State, the Canadian government, the United National Security Council, the European Union or the Hong Kong Monetary Authority.

“Sanctioned Person” means any person named on the list of Specially Designated Nationals or other lists of sanctioned persons maintained by OFAC or a person owned or controlled by one or more such persons, or any person named on any analogous list maintained by the U.S. Department of State, the Canadian government, the United National Security Council, the European Union or the Hong Kong Monetary Authority.

“S&P” means Standard & Poor’s Ratings Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of any Loan Party arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Bank Product Providers.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Bank Product Providers, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security Agreement” has the meaning specified in Section 4.01(a)(iii).

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, taking into account any right of reimbursement, contribution or similar right available to such Person from other Persons, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent



liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Spartech” means Spartech Corporation, a Delaware corporation, and its subsidiaries.

“Spartech Acquisition Date” means March 13, 2013.

“Specified Credit Facilities” means one or more credit facilities (including the ABL Facility) or commercial paper facilities, in each case with banks or other lenders or investors providing for revolving loans, the issuance of letters of credit or bankers’ acceptances, securitization financings or similar facilities; *provided* that the foregoing shall not include any term loans or similar credit facilities that are placed primarily with institutional lenders or any debt securities.

“Specified Transaction” means any Incurrence or repayment of Debt (other than for working capital purposes) or Investment that results in a Person becoming a Subsidiary or any Asset Sale that results in a Restricted Subsidiary ceasing to be a Restricted Subsidiary of the Borrower, or any Investment constituting an Acquisition, in each case not in the ordinary course of business.

“Spot Rate” has the meaning specified in Section 1.06.

“Standard Securitization Undertakings” means representations, warranties, covenants and indemnities entered into by the Borrower or any Restricted Subsidiary which are reasonably customary in an accounts receivable securitization transaction as determined in good faith by the Borrower, including Guarantees by the Borrower or any Restricted Subsidiary of any of the foregoing obligations of the Borrower or a Restricted Subsidiary.

“Stated Maturity” means, with respect to any Debt, the date specified in such Debt as the fixed date on which the payment of principal of such Debt is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase or repayment of such Debt at the option of the holder thereof upon the happening of any contingency).

“Subordinated Debt” means any Debt that is contractually subordinated in right of payment to the Obligations.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“SunBelt Guarantee” means the Guarantee by the Borrower of obligations under the Guaranteed Secured Senior Notes due 2017.

“SunBelt Guarantee Collateral Documents” means any security agreement and other “collateral document” that is executed by a Loan Party for the benefit of the holders of the SunBelt Notes solely to the extent required by and under the terms of the SunBelt Guarantee.

“SunBelt Guarantee Documents” means (x) the Guarantee dated December 22, 1997 by the Borrower, as in effect on the Closing Date, terminating on December 22, 2017 or satisfaction of such obligations, whichever is earlier, (y) the SunBelt Guarantee Collateral Documents and (z) the SunBelt Notes.

“SunBelt Notes” mean the Senior Secured Notes due 2017, Series G Notes issued by SunBelt Chlor Alkali Partnership pursuant to the terms of several note purchase agreements, each dated as of December 22, 1997.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including, without limitation, any fuel price caps and fuel price collar or floor agreements and similar agreements or arrangements designed to protect against or manage fluctuations in fuel prices and any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, similar fees or other similar charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Threshold Amount” means \$40,000,000.

“Transaction Date” has the meaning specified in the definition of “Consolidated Fixed Charge Coverage Ratio,” “Consolidated Leverage Ratio” or “Consolidated Secured Leverage Ratio,” as the context may require.

“Transactions” means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party, (b) the funding of the Initial Loans, (c) the Offer and the redemption of the 2020 Notes, (d) the satisfaction and discharge of the 2015 Notes, (e) the repayment of indebtedness under the ABL Credit Agreement on the Closing Date and (f) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UK Bribery Act” means the United Kingdom Bribery Act 2010, as amended.

“United States” and “U.S.” mean the United States of America.

“Unrestricted Subsidiary” means

(a) any Subsidiary designated as such by an Officer’s Certificate where neither the Borrower nor any of its Restricted Subsidiaries (i) provides credit support for, or Guarantee of, any Debt of such Subsidiary or any Subsidiary of such Subsidiary (including any undertaking, agreement or instrument evidencing such Debt, but excluding in the case of a Receivable Subsidiary any Standard Securitization Undertakings and further excluding other Debt under which the lender has recourse to the Borrower or any Restricted Subsidiary or to any of their assets that does not exceed \$15.0 million in the aggregate), *provided* that the Borrower or any Restricted Subsidiary may pledge Equity Interests or property of any Unrestricted Subsidiary on a non-recourse basis as long as the pledgee has no claim whatsoever against the Borrower or any Restricted Subsidiary other than to obtain that pledged Equity Interests or property, or (ii) is directly or indirectly liable for any Debt of such Subsidiary or any Subsidiary of such Subsidiary (except in the case of a Receivable Subsidiary any Standard Securitization Undertakings); *provided further*, in each case of (i) and (ii), that immediately after giving effect to such designation, either (I) the Subsidiary would have total assets of \$1,000 or less or (II) the Borrower could make a Restricted Payment at the time of designation in an amount equal to the Fair Market Value of such Subsidiary pursuant to Section 7.06 and such amount is thereafter treated as a Restricted Payment for the purpose of calculating the amount available for Restricted Payments thereunder, and

(b) any Subsidiary of an Unrestricted Subsidiary.

An Unrestricted Subsidiary may be designated as a Restricted Subsidiary for purposes of this agreement if (i) all the Debt of such Unrestricted Subsidiary could be Incurred pursuant to Section 7.02 and (ii) all the Liens on the property and assets of such Unrestricted Subsidiary could be incurred pursuant to Section 7.01.

“Voting Interests” means, with respect to any Person, securities of any class or classes of Equity Interests in such Person entitling the holders thereof generally to vote on the election of members of the Board of Directors or comparable body of such Person.

“Weighted Average Life to Maturity” means, when applied to any Debt at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

“Weighted Average Yield” means with respect to any Loan, on any date of determination, the weighted average yield to maturity, in each case, based on the interest rate applicable to such Loan on such date and giving effect to all upfront or similar fees or original issue discount payable with respect to such Loan; *provided*, that “Weighted Average Yield” shall not include arrangement fees, structuring fees, underwriting fees or similar fees paid to arrangers for such Loan.

“Wholly Owned Subsidiary” means any Person 100% of whose Equity Interests are at the time owned by the Borrower directly or indirectly through other Persons 100% of whose Equity Interests are at the time owned, directly or indirectly, by the Borrower.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law, rule or regulation and any reference to any law or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### 1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Debt of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio, covenant or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. No consent or amendment fee shall be required to be paid to any Lender in connection with an amendment contemplated by this Section 1.03(b).

1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II and IX) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.06, the “Spot Rate” for a currency means the rate determined by the Administrative Agent 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 two Business Days prior to the date of such determination; *provided* that the Administrative Agent may obtain such Spot Rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

## ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make available to the Borrower a Borrowing of Loans on the Closing Date (the “Initial Loans”) in an amount not to exceed such Lender’s Commitment. The Borrowing shall consist of Initial Loans made simultaneously by the Lenders in accordance with their respective Commitments. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. Initial Loans may be Base Rate Loans or Eurodollar Rate Loans as further provided herein.

### 2.02 Borrowings, Conversions and Continuations of Loans.

(c) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; *provided, however*, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loans in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the Loans

shall be converted to a Base Rate Loan. Any such automatic conversion to Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(d) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to a Base Rate Loan described in Section 2.02(a). Each Lender shall make the amount of its Loans available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Citi with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(e) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loan may be converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(f) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Citi's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten Interest Periods in effect.

### 2.03 Prepayments.

(a) Optional. (%4) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty (subject to clause (ii) of this Section 2.03(a)); *provided that* (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.03(a) shall be applied to the principal repayment installments thereof as directed by the Borrower, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(%4) Notwithstanding the foregoing, to the extent the Borrower makes a prepayment of Initial Loans pursuant to this Section 2.03(a) or Section 2.03(b)(i) below, with the proceeds of Debt, then if any such prepayment occurs on or prior to the six-month anniversary of the Closing Date, the Borrower shall pay a premium of 1% of the aggregate principal amount of such Loans prepaid.

(b) Mandatory. Subject to the ABL Intercreditor Agreement:

(%4) (%5) if (x) the Borrower or any of its Restricted Subsidiaries consummate any Asset Sale or (y) any Involuntary Disposition occurs, which results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Cash Proceeds in excess for all such Dispositions that have occurred subsequent to the immediately prior prepayment pursuant to this Section 2.03(b) (or, if there is no such prior prepayment, on or subsequent to the Closing Date) of \$40,000,000, the Borrower shall cause to be prepaid on or prior to the date which is ten Business Days after the date of the realization or receipt of such Net Cash Proceeds an aggregate principal amount of Loans in an amount equal to 100% of all Net Cash Proceeds received; *provided that* no such prepayment shall be required pursuant to this Section 2.03(b)(i)(A) if, on or prior to such date, the Borrower shall have given written notice to the Administrative Agent of its intention to reinvest or cause to be reinvested all or a portion of such Net Cash Proceeds in accordance with Section 2.03(b)(i)(B) (which election may only be made if no Event of Default has occurred and is then continuing).

(%5) with respect to any Net Cash Proceeds realized or received with respect to any Disposition, at the option of the Borrower, and so long as no Event of Default shall have occurred and be continuing, the Borrower may use all or any portion of such Net Cash Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful for its business (including for making Acquisitions) within (i) 365 days of the receipt of such Net Cash Proceeds or (ii) if the Borrower enters into a legally binding commitment to use such Net Cash Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful for its business within 365 days after receipt of such Net Cash Proceeds, within 540 days after receipt of such Net Cash Proceeds; *provided further that* if any Net Cash Proceeds are not so used within the time period set forth above in this Section 2.03(b)(i)(B) or are no longer intended to be so used at any time after delivery of a notice of such election, an amount equal to any such Net Cash Proceeds shall be promptly applied to the prepayment of the Loans as set forth in this Section 2.03.

(%4) Upon the incurrence or issuance by the Borrower or any of its Restricted Subsidiaries of any (x) Refinancing Term Loans, (y) Refinancing Equivalent Debt or (z) any Debt that is not expressly permitted to be incurred or issued pursuant to Section

7.02, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or such Restricted Subsidiary (such prepayments to be applied as set forth in clause (iii) below).

(iii) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.03(b) shall be applied ratably to the principal repayment installments thereof.

(iv) Notwithstanding any other provision of Section 2.03 to the contrary, to the extent that all or any of the Net Proceeds giving rise to a mandatory prepayment pursuant to this Section 2.03(b) is attributable to a Disposition by a Foreign Subsidiary, such mandatory prepayment will be limited to the extent the repatriation of such Net Proceeds would, in the good faith judgment of the Borrower, result in material adverse tax consequences and shall be subject to permissibility under local law (including financial assistance and corporate benefit restrictions and fiduciary and statutory duties of the relevant directors). Notwithstanding the foregoing, any prepayments required to be made after application of the foregoing proviso shall be net of any costs, expenses or taxes incurred by the Borrower or any of its Restricted Subsidiaries arising as a result of the repatriation of such Net Proceeds.

(v) Any Lender may reject all of its share of any mandatory prepayment (such declined amounts, the “Declined Proceeds”) of Loans required to be made pursuant to Section 2.03(b) by providing written notice (each, a “Rejection Notice”) to the Administrative Agent no later than 5:00 p.m. one Business Day after the date of such Lender’s receipt of notice from the Administrative Agent regarding such prepayment; *provided, however*, in no event may the proceeds of any Refinancing Term Loans or Refinancing Equivalent Debt be rejected. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Loans. Any Declined Proceeds shall be retained by the Borrower (or the other applicable Loan Party or Restricted Subsidiary).

2.04 Termination or Reduction of Commitments. The Aggregate Commitments shall be automatically and permanently reduced to zero on the date of the Borrowing.

2.05 Repayment of Loans. On each Quarterly Payment Date, beginning with the Quarterly Payment Date in March 2016, the Borrower shall repay to the Administrative Agent for the ratable account of the Lenders the principal amount of Initial Loans then outstanding in an amount equal to 0.25% of the aggregate initial principal amounts of all Initial Loans theretofore borrowed by the Borrower pursuant to Section 2.01 (which amount shall be reduced as a result of application of prepayments in accordance with the order of priority set forth in Sections 2.03(a) or (b), as applicable). The remaining unpaid principal amount of the Initial Loans and all other Obligations under or in respect of the Initial Loans shall be due and payable in full, if not earlier in accordance with this Agreement, on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Initial Loans outstanding on such date.

#### 2.06 Interest.

(a) Subject to the provisions of Section 2.06(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of (A) the Eurodollar Rate for such Interest Period plus (B) the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the sum of (A) the Base Rate plus (B) the Applicable Rate.

(b) While any Event of Default set forth in Sections 8.01(a) and (f) exists, the Borrower shall pay interest on (i) the principal amount of all of its outstanding Loans hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate (ii) and all other outstanding amounts (other than principal) hereunder that are not paid when due at a fluctuating interest rate per annum at all times equal to the Default Rate. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand, and (iii) accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### 2.07 Fees.

(a) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Engagement Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date, an upfront payment in an amount equal to 0.50% of the stated principal amount of such Lender’s Initial Loan. Such payment shall be made to each Lender out of the proceeds of such Lender’s Initial Loan as and when funded on the Closing Date. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

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

2.08 Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by Citi’s “prime rate” shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. Subject to Section 10.06(c), the Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent (including the Register described in Section 10.06(c)) shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a registered Note, payable to such Lender and its registered assigns, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

#### 2.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be; *provided, however*, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(b) (%4) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such 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 and time in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(%4) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds 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 Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

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

2.11 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided that*:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

The 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 the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

## 2.12 Defaulting Lenders.

(a) Adjustments. 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) Waivers and Amendments. 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 Section 10.01.

(ii) Reallocation of Payments. 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, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall 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*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any 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; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction. 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 2.12(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent 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, 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 determine to be necessary to cause the committed Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, 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 Borrower 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.

## 2.13 Extensions of Loans.

(a) The Borrower may from time to time, pursuant to the provisions of this Section 2.13, agree with one or more Lenders holding Loans to extend the maturity date, and otherwise modify the economic terms of any such Loans or any portion thereof (including, without



limitation, by increasing the interest rate or fees payable and/or modifying the amortization schedule in respect of such Loans) or any portion thereof (each such modification an “Extension” and any Loans extended pursuant to an Extension, “Extended Term Loans”) pursuant to one or more written offers (each an “Extension Offer”) made from time to time by Borrower to all Lenders holding Loans of the applicable Class, in each case on a pro rata basis (based on the relative principal amounts of the outstanding Loans of such Class of each Lender) and on the same terms to each such Lender. In connection with each Extension, Borrower will provide notification to Citi (for distribution to the Lenders holding Loans of such Class), no later than 30 days prior to the maturity of such Loans, of the requested new maturity date for the Extended Term Loans and the due date for Lender responses. In connection with any Extension, each Lender wishing to participate in such Extension shall, prior to such due date, provide Administrative Agent with a written notice thereof in a form reasonably satisfactory to Administrative Agent. Any Lender that does not respond to an Extension Offer by the applicable due date shall be deemed to have rejected such Extension. Extended Term Loans shall be deemed to be a separate Class of loans and shall cease to be a part of the Class they were a part of immediately prior to the Extension.

(b) Each Extension shall be subject to the following:

(i) no Default or Event of Default shall have occurred and be continuing at the time any Extension Offer is delivered to the Lenders or at the time of such Extension;

(ii) except as to interest rates, fees, scheduled amortization, final maturity date (which shall, subject to clause (iii) below, be determined by Borrower and set forth in the relevant Extension Offer), the Extended Term Loans shall have the same terms as the Class of Loans, subject to the related Extension Offer; provided that at no time shall there be more than five different Classes of Loans;

(iii) the final maturity date of any Extended Term Loans shall be later than the final maturity date of such Class of Loans so extended, and the Weighted Average Life to Maturity of any Loans of a Class to be extended pursuant to an Extension shall be no shorter than the Weighted Average Life to Maturity of such Class;

(iv) if the aggregate principal amount of Loans of a Class in respect of which Lenders shall have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans of such Class offered to be extended by Borrower pursuant to the relevant Extension Offer, then such Loans of such Class shall be extended ratably up to such maximum amount based on the relative principal amounts thereof (not to exceed any Lender’s actual holdings of record) with respect to which such Lenders accepted such Extension Offer;

(v) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by Borrower generally directed to the applicable Lenders under the applicable Class in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to Administrative Agent; and

(vi) no Extension shall become effective unless, on the proposed effective date of such Extension:

(A) the Administrative Agent shall have received a fully executed and delivered Committed Loan Notice;

(B) as of the date of such Extension, the representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects on and as of such date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(C) as of the date of such Extension, no event shall have occurred and be continuing or would result from the consummation of such Extension that would constitute an Event of Default or a Default.

(c) For the avoidance of doubt, it is understood and agreed that the provisions of Section 2.11 and Section 10.01 will not apply to Extensions of Loans, pursuant to Extension Offers made pursuant to and in accordance with the provisions of this Section 2.13.

(d) The Lenders hereby irrevocably authorize Administrative Agent to enter into Additional Credit Extension Amendments as may be necessary in order establish new Classes of Extended Term Loans, in each case on terms consistent with this Section 2.13. Notwithstanding the foregoing, Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders with respect to any matter contemplated by this Section 2.13 and, if Administrative Agent seeks such advice or concurrence, Administrative Agent shall be permitted to enter into such amendments with Borrower in accordance with any instructions received from such Required Lenders and shall also be entitled to refrain from entering into such amendments with Borrower unless and until it shall have received such advice or concurrence; *provided, however*, that whether or not there has been a request by Administrative Agent for any such advice or concurrence, all such Additional Credit Extension Amendments entered into with Borrower by Administrative Agent under this Section 2.13 shall be binding on the Lenders. Without limiting the foregoing, in connection with any Extensions, the appropriate Loan Parties shall (at their expense) amend (and Administrative Agent is hereby directed to amend) any Mortgage (or any other Loan Document that Administrative Agent reasonably requests to be amended to reflect an Extension) that has a maturity date prior to the Latest Maturity Date after giving effect to such Extension so that such maturity date is extended to the then Latest Maturity Date (or such later date as may be advised by local counsel to Administrative Agent).

(e) In connection with any Extension, Borrower shall provide Administrative Agent at least ten Business Days’ (or such shorter period as may be agreed by Administrative Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be reasonably established by, or acceptable to, Administrative Agent to accomplish the purposes of this Section 2.13.

#### 2.14 Increase in Commitments.

(a) The Borrower may by written notice to Administrative Agent elect to seek commitments (“Additional Commitments”) to increase the aggregate principal amount of any existing Class of Loans or to establish one or more new Classes of Loans (“Additional Term Loans”); *provided that*:

(vii) the aggregate amount of all Additional Commitments shall not exceed the Incremental Cap;

(viii) any such increase or any new Class shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof; provided that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in the preceding clause (i);

(ix) no existing Lender shall be required to provide any Additional Commitments;

(x) each of the following conditions required to be set forth in the applicable Additional Credit Extension Amendment shall have been satisfied;

(xi) the final maturity date of any Additional Term Loans shall be no earlier than the Maturity Date of the Initial Loans;

(xii) the Additional Term Loans shall have a Weighted Average Life to Maturity equal to or greater than the then remaining Weighted Average Life to Maturity of the Initial Loans;

(xiii) the interest margins for the Additional Term Loans shall be determined by Borrower and the Lenders of such Additional Term Loans; *provided that* in the event that the Weighted Average Yield for any Additional Term Loans is greater than the Weighted Average Yield for the Initial Loans by more than 50 basis points, then the Applicable Rate for the Initial Loans shall be increased to the extent necessary so that the Weighted Average Yield for such Additional Term Loans is not more than 50 basis points higher than the Weighted Average Yield for the Initial Loans;

(xiv) all other terms of the Additional Term Loans (other than as set forth in clauses (iv) through (vii) above), if more restrictive, taken as a whole, than the terms of the Initial Loans (as determined by the Borrower in its reasonable business judgment), such other terms shall be reasonably acceptable to the Borrower and the Administrative Agent;

(xv) the security interest and guaranties benefiting the Additional Term Loans (and advances of credit thereunder) will rank *pari passu* in right of payment and security with the existing credit facilities provided for herein; and

(xvi) any Additional Term Loans shall share on a pro rata basis in any voluntary and mandatory prepayments with the Initial Loans or, if agreed to by the lenders of Additional Term Loans, on a less than pro rata basis (but in no event on a greater than pro rata basis).

(b) Each such notice shall specify (x) the date (each, an “Additional Commitments Effective Date”) on which Borrower proposes that the Additional Commitments shall be effective, which shall be a date reasonably acceptable to Administrative Agent and (y) the identity of the Persons (each of which shall be an Eligible Assignee (for this purpose treating a Lender of Additional Commitments as if it were an assignee)) whom Borrower proposes would provide the Additional Commitments and the portion of the Additional Commitment to be provided by each such Person. As a condition precedent to the effectiveness of any Additional Commitments, Borrower shall deliver to Administrative Agent a certificate dated as of the Additional Commitments Effective Date signed by an Authorized Officer of Borrower certifying that, before and after giving effect to the Additional Commitments (and assuming full utilization thereof), the condition set forth in Section 2.14(a)(iv) is satisfied.

(c) On each Additional Commitments Effective Date with respect to any Additional Commitment, each Person with an Additional Commitment shall make an Additional Term Loan to Borrower in a principal amount equal to such Person’s Additional Commitment.

(d) At any time and from time to time, subject to the terms and conditions set forth herein, the Borrower may issue one or more series of Incremental Equivalent Debt in an aggregate principal amount not to exceed, as of the date of and after giving effect to the issuance of any such Incremental Equivalent Debt, the Incremental Cap.

(e) The issuance of any Incremental Equivalent Debt pursuant to this Section 2.14, shall (i) in all cases, be subject to the terms and conditions applicable to Additional Commitments set forth under Sections 2.14(a)(i), (a)(ii), (a)(iii), (a)(v), (a)(vi), (a)(vii) (if such Incremental Equivalent Debt is in the form of term loans secured on a *pari passu* basis with the Initial Loans) and (a)(viii), as if set forth in this Section 2.14(e), *mutatis mutandis* (and, for the avoidance of doubt, the interest rate, upfront fees and original issue discount for any Incremental Equivalent Debt shall be as determined by the Borrower), (ii) the covenants, events of default, guarantees and other terms of such Incremental Equivalent Debt shall be customary for similar debt instruments in light of then-prevailing market conditions at the time of issuance and in any event not materially more restrictive, taken as a whole, to the Borrower and the other Restricted Subsidiaries than those set forth in this Agreement (other than with respect to interest rate and redemption provisions), except for covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of issuance, it being understood that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent prior to or at the incurrence of such Incremental Equivalent Debt, together with a reasonably detailed description of the material terms and conditions of such Incremental Equivalent Debt or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions of the Incremental Equivalent Debt satisfy the requirement set forth in this clause (e), shall be conclusive evidence that such terms and conditions have been satisfied, (iii) such Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party, (iv) in the case of Incremental Equivalent Debt that is secured, the obligations in respect thereof shall not be secured by any Lien on any asset the Borrower or any Restricted Subsidiary other than any asset constituting Collateral, (v) if such Incremental Equivalent Debt is secured, such Incremental Equivalent Debt shall be subject to an applicable Intercreditor Agreement, and (vi) the terms of such Incremental Equivalent Debt do not provide for any scheduled amortization or mandatory repayment, mandatory redemption, mandatory offer to purchase or sinking fund obligation prior to the date that is 91 days after the Latest Maturity Date at the time of incurrence, issuance or obtainment of such Incremental Equivalent Debt, other than customary prepayments, repurchases or redemptions of or offers to prepay, redeem or repurchase upon a change of control, asset sale event or casualty or condemnation

event, customary prepayments, redemptions or repurchases or offers to prepay, redeem or repurchase based on excess cash flow (in the case of loans) and customary acceleration rights upon an event of default.

(f) This Section 2.14 shall supersede any provisions in Section 3.06 or Section 10.01 to the contrary. The Additional Commitments shall be documented by an Additional Credit Extension Amendment executed by the Persons providing the Additional Commitments (and the other Persons specified in the definition of “Additional Credit Extension Amendment” but no other existing Lender), and the Additional Credit Extension Amendment may provide for such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.14.

#### 2.15 Refinancing Term Loans.

(a) Borrower may at any time and from time to time, by written notice to Administrative Agent, request the establishment of one or more additional Classes of Loans under this Agreement or an increase to an existing Class of Loans under this Agreement the proceeds of which are used, concurrently or substantially concurrently with the incurrence thereof, solely to refinance all or any portion of any outstanding Loans (“Refinancing Term Loans”); *provided that*:

(i) each Class of Refinancing Term Loans shall be in an aggregate amount of no less than \$10,000,000 (or such other amount necessary to repay any Class of outstanding Loans in full);

(ii) such Refinancing Term Loans shall be in an aggregate principal amount not greater than the aggregate principal amount outstanding of Loans to be refinanced plus any accrued interest, premiums, fees, costs and expenses related thereto (including any original issue discount or upfront fees);

(iii) the final maturity date of such Refinancing Term Loans shall be no earlier than the maturity date of the Loans being refinanced, and the Weighted Average Life to Maturity of such Refinancing Term Loans shall be no shorter than the then remaining Weighted Average Life to Maturity of each Class of Loans being refinanced;

(iv) (A) the pricing, rate floors, discounts, fees and optional and mandatory prepayment or redemption provisions applicable to such Refinancing Term Loans shall be as agreed between Borrower and the Refinancing Term Lenders so long as, in the case of any mandatory prepayment or redemption provisions, such Refinancing Term Lenders do not participate on a greater than pro rata basis in any such prepayments as compared to Lenders and (B) the covenants and other terms applicable to such Refinancing Term Loans (excluding those terms described in the immediately preceding clause (A)), which shall be as agreed between Borrower and the lenders providing such Refinancing Term Loans, shall be substantially similar to, or, taken as a whole, not materially less favorable to the Borrower (as determined by the Borrower in its reasonable business judgment) than those applicable to any Class of Loans being refinanced, except to the extent such covenants and other terms apply solely to any period after the Latest Maturity Date or are otherwise reasonably acceptable to the Administrative Agent;

(v) no existing Lender shall be required to provide any Refinancing Term Loans;

(vi) the Refinancing Term Loans shall rank *pari passu* in right of payment and/or of security with the existing Loans; and

(vii) any Refinancing Term Loans shall be subject to the provisions set forth in Section 2.14(a)(vii) as if such Refinancing Term Loans were Additional Term Loans incurred under Section 2.14.

(b) Each such notice shall specify (x) the date (each, a “Refinancing Term Effective Date”) on which Borrower proposes that the Refinancing Term Loans be made, which shall be a date reasonably acceptable to the Administrative Agent and (y) the identity of the Persons (each of which shall be an Eligible Assignee (for this purpose treating a Lender of Refinancing Term Loans as if it were an assignee)) who Borrower proposes would provide the Refinancing Term Loans and the portion of the Refinancing Term Loans to be provided by each such Person. On each Refinancing Term Effective Date, each Person with a commitment for a Refinancing Term Loan (each such Person, a “Refinancing Term Lender”) shall make a Refinancing Term Loan to Borrower in a principal amount equal to such Person’s Commitment therefor.

(c) In lieu of Incurring any Refinancing Term Loans, the Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date issue, Incur or otherwise obtain (A) secured Debt in the form of one or more series of first lien senior secured notes (such notes, “Permitted Pari Passu Secured Refinancing Debt”), (B) secured Debt in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured term loans (such notes or term loans, “Permitted Junior Secured Refinancing Debt”) and (C) unsecured or subordinated Debt in the form of one or more series of unsecured or subordinated notes or term loans (such notes or term loans, “Permitted Unsecured Refinancing Debt” and together with Permitted Pari Passu Secured Refinancing Debt and Permitted Junior Secured Refinancing Debt, and, in each case, any Permitted Refinancing thereof, “Refinancing Equivalent Debt”), in each case, in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, any existing Class of Loans (such Loans, “Refinanced Term Loans”); *provided that*:

(i) the proceeds of such Refinancing Equivalent Debt shall be used, concurrently or substantially concurrently with the incurrence thereof, solely to refinance all or any portion of any outstanding Loans;

(ii) such Refinancing Equivalent Debt Loans shall be in an aggregate principal amount not greater than the aggregate principal amount outstanding of Loans to be refinanced plus any accrued interest, premiums, fees, costs and expenses related thereto (including any original issue discount or upfront fees);

(iii) if such Refinancing Equivalent Debt is in the form of loans, the final maturity date of such Refinancing Equivalent Debt shall be no earlier than the maturity date of the Loans being refinanced, and the Weighted Average Life to Maturity of such Refinancing Equivalent Debt shall be no shorter than the then remaining Weighted Average Life to Maturity of the Refinanced Term Loans;

(iv) if such Refinancing Equivalent Debt is in the form of notes, such Refinancing Equivalent Debt shall not have scheduled amortization or payments of principal and not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than customary “AHYDO catch-up payments,” offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default), in each case prior to the Maturity Date of the Refinanced Term Loans;

(v) such Refinancing Equivalent Debt shall not be guaranteed by Persons other than Guarantors;

(vi) if in the form of subordinated Permitted Unsecured Refinancing Debt, shall be subject to a subordination agreement to which a senior representative acting on behalf of the holders of such Permitted Unsecured Refinancing Debt shall have become a party or otherwise subject (or, alternatively, terms in the definitive documentation for such Refinancing Equivalent Debt shall contain subordination provisions reasonably acceptable to the Borrower and Administrative Agent);

(vii) (A) the pricing, rate floors, discounts, fees and optional and mandatory prepayment or redemption provisions applicable to such Refinancing Equivalent Debt shall be as agreed between Borrower and the parties providing such Refinancing Equivalent Debt so long as, in the case of any mandatory prepayment or redemption provisions, such Refinancing Equivalent Debt do not participate on a greater than pro rata basis in any such prepayments as compared to Lenders hereunder and (B) the covenants and other terms applicable to such Refinancing Equivalent Debt (excluding those terms described in the immediately preceding clause (A)), which shall be as agreed between Borrower and the parties providing such Refinancing Equivalent Debt, shall be substantially similar to, or, taken as a whole, not materially less favorable to the Borrower (as determined by the Borrower in its reasonable business judgment) than those applicable to any Class of Loans being refinanced, except to the extent such covenants and other terms apply solely to any period after the Latest Maturity Date or are otherwise reasonably acceptable to the Administrative Agent;

(viii) if either in the form of Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt, such Refinancing Equivalent Debt shall be subject to security agreements relating to such Refinancing Equivalent Debt that are substantially the same as or more favorable to the Loan Parties than the Collateral Documents or otherwise reasonably satisfactory to the Administrative Agent;

(ix) if Permitted Pari Passu Secured Refinancing Debt, such Refinancing Equivalent Debt (x) shall be secured by the Collateral on a pari passu basis with the Obligations and shall not be secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral and (y) shall be subject to a customary intercreditor agreement, in form and substance reasonably satisfactory to the Administrative Agent;

(x) if Permitted Junior Secured Refinancing Debt, such Refinancing Equivalent Debt (x) shall be secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations and shall not be secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral and (y) shall be subject to a customary lien subordination or intercreditor arrangement in form and substance reasonably satisfactory to the Administrative Agent;

(xi) any Refinancing Equivalent Debt in the form of loans secured on a pari passu basis with the Loans shall be subject to the provisions set forth in Section 2.14(a)(vii) as if such Refinancing Equivalent Debt were Additional Term Loans incurred under Section 2.14; and

(xii) shall be Incurred solely to repay, repurchase, retire or refinance substantially concurrently the Refinanced Term Loans.

(d) This Section 2.15 shall supersede any provisions in Section 3.06 or Section 10.01 to the contrary. The Refinancing Term Loans shall be documented by an Additional Credit Extension Amendment executed by the Persons providing the Refinancing Term Loans (and the other Persons specified in the definition of “Additional Credit Extension Amendment” but no other existing Lender), and the Additional Credit Extension Amendment may provide for such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.15.

### ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(h) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. (%4) All payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall, to the extent permitted by applicable Laws, be made free and clear of and without reduction or withholding for any Taxes.

(%4) If any applicable withholding agent shall be required by the Code or other applicable Laws to withhold or deduct any Taxes, including withholding Taxes, in respect of any such payment, then (A) the applicable withholding agent shall withhold or make such deductions as are determined by the applicable withholding agent to be required to be withheld or deducted, (B) the applicable withholding agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code or other applicable Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or deductions have been made (including withholding or deductions applicable to additional sums payable under this Section 3.01) each Lender (or, in the case of a payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(i) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(j) Tax Indemnifications. Without limiting the provisions of subsection (a) or (b) above, the Borrower shall indemnify the Administrative Agent and each Lender and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid by the Administrative Agent or such Lender, as the case may be, and any penalties and interest arising therefrom or with respect thereto (other than any penalties and interest attributable to the gross negligence or willful misconduct of the Administrative Agent or such Lender, as applicable, as determined in a final, non-appealable judgment by a court of competent jurisdiction), 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 any such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(k) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(l) Status of Lenders; Tax Documentation. (%4) Each Lender shall deliver to the Borrower and to the Administrative Agent, at any time(s) reasonably requested by the Borrower or the Administrative Agent, such properly and duly completed and executed forms and other documentation prescribed by applicable Laws and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Loan Parties pursuant to this Agreement or under any other Loan Document or otherwise to establish such Lender's status for withholding Tax purposes in the applicable jurisdiction. Each Lender agrees that if any documentation it previously delivered pursuant to this Section 3.01(e) expires or becomes obsolete or inaccurate in any respect, it promptly shall update such documentation or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(%4) Without limiting the generality of the foregoing

(%5) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Person becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Lender is legally entitled to do so) two duly executed originals of Internal Revenue Service Form W-9 or such other documentation or information reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to U.S. federal backup withholding or information reporting requirements; and

(%5) each Foreign Lender that is entitled under applicable Law to an exemption from or reduction of withholding Tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) two duly executed originals of Internal Revenue Service Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) two duly executed originals of Internal Revenue Service Form W-8ECI,

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 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 no interest payments under any Loan Documents are effectively connected with such Foreign Lender's conduct of a United States trade or business (a "US Tax Compliance Certificate") and (y) two duly executed originals of Internal Revenue Service Form W-8BEN or W-8BEN-E,

(IV) in the case of a Foreign Lender that is not the beneficial owner (e.g., where the Lender is a partnership or a participating Lender), two duly executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a US Tax Compliance Certificate, substantially in the form of Exhibit F-2, Exhibit F-3 or Exhibit F-4, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided*, that if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a US Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of such direct and indirect partner(s), or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding Tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(%5) If a payment made to a Foreign Lender would be subject to United States federal withholding Tax imposed by FATCA if such Foreign Lender fails to comply with the applicable reporting requirements of FATCA, such Foreign Lender shall deliver to the Administrative Agent and the Borrower on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally eligible to do so), any documentation required under any applicable Law or reasonably requested by the Administrative Agent or the Borrower sufficient for the Administrative Agent or the Borrower to comply with their obligations under FATCA and to determine that such Foreign Lender has complied with such applicable reporting requirements. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(%4) Notwithstanding anything to the contrary in this Section, no Lender shall be required to deliver any documentation that it is not legally eligible to deliver.

(iv) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender pursuant to this Section 3.01(e).

(m) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes and any loss or gain realized in the conversion of such funds from or to another currency) incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection 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 that it deems confidential) to the Borrower or any other Person.

(n) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

#### 3.04 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement);

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes indemnifiable under Section 3.01 and any Excluded Taxes); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

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

### 3.05 Compensation for Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(d) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(e) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders; Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSION

4.01 Conditions of Credit Extension. The obligation of each Lender to make its Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(%3) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a duly authorized Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(%4) executed counterparts of this Agreement and the Guaranty;

(%4) a Note executed by the Borrower in favor of each Lender requesting a Note at least two Business Days prior to the Closing Date;

(%4) a security agreement (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.13, in each case as amended, the "Security Agreement"), duly executed by each Loan Party, together with:



(%5) certificates representing the Pledged Securities referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank,

(%5) proper financing statements, duly prepared for filing under the Uniform Commercial Code or other applicable Law in all jurisdictions necessary in order to perfect and protect the Liens created under the Security Agreements (in the circumstances and to the extent required under such Security Agreements), covering the Collateral described in the Security Agreement,

(%5) the Perfection Certificate and certified copies of UCC, United States Patent and Trademark Office and United States Copyright Office, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, completed requests for information, dated on or before the date of the initial Credit Extension, listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements,

(%5) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement that the Administrative Agent may deem necessary in order to perfect the Liens created thereby (or evidence that such actions, recordings and filings shall be completed concurrently with the initial borrowing under the Facility), and

(%5) evidence that all other actions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement has been taken (or shall be taken concurrently with the initial borrowing under the Facility) (including receipt of duly executed payoff letters, UCC-3 termination statements and consent agreements);

(%4) intellectual property security agreements (together with each other intellectual property security agreement and intellectual property security agreement supplement delivered pursuant to Section 6.13 or the Security Agreement, in each case as amended, the “Intellectual Property Security Agreement”), duly executed by each Loan Party, together with evidence that all action that the Administrative Agent may deem necessary in order to perfect the Liens created under the Intellectual Property Security Agreement has been taken (or evidence that such actions, recordings and filings shall be completed concurrently with the initial borrowing under the Facility);

(%4) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(%4) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in such Loan Party’s jurisdiction of organization or formation;

(%4) a favorable opinion of Jones Day, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent;

(%4) a favorable opinion of (A) Lewis Brisbois Bisgaard & Smith LLP, local counsel to the Loan Parties in Nevada and (B) Verrill Dana LLP, local counsel to the Loan Parties in Connecticut, in each case, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent;

(%4) the Lead Arrangers shall have received *pro forma* balance sheet and related statement of operations of the Borrower for fiscal year 2014 and for the latest four-quarter period ending with the latest fiscal quarter covered by the latest quarterly financial statements of the Borrower filed with the SEC in each case after giving effect to the Transaction (the “Pro Forma Financial Statements”);

(%4) forecasts prepared by management of income statements for each month for the twelve months following the Closing Date and balance sheets, income statements and cash flow statements for each year on an annual basis commencing with the first fiscal year following the Closing Date through fiscal year 2020;

(%4) certificates attesting to the Solvency of the Borrower and its Subsidiaries, taken as a whole, after giving effect to the Transaction, from the Borrower’s chief financial officer or treasurer;

(%4) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance and endorsements, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or mortgagee and loss payee, as the case may be and as required under the Loan Documents, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral; and

(%4) a Committed Loan Notice relating to the Borrowing.

(%3) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid (or, in each case, shall be paid concurrently with the initial borrowing under the Facility).

(%3) the Borrower shall have paid (or shall be paid concurrently with the borrowing of the Initial Loans on the Closing Date) the reasonable fees and expenses of the Administrative Agent, the Arrangers and the Lenders (including, without limitation, fees and

reasonable out-of-pocket expenses of counsel to the Administrative Agent and the Arrangers).

%3) the Administrative Agent shall have received, at least five days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, to the extent such information is requested by the Administrative Agent at least ten days prior to the Closing Date.

%3) the accuracy in all material respects (or in all respects where qualified by materiality or material adverse effect), with respect to the Borrower and its subsidiaries, of the representations and warranties contained herein and in the other Loan Documents (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).

%3) the ABL Intercreditor Agreement shall have been duly executed and delivered by each party thereto, and shall be in full force and effect.

%3) the Intercompany Subordination Agreement shall have been duly executed and delivered by each Domestic Subsidiary that is not a Loan Party, and shall be in full force and effect.

(h) no event shall have occurred and be continuing or would result from the consummation of the Credit Extension of the Closing Date and the other Transactions that would constitute an Event of Default or a Default.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement 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 a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

## ARTICLE V REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Administrative Agent and the Lenders which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the Closing Date and such representations and warranties shall survive the execution and delivery of this Agreement:

5.01 Existence, Qualification and Power. Each Loan Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite corporate or other organizational power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transactions contemplated hereby, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b) (i) or (c), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

### 5.02 Authorization; No Conflict.

(e) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or organizational action on the part of such Loan Party.

(f) Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party nor the consummation of the Transactions contemplated or compliance with the terms and provisions hereof or thereof by any of them will conflict with, constitute a default under or result in (a) any breach of (i) the terms and conditions of the certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other Organization Documents of any Loan Party or (ii) any Law or any material agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any of its Restricted Subsidiaries is a party or by which it or any of its Restricted Subsidiaries is bound or to which it is subject, except where such conflict or default would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect or (b) the creation or enforcement of any Lien upon any property (now or hereafter acquired) of any Loan Party or any of its Restricted Subsidiaries (other than Liens granted under the Loan Documents or permitted under Section 7.01).

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the transactions contemplated thereby, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, or (c) the perfection of the Liens created under the Collateral Documents (including the first priority nature thereof to the extent required by the Loan Documents) except (i) for those registrations, exemptions, orders, authorizations, consents, approvals, notices or other actions that have been made, obtained, given or taken, (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and/or recordation, or (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

### 5.04 Binding Effect.

(d) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(e) The Liens in the Collateral granted to the Administrative Agent for the benefit of the Secured Parties pursuant to the Collateral Documents constitute, to the extent required by the Collateral Documents, first priority Liens, subject to Permitted Encumbrances, Permitted Liens or other Liens permitted by the Loan Documents. Except for filings contemplated on the Closing Date or such later date as is contemplated by this Agreement and the Collateral Documents, no filings are required to perfect such Liens.

#### 5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (B) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (C) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Debt, in each case to the extent required by GAAP.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated September 30, 2015, and the related consolidated statements of operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(d) The Pro Forma Financial Statements fairly present in all material respects the consolidated *pro forma* financial condition of the Borrower and its Subsidiaries as at such date and the consolidated *pro forma* results of operations of the Borrower and its Subsidiaries for the period ended on such date, all in accordance with GAAP.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries that (i) as of the Closing Date, purport to affect or pertain to this Agreement, any other Loan Document or the consummation of the Transaction or (ii) has or, if adversely determined, would reasonably be expected to have, a Material Adverse Effect.

5.07 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.

5.08 Ownership of Property. Each of the Loan Parties and its Restricted Subsidiaries has (i) with respect to interests in owned real property, good record and marketable legal and insurable fee simple title, subject only to Permitted Encumbrances, Liens permitted by the Loan Documents and other Liens acceptable to Administrative Agent, (ii) with respect to leasehold interests in real or personal property, valid leasehold interests, subject only to Permitted Encumbrances, Liens permitted by the Loan Documents and other Liens acceptable to Administrative Agent, and (iii) with respect to all other property, good and marketable title to such assets except for minor defects in title that do not materially interfere with such Loan Party's or Subsidiary's ability to conduct its business and to utilize such assets for their intended purposes and except where the failure to have such title or other property interests described above would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.09 Environmental Compliance. Except as otherwise set forth in Schedule 5.09 or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Borrower and its respective Subsidiaries, including their respective operations and properties, are in compliance with all Environmental Laws and possess and are in compliance with all Environmental Permits; (ii) neither the Borrower nor any of its Subsidiaries has received any written notices or claims relating to any Environmental Liability of the Borrower or any of its Restricted Subsidiaries; (iii) there are no and have never been any underground or above ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by Borrower or any of its Restricted Subsidiaries or, to the knowledge of the Loan Parties, on any property formerly owned or operated by the Borrower or any of its Restricted Subsidiaries in a condition that requires remedial or response action under any Environmental Law; (iv) there is no asbestos or asbestos-containing material in a condition that violates any Environmental Law on any property currently owned or operated by any Loan Party or any of its Restricted Subsidiaries; (v) Hazardous Materials have not been released, discharged or disposed of on any property currently or, to the knowledge of any Loan Party, formerly owned or operated by the Borrower or any of its Restricted Subsidiaries in a condition that requires remedial or response action under any Environmental Law; (vi) neither the Borrower nor any of its Restricted Subsidiaries is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; (vii) all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently owned or operated by the Borrower or any of its Restricted Subsidiaries have been disposed of in a manner that would not reasonably be expected to result in liability to any Loan Party and (viii) to the knowledge of any Loan Party, there are no facts, circumstances, conditions or occurrences which are expected to result in any Environmental Liability of the Borrower or any of its Subsidiaries.

5.10 Insurance. The properties of the Loan Parties are insured with financially sound insurance companies, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

5.11 Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all federal, state, local and other tax returns required to have been filed with respect to each Loan Party and each Restricted Subsidiary of each Loan Party have been filed (or extensions have been obtained), and payment or adequate reserves, if any, as shall be required by GAAP have been made for the payment of all Taxes, fees, assessments and other governmental charges which have or may become due (including in the capacity of a withholding agent), except to the extent that such Taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves, if any, as shall be required by GAAP shall have been made.

#### 5.12 ERISA Compliance.

(e) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state laws, except where any failure to so comply would not reasonably be expected to result in a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax qualified status except where any such occurrence would not reasonably be expected to have a Material Adverse Effect.

(f) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(g) (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained in respect of any Pension Plan; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA except, with respect to subsections (i) through (iii) above, as could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect.

5.13 Subsidiaries; Equity Interests; Loan Parties. As of the Closing Date, the Borrower has no Subsidiaries other than those specifically disclosed in Schedule 5.13, and as of the Closing Date all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable (in each case, to the extent such concept is applicable under applicable law) and are owned by the Borrower or such Subsidiary in the amounts specified on Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents and Permitted Liens.

#### 5.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the FRB.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940 or is subject to regulation under the Investment Company Act.

5.15 Disclosure. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the Borrower’s industry) furnished by or on behalf of the Borrower or its Subsidiaries in writing to Administrative Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrower’s industry) hereafter furnished by or on behalf of the Borrower or its Subsidiaries in writing to the Administrative Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and will not omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Administrative Agent on October 20, 2015 represent, and as of the date on which any other Projections are delivered to the Administrative Agent, such additional Projections represent, Borrower’s good faith estimate, on the date such Projections are delivered, of the Borrower and its Subsidiaries’ future performance for the periods covered thereby based upon assumptions believed by the Borrower to be reasonable at the time of the delivery thereof to the Administrative Agent (it being understood that such Projections are subject to uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries, that no assurances can be given that such Projections will be realized, and that actual results may differ in a material manner from such Projections).

5.16 Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

#### 5.17 Solvency.

(a) The Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

(b) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the Transactions with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

5.18 Patriot Act; Anti-Corruption Laws. To the extent applicable, the Borrower and each of its Subsidiaries is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act of 2001) (the “Patriot Act”); and (c) the Proceeds of Crime Money Laundering and Terrorist Finance Act (Canada) and the regulations promulgated thereunder. No part of the proceeds of the Loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, (i) 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 FCPA, or (ii) in any other manner that would cause a violation in any material respect of any applicable anti-bribery

laws. No Loan Party nor any of its Subsidiaries, nor to the knowledge of any Loan Party, any director or officer, or any employee, agent or Affiliate of, any Loan Party or any of its Subsidiaries, has taken any action, directly or indirectly, that would result in a violation in any material respect by such persons of any applicable anti-bribery law. Furthermore, each Loan Party and, to the knowledge of each Loan Party, its Affiliates have conducted their businesses in compliance in all material respects with the UK Bribery Act, the FCPA and similar laws, rules or regulations, in each case, to the extent applicable to the Loan Parties and, in their reasonable business judgment, have instituted and maintain policies and procedures designed to ensure continued compliance therewith and with Sanctions.

**5.19 OFAC and Other Sanctions.** Neither the Borrower nor any of its Subsidiaries is in violation of any Sanctions applicable to the Borrower or any of its Subsidiaries. Neither the Borrower nor any of its Subsidiaries, nor to the knowledge of any Loan Party, any director or officer, or any employee, agent or Affiliate of, the Borrower or any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities, or (d) is located, organized or a resident of a country or territory that is, or whose government is, the subject of Sanctions. No proceeds of any Credit Extension will be used by the Borrower or any of its Subsidiaries or any of their respective Controlled Affiliates, directly or indirectly, (i) to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including without limitation any Person participating in Loans).

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation shall remain unpaid or unsatisfied (other than contingent indemnification Obligations as to which no claim has been made) the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Restricted Subsidiary to:

### **6.01 Financial Statements.** Deliver to the Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing or otherwise reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and (b) above, a customary management discussion and analysis of operating results; and

(d) if the Borrower has designated any Subsidiary as an Unrestricted Subsidiary, simultaneously with any delivery of financial statements pursuant to Section 6.01(a) or (b), the related consolidated financial statements reflecting the adjustments necessary to eliminate the accounts of all such Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

### **6.02 Certificates; Other Information.** Deliver to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer, controller or other senior financial officer of the Borrower; and

(b) promptly after the same are publicly available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(b) or notices required to be delivered pursuant to Section 6.03(c) (to the extent any such documents or notices are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents or notices, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents or notices are posted on the Borrower'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 Agent); *provided* that: (i) upon the written request of the Administrative Agent, the Borrower shall deliver paper copies of such documents or notices to the Administrative Agent for any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents or notices 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 Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents or notices referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower 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 or notices.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks or another similar electronic system (the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) 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; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07*); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (z) the Administrative Agent and the 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 Side Information.”

6.03 Notices. Promptly notify the Administrative Agent:

- (a) upon any Responsible Officer becoming aware of the occurrence of any Default;
  - (b) upon any Responsible Officer becoming aware of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
  - (c) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- or
- (d) upon any Responsible Officer becoming aware of any announcement by Moody’s or S&P of any change or possible change in a Debt Rating.

Each notice pursuant to this Section 6.03 (other than Section 6.03(c) or (d)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, unless the same are being contested or disputed in good faith by appropriate proceedings diligently conducted and adequate reserves to the extent required in accordance with GAAP are being maintained by the Borrower or such Subsidiary or except to the extent the failure to pay or discharge any such obligation or liability would not reasonably be expected to result in a Material Adverse Effect.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 and (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. Except as otherwise permitted under Section 7.04 and Section 7.05, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, except for ordinary wear and tear, casualty and Dispositions permitted by this Agreement, and except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties (real and personal) and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons. If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with a financially sound insurer, flood insurance in an amount and sufficient to comply with all applicable rules and regulations and (ii) deliver to the Administrative Agent evidence of such. All such insurance with respect to any Collateral shall name the Administrative Agent as mortgagee and loss payee (in the case of property insurance with respect to Collateral) or additional insured, as its interests may arise, on behalf of the Secured Parties (in the case of liability insurance).

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws (including but not limited to any Sanctions, the FCPA and the Patriot Act) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity in all material respects with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors and officers, in each case subject to Section 10.07, all at the expense of the Borrower as provided below and subject to Section 10.04 hereof, at such reasonable times during normal business hours and upon reasonable advance notice to the Borrower; *provided* that excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrowers' expense; *provided, further*, that when an Event of Default has occurred and is continuing, the Administrative Agent or any such Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

6.11 Use of Proceeds. Use the proceeds of the Initial Loans to finance the Transaction and for general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Compliance with Environmental Laws. Except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: comply, and cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties as required by applicable Environmental Laws; *provided, however*, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.13 Covenant to Guarantee Obligations and Give Security.

(c) Upon the formation or acquisition of any new direct or indirect Subsidiary (other than any Excluded Subsidiary or an Unrestricted Subsidiary) by any Loan Party following the Closing Date, or upon any Subsidiary ceasing to be an Excluded Subsidiary, then the Borrower shall, at the Borrower's expense:

(i) within 30 days after such formation or acquisition or the date upon which such Subsidiary ceases to be an Excluded Subsidiary, as applicable (or such later date as permitted by Administrative Agent in its sole discretion), cause such Subsidiary to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within 30 days after such formation or acquisition or the date upon which such Subsidiary ceases to be an Excluded Subsidiary, as applicable (or such later date as permitted by Administrative Agent in its sole discretion), furnish to the Administrative Agent a Perfection Certificate, including without limitation, a description of the real properties of such Subsidiary, in detail reasonably satisfactory to the Administrative Agent,

(iii) within 60 days after such formation or acquisition or the date upon which such Subsidiary ceases to be an Excluded Subsidiary, as applicable (or such later date as permitted by Administrative Agent in its sole discretion), cause such Subsidiary to duly execute and deliver to the Administrative Agent Mortgages for any Material Real Property as required under this Agreement, the Security Agreement, Security Agreement Supplements, intellectual property security agreement supplements and other security and pledge agreements, specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all pledged Equity Interests in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)), securing payment of all the Obligations and constituting Liens on all such real and personal properties of such Subsidiary, subject to Permitted Encumbrances, Liens permitted by the Loan Documents and other Liens acceptable to Administrative Agent (it being understood that no leasehold mortgages or deeds of trust need be granted with respect to any leased real property) and provided that only sixty-five percent (65%) of the total outstanding voting Equity Interests of any Subsidiary that is a CFC or CFC Holdco shall be required to be pledged pursuant to this Section 6.13(a),

(iv) within 60 days after such formation or acquisition or the date upon which such Subsidiary ceases to be an Excluded Subsidiary, as applicable (or such later date as permitted by Administrative Agent in its sole discretion), cause such Subsidiary to take whatever action (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or reasonably advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties, subject to Permitted Encumbrances, Liens permitted under the Loan Documents and other Liens acceptable to the Administrative Agent, purported to be subject to the Mortgages for any Material Real Property as required under this Agreement, the Security Agreement, Security Agreement Supplements, intellectual property security agreement supplements and security and pledge agreements delivered pursuant to this Section 6.13 or Schedule 6.18, as applicable, and

(v) within 60 days after such formation or acquisition (or such later date as permitted by Administrative Agent in its sole discretion), deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request, in each case consistent with Section 4.01(a) or Schedule 6.18, as applicable.

(d) Within 60 days of the acquisition of any Material Real Property by any Loan Party, the relevant Loan Party shall give notice of such acquisition to the Administrative Agent and shall, if requested by the Administrative Agent or the Required Lenders, cause such assets to be subjected to a Lien securing Obligations and with respect to any Material Real Property will take such actions as shall be reasonably necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien consistent with Schedule 6.18.

(e) Notwithstanding the foregoing, (i) the Administrative Agent shall not take a security interest in or Lien, or require any of the items it is entitled to require or request pursuant to this Section 6.13 or other similar items with respect to those assets as to which the Administrative Agent shall determine, in its reasonable discretion, that the cost of obtaining such Lien (including any mortgage, stamp, intangibles or other similar Tax, title insurance or similar items) exceeds the practical benefit to the Secured Parties of the security afforded thereby, and (ii) Liens required to be granted pursuant to this Section 6.13, and actions required to be taken, including to perfect such Liens, shall be subject to exceptions and limitations consistent with those set forth in the Collateral Documents as in effect on the Closing Date (to the extent appropriate in the applicable jurisdiction).

(f) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold deeds of trust, Security Agreement Supplements, intellectual property security agreement supplements and other security and pledge agreements entered into pursuant to this Agreement.

#### 6.14 [Reserved].

6.15 Further Assurances. Promptly upon the reasonable request of the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents, perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Administrative Agent and other Secured Parties the rights granted or now or hereafter intended to be granted to the Administrative Agent and the other Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which the Borrower or any of its Subsidiaries is or is to be a party, and cause each of the Subsidiaries to do so.

6.16 Designation as Senior Debt. Designate all Obligations as “Designated Senior Debt” under, and defined in, all Subordinated Debt of the Borrower or any of its Subsidiaries.

6.17 Rated Credit Facility; Corporate Ratings. Use commercially reasonable efforts to maintain a rating of the Facility by each of S&P and Moody’s.

6.18 Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 6.18, in each case within the time limits specified on such schedule (or such later time as the Administrative Agent may agree in its sole discretion).

## ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification Obligations as to which no claim has been made), the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired, which Liens secure Debt, other than the following (collectively, “Permitted Liens”):

(f) Liens existing on the Closing Date with respect to Debt set forth in Schedule 7.01(a) or any Refinancing Debt in respect thereof;

(g) Liens that secure (i) the Specified Credit Facilities incurred pursuant to Section 7.02(b)(3), (ii) Hedging Obligations and Swap Contracts relating to the Specified Credit Facilities and permitted under the agreements related thereto and (iii) fees, expenses and other amounts payable under Specified Credit Facilities or payable pursuant to cash management agreements or agreements with respect to similar banking services relating to any Specified Credit Facility and permitted under the agreements related thereto; *provided* that such Liens shall be subject to the priority as set forth in any applicable Intercreditor Agreement;

(h) any Lien for taxes or assessments or other governmental charges or levies not then due and payable (or which, if due and payable, are being contested in good faith and for which adequate reserves are being maintained, to the extent required by GAAP);

(i) any warehousemen’s, materialmen’s, landlord’s or other similar Liens arising by law for sums not then due and payable (or which, if due and payable, are being contested in good faith and with respect to which adequate reserves are being maintained, to the extent required by GAAP);

(j) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other similar restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not individually or in the aggregate materially adversely affect the value of the Borrower or materially impair the operation of the business of such Person;

(k) pledges or deposits (i) in connection with workers’ compensation, unemployment insurance and other types of statutory obligations or the requirements of any official body; (ii) to secure the performance of tenders, bids, surety or performance bonds, leases, purchase, construction, sales or servicing contracts (including utility contracts) and other similar obligations Incurred in the normal course of business consistent with industry practice; (iii) to obtain or secure obligations with respect to letters of credit, Guarantees, bonds or other sureties or assurances given in connection with the activities described in clauses (i) and (ii) above, in each case not Incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the



deferred purchase price of property or services or imposed by ERISA or the Code in connection with a “plan” (as defined in ERISA); or (iv) arising in connection with any attachment unless such Liens shall not be satisfied or discharged or stayed pending appeal within 60 days after the entry thereof or the expiration of any such stay;

(l) Liens on property or assets existing at the time of acquisition thereof; *provided* that such Liens are not extended to the property and assets of the Borrower and its Restricted Subsidiaries other than the property or assets acquired;

(m) Liens on property or assets of a Person existing at the time such Person is merged with or into or consolidated with the Borrower or a Restricted Subsidiary, or becomes a Restricted Subsidiary (and not created or Incurred in anticipation of such transaction); *provided* that such Liens are not extended to the property and assets of the Borrower and its Restricted Subsidiaries other than the property or assets acquired;

(n) Liens securing Debt of a Restricted Subsidiary owed to and held by the Borrower or a Guarantor thereof;

(o) for the avoidance of doubt, other Liens (not securing Debt) incidental to the conduct of the business of the Borrower or any of its Restricted Subsidiaries, as the case may be, or the ownership of their assets which do not individually or in the aggregate materially adversely affect the value of the Borrower or materially impair the operation of the business of the Borrower or its Restricted Subsidiaries;

(p) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods incurred in the ordinary course of business;

(q) licenses of intellectual property granted in the ordinary course of business;

(r) Liens to secure Capital Lease Obligations, Synthetic Lease Obligations and Purchase Money Debt permitted to be Incurred pursuant to Section 7.02(xi); *provided* that such Liens do not extend to or cover any assets other than such assets acquired or constructed after the Closing Date with the proceeds of such Capital Lease Obligation, Synthetic Lease Obligation or Purchase Money Debt;

(s) Liens in favor of the Borrower or any Guarantor;

(t) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person’s obligation in respect of banker’s acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(u) Liens securing Debt Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; *provided, however*, that the Lien may not extend to any property owned by such Person or any of its Restricted Subsidiaries at the time the Lien is Incurred (other than assets and property affixed or appurtenant thereto and any proceeds thereof), and the Debt (other than any interest thereon) secured by the Lien may not be Incurred more than 180 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien;

(v) Liens on property or shares of Equity Interests of another Person at the time such other Person becomes a Subsidiary of such Person; *provided, however*, that (i) the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto and any proceeds thereof) and (ii) such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Restricted Subsidiary;

(w) Liens (i) that are contractual rights of set-off (A) relating to the establishment of depository relations with banks not given in connection with the issuance of Debt, (B) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations and other cash management activities incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (C) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business and (ii) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (Y) encumbering reasonable customary initial deposits and margin deposits and attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business, and (Z) in favor of banking institutions arising as a matter of law or pursuant to customary account agreements encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(x) Liens created by or resulting from any litigation or other proceedings which is being contested in good faith by appropriate proceedings, including Liens arising out of judgments or awards against the Borrower or any Restricted Subsidiary with respect to which the Borrower or such Restricted Subsidiary is in good faith prosecuting an appeal or proceedings for review or for which the time to make an appeal has not yet expired; or final unappealable judgment Liens which are satisfied within 15 days of the date of judgment; or Liens Incurred by the Borrower or any Restricted Subsidiary for the purpose of obtaining a stay or discharge in the course of any litigation or other proceeding to which the Borrower or such Restricted Subsidiary is a party;

(y) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiaries and do not secure any Debt;

(z) any interest of title of an owner of equipment or inventory on loan or consignment to the Borrower or any of its Restricted Subsidiaries and Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(aa) deposits in the ordinary course of business to secure liability to insurance carriers;

(bb) Liens required under and pursuant to the SunBelt Guarantee Collateral Documents (as in effect on the Closing Date);

(cc) Liens on the Equity Interests of a Receivables Subsidiary and accounts receivable and related assets described in the definition of “Qualified Receivables Transaction,” in each case, Incurred in connection with a Qualified Receivables Transaction;

(dd) Liens securing Hedging Obligations and Swap Contracts so long as any related Debt is permitted to be Incurred and secured under this Agreement;

(ee) options, put and call arrangements, rights of first refusal and similar rights relating to Investments in joint ventures, partnerships and the like permitted to be made under this Agreement;

(ff) Liens attaching to earnest money deposits (or equivalent deposits otherwise named) made in connection with proposed acquisitions in an amount not to exceed \$5.0 million;

(gg) (i) set-off rights not otherwise set forth in clause (r) above or (ii) Liens arising in connection with repurchase agreements that constitute Investments;

(hh) Liens not otherwise permitted under this Agreement in an aggregate amount not to exceed \$75.0 million;

(ii) Liens on property or assets of the Borrower or any Restricted Subsidiary in favor of the United States of America, any state thereof or any instrumentality of either to secure certain payments pursuant to any contract or statute;

(jj) Liens to secure any permitted extension, renewal, refinancing or refunding (or successive extensions, renewals, refinancings or refundings), in whole or in part, of any Debt secured by Liens referred to above; *provided* that such Liens do not extend to any other property or assets and the principal amount of the obligations secured by such Liens is not increased;

(kk) Liens securing Debt of Spartech outstanding on the Spartech Acquisition Date; and

(ll) Liens under (x) the Loan Documents, (y) securing any Incremental Equivalent Debt Incurred under Section 2.14 or (z) securing any Refinancing Equivalent Debt Incurred under Section 2.15.

Notwithstanding anything to the contrary and except as permitted under Section 7.01(gg)(x), the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly create, incur, assume or suffer to exist any Lien upon (i) the Equity Interests of any Joint Venture unless such Equity Interests secure the Obligations at least ratably with such other Debt and (ii) Debt of a Non-Loan Party that is owed to a Loan Party.

7.02 Debt. Incur any Debt (including Acquired Debt) except:

(f) if (i) the Consolidated Fixed Charge Coverage Ratio of the Borrower and its Restricted Subsidiaries, determined on a *pro forma* basis as if any such Debt (including any other Debt, other than Debt Incurred under the ABL Facility, being Incurred contemporaneously), and any other Debt Incurred since the beginning of the Four Quarter Period had been Incurred and the proceeds thereof had been applied at the beginning of the Four Quarter Period, and any other Debt repaid (other than any revolving Debt) since the beginning of the Four Quarter Period had been repaid at the beginning of the Four Quarter Period, would be greater than 2.00 to 1.00 and (ii) no Default or Event of Default shall have occurred and be continuing at the time or as a consequence of the Incurrence of such Debt; *provided* that the aggregate principal amount of such Debt incurred by Restricted Subsidiaries that are not Guarantors (other than Foreign Subsidiaries or Receivable Subsidiaries) does not exceed \$35.0 million at any one time outstanding; and

(g) any of the following:

(%4) Debt Incurred pursuant to any Specified Credit Facility in an aggregate principal amount not to exceed at any one time outstanding (x) the greater of (A) the Incremental Cap and (B) the sum of (1) 50% of the book value of the inventory of the Borrower and its Restricted Subsidiaries and (2) 75% of the accounts receivable of the Borrower and its Restricted Subsidiaries, *minus* (y) any amounts Incurred and outstanding pursuant to a Qualified Receivables Transaction permitted under clause (xvi) below;

(%4) Debt under the 2020 Notes and the 2023 Notes outstanding on the Closing Date and the contribution, indemnification and reimbursement obligations owed by the Borrower or any Guarantor to any of the other of them in respect of amounts paid or payable on such 2020 Notes and 2023 Notes;

(%4) Guarantees of the 2020 Notes and the 2023 Notes;

(%4) Debt Incurred under this Agreement (including Sections 2.13, 2.14 and 2.15 (including Refinancing Equivalent Debt)) and under the other Loan Documents, or pursuant to Sections 2.14(d) and 2.14(e) in respect of any Incremental Equivalent Debt, and any Refinancing Debt Incurred to refinance such Debt;

(%4) Debt owed by the Borrower to any Restricted Subsidiary, or by any Restricted Subsidiary to the Borrower or to any other Restricted Subsidiary; *provided* that (x) any such Debt owed by any Restricted Subsidiary that is not a Guarantor to the Borrower or any Guarantor shall be subject to Section 7.06 and (y) any such Debt owed by the Borrower or any Guarantor to any Restricted Subsidiary that is not a Guarantor shall consist solely of Subordinated Debt and shall be subject to the Intercompany Subordination Agreement;

(%4) Guarantees Incurred by the Borrower of Debt of a Restricted Subsidiary otherwise permitted to be Incurred under this Agreement;

(%4) Guarantees by any Guarantor of Debt of the Borrower or any Guarantor; *provided that* (a) such Debt is Incurred in accordance with Section 7.02 hereof and (b) such Guarantees are subordinated to the Obligations to the same extent as the Debt being Guaranteed;

(%4) Debt Incurred in respect of workers' compensation claims and self-insurance obligations, and, for the avoidance of doubt, indemnity, bid, performance, warranty, release, appeal, surety and similar bonds, standby letters of credit, letters of credit for operating purposes and completion guarantees provided or Incurred (including Guarantees thereof) by the Borrower or a Restricted Subsidiary in the ordinary course of business;

(%4) Debt under Swap Contracts and Hedging Obligations;

(%4) [reserved];

(%4) Debt of the Borrower or any Restricted Subsidiary pursuant to Capital Lease Obligations, Synthetic Lease Obligations and Purchase Money Debt, *provided that* the aggregate principal amount of such Debt outstanding at any time may not exceed the greater of (x) \$175.0 million in the aggregate and (y) 6.0% of Consolidated Total Assets;

(%4) Debt arising from agreements of the Borrower or a Restricted Subsidiary providing for indemnification, contribution, earnout, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or Equity Interests of a Restricted Subsidiary otherwise permitted under this Agreement;

(%4) the issuance by any of the Borrower's Restricted Subsidiaries to the Borrower or to any of its Restricted Subsidiaries of shares of Preferred Interests; *provided, however*, that:

(%5) any subsequent issuance or transfer of Equity Interests that results in any such Preferred Interests being held by a Person other than the Borrower or a Restricted Subsidiary; and

(%5) any sale or other transfer of any such Preferred Interests to a Person that is not either the Borrower or a Restricted Subsidiary;

shall be deemed, in each case, to constitute an issuance of such Preferred Interests by such Restricted Subsidiary that was not permitted by this clause (xiii);

(%4) Debt 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; *provided, however*, that such Debt is extinguished within five Business Days of Incurrence;

(%4) Debt of the Borrower or any Restricted Subsidiary not otherwise permitted pursuant to this definition, in an aggregate principal amount not to exceed \$100.0 million at any one time outstanding;

(%4) Purchase Money Notes Incurred by any Receivable Subsidiary that is a Restricted Subsidiary in a Qualified Receivables Transaction and Non-Recourse Receivable Subsidiary Debt;

(%4) Debt of the Borrower or any Restricted Subsidiary to the extent the net proceeds thereof are promptly deposited to defease any debt securities;

(%4) Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower or any of its Restricted Subsidiaries;

(%4) Debt consisting of take-or-pay obligations on customary business terms contained in supply agreements entered into in the ordinary course of business;

(%4) Refinancing Debt with respect to Debt Incurred or outstanding pursuant to clauses (ii), (iii) and this clause (xx);

(%4) the SunBelt Guarantee; and

(%4) Debt of the Spartech outstanding on the Spartech Acquisition Date, including, without limitation, the Spartech's Debt in connection with industrial revenue bonds.

For purposes of determining compliance with this Section 7.02, if the Debt which is the subject of a determination under this provision is Acquired Debt, or Debt Incurred in connection with the simultaneous acquisition of any Person, business, property or assets, or Debt of an Unrestricted Subsidiary being designated as a Restricted Subsidiary, then the Consolidated Fixed Charge Coverage Ratio shall be determined by giving effect (on a *pro forma* basis, as if the transaction had occurred at the beginning of the Four Quarter Period) to (x) the Incurrence of such Acquired Debt or such other Debt by the Borrower or any of its Restricted Subsidiaries and (y) the inclusion, in Consolidated Cash Flow Available for Fixed Charges, of the Consolidated Cash Flow Available for Fixed Charges of the acquired Person, business, property or assets or redesignated Subsidiary.

For purposes of determining any particular amount of Debt under this Section 7.02, (x) Debt Incurred under the ABL Credit Agreement and outstanding on the Closing Date shall at all times be treated as Incurred pursuant to Section 7.02(b)(i) and (y) Guarantees, Liens or obligations with respect to letters of credit supporting Debt otherwise included in the determination of such particular amount shall not be included. For purposes of determining any particular amount of Debt under this Section 7.02, if obligations in respect of letters of credit are Incurred pursuant to the ABL Facility and are being treated as Incurred pursuant to Section 7.02(b)(i) and the letters of credit relate to other Debt, then such other Debt shall not be deemed to have been Incurred. For purposes of determining compliance with this Section 7.02, in the event that an item of Debt meets the criteria of more than one of the types of Debt described in Sections 7.02(a) and (b), the Borrower, in its sole discretion, may classify and divide, and from time to time may reclassify and redivide, all or any portion of such item of Debt, except as set forth in clause (x) in the first sentence of this paragraph. For purposes of determining compliance of any non-U.S. dollar-denominated Debt with this Section 7.02, the amount outstanding under U.S. dollar-equivalent principal amount of Debt denominated in a foreign currency shall at all times be calculated based on the relevant currency exchange rate in effect on the date such Debt was Incurred, in the case of the term Debt, or first committed, in the cases of the revolving credit Debt; *provided, however*, that if such Debt is Incurred to refinance other Debt denominated in the same or different currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Debt does not exceed the principal amount of such Debt being refinanced.

The Borrower and any Guarantor will not Incur any Debt that pursuant to its terms is subordinate or junior in right of payment to any Debt unless such Debt is subordinated in right of payment to the Obligations to the same extent; *provided* that Debt will not be considered subordinate or junior in right of payment to any other Debt solely by virtue of being unsecured or secured to a greater or lesser extent or with greater or lower priority or by virtue of structural subordination.

### 7.03 [Reserved].

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or engage in any Asset Sale of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

%3) any Subsidiary may merge, consolidate, amalgamate or liquidate with or into (i) the Borrower, *provided* that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, including any such merger, consolidation, or amalgamation, the purpose of which is to change the jurisdiction of the Borrower or any Subsidiary so long as the Borrower remains organized under the laws of the United States, a state within the United States or the District of Columbia and the Loan Parties comply with the Collateral Documents, *provided* that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person;

%3) any Loan Party may engage in an Asset Sale of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

%3) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Asset Sale that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

%3) the Borrower and its Subsidiaries may enter to any merger, consolidation, or amalgamation or effect Asset Sales in order to effect any corporate reorganization, *provided* that in the case of a merger, consolidation or amalgamation involving a Loan Party, a Loan Party must be the survivor of such merger, consolidation or amalgamation;

%3) in connection with any Permitted Investment, any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; *provided* that (i) the Person surviving such merger shall be a Subsidiary of the Borrower and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person; and

%3) the Borrower and its Subsidiaries may consummate any Asset Sale permitted by Section 7.05.

### 7.05 Limitation on Asset Sales. Consummate an Asset Sale unless:

(1) the Borrower (or the applicable Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of;

(2) the Net Cash Proceeds of such Asset Sale shall be applied to prepay Loans to the extent required pursuant to Section 2.03(b)(i) after giving effect to any time periods and reinvestment rights contained therein; and

(3) at least 75% of the consideration received in the Asset Sale by the Borrower or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this clause (3), each of the following will be deemed to be cash:

(viii) any liabilities, as shown on the most recent consolidated balance sheet of the Borrower or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations), or any Guarantees of Debt (including, without limitation, the SunBelt Guarantee) of Persons other than the Borrower or its Restricted Subsidiaries, that are assumed (contractually or otherwise) by the person acquiring such assets to the extent that the Borrower and its Restricted Subsidiaries have no further liability with respect to such liabilities;

(ix) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash within 180 days of their receipt to the extent of the cash received in that conversion;

(x) any assets (other than inventory) that are used or useful in a Permitted Business;

(xi) all or substantially all of the assets of, or any Equity Interests of, another Permitted Business, if, after giving effect to any such acquisition of Equity Interests, the Permitted Business is or becomes a Restricted Subsidiary;

(xii) any Designated Non-cash Consideration received by the Borrower or its Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (v) that is at that time outstanding in the aggregate, not to exceed the greater of (i) \$35.0 million and (ii) 1.25% of the Borrower's Consolidated Total Assets, in each case 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 measured at the time received and without giving effect to subsequent changes in value.

7.06 Restricted Payments. Directly or indirectly, make any Restricted Payment except:

(b) the Borrower and its Restricted Subsidiaries may make any Restricted Payment if at the time of and after giving effect to the proposed Restricted Payment:

(iii) no Default in the payment in respect of principal or interest or Event of Default shall have occurred and be continuing or will occur as a consequence thereof;

(iv) after giving effect to such Restricted Payment on a pro forma basis, the Borrower would be permitted to Incur at least \$1.00 of additional Debt pursuant to Section 7.02(a); and

(v) after giving effect to such Restricted Payment on a pro forma basis, the aggregate amount expended or declared for all Restricted Payments made on or after September 24, 2010 (excluding Restricted Payments permitted by clauses (ii) through (ix) and (xv) of the next succeeding paragraph) shall not exceed the sum (without duplication) of:

(A) 50% of the Consolidated Net Income (or, if Consolidated Net Income shall be a deficit, *minus* 100% of such deficit) of the Borrower accrued on a cumulative basis during the period (taken as one accounting period) from January 1, 2010 and ending on the last day of the fiscal quarter immediately preceding the date of such proposed Restricted Payment, *plus*

(B) 100% of the aggregate net proceeds (including the Fair Market Value of property other than cash) received by the Borrower subsequent to September 24, 2010 either (i) as a contribution to its common equity capital or (ii) from the issuance and sale (other than to a Subsidiary) of its Qualified Equity Interests, including Qualified Equity Interests issued upon the conversion or exchange of Debt or Redeemable Equity Interests of the Borrower, and from the exercise of options, warrants or other rights to purchase such Qualified Equity Interests (other than, in each case, Equity Interests or Debt sold to a Subsidiary of the Borrower), *plus*

(C) to the extent not otherwise included in the calculation of Consolidated Net Income of the Borrower for such period, 100% of the net reduction in Investments (other than Permitted Investments and Investments made pursuant to Section 7.06(b)(xi)) made on and after September 24, 2010 in any Person other than the Borrower or a Restricted Subsidiary resulting from dividends, repayment of loans or advances or other transfers of assets, in each case to the Borrower or any Restricted Subsidiary, *plus*

(D) to the extent that any Investment (other than Permitted Investments or Investments in Unrestricted Subsidiaries) that was made on and after September 24, 2010 is sold for cash or otherwise disposed of, liquidated or repaid for cash or other assets, the lesser of (i) the initial amount of such Investment, or (ii) to the extent not otherwise included in the calculation of Consolidated Net Income of the Borrower for such period, the net cash return of capital or net Fair Market Value of return of capital with respect to such Investment, less the cost of any such disposition or liquidation, *plus*

(E) to the extent that any Unrestricted Subsidiary of the Borrower designated as such on and after the Closing Date is redesignated as a Restricted Subsidiary or merged or consolidated with or into the Borrower or a Restricted Subsidiary, the lesser of (i) the Fair Market Value of the Borrower's Investment in such Subsidiary as of the date of such redesignation or (ii) such Fair Market Value as of the date on which such Subsidiary was originally designated as an Unrestricted Subsidiary, *plus*

(F) 100% of any dividends or interest payments received by the Borrower or a Restricted Subsidiary on and after September 24, 2010 from an Unrestricted Subsidiary or other Investment (other than a Permitted Investment), to the extent such dividends or interest payments were not otherwise included in the calculation of Consolidated Net Income of the Borrower for such period; and

(c) the Borrower and its Restricted Subsidiaries may make the following additional Restricted Payments:

(i) the payment of any dividend on Equity Interests in the Borrower or a Restricted Subsidiary within 60 days after declaration thereof if at the declaration date such payment was permitted by Section 7.06(a);

(ii) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of any Qualified Equity Interests of the Borrower by conversion into, or by or in exchange for, Qualified Equity Interests, or out of net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of other Qualified Equity Interests of the Borrower; provided that the amount of any net proceeds that are utilized for such Restricted Payment will be excluded from Section 7.06(a)(iii)(B);

(iii) the retirement of any shares of Redeemable Equity Interests by conversion into, or by exchange for, shares of Redeemable Equity Interests, or out of the net proceeds of the substantially concurrent sale (other than to a Subsidiary of the Borrower) of other shares of Redeemable Equity Interests;

(iv) the redemption, defeasance, repurchase or acquisition or retirement for value of any Debt of the Borrower or a Guarantor that is subordinate in right of payment or security to the Obligations out of the net cash proceeds of a substantially concurrent issue and sale (other than to a Subsidiary of the Borrower) of (x) new subordinated Debt of the Borrower or such Guarantor, as the case may be, Incurred in accordance with this Agreement or (y) of Qualified Equity Interests of the Borrower; provided that the amount of any net proceeds that are utilized for such Restricted Payment will be excluded from Section 7.06(a)(iii)(B);

(v) the purchase, redemption, retirement or other acquisition for value of Equity Interests in the Borrower or any direct or indirect parent of the Borrower (or any payments to a direct or indirect parent company of the Borrower for the purposes of permitting any such repurchase) held by employees or former employees of the Borrower or any Restricted Subsidiary (or their estates or beneficiaries under their estates) upon death, disability, retirement or termination of employment or alteration of employment status or pursuant to the terms of any agreement under which such Equity Interests were issued; *provided* that the aggregate cash consideration paid for such purchase, redemption, retirement or other acquisition of such Equity Interests does not exceed \$10.0 million in any calendar year, *provided, further*, that any unused amounts in any calendar year may be carried forward to one or more future periods subject to a maximum aggregate amount of repurchases made pursuant to this clause (v) not to exceed \$15.0 million in any calendar year; *provided, however*, that such amount in any calendar year may be increased by an amount not to exceed (A) the cash proceeds received by the Borrower or any of its Restricted Subsidiaries from the sale of Qualified Equity Interests of the Borrower or any direct or indirect parent company of the Borrower (to the extent contributed to the Borrower) to employees of the Borrower and its Restricted Subsidiaries that occurs after the Closing Date; *provided, however*, that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments pursuant to Section 7.06(a)(iii); *plus* (B) the cash proceeds of key man life insurance policies received by the Borrower and its Restricted Subsidiaries after the Closing Date (*provided, however*, that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by the proviso of this clause (v) in any calendar year and, to the extent any payment described under this clause (v) is made by delivery of Debt and not in cash, such payment shall be deemed to occur only when, and to the extent, the obligor on such Debt makes payments with respect to such Debt);

(vi) the repurchase of Equity Interests deemed to occur (A) upon the exercise of stock options, warrants or similar rights to the extent such Equity Interests represent a portion of the exercise price of those stock options or warrants, (B) as a result of common shares utilized to satisfy tax withholding obligations upon exercise of stock options or vesting of other equity awards or (C) upon the cancellation of stock options, warrants or other equity awards;

(vii) cash payments in lieu of issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Equity Interests of the Borrower or a Restricted Subsidiary;

(viii) the declaration and payment of dividends to holders of any class or series of Redeemable Equity Interests of the Borrower or any Restricted Subsidiary issued or Incurred in compliance with Section 7.02 to the extent such dividends are included in the definition of "Consolidated Fixed Charges";

(ix) purchase or acquire shares of the Borrower's Equity Interests in open-market purchases for matching contributions to any employees of the Borrower or its Subsidiaries pursuant to any employee stock purchase plan, deferred compensation plan or other benefit plan;

(x) to the extent no Event of Default has occurred and is continuing or will occur as a consequence thereof, upon the occurrence of a Change of Control or an Asset Sale (each as defined in the 2023 Indenture), the defeasance, redemption, repurchase or other acquisition of any subordinated Debt pursuant to provisions substantially similar to those contained in Section 4.10 and Section 4.14 of the 2023 Indenture at a purchase price not greater than 101% of the principal amount thereof (in the case of a Change of Control) or at a percentage of the principal amount thereof not higher than the principal amount applicable to the 2023 Notes (in the case of an Asset Sale), plus any accrued and unpaid interest thereon; provided that prior to or contemporaneously with such defeasance, redemption, repurchase or other acquisition, the Borrower has repaid all then outstanding Loans in full;

(xi) to the extent no payment Default under this Agreement or the ABL Facility or Event of Default has occurred and is continuing or will occur as a consequence thereof, other Restricted Payments not in excess of the greater of (x) \$50.0 million and (y) 1.75% of Consolidated Total Assets (in each case to the extent not otherwise included in Consolidated Net Income net of, with respect to any Restricted Payment that constitutes an Investment in any particular Person made in reliance on this clause, the return thereon received after the Closing Date as a result of any sale for cash or Cash Equivalents, repayment, redemption, liquidating distribution or other realization for cash or Cash Equivalents, not to exceed the amount of Investments made after the Closing Date in such Person in reliance on this clause);

(xii) the purchase, repurchase, redemption, acquisition or retirement for nominal value of common stock or preferred stock purchase rights in each case issued in connection with any shareholder rights plan that may be adopted by the Borrower;

(xiii) the repurchase or other acquisition of shares of, or options to purchase shares of, common stock of the Borrower or any of its Subsidiaries pursuant to any share repurchase plan approved by the Borrower's Board of Directors; provided, however, that the aggregate amount of such repurchases shall not exceed \$7.5 million in any twelve-month period;

(xiv) the making by the Borrower of quarterly dividend payments in respect of common stock of the Borrower of no more than \$0.10 per share; and

(xv) to the extent no Default in any payment in respect of principal or interest under this Agreement, the ABL Credit Agreement or any Debt in excess of the Threshold Amount or Event of Default has occurred and is continuing or will occur as a consequence thereof, other Restricted Payments; *provided* that the Consolidated Leverage Ratio shall not be in excess of 2.25 to 1.00 on a *pro forma* basis immediately after giving effect to such Restricted Payment.

If the Borrower makes a Restricted Payment which, at the time of the making of such Restricted Payment, in the good faith determination of the Borrower, would be permitted under the requirements of this Agreement, such Restricted Payment shall be deemed to have been made in compliance with this Agreement notwithstanding any subsequent adjustment made in good faith to the Borrower's financial statements affecting Consolidated Net Income.

If any Person in which an Investment is made, which Investment constitutes a Restricted Payment when made, thereafter becomes a Restricted Subsidiary in accordance with this Agreement, all such Investments previously made in such Person shall no longer be counted as Restricted Payments for purposes of calculating the aggregate amount of Restricted Payments pursuant to Section 7.06(b), in each case to the extent such Investments would otherwise be so counted.

If the Borrower or a Restricted Subsidiary transfers, conveys, sells, leases or otherwise disposes of an Investment in accordance with Section 7.05, which Investment was originally included in the aggregate amount expended or declared for all Restricted Payments pursuant to clause (c) of the definition of "Restricted Payment," the aggregate amount expended or declared for all Restricted Payments shall be reduced by the lesser of (i) the net cash proceeds from the transfer, conveyance, sale, lease or other disposition of such Investment or (ii) the amount of the original Investment, in each case, to the extent originally included in the aggregate amount expended or declared for all Restricted Payments pursuant to clause (c) of the definition of "Restricted Payment."

For purposes of this Section 7.06, if a particular Restricted Payment involves a non-cash payment, including a distribution of assets, then such Restricted Payment shall be deemed to be an amount equal to the cash portion of such Restricted Payment, if any, plus an amount equal to the Fair Market Value of the non-cash portion of such Restricted Payment.

7.07 Change in Nature of Business. Engage in any business other than a Permitted Business.

7.08 Transactions with Affiliates. Directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of related transactions, contract, agreement, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of \$5.0 million, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Borrower or the relevant Subsidiary than those that could reasonably be expected to have been obtained in a comparable arm's-length transaction by the Borrower or such Subsidiary with an unaffiliated party;

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$20.0 million, the Borrower delivers to the Administrative Agent a resolution adopted in good faith by the majority of the Board of Directors of the Borrower approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (i) above; and

(iii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$40.0 million, the Borrower must obtain and deliver to the Administrative Agent a written opinion of a nationally recognized investment banking, accounting or appraisal firm stating that the transaction is fair to the Borrower or such Restricted Subsidiary, as the case may be, from a financial point of view.

The foregoing limitations do not limit, and shall not apply to:

(1) Restricted Payments permitted under Section 7.06;

(2) the payment of reasonable and customary compensation and indemnities and other benefits to members of the Board of Directors of the Borrower or a Restricted Subsidiary who are outside directors;

(3) the payment of reasonable and customary compensation (including awards or grants in cash or securities and other payments) and other benefits (including retirement, health, option, deferred compensation and other benefit plans) and indemnities to officers and employees of the Borrower or any Restricted Subsidiary as determined by the Board of Directors thereof in good faith;

(4) transactions between or among the Borrower and/or its Restricted Subsidiaries;

(5) any agreement or arrangement as in effect on the Closing Date and any amendment or modification thereto so long as such amendment or modification is not more disadvantageous to the Lenders in any material respect;

(6) any contribution of capital to the Borrower;

(7) transactions permitted by, and complying with, Section 7.04 hereof;

(8) any transaction with a joint venture, partnership, limited liability company or other entity that would constitute an Affiliate Transaction solely because the Borrower or a Restricted Subsidiary owns an equity interest in such joint venture, partnership, limited liability company or other entity;

(9) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case, in the ordinary course of business and on terms that are not materially less favorable to the Borrower or such Restricted Subsidiary, as the case may be, as determined in good faith by the Borrower, than those that could reasonably be expected to be obtained in a comparable arm's length transaction with a Person that is not an Affiliate of the Borrower;

(10) transactions effected as part of a Qualified Receivables Transaction;

(11) loans (or Guarantees of third-party loans) and advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$10.0 million at any one time outstanding for travel, entertainment, relocation and analogous ordinary business purposes;

(12) the issuance or sale of any Equity Interests (other than Disqualified Equity Interests) of the Borrower; and

(13) the Transactions and the payment of fees and expenses in connection with the Transactions.

**7.09 Burdensome Agreements.** Directly or indirectly, cause or suffer to exist or become effective or enter into any encumbrance or restriction on (x) the ability of any Restricted Subsidiary to (i) pay dividends or make any other distributions on its Equity Interests owned by the Borrower or any Restricted Subsidiary or pay any Debt or other obligation owed to the Borrower or any Restricted Subsidiary, (ii) make loans or advances to the Borrower or any Restricted Subsidiary thereof or (iii) transfer any of its property or assets to the Borrower or any Restricted Subsidiary or (y) the ability of the Borrower or any of its Restricted Subsidiaries (other than any Foreign Subsidiaries or any Excluded Subsidiaries) to create, incur, assume or suffer to exist any Lien in favor of the Lenders in respect of obligations and liabilities under this Agreement or any other Loan Documents upon any of its property, assets or revenues constituting Collateral as and to the extent contemplated by this Agreement and the other Loan Documents, whether now owned or hereafter acquired.

However, the preceding restrictions will not apply to the following encumbrances or restrictions existing under or by reason of:

(g) any encumbrance or restriction in existence on the Closing Date, including pursuant to the ABL Loan Documents, the 2020 Notes, the 2023 Notes, the SunBelt Guarantee and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements, or refinancings, of any of the foregoing agreements or documents, *provided* that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings, in the good faith judgment of the Borrower, are not materially more restrictive, taken as a whole, with respect to such dividend or other payment restrictions than those contained in these agreements on the Closing Date or refinancings thereof;

(h) any encumbrance or restriction pursuant to an agreement relating to an acquisition of property, so long as the encumbrances or restrictions in any such agreement relate solely to the property so acquired (and are not or were not created in anticipation of or in connection with the acquisition thereof);

(i) any encumbrance or restriction which exists with respect to a Person that becomes a Restricted Subsidiary or merges with or into a Restricted Subsidiary on or after the Closing Date, which is in existence at the time such Person becomes a Restricted Subsidiary, but not created in connection with or in anticipation of such Person becoming a Restricted Subsidiary, and which is not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person becoming a Restricted Subsidiary;

(j) any instrument governing Debt or Equity Interests of a Person acquired by the Borrower or any of the Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Debt or Equity Interests was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, *provided* that, in the case of Debt, such Debt was permitted to be Incurred under Section 7.02;

(k) any encumbrance or restriction under the 2020 Notes, the 2023 Notes or the Loan Documents or any documents governing (x) any Incremental Equivalent Debt Incurred under Section 2.14 or (y) any Refinancing Equivalent Debt Incurred under Section 2.15;

(l) any encumbrance or restriction pursuant to an agreement effecting a permitted renewal, refunding, replacement, refinancing or extension of Debt issued pursuant to an agreement containing any encumbrance or restriction referred to in the foregoing clauses (b) through (e), so long as the encumbrances and restrictions contained in any such renewal, refunding, replacement, refinancing or extension agreement are no less favorable in any material respect to the Lenders than the encumbrances and restrictions contained in the agreements governing the Debt being renewed, refunded, replaced, refinanced or extended in the good faith judgment of the Borrower;

(m) customary provisions restricting subletting or assignment of any lease, contract, or license of the Borrower or any Restricted Subsidiary or provisions in agreements that restrict the assignment of such agreement or any rights thereunder;

(n) any encumbrance or restriction by reason of applicable law, rule, regulation, order, license, permit or similar restriction;

(o) any encumbrance or restriction under the sale of assets or Equity Interests, including, without limitation, any agreement for the sale or other disposition of a Subsidiary that restricts distributions by that Subsidiary pending its sale or other disposition;

(p) restrictions on cash and other deposits or net worth imposed by customers under contracts entered into the ordinary course of business;

(q) customary provisions with respect to the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, stock sale agreements, sale leaseback agreements and other similar agreements;



(r) purchase money obligations (including Capital Lease Obligations) for property acquired in the ordinary course of business that impose restrictions on that property so acquired of the nature described in clause (x)(iii) of the first paragraph of this Section 7.09;

(s) Liens permitted under Section 7.01 securing Debt otherwise permitted to be Incurred under Section 7.02, that limit the right of the debtor to dispose of the assets subject to such Liens;

(t) any Non-Recourse Receivable Subsidiary Debt or other contractual requirements of a Receivable Subsidiary that is a Restricted Subsidiary in connection with a Qualified Receivables Transaction; *provided* that such restrictions apply only to such Receivable Subsidiary or the receivables and related assets described in the definition of Qualified Receivables Transaction which are subject to such Qualified Receivables Transaction;

(u) any other agreement governing Debt entered into after the Closing Date that contains encumbrances and restrictions that are not materially more restrictive with respect to any Restricted Subsidiary than those in effect on the Closing Date with respect to that Restricted Subsidiary pursuant to agreements in effect on the Closing Date; and

(v) existing under any agreement relating to Debt Incurred by Foreign Subsidiaries permitted to be Incurred pursuant to Section 7.02 and Refinancing Debt in respect thereof; *provided* that such restrictions are customary for a financing of such type and apply only to the Persons Incurring such Debt (including Guarantees thereof) and their Subsidiaries.

Nothing contained in this Section 7.09 shall prevent the Borrower or any Restricted Subsidiary from (i) creating, incurring, assuming or suffering to exist any Liens otherwise permitted under Section 7.01 or (ii) restricting the sale or other disposition of property or assets of the Borrower or any of its Restricted Subsidiaries that secure Debt of the Borrower or any of its Restricted Subsidiaries Incurred in accordance with Section 7.01 and Section 7.02 hereof.

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 [Reserved].

7.12 Limitation on Sale and Leaseback Transactions. Enter into any Sale and Leaseback Transaction unless:

(1) the consideration received in such Sale and Leaseback Transaction is at least equal to the Fair Market Value of the property sold,

(2) prior to and after giving effect to the Attributable Debt in respect of such Sale and Leaseback Transaction, the Borrower and such Restricted Subsidiary comply with Section 7.02, and

(3) at or after such time the Borrower and such Restricted Subsidiary also comply with Section 7.04, if applicable.

7.13 Amendments of Certain Documents. Amend or otherwise modify (a) any of its Organization Documents in a manner materially adverse to the Administrative Agent and the Lenders taken as a whole (as determined in good faith by the Borrower) and (b) any term or condition of any Junior Debt in any manner materially adverse to the interests of the Administrative Agent and the Lenders taken as a whole (as determined in good faith by the Borrower).

7.14 Accounting Changes. Make any change in (a) its accounting policies or reporting practices, except as required or permitted by GAAP or (b) its fiscal year unless to conform to the accounting policies or reporting practices or fiscal year, as applicable, of the Borrower.

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an “Event of Default”:

%3) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan, or (ii) pay within three days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

%3) Specific Covenants. The Borrower or any Restricted Subsidiary fails to perform or observe any term, covenant or agreement contained in any of Section 6.03, Section 6.05 (solely as it relates to good standing in its jurisdiction of organization) or Article VII; or

%3) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (i) a Responsible Officer of such Loan Party becoming aware of such default or (ii) receipt by such Loan Party of notice from the Administrative Agent or any Lender of such default; or

%3) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

%3) Cross-Default. Any Loan Party or any Restricted Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt (other than Debt hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform

any other agreement or condition relating to any such Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt or the beneficiary or beneficiaries of any Debt arising pursuant to a Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause (whether or not exercised), with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its Stated Maturity, or otherwise to become payable or cash collateral in respect thereof to be demanded; *provided that* this clause (e) shall not apply to secured Debt that becomes due (and is paid in full and otherwise discharged within five Business Days of initially becoming due) as a result of the voluntary sale or transfer of the property or assets securing such Debt, if such sale or transfer is permitted hereunder and under the documents providing for such Debt; *provided, further*, an "Event of Default" under the ABL Credit Agreement shall not constitute an Event of Default hereunder unless and until (x) the ABL Lenders have actually declared all obligations thereunder to be immediately due and payable in accordance with the terms of the ABL Credit Agreement and such declaration has not been rescinded by the ABL Lenders on or before such date or (y) the Borrower has failed to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of the ABL Facility; or

%3) Insolvency Proceedings, Etc. Any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment is not timely controverted or continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and is not timely controverted or continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

%3) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy or a stay of enforcement thereof is not in effect; or

%3) Judgments. There is entered against any Loan Party or any Restricted Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute or decline coverage), or (ii) any one or more final judgments other than for the payment of money, that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days at any time after the entry of any such judgment, order, or award during which the same is not discharged, satisfied, vacated, or bonded pending appeal, or (C) a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

%3) ERISA. (i) Except as would not reasonably be expected to result in a Material Adverse Effect, an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan which has resulted in liability of the Borrower in an aggregate amount in excess of the Threshold Amount; or

%3) Invalidity of Loan Documents. The validity or enforceability of any material provision of any Loan Document, shall at any time for any reason (other than the failure of the Administrative Agent to file UCC-1 financing statements or fixture filings, file or record any Mortgage or maintain possession of stock certificates or debt securities that have been delivered to it and other than as a result of any transaction permitted by this Agreement or after the satisfaction of the Obligations) cease to be in full force and effect or be declared to be null and void, or any Loan Party or its Restricted Subsidiaries purport to revoke, terminate or rescind any provision of any Loan Document, or a proceeding shall be commenced by a Loan Party or its Restricted Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Restricted Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Restricted Subsidiaries shall deny that such Loan Party or its Restricted Subsidiaries has any liability or obligation purported to be created under any Loan Document;

%3) Change of Control. There occurs any Change of Control; or

%3) Collateral and Other Documents. Any Collateral Document shall fail or cease to create a valid and perfected and, except to the extent set forth in the ABL Intercreditor Agreement, and to the extent Permitted Liens have priority, first priority Lien on the Collateral purported to be covered thereby (except (x) as a result of a transaction permitted by this Agreement, (y) with respect to Collateral with a collective fair market value of less than the Threshold Amount or (z) as a result of the failure of the Administrative Agent to file UCC-1 financing statements or fixture filings, file or record any Mortgage or maintain possession of stock certificates or debt securities that have been delivered to it) or the subordination provisions contained in any agreement related to any Subordinated Debt shall cease to be in full force and effect or to give the Administrative Agent or Lenders the rights, powers and privileges purported to be created thereby.

8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, (a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower and (b) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law; *provided, however*, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall

automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of (i) that portion of the Obligations constituting unpaid principal of the Loans and (ii) the Secured Hedge Obligations and Bank Product Obligations, in each case, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

## ARTICLE IX ADMINISTRATIVE AGENT

### 9.01 Appointment and Authority.

(e) Each of the Lenders hereby irrevocably appoints Citi to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

(f) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative 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 discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. 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, the Administrative Agent:

%3) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

%3) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

%3) 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 Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

%3) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

%3) 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, (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 Collateral Documents, (v) the value or the sufficiency of any Collateral, or (v) 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.

(f) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders and, without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

9.04 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) 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 the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), 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.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Syndication Agent, Bookrunners or Lead Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

%3) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other 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 and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.07 and 10.04) allowed in such judicial proceeding; and

%3) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, 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 Sections 2.07 and 10.04.

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 any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

9.10 Collateral and Guaranty Matters. Each of the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

%3) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent (x)(i) Bank Product Obligations and (ii) Secured Hedge Obligations not yet due and payable, and (y) indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale to a person that is not a Loan Party permitted hereunder or any sale or transfer that is not prohibited hereunder or under any other Loan Document to a person that is not a Loan Party, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

%3) to release any Guarantor from its obligations under the Guaranty if such Person becomes an Unrestricted Subsidiary or Excluded Subsidiary or ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

%3) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(m) or in connection with a Permitted Encumbrance that is entered into in the ordinary course of business and is not an Asset Sale.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, upon the receipt of an Officer's Certificate, at the Borrower's reasonable expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Withholding Tax. To the extent required by applicable Law (including for this purpose, pursuant to any agreements entered into with a Governmental Authority), the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Loan Parties and without limiting the obligation of the Loan Parties to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any interest, additions to Tax or penalties thereto, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by an Administrative Agent shall be deemed presumptively correct absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.11. The agreements in this Section 9.11 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other obligations. Unless required by applicable laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender any refund of Taxes withheld or deducted from funds paid for the account of such Lender.

## ARTICLE X MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

%3) waive any condition set forth in Section 4.01, without the written consent of each Lender;

%3) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

%3) postpone any date fixed by this Agreement or any other Loan Document for any scheduled payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such scheduled payment;

%3) reduce the principal of, or the rate of interest specified herein on, any Loan or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

%3) change (i) Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans;

%3) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

%3) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

%3) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

%3) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and *provided, further*, that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (i) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, error, defect or inconsistency so long as, in each case, the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment and (ii) the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with the provision of any Additional Commitments or any borrowing of Additional Term Loans to effect the provisions of Section 2.14 or any borrowing of Refinancing Term Loans to effect the provisions of Section 2.15 or otherwise to effect the provisions of Section 2.14 or Section 2.15, or in connection with the entry into any intercreditor agreement expressly contemplated hereunder.

#### 10.02 Notices; Effectiveness; Electronic Communications.

(g) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications 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 and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(h) Electronic Communications. Notices and other communications to the Lenders 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 pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its

discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(i) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(j) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(k) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement**. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.11), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver**.

(c) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent in each relevant jurisdiction), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent, Syndication Agent, Bookrunners, Lead Arrangers or any Lender (including the reasonable fees, charges and

disbursements of counsel for the Administrative Agent and the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that in the case of charges of outside counsel, such payment shall be limited to the fees, disbursements and other charges of (x) one transaction counsel, (y) if reasonably necessary (as determined by the Administrative Agent), one local counsel in each relevant jurisdiction and (z) if reasonably necessary (as determined by the Administrative Agent), regulatory and specialist counsel (and, in each case, in the case of an actual or a potential conflict of interest, (A) one additional counsel for each affected person (or group of persons) and (B) if necessary, one local, regulatory and/or specialist counsel for each affected person (or group of persons) in any relevant jurisdiction.

(d) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), Syndication Agent, Bookrunners, Lead Arrangers each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of counsel for any Indemnities), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution, enforcement or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials at, on, under or from any property currently or formerly owned or operated by the Borrower or any of its Subsidiaries requiring assessment, remediation or response action under any Environmental Law, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or such Indemnitee’s Affiliates or any of its or their respective Related Parties, (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for material breach of such Indemnitee’s (or any of its Related Parties’) obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise from any claim, actions, suits, inquiries, litigation, investigation or proceeding that does not involve an act or omission of the Borrower or any of its affiliates and that is brought by an Indemnitee against any other Indemnitee (other than claims against an Indemnitee acting in its capacity as Administrative Agent or Arranger hereunder unless such claims arise from the gross negligence, bad faith or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable judgment)); *provided further* that with respect to each claim (or related series of claims), in the case of charges of outside counsel, such payment shall be limited to the fees, disbursements and other charges of (x) one counsel, (y) if reasonably necessary (as determined by the Administrative Agent), one local counsel in each relevant jurisdiction and (z) if reasonably necessary (as determined by the Administrative Agent), regulatory and specialist counsel (and, in each case, in the case of an actual or a potential conflict of interest, (A) one additional counsel for each affected person (or group of persons) and (B) if necessary, one local, regulatory and/or specialist counsel for each affected person (or group of persons) in any relevant jurisdiction. This Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(e) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), or such Related Party, as the case may be, such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12.

(f) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee 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 other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(g) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(h) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside**. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent



upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### 10.06 Successors and Assigns.

(w) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(x) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(%5) in the case of an assignment (i) in connection with the initial syndication of the Initial Loans held by Citibank, N.A. and (ii) of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(%5) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided, however,* that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) except in the case of an assignment in connection with the initial syndication of the Initial Loans held by Citibank, N.A., the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however,* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to a natural person or (D) solely to the extent that the list of Disqualified Lenders has been provided to the Administrative Agent and posted to the Lenders, to a Disqualified Lender.

(vi) Certain Additional Payments. 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 Borrower 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 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 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.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 Section 10.06(d).

(y) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent 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 a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.

(z) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower, any of the Borrower's Affiliates or Subsidiaries or, solely to the extent that the list of Disqualified Lenders has been provided to the Administrative Agent and posted to the Lenders, to a Disqualified Lender) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans; *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such Sections (it being understood that the documentation required under Section 3.01(e) shall be delivered solely to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, *provided* such Participant agrees to be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); *provided*, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in such Lender's Participant Register as the owner of such participation for all purposes of this Agreement, including payments of interest and principal, notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from the Borrower under the Loan Documents shall be made available to the Borrower upon reasonable request. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(aa) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, not to be unreasonably withheld.

(bb) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or

(ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, *provided* that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender and its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO 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 COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN

SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, INCLUDING WITH RESPECT TO COLLATERAL, AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

10.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON 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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lead Arrangers are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Lead Arrangers, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Lead Arrangers are and have been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor the Lead Arrangers have any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Lead Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor the Lead Arrangers have any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Lead Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.16 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.17 USA PATRIOT Act. 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 Borrower that pursuant to the requirements of the Patriot 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 Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Patriot Act.

10.18 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 Borrower in respect of any such sum due from it to the Administrative Agent or any Lender 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 or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, 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 or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

10.19 Intercreditor Agreements and the Acknowledgment. Each Lender grants the Administrative Agent the power to enter into the Intercreditor Agreements and to bind such Lender to the provisions thereof. Notwithstanding anything herein to the contrary, the Lien and security interest granted pursuant to this Agreement and the exercise of any right or remedy hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of any Intercreditor Agreement and this Agreement, the terms of such Intercreditor Agreement shall govern and control except as expressly set forth in such Intercreditor Agreement. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of the Administrative Agent (and the other Secured Parties) with respect to the “Revolving Loan Priority Collateral” (as defined in the ABL Intercreditor Agreement) shall be subject to the terms of the ABL Intercreditor Agreement. Until the “Discharge of Revolving Loan Debt” (as defined in the ABL Intercreditor Agreement), the delivery of any “Revolving Loan Priority Collateral” (as defined in the ABL Intercreditor Agreement) to the “Revolving Loan Agent” (as defined in the ABL Intercreditor Agreement) pursuant to the “Revolving Loan Documents” (as defined in the ABL Intercreditor Agreement) shall satisfy any delivery requirement hereunder or under any other Loan Document with respect to such Revolving Loan Priority Collateral.

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

POLYONE CORPORATION

By: /s/ Scott J. Leffler  
Name: Scott J. Leffler  
Title: Vice President and Treasurer

CITIBANK, N.A., as  
Administrative Agent

By: /s/ Robert Cohen  
Name: Robert Cohen  
Title: Vice President

CITIBANK, N.A., as a Lender

By: /s/ Robert Cohen  
Name: Robert Cohen  
Title: Vice President

**SCHEDULE 1.01(a)**  
**CLOSING DATE GUARANTORS**

1. CONEXUS, LLC
2. NEU SPECIALTY ENGINEERED MATERIALS, LLC
3. POLYMER DIAGNOSTICS, INC.
4. COLORMATRIX GROUP, INC.
5. COLORMATRIX HOLDINGS, INC.
6. THE COLORMATRIX CORPORATION
7. CHROMATICS, INC.
8. GAYSON SILICONE DISPERSIONS, INC.
9. POLYONE LLC
10. GLASFORMS, INC.
11. POLYONE DESIGNED STRUCTURES AND SOLUTIONS LLC
12. FRANKLIN-BURLINGTON PLASTICS, INC.

**SCHEDULE 1.01(b)**  
**MORTGAGED PROPERTIES**

Avon Lake, Ohio Campus which consists of buildings and land known as Lorain County Permanent Parcel Number 0400005000123 with the common address of 33587 Walker Road.

**SCHEDULE 2.01**  
**COMMITMENTS AND APPLICABLE PERCENTAGE**

<b>Lender</b>	<b>Commitment</b>	<b>Applicable Percentage</b>
Citibank, N.A.	\$550,000,000	100%
<b>Total</b>	\$ 550,000,000	100%

**SCHEDULE 5.09**  
**ENVIRONMENTAL**

None.

**SCHEDULE 5.13**  
**SUBSIDIARIES AND OTHER EQUITY INVESTMENTS; LOAN PARTIES**

<b>Equity Holder</b>	<b>Issuer</b>	<b>Percentage of Outstanding Shares</b>
PolyOne Corporation	Conexus, LLC (f/k/a Conexus, Inc.)	100%
GLS International, Inc.	GLS Hong Kong Limited	99.9%
PolyOne Corporation		.1%
PolyOne Corporation	GLS International, Inc.	100%
GLS International, Inc.	GLS Thermoplastic Alloys (Suzhou) Co., Ltd.	100%
GLS International, Inc.	GLS Trading (Suzhou) Co., Ltd.	100%
PolyOne Corporation	M.A. Hanna Asia Holding Company	100%
PolyOne Corporation	NEU Specialty Engineered Materials, LLC	100%
PolyOne Corporation	P.I. Europe CV	92%
PolyOne LLC		8%
PolyOne Corporation	Polymer Diagnostics, Inc.	100%
PolyOne Corporation	PolyOne Canada Inc.	100%
PolyOne Corporation	PolyOne Controladora S.A. de C.V.	100%
PolyOne Corporation	PolyOne Hong Kong Holding Ltd.	100%
PolyOne Corporation	PolyOne Designed Structures and Solutions LLC	100%
PolyOne Corporation	PolyOne International Trading (Shanghai) Co., Ltd.	100%
PolyOne Corporation	PolyOne LLC	100%
PolyOne Corporation	PolyOne Shenzhen Co. Ltd.	100%
PolyOne Corporation	PolyOne Singapore Pte. Ltd.	100%
Conexus, LLC (f/k/a Conexus, Inc.)	PolyOne Termoplasticos do Brasil Ltda.	0.01%
PolyOne Corporation		99.99%
PolyOne Corporation	ColorMatrix Group, Inc.	100%
ColorMatrix Group, Inc.	ColorMatrix Holdings, Inc.	100%
ColorMatrix Holdings, Inc.	The ColorMatrix Corporation	100%
The ColorMatrix Corporation	Chromatics, Inc.	100%
The ColorMatrix Corporation	ColorMatrix - Brazil, LLC	100%
The ColorMatrix Corporation	Gayson Silicone Dispersions, Inc.	100%
ColorMatrix Group, Inc.	ColorMatrix Plastic Colorant (Suzhou) Co. Ltd.	100%

ColorMatrix Holdings, Inc.	ColorMatrix Asia Limited	100%
ColorMatrix Holdings, Inc.	ColorMatrix UK Holdings Ltd.	100%
PolyOne Corporation	Glasforms, Inc.	100%
PolyOne Designed Structures and Solutions LLC	Spartech Luxembourg Holding Co. S.à r.l	100%
PolyOne Designed Structures and Solutions LLC	Spartech Mexico Holding Company	100%
PolyOne Designed Structures and Solutions LLC	Franklin-Burlington Plastics, Inc.	100%
PolyOne Designed Structures and Solutions LLC	Spartech France Holdings, L.P.	50.77%
PolyOne DSS Canada Inc.		49.23%
PolyOne Designed Structures and Solutions LLC	PolyOne DSS Canada Inc.	100%
PolyOne Corporation	Geon Development, Inc.	100%
PolyOne Corporation	Hanna Proprietary Limited	100%
PolyOne Corporation	Hanna-Itasca Company	100%
PolyOne Corporation	Hollinger Development Company	100%
PolyOne Corporation	M.A. Hanna Plastic Group, Inc.	100%
PolyOne Corporation	Burton Rubber Company	100%
PolyOne Corporation	M.A. Hanna Export Services Corporation	100%
PolyOne Corporation	PolyOne Funding Corporation	100%
PolyOne Corporation	Canada Films Venture Inc.	100%
PolyOne Corporation	PolyOne Costa Rica SA	100%
PolyOne Corporation	PolyOne Vinyl Compounds Asia Holdings Limited	96%
M.A. Hanna Plastic Group, Inc.	L.E. Carpenter & Company	100%
M.A. Hanna Plastic Group, Inc.	RA Products, Inc.	100%
PolyOne Corporation	PolyOne Engineered Films, LLC	70%
Canada Films Venture Inc.		30%
PolyOne Engineered Films, LLC	O’Sullivan Plastics LLC	100%
PolyOne Engineered Films, LLC	Regalite Plastics, LLC	100%
PolyOne Engineered Films, LLC	Shawnee Holdings, LLC	100%
PolyOne Termoplásticos do Brasil Ltda.	Uniplen Indústria de Polímeros Ltda.	100%
PolyOne Termoplásticos do Brasil Ltda.	Braspenco Indústria de Compostos Plásticos Ltda.	100%
PolyOne Controladora, S.A. de C.V.	PolyOne de Mexico S.A. de C.V.	100%
PolyOne Canada Inc.	Auseon Ltd.	80%
The Geon Company Australia Limited		20%
PolyOne Canada Inc.	The Geon Company Australia Limited	100%
PolyOne Canada Inc.	LP Holdings Inc.	100%
PolyOne Canada Inc.	PolyOne Funding Canada Corporation	100%
P.I. Europe C.V.	PolyOne International Finance Company	100%
P.I. Europe C.V.	PolyOne Management International Holding, S.L. (ETVE)	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Corporation UK Limited	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne España, S.L.	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Italy Srl	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Polimeks Plastik Ticaret ve Sanayi A.Ş	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Tekno Polimer Mühendislik Plastikleri Sanayi ve Ticaret A.Ş	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Tekno Ticaret Mühendislik Plastikleri Sanayi ve Ticaret A.Ş	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Magyarország Polimer Feldolgozo KFT. (a/k/a PolyOne Hungary, Ltd.)	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Belgium SA	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Poland Manufacturing Sp. z o.o.	99%

PolyOne Belgium SA		1%
PolyOne Management International Holding, S.L. (ETVE)	Hanna France S.à.r.l.	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Deutschland, GmbH	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Luxembourg S.a.R.L.	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Sweden, AB	100%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne Europe Logistics S.A.	99.99%
PolyOne Belgium SA		0.01%
PolyOne Management International Holding, S.L. (ETVE)	PolyOne CR s.r.o.	98%
PolyOne Belgium SA		2%
Hanna France S.à.r.l.	PolyOne France S.A.S.	100%
PolyOne Deutschland, GmbH	PolyOne Color and Additives Germany, GmbH	100%
PolyOne Deutschland, GmbH	PolyOne Th. Bergmann, GmbH	100%
PolyOne Luxembourg S.a.R.L.	PolyOne Korea, Ltd.	100%
PolyOne Luxembourg S.a.R.L.	Juffali-PolyOne Master Batches Company	51%
PolyOne Luxembourg S.a.R.L.	PolyOne Polymers India Pvt. Ltd	32%
PolyOne Singapore Pte. Ltd.		68%
PolyOne Belgium SA		<.01%
PolyOne Luxembourg S.a.R.L.	PolyOne Manufacturing S.a.r.l.	100%
PolyOne Manufacturing S.a.r.l.	PolyOne de Mexico Distribution, S. de R.L. de C.V.	99.99%
PolyOne Manufacturing S.a.r.l.	PolyOne de Mexico Manufacturing, S. de R.L. de C.V.	99.99%
PolyOne Hong Kong Holding Limited	PolyOne Suzhou, China	100%
PolyOne Hong Kong Holding Limited	PolyOne Shanghai, China	100%
PolyOne Hong Kong Holding Limited	PolyOne Distribution Trading (Shanghai) Co. Ltd.	100%
PolyOne Hong Kong Holding Limited	PolyOne Management (Shanghai) Co. Ltd.	100%
PolyOne Singapore Pte. Ltd.	PolyOne Japan K.K.	100%
M.A. Hanna Asia Holding Company	PolyOne (Thailand) Co., Ltd. (f/k/a Star Color Co. Ltd.)	100%
PolyOne Vinyl Compounds Asia Holdings Limited	PolyOne (Dongguan) Vinyl Compounds Company Ltd.	100%
ColorMatrix - Brazil, LLC	ColorMatrix Argentina S.A.	95%
The ColorMatrix Corporation		5%
ColorMatrix - Brazil, LLC	ColorMatrix do Brasil Industria e Comercio de Pigmentos e Aditivos Ltda.	95.18%
ColorMatrix South America, Ltd.		4.82%
ColorMatrix - Brazil, LLC	ColorMatrix Mexico S.A. de C.V.	99% (fixed) 100% (variable)
The ColorMatrix Corporation		1% (fixed)
ColorMatrix - Brazil, LLC	ColorMatrix South America, Ltd.	100%
ColorMatrix UK Holdings Limited	ColorMatrix Europe Limited	83.81%
ColorMatrix Group, Inc.		16.19%
ColorMatrix Europe Limited	Seola ApS Holding	100%
ColorMatrix Europe Limited	ColorMatrix Europe BV	100%
ColorMatrix Europe Limited	ColorMatrix U.K. Limited	100%
Seola ApS Holding	Colorant Chromatics AG	100%
Colorant Chromatics AG	Shanghai Colorant Chromatics Co, Ltd.	100%
Colorant Chromatics AG	Colorant Chromatics Trading (Shanghai) Co., Ltd.	100%
Colorant Chromatics AG	Colorant Chromatics AB	100%
Colorant Chromatics AG	Colorant GmbH	100%



Colorant Chromatics AG	Colorant Chromatics Europe B.V.	100%
ColorMatrix Europe BV	ColorMatrix Russia LLC	100%
ColorMatrix Europe BV	ColorMatrix South Africa (Pty) Ltd.	100%
Spartech Mexico Holding Company	Spartech Mexico Holding Company Two	100%
Spartech Mexico Holding Company	Spartech Mexico Holdings, LLC	100%
Spartech Mexico Holding Company	Spartech de Mexico Holding Company, S. de R.L. de C.V.	.99%
Spartech Mexico Holdings, LLC		.01%
PolyOne DSS Canada Inc.		99.00%
Spartech France Holdings, L.P.	Spartech, S.A.S.	100%

#### SCHEDULE 6.18 POST-CLOSING MATTERS

1. Real Property Requirements. The Administrative Agent shall have received, within 60 days after the Closing Date (unless waived or extended by Administrative Agent in its sole discretion):

(i) a Mortgage encumbering each Mortgaged Property in favor of the Administrative Agent, for the benefit of the Secured Parties, duly executed and acknowledged by each Loan Party that is the owner of or holder of any interest in such Mortgaged Property, and otherwise in form for recording in the recording office of the county where each such Mortgaged Property is situated;

(ii) with respect to each Mortgage, a policy or policies (or an unconditional binding commitment therefor to be replaced by a final title policy) of title insurance issued by a nationally recognized title insurance company, in such amounts as reasonably acceptable to the Administrative Agent not to exceed the Fair Market Value of the applicable Mortgaged Property, insuring the Lien of each Mortgage as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Encumbrances and otherwise in form and substance reasonably acceptable to the Administrative Agent, together with such endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request but only to the extent such endorsements are (i) available in the relevant jurisdiction and (ii) available at commercially reasonable rates (the “**Mortgage Policy**”);

(iii) with respect to each Mortgaged Property, such affidavits (including a so-called “gap” indemnification) as are customarily required to induce the title company to issue the Mortgage Policy/ies and endorsements contemplated above;

(iv) evidence reasonably acceptable to the Administrative Agent of payment by Administrative Borrower of all Mortgage Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the Mortgage Policies referred to above;

(v) a completed “Life-of-Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property and if such Mortgaged Property is located in a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Loan Party and (ii) evidencing the insurance required by Section 6.08 in form and substance satisfactory to the Administrative Agent;

(vi) an American Land Title Association survey in a form and substance reasonably acceptable to the Administrative Agent or such existing survey together with a no-change affidavit sufficient for the title company to remove all standard survey exceptions from the Mortgage Policy related to such Mortgaged Property and issue the survey related endorsements; and

(vii) an opinion of counsel to Loan Parties with respect to the Mortgages, which shall include opinions as to the due authorization, execution and delivery, the enforceability, and perfection of the Mortgages and such other matters customarily covered in real estate mortgage counsel opinions as the Administrative Agent may reasonably request and shall otherwise be in form and substance reasonably acceptable to the Administrative Agent.

2. Foreign Subsidiaries Joinder to the Intercompany Subordination Agreement. The Administrative Agent shall have received, within 30 days after the Closing Date (or such later time as may be agreed by the Administrative Agent in its sole discretion), joinders to the Intercompany Subordination Agreement duly executed by each Foreign Subsidiary of the Borrower that is not a party thereto on the Closing Date.

3. Delivery of Stock Certificates. The Administrative Agent shall have received, within 30 days after the Closing Date (or such later time as may be agreed by the Administrative Agent in its sole discretion), share certificates required to be pledged pursuant to the Security Agreement, together

with instruments of transfer endorsed in blank for each of the following entities: (i) M.A. Hanna Asia Holding Company; (ii) PolyOne Singapore Pte. Ltd.; (iii) ColorMatrix – Brazil, LLC; (iv) Spartech Mexico Holding Company; (v) PolyOne DSS Canada Inc.; (vi) ColorMatrix Europe Ltd.; (vii) ColorMatrix Argentina S.A.; (viii) ColorMatrix Mexico S.A. de C.V.; and (ix) GLS International, Inc.

4. Delivery of Promissory Notes. The Administrative Agent shall have received, within 30 days after the Closing Date (or such later time as may be agreed by the Administrative Agent in its sole discretion), each promissory note set forth on Schedule I to the Security Agreement, together with an undated instrument of transfer with respect thereto endorsed in blank.

5. GLS International, Inc. The Borrower shall cause, within 15 Business Days of the Closing Date (or such later time as may be agreed by the Administrative Agent in its sole discretion), GLS International, Inc., to become a Guarantor hereunder and deliver all instruments, agreements and other applicable documentation in accordance with Section 6.13 (irrespective of the time periods specified therein), unless GLS International, Inc. is no longer a Loan Party (as defined in the ABL Credit Agreement) under the ABL Credit Agreement.

**SCHEDULE 7.01(a)  
EXISTING LIENS**

<b>Loan Party</b>	<b>Jurisdiction</b>	<b>Type of filing found</b>	<b>Secured Party</b>	<b>Original File Date</b>	<b>Original File Number</b>	<b>Amdt. File Date</b>	<b>Amdt. File Number</b>
PolyOne Corporation	Ohio SOS	UCC-1	Bayer Corporation	07/10/2002	OH00051752337		
PolyOne Corporation	Ohio SOS	UCC-3 Amendment  Amended Secured Party's name.	Bayer Polmers LLC	07/10/2002	OH00051752337	03/19/2003	20030800302
PolyOne Corporation	Ohio SOS	UCC-3 Amendment  Amended Secured Party's name.	Lanxess Corporation	07/10/2002	OH00051752337	07/20/2004	20042020018
PolyOne Corporation	Ohio SOS	UCC-3 Continuation	Lanxess Corporation	07/10/2002	OH00051752337	04/09/2007	20070990368
PolyOne Corporation	Ohio SOS	UCC-3 Continuation	Lanxess Corporation	07/10/2002	OH00051752337	05/08/2012	20121290222
PolyOne Corporation	Ohio SOS	UCC-1	National Paper & Packaging Co.	09/02/2003	OH00067980772		
PolyOne Corporation	Ohio SOS	UCC-3 Continuation	National Paper & Packaging Co.	09/02/2003	OH00067980772	07/03/2008	20081850562
PolyOne Corporation	Ohio SOS	UCC-3 Amendment  Amended Secured Party's name	Supplyone Cleveland, Inc.	09/02/2003	OH00067980772	08/05/2009	20092170520
PolyOne Corporation	Ohio SOS	UCC-3 Amendment  Amended Debtor's address	Supplyone Cleveland, Inc.	09/02/2003	OH00067980772	06/05/2013	20131560114
PolyOne Corporation	Ohio SOS	UCC-3 Continuation	Supplyone Cleveland, Inc.	09/02/2003	OH00067980772	06/05/2013	20131560115
PolyOne Corporation	Ohio SOS	UCC-1	Zeon Chemicals, L.P.	01/09/2007	OH0010707627		
PolyOne Corporation	Ohio SOS	UCC-3 Continuation	Zeon Chemicals, L.P.	01/09/2007	OH0010707627	12/19/2011	20113530405
PolyOne Corporation	Ohio SOS	UCC-1	Sun Chemical Corp.	08/15/2013	OH00169611158		
PolyOne Corporation	Ohio SOS	UCC-1	Cristal USA Inc.  Assignor SP Wells Fargo Bank, National Association, as Agent and Cristal Inorganic Chemicals Switzerland Ltd.	08/15/2014	OH00178719814		
PolyOne Corporation	Ohio SOS	UCC-1	BASF Corporation	01/29/2015	OH00182735844		
PolyOne Designed	Delaware SOS	UCC-1	Cristal USA Inc.	08/14/2014	2014 3270832		

Structures and Solutions LLC			Assignor SP Wells Fargo Bank, National Association, as Agent and Cristal Inorganic Chemicals Switzerland Ltd.				
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1. Liens securing Debt of Glasforms, Inc. related to the \$7,010,000 The Industrial Development Board of the City of Birmingham, Industrial Development Revenue Bonds (Glasforms, Inc. Project), Series 1999, Issued on April 23, 1999.
2. Liens securing Debt of PolyOne Designed Structures and Solutions LLC(as successor to Polycom-Huntsman Inc.) related to the \$8,000,000 Revenue Bonds (Polycom-Huntsman, Inc. Project) Series 1995A of the Lake Charles Harbor and Terminal District, Issued on December 14, 1995.
3. Liens securing Debt of PolyOne Designed Structures and Solutions LLC pursuant to an agreement with the Chamber of Commerce and Industry of Les Ardennes pertaining to the premises located at 2.1 Donchery, Donchery, France, which funded the construction and expansion of the facility in 2006.
4. Liens against the accounts receivable solely of ColorMatrix do Brasil Indústria e Comércio de Pigmentos e Aditivos Ltda., which secure only borrowings under the Bank Credit, dated August 11, 2011, issued by Itaú Unibanco S.A. for a revolving credit facility of up to 900,000 Brazilian reals.

**SCHEDULE 7.06  
EXISTING INVESTMENTS**

Equity Interests in Subsidiaries as set forth on [Schedule 5.13](#) hereto.

PolyOne Corporation owns the following additional Equity Interests:

Entity Name	Percentage of Ownership
Butler Brothers	49%
Hansand Steamship Company	33%
Kimberly Iron Company, Ltd.	14%
Altona Properties Pty. Ltd.	37%
PolyOne Engineered Films, LLC	70%
Pilot Knob Pellet Co.	50%
Paramount Coal Company	50%
Early Stage Partners, L.P.	2%
Syngold Exploration, Inc.	4.26%
Ohio Innovation Fund I, L.P.	2%
Cleveland Development Partnership II, L.P.	2%

**SCHEDULE 10.02**  
**ADMINISTRATIVE AGENT'S OFFICE, CERTAIN ADDRESSES FOR NOTICES**

POLYONE CORPORATION	<p>PolyOne Corporation 33587 Walker Road Avon Lake, Ohio 44012 Attention: Treasurer Facsimile No.: 440-930-1839 Phone No.: 440-930-1118 Electronic Mail: Scott.Leffler@PolyOne.com</p> <p>and</p> <p>PolyOne Corporation 33587 Walker Road Avon Lake, Ohio 44012 Attention: General Counsel Facsimile No.: 440-930- 1002 Phone No.: 440-930- 1318 Electronic Mail: Lisa.Kunkle@polyone.com</p> <p>With a copy, which shall not constitute notice, to:</p> <p>Jones Day 901 Lakeside Ave Cleveland, OH 44114 Attention: Rachel Rawson Facsimile No.: 216-579-0212</p> <p>Website: <a href="http://www.polyone.com">www.polyone.com</a></p>
CITIBANK, N.A.,  <u>Administrative Agent's Office (for payments and requests for Credit Extensions)</u>	<p>Citibank, N.A.</p> <p>Loan Administration 1615 Brett Road, Building III New Castle, DE 19720 Attention: Loan Administration Phone No.: 302-894-6010 Facsimile No.: 646-274-5080 Electronic Mail: <a href="mailto:global.loans.support@citi.com">global.loans.support@citi.com</a> W-9 Tax ID: 13-5266470</p>

<b><u>Wiring Instructions</u></b>	Citibank, N.A. ABA/Routing No: 021000089 Account Name: Medium Term Finance Account No.: 36852248 Reference: PolyOne Corporation

**EXHIBIT A**

**FORM OF COMMITTED LOAN NOTICE**

Date: \_\_\_\_\_

To: Citibank, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement dated as of November 12, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement,” the terms defined in the Credit Agreement being used herein as therein defined), among PolyOne Corporation, an Ohio corporation, (the “Borrower”), the Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent.

The undersigned hereby requests (select one):

\_\_\_\_\_ A Borrowing of Loans \_\_\_\_ A conversion or continuation of Loans

1. On \_\_\_\_\_ (must be a Business Day).
2. In the amount of \$\_\_\_\_\_.
3. Class of Loans: \_\_\_\_\_.
4. Comprised of \_\_\_\_\_.  
[Type of Loan requested]
5. For Eurodollar Rate Loans: with an Interest Period of \_\_\_\_\_ months.

**BORROWER:**

**POLYONE CORPORATION,**  
an Ohio corporation

By: \_\_\_\_

Name:

Title:

**EXHIBIT B**

**FORM OF TERM NOTE**

FOR VALUE RECEIVED, POLYONE CORPORATION, an Ohio corporation (“Borrower”), hereby promises to pay to or its registered assigns (the “Lender”), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of the Loans made by the Lender to the Borrower under that certain Credit Agreement dated as of November 12, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”; the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent for the Lenders.

The Borrower promises to pay interest on the unpaid principal amount of the Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds to the Administrative Agent’s Office in accordance with the terms of the Credit Agreement. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement. The Loan made by the Lender may be evidenced by a loan account or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of the Loan and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of intent to accelerate, notice of acceleration, notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

- Signature Page to Follow -

**BORROWER:**

**POLYONE CORPORATION,**  
an Ohio corporation

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT C**

**FORM OF COMPLIANCE CERTIFICATE**  
(Pursuant to Section 6.02(a) of the Credit Agreement)

Financial Statement Date: \_\_\_\_\_, \_\_\_\_\_

To: Citibank, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement dated as of November 12, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”; the terms defined therein being used herein as therein defined), among PolyOne Corporation, an Ohio corporation (the “Borrower”), the various financial institutions that are, or may from time to time become, parties thereto (each individually a “Lender,” and collectively, the “Lenders”), and Citibank, N.A., as Administrative Agent for the Lenders (the “Administrative Agent”).

The undersigned Responsible Officer hereby certifies as of the date hereof that he is a Responsible Officer of the Borrower, and that, as such, he is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Borrower, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. Attached hereto as Exhibit A is a consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended [ ] 20[ ], and the related consolidated statements of income or operations, changes in shareholders’ equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of [ ], which report and opinion have been prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. Attached hereto as Exhibit A is a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of the fiscal quarter ended [ ] and the related consolidated statements of income or operations, changes in shareholders’ equity, and cash flows for such fiscal quarter and for the portion of the Borrower’s fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail. Such financial statements fairly present the financial condition, results of operations, shareholders’ equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by such financial statements.

[select one:]

3. [To the best knowledge of the undersigned, as of the date hereof, no Default has occurred and is continuing.]

3. [To the best knowledge of the undersigned, the following is a list of each Default that has occurred and is continuing as of the date hereof, and its nature and status:]

4. To the best knowledge of the undersigned, the Borrower and each of its Subsidiaries are in compliance with their notice and reporting obligations the Security Agreement to which they are parties [add if applicable: except as follows: \_\_\_\_\_].

5. Attached hereto as Exhibit B is a customary management discussion and analysis of operating results required to be delivered pursuant to Section 6.01(c) of the Credit Agreement.

[6. Attached hereto as Exhibit C are consolidated financial statements reflecting the adjustments necessary to eliminate the accounts of all Unrestricted Subsidiaries from the consolidated financial statements referred to in paragraph 1 above.]

[6. Attached hereto as Exhibit [ ], is a list of any U.S. federally registered Intellectual Property acquired by a Loan Party during the most recently ended fiscal quarter.]

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

**POLYONE CORPORATION,**  
an Ohio corporation

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT D**

**FORM OF  
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each] Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each] Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint.] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the Loan, and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the] [any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

[Assignor [is] [is not] a Defaulting Lender]

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

[for each Assignee, indicate [Affiliate][Approved Fund] of [identify Lender]Lender]

3. Borrower: PolyOne Corporation

4. Administrative Agent: Citibank, N.A., as the administrative agent under the Credit Agreement
5. Credit Agreement: Credit Agreement dated as of November 12, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among PolyOne Corporation (the “Borrower”), the Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent.
6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Commitment/Loans Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

[7. Trade Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

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

[NAME OF ASSIGNOR]

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

ASSIGNEE[S]  
[NAME OF ASSIGNEE]

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

[NAME OF ASSIGNEE]

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

[Consented to and] Accepted:  
  
CITIBANK, N.A., as  
Administrative Agent



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

[Consented to:

POLYONE CORPORATION

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

ANNEX 1

**STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION**

**1. Representations and Warranties.**

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[st [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the] [such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor 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 decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**EXHIBIT E**

FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of November 12, 2015 (as may be further amended and restated, and in effect on the date hereof, the “Credit Agreement”), among POLYONE CORPORATION, an Ohio corporation (the “Company”), the Lenders from time to time party thereto and CITIBANK, N.A., as Administrative Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Company within the meaning of Section 881(c)(3)(B) of the Code (iv) it is not a controlled foreign corporation related to the Company as described in Section 881(c)(3)(C) of the Code and (v) no interest payments under any Loan Documents are effectively connected with the undersigned’s conduct of a United States trade or business .

The undersigned has furnished the Administrative Agent and the Company with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Company and the Administrative Agent in writing, and (2) the undersigned shall have at all times furnished the Company and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

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

Date: \_\_\_\_\_ , 20[ ]

FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of November 12, 2015 (as may be further amended and restated, and in effect on the date hereof, the “Credit Agreement”), among POLYONE CORPORATION, an Ohio corporation (the “Company”), the Lenders from time to time party thereto and CITIBANK, N.A., as Administrative Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Company within the meaning of Section 881(c)(3)(B) of the Code, (iv) it is not a controlled foreign corporation related to the Company as described in Section 881(c)(3)(C) of the Code and (v) no interest payments under any Loan Documents are effectively connected with the undersigned’s conduct of a United States trade or business.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the

undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

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

Date: \_\_\_\_\_ , 20[ ]

**EXHIBIT F-3**

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of November 12, 2015 (as may be further amended and restated, and in effect on the date hereof, the “Credit Agreement”), among POLYONE CORPORATION, an Ohio corporation (the “Company”), the Lenders from time to time party thereto and CITIBANK, N.A., as Administrative Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its applicable direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its applicable direct or indirect partners/members is a ten percent shareholder of the Company within the meaning of Section 881(c)(3)(B) of the Code (v) none of its applicable direct or indirect partners/members is a controlled foreign corporation related to the Company as described in Section 881(c)(3)(C) of the Code and (vi) no interest payments under any Loan Documents are effectively connected with the undersigned’s or any of its applicable direct or indirect partners’/members’ conduct of a United States trade or business.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

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

Date: \_\_\_\_\_ , 20[ ]

**EXHIBIT F-4**

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of November 12, 2015 (as may be further amended and restated, and in effect on the date hereof, the “Credit Agreement”), among POLYONE CORPORATION, an Ohio corporation (the “Company”), the Lenders from time to time party thereto and CITIBANK, N.A., as Administrative Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 3.01(e) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its applicable direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its applicable direct or indirect partners/members is a ten percent shareholder of the Company within the meaning of Section 881(c)(3)(B) of the Code (v) none of its applicable direct or indirect partners/members is a controlled foreign corporation related to the Company as described in Section 881(c)(3)(C) of the Code and (vi) no interest payments under any Loan Documents are effectively connected with the undersigned’s or any of its applicable direct or indirect partners’/members’ conduct of a United States trade or business.

The undersigned has furnished the Administrative Agent and the Company with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Company and the Administrative Agent in writing, and (2) the undersigned shall have at all times furnished the Company and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: \_\_  
Name:  
Title:

Date: \_\_\_\_\_ , 20[ ]

## SCHEDULE OF EXECUTIVES WITH MANAGEMENT CONTINUITY AGREEMENTS

<u>Title</u>	<u>Name</u>	<u>Years /Comp*</u>	<u>Excise Tax Gross Up?</u>
Executive Chairman	Stephen D. Newlin	3	Y
President and Chief Executive Officer	Robert M. Patterson	3	Y
Executive Vice President, Chief Financial Officer	Bradley C. Richardson	2	N
Senior Vice President, President of Designed Structures and Solutions	Richard N. Altice	2	N
Senior Vice President, President of Distribution	Mark D. Crist	2	N
Senior Vice President, President of Performance Products and Solutions	Michael A. Garratt	2	N
Senior Vice President, Chief Commercial Officer	Michael E. Kahler	3	Y
Senior Vice President, General Counsel and Secretary	Lisa K. Kunkle	3	Y
Senior Vice President, Global Operations and Process Improvement	M. John Midea, Jr.	2	N
Senior Vice President, President of Specialty Engineered Materials	Craig M. Nikrant	2	N
Senior Vice President, Mergers & Acquisitions	Joel R. Rathbun	2	N
Senior Vice President, Chief Human Resources Officer	Ana G. Rodriguez	2	N
Senior Vice President, President of Color, Additives and Inks	John V. Van Hulle	2	N

\* Years of compensation payable upon change of control

## SUBSIDIARIES OF THE COMPANY

<b><u>Name</u></b>	<b><u>Formation Jurisdiction</u></b>
Altona Properties Pty Ltd. (37.4% owned)	Australia
Auseon Limited	Australia
Braspenco Indústria de Compostos de Plásticos Ltda.	Brazil
Canada Films Venture, Inc.	Ontario
Chromatics, Inc.	Connecticut
Colorant Chromatics AB	Finland
Colorant Chromatics AG	Switzerland
Colorant Chromatics Europe B.V.	Netherlands
Colorant Chromatics Trading Shanghai, Ltd.	China
Colorant GmbH	Germany
ColorMatrix Argentina S.A.	Argentina
ColorMatrix Asia Limited	Hong Kong
ColorMatrix Corporation, The	Ohio
ColorMatrix do Brasil Indústria e Comércio de Pigmentos e Aditivos Ltda.	Brazil
ColorMatrix Europe BV	Netherlands
ColorMatrix Europe Limited	United Kingdom
ColorMatrix Group, Inc.	Delaware
ColorMatrix Holdings, Inc.	Delaware
ColorMatrix Mexico, S.A. de C.V.	Mexico
ColorMatrix Plastic Colorant (Suzhou) Co. Ltd.	China
ColorMatrix Russia LLC	Russia
ColorMatrix South Africa (Pty) Ltd.	South Africa
ColorMatrix South America, Ltd.	British Virgin Islands
ColorMatrix UK Holdings Limited	United Kingdom
ColorMatrix UK Limited	United Kingdom
ColorMatrix-Brazil, LLC	Ohio
Conexus, LLC	Nevada
Gayson Silicone Dispersions, Inc.	Ohio
Geon Development, Inc.	Ohio
Glasforms, Inc.	California
GLS Hong Kong Limited	China
GLS International, Inc.	Illinois
GLS Thermoplastic Alloys (Suzhou) Co., Ltd.	China
GLS Trading (Suzhou) Co., Ltd.	China
Hanna France SARL	France
Juffali-PolyOne Master Batches Company (51%)	Saudi Arabia
LP Holdings Inc.	Canada
M.A. Hanna Asia Holding Company	Delaware
M.A. Hanna Export Services Corp.	Barbados
Magenta Master Fibers S.r.l.	Italy
Magenta Master Fibers Co., Ltd.	China
NEU Specialty Engineered Materials, LLC	Ohio
P.I. Europe C.V.	Netherlands
Polymer Diagnostics, Inc.	Ohio
PolyOne Belgium S.A.	Belgium
PolyOne Canada Inc.	Canada

<b><u>Name</u></b>	<b><u>Formation Jurisdiction</u></b>
PolyOne Color and Additives Germany, GmbH	Germany
PolyOne Controladora, S.A. de C.V.	Mexico
PolyOne Corporation UK Limited	United Kingdom
PolyOne Costa Rica S.A.	Costa Rica
PolyOne CR s.r.o.	Czech Republic
PolyOne de Mexico Distribution, S. de R.L. de C.V.	Mexico
PolyOne de Mexico Manufacturing, S. de R.L. de C.V.	Mexico
PolyOne de Mexico S.A. de C.V.	Mexico
PolyOne Designed Structures and Solutions LLC	Delaware
PolyOne Deutschland, GmbH	Germany
PolyOne Distribution Trading (Shanghai) Co. Ltd.	China
PolyOne (Dongguan) Vinyl Compounds Company Ltd.	China
PolyOne DSS Canada Inc.	New Brunswick
PolyOne España, S.L.	Spain
PolyOne Europe Logistics S.A.	Belgium
PolyOne France S.A.S.	France
PolyOne Funding Canada Corporation	Canada
PolyOne Funding Corporation	Delaware
PolyOne Hong Kong Holding Limited	Hong Kong
PolyOne Hungary, Ltd.	Hungary
PolyOne International Finance Company	Ireland
PolyOne International Trading (Shanghai) Co., Ltd.	China
PolyOne Italy Srl	Italy
PolyOne Japan K.K.	Japan
PolyOne Korea, Ltd.	Korea
PolyOne LLC	Delaware
PolyOne Luxembourg S.a.R.L.	Luxembourg
PolyOne Management (Shanghai) Co. Ltd.	China
PolyOne Management International Holding, S.L. (ETVE)	Spain
PolyOne Manufacturing S.A.R.L.	Luxembourg
PolyOne Poland Manufacturing, Sp.z.o.o.	Poland
PolyOne Polimeks Plastik Tic. ve San. A.S.	Turkey
PolyOne Polymers India Pvt. Ltd.	India
PolyOne Puerto Rico, LLC	Puerto Rico
PolyOne Shanghai, China	China
PolyOne Shenzhen Co. Ltd.	China
PolyOne Singapore Pte Ltd	Singapore
PolyOne Suzhou, China	China
PolyOne Sweden, A.B.	Sweden
PolyOne Tekno Polimer Mühendislik Plastikleri San. ve Tic. A.S.	Turkey
PolyOne Tekno Ticaret Mühendislik Plastikleri San. ve Tic. A.S.	Turkey
PolyOne Termoplásticos do Brasil Ltda.	Brazil
PolyOne Th. Bergmann GmbH	Germany
PolyOne (Thailand) Co., Ltd.	Thailand
PolyOne Vinyl Compounds Asia Holdings Limited	British Virgin Islands
Seola ApS	Denmark

<u>Name</u>	<u>Formation Jurisdiction</u>
Shanghai Colorant Chromatics Co., Ltd.	China
Spartech de Mexico Holding Company, S. de R.L. de C.V.	Mexico
Spartech France Holdings, L.P.	Delaware
Spartech Luxembourg Holding Co. S.A.R.L.	Luxembourg
Spartech Mexico Holding Company	Missouri
Spartech Mexico Holding Company Two	Missouri
Spartech Mexico Holdings, LLC	Missouri
Spartech, S.A.S.	France
Uniplen Indústria de Polimeros Ltda.	Brazil



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-205919) pertaining to the amended and restated PolyOne Corporation 2010 Equity and Performance Incentive Plan;
- (2) Registration Statement (Form S-8 No. 333-187201) pertaining to the Spartech Corporation 2004 Equity Compensation Plan, as amended, and the Spartech Corporation 2001 Stock Option Plan;
- (3) Registration Statement (Form S-8 No. 333-181787) pertaining to the PolyOne Corporation 2010 Equity and Performance Incentive Plan;
- (4) Registration Statement (Form S-8 No. 333-166775) pertaining to the PolyOne Corporation 2010 Equity and Performance Incentive Plan;
- (5) Registration Statement (Form S-8 No. 333-157486) pertaining to the PolyOne Retirement Savings Plan;
- (6) Registration Statement (Form S-8 No. 333-151057) pertaining to the PolyOne Corporation 2008 Equity and Performance Incentive Plan;
- (7) Registration Statement (Form S-8 No. 333-47796) pertaining to Post Effective Amendment No. 3 on Form S-8 to Form S-4 pertaining to the Geon Company 1993 Incentive Stock Plan, the Geon Company 1995 Incentive Stock Plan, the Geon Company 1998 Interim Stock Award Plan, the Geon Company 1999 Incentive Stock Plan, the PolyOne Corporation Deferred Compensation Plan for Non-Employee Directors and the M.A. Hanna Company Long-Term Incentive Plan;
- (8) Registration Statement (Form S-8 No. 333-141029) pertaining to the PolyOne Retirement Savings Plan and the DH Compounding Company Savings and Retirement Plan and Trust;
- (9) Registration Statement (Form S-8 No. 333-141028) pertaining to the M.A. Hanna Company Long-Term Incentive Plan; and
- (10) Registration Statement (Form S-8 No. 333-128283) pertaining to the 2005 Equity and Performance Incentive Plan

of our reports dated February 12, 2016, with respect to the consolidated financial statements of PolyOne Corporation and the effectiveness of internal control over financial reporting of PolyOne Corporation, included in this Annual Report (Form 10-K) of PolyOne Corporation for the year ended December 31, 2015.

/s/ Ernst & Young LLP

Cleveland, Ohio  
February 12, 2016

**CERTIFICATION**

I, Robert M. Patterson, certify that:

1. I have reviewed this Annual Report on Form 10-K of PolyOne Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Robert M. Patterson

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Robert M. Patterson  
President and Chief Executive Officer

February 12, 2016

**POLYONE CORPORATION**

## CERTIFICATION

I, Bradley C. Richardson, certify that:

1. I have reviewed this Annual Report on Form 10-K of PolyOne Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Bradley C. Richardson

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Bradley C. Richardson  
Executive Vice President and Chief Financial Officer

February 12, 2016

POLYONE CORPORATION

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of PolyOne Corporation (the "Company") for the year ended December 31, 2015, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert M. Patterson, President and Chief Executive Officer of the Company, do hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods expressed in the Report.

/s/ Robert M. Patterson

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Robert M. Patterson  
President and Chief Executive Officer

February 12, 2016

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

**POLYONE CORPORATION**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of PolyOne Corporation (the "Company") for the year ended December 31, 2015, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bradley C. Richardson, Executive Vice President and Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods expressed in the Report.

/s/ Bradley C. Richardson

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Bradley C. Richardson  
Executive Vice President and Chief Financial Officer

February 12, 2016

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

**POLYONE CORPORATION**