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

Form N-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

- Pre-Effective Amendment No. 4
 Post-Effective Amendment No.
-

Fifth Street Finance Corp.

(Exact name of registrant as specified in charter)

**White Plains Plaza
445 Hamilton Avenue, Suite 1206
White Plains, NY 10601
(914) 286-6800**

(Address and telephone number,
including area code, of principal executive offices)

**Leonard M. Tannenbaum
Fifth Street Finance Corp.
White Plains Plaza
445 Hamilton Avenue, Suite 1206
White Plains, NY 10601**
(Name and address of agent for service)

COPIES TO:

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Approximate date of proposed public offering: As soon as practicable after the effective date of this Registration Statement.

If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, other than securities offered in connection with a dividend reinvestment plan, check the following box.

It is proposed that this filing will become effective (check appropriate box):

when declared effective pursuant to Section 8(c).

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of Securities Being Registered	Proposed Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Amount of Registration Fee ⁽³⁾
Common Stock, \$0.01 par value per share	\$173,880,000	\$5,345

(1) Estimated pursuant to Rule 457(o) under the Securities Act of 1933 solely for the purpose of determining the registration fee.
(2) Includes the underwriters' option to purchase additional shares.
(3) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

The purpose of this Pre-effective Amendment No. 4 to the Registration Statement on Form N-2 is solely to file certain exhibits to the Registration Statement as set forth in Item 25(2) of Part C.

PART C
Other Information

Item 25 Financial Statements And Exhibits

(1) *Financial Statements*

The following financial statements of Fifth Street Finance Corp. (the "Registrant" or the "Company") are included in Part A of this Registration Statement:

	<u>PAGE</u>
Balance Sheet at March 31, 2008 (unaudited)	F-2
Statement of Operations for the three and six months ended March 31, 2008 (unaudited)	F-3
Statement of Changes in Stockholders' Equity for the three and six months ended March 31, 2008 (unaudited)	F-4
Statement of Cash Flows for the six months ended March 31, 2008 (unaudited)	F-5
Schedule of Investments as of March 31, 2008 (unaudited)	F-6
Schedule of Investments as of September 30, 2007 (audited)	F-11
Notes to Financial Statements	F-14
Fifth Street Mezzanine Partners III, L.P. (predecessor entity)	
Report of Independent Registered Public Accounting Firm	F-36
Balance Sheet as of September 30, 2007	F-37
Statement of Operations—For the period from February 15, 2007 (inception) through September 30, 2007	F-38
Statement of Changes in Partners' Capital—For the period from February 15, 2007 (inception) through September 30, 2007	F-39
Statement of Cash Flows—For the period from February 15, 2007 (inception) through September 30, 2007	F-40
Schedule of Investments as of September 30, 2007	F-41
Notes to Financial Statements	F-44

(2) *Exhibits*

- (a)(1) Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 filed with Fifth Street Finance Corp.'s Form 8-A (File No. 001-33901) filed on January 2, 2008).
- (a)(2) Certificate of Amendment to the Registrant's Restated Certificate of Incorporation**
- (a)(3) Certificate of Correction to the Certificate of Amendment to the Registrant's Restated Certificate of Incorporation**
- (b) Amended and Restated By-laws of the Registrant (Incorporated by reference to Exhibit 3.2 filed with Fifth Street Finance Corp.'s Form 8-A (File No. 001-33901) filed on January 2, 2008).
- (d) Form of Common Stock Certificate (Incorporated by reference to Exhibit 4.1 filed with Fifth Street Finance Corp.'s Form 8-A (File No. 001-33901) filed on January 2, 2008).
- (e) Amended and Restated Dividend Reinvestment Plan**
- (g) Form of Amended and Restated Investment Advisory Agreement by and between Registrant and Fifth Street Management LLC*
- (h) Form of Underwriting Agreement**
- (j) Custodial Agreement**
- (k)(1) Form of Administration Agreement by and between Registrant and FSC, Inc.*
- (k)(2) Form of License Agreement by and between Registrant and Fifth Street Capital LLC*
- (k)(3) Secured Revolving Credit Agreement between Registrant and Bank of Montreal**

- (k)(4) Guarantee and Security Agreement between Registrant and Bank of Montreal**
- (k)(5) First Amendment to Secured Revolving Credit Agreement between Registrant and Bank of Montreal**
- (k)(6) First Amendment to Guarantee and Security Agreement between Registrant and Bank of Montreal**
- (l) Opinion of Sutherland Asbill & Brennan LLP**
- (n)(1) Consent of Sutherland Asbill & Brennan LLP (incorporated by reference to exhibit l hereto)**
- (n)(2) Consent of Grant Thornton LLP*
- (r) Code of Ethics*
- (s) Consent of Murray, Devine & Co., Inc.*

* Previously filed as an exhibit to this registration statement.

** Filed herewith.

Item 26. Marketing Arrangements

The information contained under the heading "Underwriting" in this Registration Statement is incorporated herein by reference.

Item 27. Other Expenses Of Issuance And Distribution

SEC registration fee	\$	5,803
New York Stock Exchange listing fee	\$	40,000
FINRA filing fee	\$	19,038
Accounting fees and expenses	\$	565,000
Legal fees and expenses	\$	800,000
Printing and engraving	\$	150,000
Miscellaneous fees and expenses	\$	420,159
Total	\$	2,000,000

The amounts set forth above, except for the SEC, FINRA, and New York Stock Exchange fees, are in each case estimated. All of the expenses set forth above shall be borne by the Registrant.

Item 28. Persons Controlled By Or Under Common Control

None.

Item 29. Number Of Holders Of Securities

The following table sets forth the number of record holders of the Registrant's capital stock at May 5, 2008.

Title of Class	Number of Record Holders
Common stock, \$0.01 par value	37
Series A Preferred Stock, \$0.01 par value	1

Item 30. Indemnification

Section 145 of the Delaware General Corporation Law empowers a Delaware corporation to indemnify its officers and directors and specific other persons to the extent and under the circumstances set forth therein.

Section 102(b)(7) of the Delaware General Corporation Law allows a Delaware corporation to eliminate the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liabilities arising (a) from any breach of the director's duty of loyalty to the corporation or its stockholders; (b) from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the Delaware General Corporation Law; or (d) from any transaction from which the director derived an improper personal benefit.

Subject to the 1940 Act or any valid rule, regulation or order of the SEC thereunder, our restated certificate of incorporation, effective as of January 2, 2008 and amended as of April 24, 2008, provides that we will indemnify any person who was or is a party or is threatened to be made a party to any threatened action, suit or proceeding whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Registrant, or is or was serving at the request of the Registrant as a director or officer of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, in accordance with provisions corresponding to Section 145 of the Delaware General Corporation Law. The 1940 Act provides that a company may not indemnify any director or officer against liability to it or its security holders to which he or she might otherwise be subject by reason of his or her willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office unless a determination is made by final decision of a court, by vote of a majority of a quorum of directors who are disinterested, non-party directors or by independent legal counsel that the liability for which indemnification is sought did not arise out of the foregoing conduct. In addition, our certificate of incorporation will provide that the indemnification described therein is not exclusive and shall not exclude any other rights to which the person seeking to be indemnified may be entitled under statute, any bylaw, agreement, vote of stockholders or directors who are not interested persons, or otherwise, both as to action in his official capacity and to his action in another capacity while holding such office.

The above discussion of Section 145 of the Delaware General Corporation Law and the Registrant's restated certificate of incorporation is not intended to be exhaustive and is respectively qualified in its entirety by such statute and the Registrant's certificate of incorporation.

As of the date of the completion of this offering, the Registrant will have obtained primary and excess insurance policies insuring our directors and officers against some liabilities they may incur in their capacity as directors and officers. Under such policies, the insurer, on the Registrant's behalf, may also pay amounts for which the Registrant has granted indemnification to the directors or officers.

The Registrant has agreed to indemnify the several underwriters against specific liabilities, including liabilities under the Securities Act of 1933 (the "Securities Act").

Item 31. Business And Other Connections Of Investment Adviser

A description of any other business, profession, vocation, or employment of a substantial nature in which our investment adviser, and each director or executive officer of our investment adviser, is or has been during the past two fiscal years, engaged in for his or her own account or in the capacity of director, officer, employee, partner or trustee, is set forth in Part A of this Registration Statement in the sections entitled "Business — The Investment Adviser," "Management — Board of

Directors and Executive Officers — Directors," " — Executive Officers" and "Investment Advisory Agreement." Additional information regarding our investment adviser and its officers and directors is set forth in its Form ADV, as filed with the Securities and Exchange Commission (SEC File No. 801-68676), and is incorporated herein by reference.

Item 32. Location Of Accounts And Records

All accounts, books and other documents required to be maintained by Section 31(a) of the Investment Company Act of 1940, and the rules thereunder are maintained at the offices of:

- (1) the Registrant, Fifth Street Finance Corp., White Plains Plaza, 445 Hamilton Avenue, Suite 1206, White Plains, NY 10601;
- (2) the Transfer Agent, American Stock Transfer & Trust Company, 59 Maiden Lane, New York, New York, 10038;
- (3) the Custodian, Bank of America, National Association, Bank of America Corporate Center, 100 N Tryon Street, Charlotte, NC 28255-0001;
- (4) the investment adviser, Fifth Street Management LLC, White Plains Plaza, 445 Hamilton Avenue, Suite 1206, White Plains, NY 10601; and
- (5) the administrator, FSC, Inc., White Plains Plaza, 445 Hamilton Avenue, Suite 1206, White Plains, NY 10601.

Item 33. Management Services

Not Applicable.

Item 34. Undertakings

1. The Registrant undertakes to suspend the offering of shares until the prospectus is amended if (1) subsequent to the effective date of this registration statement, the net asset value declines more than ten percent from the net asset value as of the effective date of this registration statement, or (2) the net asset value increases to an amount greater than the net proceeds as stated in the prospectus.

2. The Registrant hereby undertakes that:

(a) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant under Rule 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(b) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Pre-Effective Amendment No. 4 to the Registration Statement on Form N-2 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of White Plains, State of New York, on June 6, 2008.

FIFTH STREET FINANCE CORP.

By: /s/ LEONARD M. TANNENBAUM

Name: Leonard M. Tannenbaum
Title: President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Pre-Effective Amendment No. 4 to the Registration Statement on Form N-2 has been signed below by the following persons in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ LEONARD M. TANNENBAUM</u> Leonard M. Tannenbaum	President, Chief Executive Officer and Director (Principal Executive Officer)	June 6, 2008
<u>/s/ WILLIAM H. CRAIG</u> William H. Craig	Chief Financial Officer (Principal Financial and Accounting Officer)	June 6, 2008
<u>/s/ ADAM C. BERKMAN</u> Adam C. Berkman	Director	June 6, 2008
<u>/s/ BRIAN S. DUNN</u> Brian S. Dunn	Director	June 6, 2008
<u>/s/ BYRON J. HANEY</u> Byron J. Haney	Director	June 6, 2008
<u>/s/ FRANK C. MEYER</u> Frank C. Meyer	Director	June 6, 2008
<u>/s/ DOUGLAS F. RAY</u> Douglas F. Ray	Director	June 6, 2008
<u>/s/ BRUCE E. TOLL</u> Bruce E. Toll	Director	June 6, 2008

QuickLinks

[Explanatory Note](#)

[PART C Other Information](#)

[SIGNATURES](#)

**CERTIFICATE OF AMENDMENT TO THE
RESTATED
CERTIFICATE OF INCORPORATION OF
FIFTH STREET FINANCE CORP.**

Fifth Street Finance Corp. (the "**Corporation**"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify as follows:

FIRST: that at a meeting of the Board of Directors of the Corporation resolutions were duly adopted setting forth a proposed amendment of the Corporation's Restated Certificate of Incorporation, declaring said amendment to be advisable and submitting said amendment to the Corporation's stockholders for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that the Corporation's Restated Certificate of Incorporation is hereby amended by deleting Article IV thereof in its entirety and replacing the following in lieu thereof:

**ARTICLE IV
CAPITAL STOCK**

The Corporation is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Series A Preferred Stock**". The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 50,000,000 shares, of which: (i) 49,800,000 shares, par value \$0.01 per share, shall be shares of common stock (the "**Common Stock**"); and (ii) 200,000 shares, par value \$0.01 per share, shall be shares of Series A Preferred Stock (the "**Series A Stock**"). The initial liquidation preference of the Series A Stock shall be \$500.00 per share (the "**Liquidation Value**"). Paragraph (B)(9) below contains the definitions of certain defined terms used herein.

(A) **Common Stock.** Except as (1) otherwise required by laws of the State of Delaware or (2) expressly provided in this Certificate of Incorporation (as amended from time to time), each share of Common Stock shall have the same powers, rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters. The shares of Common Stock shall not have any preemptive rights whatsoever.

(1) **Dividends.** Subject to the provisions of the laws of the State of Delaware, and to the other provisions of this Certificate of Incorporation (as amended from time to time), holders of shares of Common Stock shall be entitled to receive equally, on a per share basis, such dividends and other distributions in cash, securities or other property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(2) **Voting Rights.** At every annual or special meeting of stockholders of the Corporation, each record holder of Common Stock shall be entitled to cast one (1) vote for each share of Common Stock standing in such holder's name on the stock transfer records of the Corporation for the election of directors and on matters submitted to a vote of stockholders of the Corporation; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any matter specifically reserved to a vote of the holders of shares of Series A Stock pursuant to this Certificate of Incorporation or pursuant to the DGCL. Except as otherwise provided herein or by the laws of the State of Delaware, the holders of shares of Common Stock and holders of shares of Series A Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation. There shall be no cumulative voting.

(3) **Liquidation Rights.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the Corporation's debts and other liabilities, including amounts payable upon shares of then outstanding Series A Stock entitled to a preference on distributions in the dissolution, liquidation, or winding up of the Corporation, if any, over holders of Common Stock, upon such dissolution, liquidation or winding up, the remaining net assets of the Corporation shall be distributed among holders of shares of Common Stock equally on a per share basis. A merger or consolidation of the Corporation with or into any other corporation or other entity, or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders) shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this Paragraph (A)(3).

(B) **Series A Stock.** The Series A Stock shall have the following powers, rights and privileges:

(1) **Voting Rights.**

(a) So long as any shares of Series A Stock shall be outstanding, the holders of any Series A Stock, voting separately as a single class, shall have the right to elect (i) two directors of the Corporation at all times during which the Series A Stock is outstanding and (ii) a majority of the directors of the Corporation, if at any time dividends on the Series A Stock are unpaid in an amount equal to two full years of dividends on such securities, and to continue to be so represented until all dividends in arrears have been paid or otherwise provided for.

(b) So long as any shares of Series A Stock shall be outstanding, and unless the consent or approval of a greater number of shares shall then be required by law, without first obtaining the consent or approval of the holders of at least a majority of the outstanding Series A Stock (the "**Required Approval**"), the Corporation shall not: (i) amend, alter, or repeal its Certificate of Incorporation or its Bylaws (whether by merger, consolidation, reclassification, combination, or otherwise), or waive any provisions thereof, in a manner that would adversely affect the rights, preferences, privileges, or powers of the Series A Stock; (ii) authorize, create, or issue any class or series, or any shares of any class or series, of stock having any preference or priority, or ranking on a parity, as to voting, dividends, or upon redemption, liquidation, dissolution, or winding up, over or with respect to the Series A Stock; or (iii) adopt any plan of reorganization adversely affecting the Series A Stock. In addition, in the event the Corporation withdraws its election to be treated as a business development company, the Corporation shall not engage in significant corporate transactions, including but not limited to an amendment to the Restated Certificate of Incorporation, an increase in number of Directors, the incurrence of debt which would cause the Corporation to have outstanding Senior Securities in excess of \$115 million, the issuance of preferred stock, a merger or an acquisition, without the Required Approval.

(2) **Dividends.**

(a) The holders of shares of Series A Stock, in preference to the holders of shares of Common Stock, shall be entitled to receive dividends on the Series A Stock, which shall accrue at an annual rate per share equal to 8.5% (the "**Dividend Rate**") of the Liquidation Value from and after the date of issuance of the Series A Stock (the "**Issue Date**") and for so long as the shares of Series A Stock remain outstanding. Dividends shall be (i) calculated and compounded monthly, (ii) cumulative, whether or not declared or paid, and will accrue and be payable monthly, in arrears, on the first day of each month (each such date referred to herein as a "**Monthly Dividend Payment Date**"), except that if any Monthly Dividend Payment Date is not a Business Day, then they shall be payable on the next succeeding Business Day, commencing on the first Monthly Dividend Payment Date following the Issue Date. Dividends

payable on the Series A Stock will be computed on the basis of a 360-day year consisting of twelve 30-day months, and will be deemed to accrue on a daily basis.

(b) No dividends shall be declared or paid or funds set apart for the payment of dividends on shares of Common Stock for any period unless full cumulative dividends on the Series A Stock shall have been or contemporaneously are declared and paid (or are deemed declared and paid) in full. Unless full cumulative dividends on all outstanding shares of Series A Stock for all past dividend periods shall have been declared and paid, then: (i) no dividend shall be declared or paid (or deemed paid) upon, or any sum set apart for the payment of dividends upon, shares of Common Stock; (ii) no Common Stock shall be repurchased, redeemed or otherwise acquired or retired by the Corporation except as permitted in accordance with Paragraph (B)(1)(b) hereof; and (iii) no monies shall be paid into or set apart or made available for a sinking or other like fund for the purchase, redemption or other acquisition or retirement for value of shares of Common Stock.

(c) If (i) any shares of Series A Stock remain outstanding after the Mandatory Redemption Date, (ii) the Corporation has one or more Non-Performing Loans that equal, at cost, 15% or more of the Corporation's total assets (the "**Non-Performing Loan Provision**"), or (iii) a dividend on the Series A Stock is not paid within five Business Days of the Monthly Dividend Payment Date, then the Dividend Rate shall equal 13.5% per annum (the "**Default Dividend Rate**"); provided, however; that, in the case of clause (i), the Default Dividend Rate shall only continue in effect with respect to any outstanding Series A Stock until such time that such Series A Stock is redeemed, in the case of clause (ii), the Default Dividend Rate shall only continue in effect for the period of time during which the Corporation is not in compliance with the Non-Performing Loan Provision, and in the case of clause (iii) the Default Dividend Rate shall only continue in effect until full cumulative dividends on the Series A Stock have been paid in full.

(3) **Conversion.** The Series A Stock is not convertible into shares of Common Stock.

(4) **Liquidation Rights.** In the event of any (i) liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, (ii) merger, consolidation or transfer of Control of the Corporation or Fifth Street Management LLC (the "**Adviser**"), or (iii) transaction or series of transactions in which all or substantially all the assets of the Corporation or the Adviser are transferred, the holders of the Series A Stock then outstanding shall, by reason of their ownership thereof, be entitled to receive, prior and in preference to any payment or distribution of any asset of the Corporation to the holders of shares of Common Stock, an amount (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series A Stock) in cash equal to 100% of the Liquidation Value, plus all Accrued Dividends on such shares to the date of liquidation, dissolution or winding up (such amount being referred to herein as the "**Liquidation Preference**"); provided, however, that the consummation of an initial public offering of the Corporation's Common Stock shall not be deemed to be an event described in (i), (ii), or (iii) above. If, upon the occurrence of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets and funds to be distributed among the holders of the Series A Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the holders of all such shares of Series A Stock shall share ratably in such distribution of assets in accordance with the amounts that would be payable on such distribution if the amounts to which the holders of outstanding shares of Series A Stock are entitled were paid in full.

(5) **Optional Redemption.**

(a) At any time from and after the Issue Date, any outstanding shares of Series A Stock may be redeemed, in whole or in part, by the Corporation. At least twenty (20) days prior to

the date fixed by the Corporation for redemption (the "**Redemption Date**"), the Corporation shall send a notice (a "**Redemption Notice**") to all holders of Series A Stock to be redeemed setting forth (i) the Redemption Price, including a calculation thereof, and (ii) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Corporation does not have sufficient funds legally available to redeem all shares of Series A Stock at the Redemption Date, then it shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or after the Redemption Date, each holder of shares of Series A Stock to be redeemed shall surrender such holder's certificates representing such shares to the Corporation in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event that less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holders of such shares as holders of Series A Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates), including the right to receive dividends thereon, shall cease and terminate with respect to such shares; provided that in the event that shares of Series A Stock are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Series A Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(6) Mandatory Redemption Date.

(a) If not redeemed sooner by the Corporation pursuant to Paragraph (B)(5) hereof, the Series A Stock must be redeemed by the Corporation on the date that is thirty (30) months after the Issue Date (the "**Mandatory Redemption Date**"). At least twenty (20) days prior to the Mandatory Redemption Date, the Corporation shall send a notice (a "**Mandatory Redemption Notice**") to all holders of Series A Stock to be redeemed setting forth (i) the Mandatory Redemption Price, including a calculation thereof, and (ii) the place at which such holders may obtain payment of the Mandatory Redemption Price upon surrender of their share certificates.

(b) On or after the Mandatory Redemption Date, each holder of shares of Series A Stock to be redeemed shall surrender such holder's certificates representing such shares to the Corporation in the manner and at the place designated in the Mandatory Redemption Notice, and thereupon the Mandatory Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event that less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the Mandatory Redemption Date, unless there shall have been a default in payment of the Mandatory Redemption Price or the Corporation is unable to pay the Mandatory Redemption Price due to not having sufficient legally available funds, all rights of the holders of such shares as holders of Series A Stock (except the right to receive the Mandatory Redemption Price without interest upon surrender of their certificates), including the right to receive dividends thereon, shall cease and terminate with respect to such shares; provided that in the event that shares of Series A Stock are not redeemed due to a

default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Series A Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(7) **Senior Securities Limitation.** Prior to the redemption in full of the Series A Stock, as long as any shares of the Series A Stock remain outstanding, the Corporation shall not have outstanding Senior Securities in excess of \$115 million.

(8) **Reacquired Shares.** Any shares of Series A Stock redeemed, purchased, or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof, and, if necessary to provide for the lawful redemption or purchase of such shares, the capital represented by such shares shall be reduced in accordance with the DGCL. All such shares shall upon their cancellation (and compliance with any applicable provisions of the laws of the State of Delaware) become authorized but unissued shares of Series A Preferred Stock, par value \$.01 per share, of the Corporation and may be reissued by the Corporation.

(9) **Definitions.** For purposes of Paragraph (B) of Article IV of this Certificate of Incorporation (as amended from time to time):

"*Accrued Dividends*" means all dividends accrued to a particular date but not yet paid on the Series A Stock pursuant to Paragraph (B)(2), whether or not declared.

"*Business Day*" means any day other than a Saturday, Sunday, or a day on which commercial banks in the City of New York are authorized or obligated by law or executive order to close.

"*Common Stock*" has the meaning set forth the first paragraph of this Article IV.

"*Control*" means to own beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company.

"*Default Dividend Rate*" has the meaning set forth in Paragraph (B)(2)(c).

"*Dividend Rate*" has the meaning set forth in Paragraph (B)(2)(a).

"*Issue Date*" has the meaning set forth in Paragraph (B)(2)(a).

"*Liquidation Preference*" has the meaning set forth in Paragraph (B)(4).

"*Liquidation Value*" has the meaning set forth in the first paragraph of this Article IV.

"*Mandatory Redemption Date*" has the meaning set forth in Paragraph (B)(6)(a).

"*Mandatory Redemption Notice*" has the meaning set forth in Paragraph (B)(6)(a).

"*Mandatory Redemption Price*" means 100% of the then applicable Liquidation Value, plus any Accrued Dividends.

"*Monthly Dividend Payment Date*" has the meaning set forth in Paragraph (B)(2)(a).

"*Non-Performing Loan Provision*" has the meaning set forth in Paragraph (B)(2)(c).

"*Non-Performing Loans*" means any loan which has any interest or principal payment that is more than 30 days past due.

"*Redemption Date*" has the meaning set forth in Paragraph (B)(5)(a).

"*Redemption Notice*" has the meaning set forth in Paragraph (B)(5)(a).

"*Redemption Price*" means 101% of the then applicable Liquidation Value, plus any Accrued Dividends; provided, however, if the Redemption Date is within one hundred and

eighty (180) days of the Mandatory Redemption Date, then "*Redemption Price*" shall mean 100% of the then applicable Liquidation Value, plus any Accrued Dividends.

"*Required Approval*" has the meaning set forth in Paragraph (B)(1)(b).

"*Senior Securities*" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

"*Series A Stock*" has the meaning set forth in the first paragraph of this Article IV.

FURTHER RESOLVED, that the Corporation's Restated Certificate of Incorporation is hereby amended by deleting Paragraph B of Article IV thereof in its entirety and replacing the following in lieu thereof:

(B) Number of Directors. The number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws. So long as any shares of Series A Stock (as defined in Article IV above) remain outstanding, the total number of directors shall not exceed nine. A majority of the directors shall be "independent" under applicable law and the rules of the relevant stock exchange on which the Common Stock is listed.

SECOND: The foregoing amendment has been duly adopted by the Board of Directors and Stockholders in accordance with the provisions of Sections 141, 228 and 242 of the DGCL.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Fifth Street Finance Corp. has caused this Certificate of Amendment to the Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 24th day of April, 2008.

FIFTH STREET FINANCE CORP.

BY: /s/ Leonard M. Tannenbaum

/s/ Leonard M. Tannenbaum
Name: Leonard M. Tannenbaum
Title: Chief Executive Officer

QuickLinks

[CERTIFICATE OF AMENDMENT TO THE RESTATED CERTIFICATE OF INCORPORATION OF FIFTH STREET FINANCE CORP.
ARTICLE IV CAPITAL STOCK](#)

**CERTIFICATE OF CORRECTION
TO THE
CERTIFICATE OF AMENDMENT
TO THE
RESTATED CERTIFICATE OF INCORPORATION
OF
FIFTH STREET FINANCE CORP.**

Fifth Street Finance Corp. (the "**Corporation**"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify as follows:

1. The name of the Corporation is Fifth Street Finance Corp.
2. That a Certificate of Amendment to the Restated Certificate of Incorporation of the Corporation (the "**Certificate**") was filed by the Secretary of State of Delaware on April 24, 2008 and that the Certificate requires correction as permitted by Section 103 of the DGCL.

3. The inaccuracy or defect of the Certificate is:

The first sentence of the second resolution of Article First of the Certificate contains a typographical error. The second resolution of the Certificate was intended to amend Paragraph B of Article V of the Restated Certificate of Incorporation of the Corporation and the resolution should have not have referenced Article IV.

4. The first sentence of the second resolution of Article First of the Certificate is hereby amended to read in its entirety as follows:

"FURTHER RESOLVED, that the Corporation's Restated Certificate of Incorporation is hereby amended by deleting Paragraph B of Article V thereof in its entirety and replacing the following in lieu thereof:

(B) Number of Directors. The number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws. So long as any shares of Series A Stock (as defined in Article IV above) remain outstanding, the total number of directors shall not exceed nine. A majority of the directors shall be "independent" under applicable law and the rules of the relevant stock exchange on which the Common Stock is listed."

IN WITNESS WHEREOF, this Certificate of Correction to the Certificate of Amendment to the Restated Certificate of Incorporation has been duly executed as of the 4th day of June, 2008 and is being filed in accordance with Section 103 of the DGCL by an authorized person of the corporation.

FIFTH STREET FINANCE CORP.

BY: /s/ BERNARD D. BERMAN

Name: Bernard D. Berman
Title: Executive Vice President and Secretary

QuickLinks

[CERTIFICATE OF CORRECTION TO THE CERTIFICATE OF AMENDMENT TO THE RESTATED CERTIFICATE OF INCORPORATION OF FIFTH STREET FINANCE CORP.](#)

**AMENDED AND RESTATED
DIVIDEND REINVESTMENT PLAN
OF
FIFTH STREET FINANCE CORP.**

Fifth Street Finance Corp., a Delaware corporation (the "**Corporation**"), hereby adopts the following amended and restated dividend reinvestment plan (the "**Plan**") with respect to net investment income dividends and capital gains distributions declared by its Board of Directors on shares of its Common Stock:

1. Unless a stockholder specifically elects to receive cash as set forth below, all net investment income dividends and all capital gains distributions hereafter declared by the Board of Directors shall be payable in shares of the Common Stock of the Corporation, and no action shall be required on such stockholder's part to receive a distribution in stock.
 2. Such net investment income dividends and capital gains distributions shall be payable on such date or dates as may be fixed from time to time by the Board of Directors to stockholders of record at the close of business on the record date(s) established by the Board of Directors for the net investment income dividend and/or capital gains distribution involved.
 3. The Corporation shall use only newly-issued shares of its Common Stock to implement the Plan if its shares are trading at a premium to net asset value. Under such circumstances, the number of shares to be issued to a stockholder shall be determined by dividing the total dollar amount of the distribution payable to such stockholder by the market price per share of the Corporation's Common Stock at the close of regular trading on the New York Stock Exchange on the payment date fixed by the Corporation's Board of Directors for such distribution. Market price per share on that date shall be the closing price for such shares on the New York Stock Exchange or, if no sale is reported for such day, at the average of their electronically-reported bid and asked prices. Notwithstanding the foregoing, prior to the initial public offering of the Corporation (the "**IPO**"), net asset value per share shall be used in lieu of market price per share to determine the number of shares to be issued to each Participant (as defined below) pursuant to the Plan.
 4. If the Corporation declares a distribution to stockholders, the Plan Administrator, as defined below, may be instructed not to credit accounts with newly-issued shares and instead to buy shares in the market if (1) the price at which newly-issued shares are to be credited does not exceed 110% of the last determined net asset value of the shares; or (2) the Corporation has advised the Plan Administrator that since such net asset value was last determined, the Corporation has become aware of events that indicate the possibility of a material change in per share net asset value as a result of which the net asset value of the shares on the payment date might be higher than the price at which the Plan Administrator would credit newly-issued shares to stockholders. Shares purchased in open market transactions by the Plan Administrator shall be allocated to each Participant (as defined below) based upon the average purchase price, excluding any brokerage charges or other charges, of all shares of Common Stock purchased with respect to the applicable distribution.
 5. A stockholder may elect to receive his or its net investment income dividends and capital gains distributions in cash. To exercise this option, such stockholder shall notify American Stock Transfer and Trust Company, the plan administrator and the Corporation's transfer agent and registrar (referred to as the "**Plan Administrator**"), in writing so that such notice is received by the Plan Administrator no later than 10 days prior to the record date fixed by the Board of Directors for the net investment income dividend and/or capital gains distribution involved. Such election shall remain in effect until the stockholder shall notify the Plan Administrator in writing of such stockholder's withdrawal of the election, which notice shall be delivered to the Plan Administrator no later than 10 days prior to the record date fixed by the Board of Directors for the next net
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investment income dividend and/or capital gains distribution by the Corporation. Prior to the IPO, this option may be exercised by sending a written notice to the Corporation's chief financial officer.

6. The Plan Administrator will set up an account for shares acquired pursuant to the Plan for each stockholder who has not so elected to receive dividends and distributions in cash (each a "**Participant**"). The Plan Administrator may hold each Participant's shares, together with the shares of other Participants, in non-certificated form in the Plan Administrator's name or that of its nominee. Upon request by a Participant, received in writing no later than 10 days prior to a payment date, the Plan Administrator will, instead of crediting shares to and/or carrying shares in a Participant's account, issue, without charge to the Participant, a certificate registered in the Participant's name for the number of whole shares payable to the Participant and a check for any fractional share.

7. The Plan Administrator will confirm to each Participant each acquisition made pursuant to the Plan as soon as practicable but not later than 10 business days after the date thereof. Although each Participant may from time to time have an undivided fractional interest (computed to three decimal places) in a share of Common Stock of the Corporation, no certificates for a fractional share will be issued. However, dividends and distributions on fractional shares will be credited to each Participant's account. In the event of termination of a Participant's account under the Plan, the Plan Administrator will adjust for any such undivided fractional interest in cash at the market value of the Corporation's shares at the time of termination.

8. The Plan Administrator will forward to each Participant any Corporation related proxy solicitation materials and each Corporation report or other communication to stockholders, and will vote any shares held by it under the Plan in accordance with the instructions set forth on proxies returned by Participants to the Corporation.

9. In the event that the Corporation makes available to its stockholders rights to purchase additional shares or other securities, the shares held by the Plan Administrator for each Participant under the Plan will be added to any other shares held by the Participant in certificated form in calculating the number of rights to be issued to the Participant.

10. The Plan Administrator's service fee, if any, and expenses for administering the Plan will be paid for by the Corporation.

11. Each Participant may terminate his or its account under the Plan by so notifying the Plan Administrator in writing or by telephone. Such termination will be effective immediately if the Participant's notice is received by the Plan Administrator not less than 10 days prior to any dividend or distribution record date; otherwise, such termination will be effective only with respect to any subsequent dividend or distribution. The Plan may be terminated by the Corporation upon notice in writing mailed to each Participant at least 30 days prior to any record date for the payment of any dividend or distribution by the Corporation. Upon any termination, the Plan Administrator will cause a certificate or certificates to be issued for the full shares held for the Participant under the Plan and a cash adjustment for any fractional share to be delivered to the Participant without charge to the Participant. If a Participant elects by his or its written or telephonic notice to the Plan Administrator in advance of termination to have the Plan Administrator sell part or all of his or its shares and remit the proceeds to the Participant, the Plan Administrator is authorized to deduct a \$15.00 transaction fee plus brokerage commission from the proceeds.

12. These terms and conditions may be amended or supplemented by the Corporation at any time but, except when necessary or appropriate to comply with applicable law or the rules or policies of the Securities and Exchange Commission or any other regulatory authority, only by

mailing to each Participant appropriate written notice at least 30 days prior to the effective date thereof. The amendment or supplement shall be deemed to be accepted by each Participant unless, prior to the effective date thereof, the Plan Administrator receives written notice of the termination of his or its account under the Plan. Any such amendment may include an appointment by the Plan Administrator in its place and stead of a successor agent under these terms and conditions, with full power and authority to perform all or any of the acts to be performed by the Plan Administrator under these terms and conditions. Upon any such appointment of any agent for the purpose of receiving dividends and distributions, the Corporation will be authorized to pay to such successor agent, for each Participant's account, all dividends and distributions payable on shares of the Corporation held in the Participant's name or under the Plan for retention or application by such successor agent as provided in these terms and conditions.

13. The Plan Administrator will at all times act in good faith and use its best efforts within reasonable limits to ensure its full and timely performance of all services to be performed by it under this Plan and to comply with applicable law, but assumes no responsibility and shall not be liable for loss or damage due to errors unless such error is caused by the Plan Administrator's negligence, bad faith, or willful misconduct or that of its employees or agents.

14. These terms and conditions shall be governed by the laws of the State of New York.

QuickLinks

[AMENDED AND RESTATED DIVIDEND REINVESTMENT PLAN OF FIFTH STREET FINANCE CORP.](#)

[FORM OF UNDERWRITING AGREEMENT]

Fifth Street Finance Corp.
Common Stock, \$0.01 par value per share

Underwriting Agreement

, 2008

Goldman, Sachs & Co.,
85 Broad Street,
New York, New York 10004

UBS Securities LLC,
299 Park Avenue,
New York, NY 10171

Wachovia Capital Markets, LLC
375 Park Avenue
New York, New York 10152

As representatives (the "*Representatives*") of the several Underwriters named in Schedule I hereto, c/o Goldman, Sachs & Co.

Ladies and Gentlemen:

Fifth Street Finance Corp., a Delaware corporation (the "*Company*"), proposes, subject to the terms and conditions stated herein, to issue and sell to the Underwriters named in Schedule I hereto (the "*Underwriters*"), an aggregate of [•] shares (the "*Firm Shares*") and, at the election of the Underwriters, up to [•] additional shares (the "*Optional Shares*") of Common Stock, \$0.01 par value per share ("*Stock*") of the Company (the Firm Shares and the Optional Shares that the Underwriters elect to purchase pursuant to Section 3 hereof being collectively called the "*Shares*").

On January 2, 2008, Fifth Street Mezzanine Partners III, L.P., a Delaware limited partnership (the "*Limited Partnership*"), merged with and into the Company pursuant to a certificate of merger filed with the Secretary of State of the State of Delaware in accordance with Section 263 of the General Corporation Law of the State of Delaware (as amended, the "*DGCL*") and Section 17-211 of the Delaware Revised Uniform Limited Partnership Act (as amended, the "*Delaware LP Act*"). At such time, the partnership interests of the Limited Partnership were exchanged for 12,480,998 shares of Stock of the Company, pursuant to the Agreement and Plan of Merger dated as of January 2, 2008 (the "*Merger Agreement*"), between the Company and the Limited Partnership. Such merger, as further described in the Pricing Prospectus (as defined below) under the heading "Merger; Business Development Company and Regulated Investment Company Elections" is hereinafter referred to as the "*Merger*".

On October 16, 2007, the Company filed a Form N-6F Notice of Intent to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 (File No. 814-00752) (the "*Notification of Intent*") with the Securities and Exchange Commission (the "*Commission*") under the Investment Company Act of 1940, as amended, and the rules and regulations thereunder (collectively, the "*Investment Company Act*"), pursuant to which the Company notified the Commission that it intends to elect to be treated as a business development company ("*BDC*").

On January 2, 2008, Form N-54A Notification of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940, (File No. 814-00755) (the "*Notification of Election*") was filed with the Commission under the Investment Company Act, pursuant to which the Company elected to be treated as a BDC. The Company intends to elect to be treated as a regulated investment company ("*RIC*") (within the meaning of Section 851(a) of the Internal Revenue Code of 1986, as amended (the "*Code*")) commencing with its first taxable year that it is treated as a corporation for Federal income tax purposes.

The Company has entered into an investment advisory and management agreement, dated as of December 14, 2007, and amended as of [•], 2008 (together, the "*Investment Advisory Agreement*"), with Fifth Street Management LLC, a Delaware limited liability company (the "*Adviser*"), registered as an

investment adviser under the Investment Advisers Act of 1940, as amended, and the rules and regulations thereunder (the "Advisers Act").

The Company has entered into an administration agreement, dated as of December 14, 2007, (the "Administration Agreement"), with FSC, Inc., a Delaware corporation (the "Administrator").

The Company and Wachovia Capital Markets, LLC (in its capacity as administrator of the directed share program, the "DSP Administrator") have agreed that up to [•]% of the Firm Shares to be purchased by it under this Agreement (the "Reserved Securities") shall be reserved for sale by the DSP Administrator to the Company's directors, officers, employees and certain other persons identified by the Company (the "Reserved Security Offerees") as part of the distribution of the Securities by the Underwriters, subject to the terms of this Agreement, the applicable rules, regulations and interpretations of the Financial Industry Regulatory Authority ("FINRA") and all other applicable laws, rules and regulations. To the extent that any such Reserved Securities are not orally confirmed for purchase by any such Reserved Security Offeree before 10:00 a.m. (New York City time) on the first trading day on the NYSE after the date of this Agreement, such Reserved Securities may, at the sole and absolute discretion of the Representatives and the DSP Administrator, be offered to the public as part of the public offering contemplated hereby or offered or sold to any other Reserved Security Offerees.

1. The Company represents and warrants to and agrees with each of the Underwriters, and the Adviser and the Administrator, jointly and severally, represent and warrant to and agree with each of the Underwriters, that:

(a) A registration statement on Form N-2 (File No. 333-146743) (the "Initial Registration Statement") in respect of the Shares has been filed with the Securities and Exchange Commission (the "Commission"); the Company is eligible to use Form N-2; the Initial Registration Statement and any post-effective amendment thereto, each in the form heretofore delivered to you, and, excluding exhibits thereto, for each of the other Underwriters, have been declared effective by the Commission in such form; other than a registration statement, if any, increasing the size of the offering (a "Rule 462(b) Registration Statement"), filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Act"), which became effective upon filing, no other document with respect to the Initial Registration Statement has heretofore been filed with the Commission; and no stop order suspending the effectiveness of the Initial Registration Statement, any post-effective amendment thereto or the Rule 462(b) Registration Statement, if any, has been issued and no proceeding for that purpose has been initiated or threatened by the Commission (any preliminary prospectus included in the Initial Registration Statement or filed with the Commission pursuant to Rule 497(a) of the rules and regulations of the Commission under the Act is hereinafter called a "Preliminary Prospectus"; the various parts of the Initial Registration Statement and the Rule 462(b) Registration Statement, if any, including all exhibits thereto and including the information contained in the form of final prospectus filed with the Commission pursuant to Rule 497(h) under the Act in accordance with Section 7(A)(a) hereof and deemed by virtue of Rule 430A under the Act to be part of the Initial Registration Statement at the time it was declared effective, each as amended at the time such part of the Initial Registration Statement became effective or such part of the Rule 462(b) Registration Statement, if any, became or hereafter becomes effective, are hereinafter collectively called the "Registration Statement"; the Preliminary Prospectus relating to the Shares that was included in the Registration Statement immediately prior to the Applicable Time (as defined in Section 1(c) hereof) is hereinafter called the "Pricing Prospectus"; and such final prospectus, in the form first filed pursuant to Rule 497(h) under the Act, is hereinafter called the "Prospectus";

(b) No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Act and the Investment Company Act and the rules and regulations of the Commission thereunder, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through the Representatives expressly for use therein; and *provided, further*, that this representation and warranty shall not apply to the Preliminary Prospectus filed with the Commission on October 15, 2007 to the

extent that such Preliminary Prospectus did not contain the financial statements required by Item 24 of Form N-2 and the presentation and discussion of information derived therefrom required by Item 4.2 of Form N-2;

(c) For the purposes of this Agreement, the "Applicable Time"(1) is [•] (Eastern time) on the date of this Agreement. The Pricing Prospectus, as of the Applicable Time when considered together with the price to the public and number of Shares to be offered set forth on the cover of the Prospectus (such price to the public and number of Shares being referred to herein as the "Pricing Information"), did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Additional Disclosure Item (as defined in Section 8 hereof) listed on Schedule II(a) hereto does not conflict with the information contained in the Registration Statement, the Pricing Prospectus or the Prospectus and each such Additional Disclosure Item, as supplemented by and taken together with the Pricing Prospectus as of the Applicable Time when considered together with the Pricing Information, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to statements or omissions made in the Pricing Prospectus in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through the Representatives expressly for use therein;

(1) The time chosen will be the time at which, or a time immediately prior to the time, the Shares are priced.

(d) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will conform, in all material respects to the requirements of the Act and do not and will not, as of the applicable effective date as to each part of the Registration Statement and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through the Representatives expressly for use therein; there are no contracts or agreements that are required to be described in the Registration Statement, or the Pricing Prospectus or the Prospectus, or to be filed as an exhibit to the Registration Statement that have not been so described and filed as required;

(e) The Company has not sustained since the date of the latest audited financial statements included in the Pricing Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Pricing Prospectus, there has not been any change in the capital stock or long-term debt of the Company or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company (any such change or development is hereinafter referred to as a "Material Adverse Change"), otherwise than as set forth or contemplated in the Pricing Prospectus;

(f) The Company has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by it, free and clear of all liens, encumbrances and defects except such as are described in the Pricing Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company; and any real property and buildings held under lease by the Company are held by it under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company; the Company owns, leases or has access to all properties and other assets that are necessary to the conduct of its business as described in the Registration Statement and the Pricing Prospectus;

(g) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the Pricing Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction;

(h) The Company has an authorized capitalization as set forth in the Pricing Prospectus under the caption "Description of Our Securities" and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and conform to the description of the Stock contained in the Pricing Prospectus and Prospectus;

(i) The unissued Shares to be issued and sold by the Company to the Underwriters hereunder have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued and fully paid and non-assessable and will conform to the description of the Stock contained in the Prospectus;

(j) The Limited Partnership was duly formed and, at the time of the Merger, validly existing and in good standing under the laws of the State of Delaware; the Limited Partnership had all required power and authority (limited partnership and other) necessary to complete the Merger; the Merger did not conflict with or result in a violation of the Limited Partnership's organizational documents, or conflict with or constitute a breach or violation of, or a default under any of the terms or provisions of any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Limited Partnership was a party or to which it or any of its properties or assets was bound or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Limited Partnership or any of its subsidiaries or any of their properties; all documents required under the DGCL and the Delaware LP Act to effect the Merger have been duly filed with the Secretary of State of the State of Delaware and conform to the requirements of the DGCL and the Delaware LP Act; the Merger became effective under the DGCL and the Delaware LP Act on the date of such filing; and the Merger was legally sufficient under the DGCL and the Delaware LP Act to vest in the Company immediately following the effective time of the Merger all right, title (vested by deed or otherwise under the laws of the State of Delaware) and interest in all the properties and assets of the Limited Partnership immediately prior to such effective time;

(k) The Company had all required power and authority (corporate and otherwise) necessary to complete the Merger; the Merger did not conflict with or result in a violation of the Company's Restated Certificate of Incorporation ("*Certificate of Incorporation*") or bylaws in effect at the time of the Merger, or conflict with or constitute a breach or violation of, or a default under any of the terms or provisions of any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company was a party or to which it or any of its properties or assets was bound or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties;

(l) This Agreement has been duly authorized, executed and delivered by the Company; each of the License Agreement, dated as of December 14, 2007 (the "*License Agreement*"), between the Company and Fifth Street Capital LLC, the Custodian Agreement, dated as of May 5, 2008 (the "*Custodian Agreement*"), between the Company and Bank of America, National Association, the Investment Advisory Agreement and the Administration Agreement have been duly authorized, executed and delivered by the Company and constitute valid, binding and enforceable agreements of the Company, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally; and the Investment Advisory Agreement has been approved by the Company's board of directors and stockholders in accordance with Section 15 of the Investment Company Act and contains the applicable provisions required by Section 205 of the Advisers Act and Section 15 of the Investment Company Act;

(m) None of the execution, delivery and performance of this Agreement, the License Agreement, the Custodian Agreement, the Investment Advisory Agreement or the Administration Agreement, or the consummation of transactions contemplated hereby and thereby, will (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture,

mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject, or (ii) result in any violation of the provisions of the Certificate of Incorporation or the or Amended and Restated Bylaws (the "Bylaws") of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its properties except, with respect to clause (i), to the extent that any such conflict, breach or violation would not result in a Material Adverse Change; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery or performance of any of this Agreement, the License Agreement, the Investment Advisory Agreement or the Administration Agreement, or the consummation of the transactions contemplated hereby and thereby, except the registration under the Act of the Shares, such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters and such consents, approvals, authorization, registrations or qualifications which have been obtained or effected;

(n) The Company is not in violation of its Certificate of Incorporation or Bylaws or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(o) The statements set forth in the Pricing Prospectus and Prospectus under the caption "Description of Our Securities", insofar as they purport to constitute a summary of the terms of the Stock, and under the captions "Merger; Business Development Company and Regulated Investment Company Status", "Regulation as a Business Development Company", "Material U.S. Federal Income Tax Considerations" and "Underwriting", insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair;

(p) The Company is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof, will not be a "registered management investment company", as such term is used in the Investment Company Act;

(q) Other than as set forth in the Pricing Prospectus, there are no legal or governmental proceedings pending to which the Company is a party or of which any property of the Company is the subject which, if determined adversely to the Company, would individually or in the aggregate have a material adverse effect on the current or future financial position, stockholders' equity or results of operations of the Company; and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(r) The Company has duly elected to be regulated by the Commission as a BDC under the Investment Company Act, and no order of suspension or revocation has been issued or proceedings therefor initiated or, to the knowledge of the Company, threatened by the Commission. Such election is effective and has not been withdrawn and the provisions of the Company's Certificate of Incorporation and Bylaws and compliance by the Company with the investment objectives, policies and restrictions described in the Pricing Prospectus and the Prospectus, will not conflict with the provisions of the Investment Company Act applicable to the Company;

(s) Grant Thornton LLP, who have certified certain financial statements of the Limited Partnership, are independent public accountants of the Company as required by the Act and the rules and regulations of the Commission thereunder;

(t) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except for the material weakness described in the Pricing Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over

financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially negatively affected, or is reasonably likely to materially negatively affect, the Company's internal control over financial reporting;

(u) Since the date of the latest audited financial statements included in the Pricing Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting;

(v) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including material information pertaining to the Company's operations and assets managed by the Adviser, is made known to the Company's Chief Financial Officer by others within the Company and the Adviser, and such disclosure controls and procedures are effective to perform the functions for which they were established;

(w) The terms of the Investment Advisory Agreement comply in all material respects with the applicable provisions of the Investment Company Act and the Advisers Act;

(x) Other than the Shares, neither the Company nor the Limited Partnership has sold any securities, the sale of which is required to be registered under the Securities Act;

(y) There are no agreements requiring the registration under the Securities Act of, and there are no options, warrants or other rights to purchase any shares of, or exchange any securities for shares of, the Company's capital stock;

(z) When the Notification of Election was filed with the Commission, it (i) contained all statements required to be stated therein in accordance with, and compiled in all material respects with the requirements of, the Investment Company Act and (ii) did not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading;

(aa) By executing the License Agreement, the Company owns, or has obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), trade names, copyrights, trade secrets and other proprietary information described in the Pricing Prospectus and the Prospectus as being licensed by it or which are necessary for the conduct of its businesses;

(bb) The Company maintains insurance covering its properties, operations, personnel and businesses as the Company deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Company and its business; all such insurance is fully in force;

(cc) The Company has not sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in, or filed as an exhibit to, the Registration Statement, and no such termination or non-renewal has been threatened by the Company or, to the Company's knowledge, any other party to any such contract or agreement;

(dd) The Company has not, directly or indirectly, extended credit, arranged to extend credit, or renewed any extension of credit, in the form of a personal loan, to or for any director or executive officer of the Company, or to or for any family member or affiliate of any director or executive officer of the Company;

(ee) Neither the Company nor, to the Company's knowledge, any employee or agent of the Company has made any payment of funds of the Company or received or retained any funds in violation of any law, rule or regulation, which payment, receipt or retention of funds is of a character required to be disclosed in the Registration Statement or the Prospectus;

(ff) Neither the Company nor, to the Company's knowledge, any of its respective directors, officers, affiliates or controlling persons has taken, directly or indirectly, any action designed, or which has constituted or might reasonably be expected to cause or result in, under the Exchange Act, to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Shares;

(gg) To the Company's knowledge, there are no affiliations or associations between any member of FINRA and any of the Company's officers, directors or securityholders, except as set forth in the Registration Statement and the Pricing Prospectus;

(hh) Except as disclosed in the Prospectus, (i) no person is serving or acting as an officer, director or investment adviser of the Company, except in accordance with the provisions of the Investment Company Act and the Advisers Act and (ii) to the knowledge of the Company, no director of the Company is an "*affiliated person*" (as defined in the Investment Company Act) of any of the Underwriters;

(ii) The operations of the Company are in compliance in all material respects with the provisions of the Investment Company Act applicable to a BDC and the rules and regulations of the Commission thereunder;

(jj) The Company has not offered, or caused the Underwriters to offer, Shares to any person pursuant to the program for the sale of the Reserved Securities with the intent to influence unlawfully (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company, or (ii) a trade journalist or publication to write or publish favorable information about the Company or any of its respective products or services;

(kk) The Company has not distributed any offering material in connection with the offering or sale of the Shares other than the Registration Statement, the Pricing Prospectus or the Prospectus;

(ll) None of the persons identified as "*independent directors*" in the Registration Statement or the Pricing Prospectus is an "*interested person*" as that term is defined in Section 2(a)(19) of the Investment Company Act;

(mm) Except as described in the Registration Statement and the Pricing Prospectus, no relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers or stockholders of the Company, on the other hand, that is required to be described in the Registration Statement or the Pricing Prospectus which is not so described;

(nn) Except as disclosed in the Registration Statement and the Pricing Prospectus, neither the Company nor the Adviser has any lending or other relationship with any affiliate of any Underwriter and the Company will not use any of the proceeds from the sale of the Shares to repay any indebtedness owed to any affiliate of any Underwriter;

(oo) The Company intends to elect to be treated as a regulated investment company ("*RIC*") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "*Code*"), for its taxable year ending on September 30, 2008. The Company is in compliance with the requirements of the Code necessary to qualify as a RIC. The Company intends to direct the investment of the net proceeds of the offering of the Shares and to continue to conduct its activities in such a manner as to continue to comply with the requirements for qualification as a RIC under Subchapter M of the Code;

(pp) The Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or other entity other those companies described in the Preliminary Prospectus under the captions "Portfolio Companies" and "Prospectus Summary—Recent Developments" and the Company does not control (as such term is defined in Section 2(a)(9) of the Investment Company Act) any such companies. The Company does not have any "*subsidiaries*" within the meaning of Article 6 of Regulation S-X under the Act;

(qq) The Company is not aware that any executive, key employee or significant group of employees of the Company, if any, plans to terminate employment with the Company or any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Company; and

(rr) At and prior to the effective time of the Merger and as of the date hereof, the Company is intended to qualify as a BDC (as defined in the Second Amended and Restated Limited Partnership Agreement of the Limited Partnership, dated as of September 7, 2007 (the "*Partnership Agreement*") and a RIC on the terms generally set forth in Appendix III to the Partnership Agreement.

(ss) None of the Reserved Security Offerees is domiciled outside of the United States.

2. (a) The Adviser represents and warrants to the Underwriters that:

(i) The Adviser has not sustained since the date of its formation any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus; and, since the date as of which information is given in the Registration Statement and the Pricing Prospectus, there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Adviser (any such change or development is hereinafter referred to as an "Adviser Material Adverse Change"), otherwise than as set forth or contemplated in the Pricing Prospectus;

(ii) The Adviser has been duly formed and is validly existing as a limited liability company and is in good standing under the laws of the State of Delaware, with power and authority to own its properties and conduct its business as described in the Pricing Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction;

(iii) The Adviser is duly registered with the Commission as an investment adviser under the Advisers Act and is not prohibited by the Advisers Act or the Investment Company Act from acting under the Investment Advisory Agreement for the Company as contemplated by the Pricing Prospectus. There does not exist any proceeding or, to the Adviser's knowledge, any facts or circumstances the existence of which could lead to any proceeding which might adversely affect the registration of the Adviser with the Commission;

(iv) This Agreement and the Investment Advisory Agreement have each been duly authorized, executed and delivered by the Adviser and constitute valid, binding and enforceable agreements of the Adviser, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally;

(v) None of the execution, delivery and performance of this Agreement or the Investment Advisory Agreement, or the consummation of transactions contemplated hereby and thereby, will (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Adviser or any of its subsidiaries is a party or by which the Adviser or any of its subsidiaries is bound or to which any of the property or assets of the Adviser or any of its subsidiaries is subject, or (ii) result in any violation of the provisions of the limited liability company agreement of the Adviser or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Adviser or any of its subsidiaries or any of its properties except, with respect to clause (i), to the extent that any such conflict, breach or violation would not result in an Adviser Material Adverse Change; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery or performance of any of this Agreement or the Investment Advisory Agreement, or the consummation of the transactions contemplated hereby and thereby by the Adviser, including the conduct of its business, except such as have been obtained under the Act, the Investment Company Act and the Advisers Act;

(vi) There are no legal or governmental proceedings pending to which the Adviser is a party or of which any of its property is the subject which, if determined adversely to the Adviser would individually or in the aggregate materially adversely affect the Adviser's ability to properly render services to the Company or have a material adverse effect on the current or future financial

position, stockholders' equity or results of operations of the Adviser and, to the best of its knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(vii) The Adviser is not in violation of its limited liability company agreement or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(viii) The description of the Adviser contained in the Pricing Prospectus is true, accurate and complete in all material respects;

(ix) The Adviser has the financial resources available to it necessary for the performance of its services and obligations as contemplated in the Pricing Prospectus and under this Agreement and the Investment Advisory Agreement; the Adviser owns, leases or has access to all properties and other assets that are necessary to the conduct of its business and to perform the services, as described in the Registration Statement and the Pricing Prospectus;

(x) The Adviser is not aware that (i) any of its executives, key employees or significant group of employees plans to terminate employment with the Adviser or (ii) any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Adviser;

(xi) The Adviser maintains system of internal controls sufficient to provide reasonable assurance that (i) transactions effectuate by it under the Investment Advisory Agreement are executed in accordance with its management's general or specific authorization; and (ii) access to the Company's assets is permitted only in accordance with its management's general or specific authorization; and

(xii) The Adviser maintains insurance covering its properties, operations, personnel and businesses as they deem adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Adviser and its businesses; all such insurance is fully in force and effect.

(b) The Administrator represents and warrants to the Underwriters that:

(i) The Administrator has not sustained since the date of its formation any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus; and, since the date as of which information is given in the Registration Statement and the Pricing Prospectus, there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Administrator (any such change or development is hereinafter referred to as an "*Administrator Material Adverse Change*"), otherwise than as set forth or contemplated in the Pricing Prospectus;

(ii) The Administrator has been duly formed and is validly existing as a corporation and is in good standing under the laws of the State of Delaware, with power and authority to own its properties and conduct its business as described in the Pricing Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction;

(iii) This Agreement and the Administration Agreement have each been duly authorized, executed and delivered by the Administrator and constitute valid, binding and enforceable agreements of the Administrator, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally;

(iv) None of the execution, delivery and performance of this Agreement or the Administration Agreement, or the consummation of transactions contemplated hereby and thereby, will (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Administrator or any of its subsidiaries is a party or by which the Administrator or any of its subsidiaries is bound or to which any of the property or assets of the Administrator or any of its subsidiaries is subject, or (ii) result in any violation of the provisions of the organizational documents of the Administrator or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Administrator or any of its subsidiaries or any of its properties except, with respect to clause (i), to the extent that any such conflict, breach or violation would not result in an Administrator Material Adverse Change; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery or performance of any of this Agreement or the Administration Agreement, or the consummation of the transactions contemplated hereby and thereby by the Administrator, including the conduct of its business, except such as have been obtained;

(v) There are no legal or governmental proceedings pending to which the Administrator is a party or of which any of its property is the subject which, if determined adversely to the Administrator would individually or in the aggregate have a material adverse effect on the current or future financial position, stockholders' equity or results of operations of the Administrator and, to the best of its knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(vi) The Administrator is not in violation of its certificate of incorporation or bylaws or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(vii) The description of the Administrator contained in the Pricing Prospectus is true, accurate and complete in all material respects;

(viii) The Administrator has the financial resources available to it necessary for the performance of its services and obligations as contemplated in the Pricing Prospectus and under this Agreement and the Administration Agreement; the Administrator owns, leases or has access to all properties and other assets that are necessary to the conduct of its business and to perform the services, as described in the Registration Statement and the Pricing Prospectus;

(ix) The Administrator is not aware that (i) any of its executives, key employees or significant group of employees plans to terminate employment with the Administrator or (ii) any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Administrator;

(x) The Administrator maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions for which it has bookkeeping and record keeping responsibility for under the Administration Agreement are recorded as necessary to permit preparation of the Company's financial statements in conformity with generally accepted

accounting principles and to maintain accountability for the Company's assets and (ii) the recorded accountability for such assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(xi) The Administrator maintains insurance covering its properties, operations, personnel and businesses as they deem adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Administrator and its businesses; all such insurance is in full force and effect.

3. Subject to the terms and conditions herein set forth, (a) the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price per share of \$[•], the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto and (b) in the event and to the extent that the Underwriters shall exercise the election to purchase Optional Shares as provided below, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the purchase price per share set forth in clause (a) of this Section 3, that portion of the number of Optional Shares as to which such election shall have been exercised (to be adjusted by you so as to eliminate fractional shares) determined by multiplying such number of Optional Shares by a fraction, the numerator of which is the maximum number of Optional Shares which such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the maximum number of Optional Shares that all of the Underwriters are entitled to purchase hereunder.

The Company hereby grants to the Underwriters the right to purchase at their election up to [•] Optional Shares, at the purchase price per share set forth in the paragraph above, for the sole purpose of covering sales of shares in excess of the number of Firm Shares, *provided* that the purchase price per Optional Share shall be reduced by an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Shares but not payable on the Optional Shares. Any such election to purchase Optional Shares may be exercised only by written notice from you to the Company, given within a period of 30 calendar days after the date of this Agreement, setting forth the aggregate number of Optional Shares to be purchased and the date on which such Optional Shares are to be delivered, as determined by you but in no event earlier than the First Time of Delivery (as defined in Section 6 hereof) or, unless you and the Company otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

4. The Company hereby confirms its engagement of Goldman, Sachs & Co. as, and Goldman, Sachs & Co. hereby confirms its agreement with the Company to render services as, a "qualified independent underwriter" within the meaning of Rule 2720(b)(15) of FINRA with respect to the offering and sale of the Shares. Goldman, Sachs & Co., in its capacity as qualified independent underwriter and not otherwise, is referred to herein as the "QIU".

5. Upon the authorization by you of the release of the Firm Shares, the several Underwriters propose to offer the Firm Shares for sale upon the terms and conditions set forth in the Prospectus.

6. (a) The Shares to be purchased by each Underwriter hereunder, in definitive form, and in such authorized denominations and registered in such names as a Representative may request upon at least forty-eight hours' prior notice to the Company shall be delivered by or on behalf of the Company to the Representatives, through the facilities of the Depository Trust Company ("DTC"), for the account of such Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to the Representatives at least forty-eight hours in advance. The Company will cause the certificates representing the Shares to be made available for checking and packaging at least twenty-four hours prior to the Time of Delivery (as defined below) with respect thereto at the office of DTC or its designated custodian (the "*Designated Office*"). The time and date of such delivery and payment shall

be, with respect to the Firm Shares, 9:30 a.m., New York City time, on [•], 2008 or such other time and date as the Representatives and the Company may agree upon in writing, and, with respect to the Optional Shares, 9:30 a.m., New York time, on the date specified by the Representatives in the written notice given by the Representatives of the Underwriters' election to purchase such Optional Shares, or such other time and date as the Representatives and the Company may agree upon in writing. Such time and date for delivery of the Firm Shares is herein called the "*First Time of Delivery*", such time and date for delivery of the Optional Shares, if not the First Time of Delivery, is herein called the "*Second Time of Delivery*", and each such time and date for delivery is herein called a "*Time of Delivery*".

(b) The documents to be delivered at each Time of Delivery by or on behalf of the parties hereto pursuant to Section 10 hereof, including the cross receipt for the Shares and any additional documents requested by the Underwriters pursuant to Section 10(I) hereof, will be delivered at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, NY (the "*Closing Location*"), and the Shares will be delivered at the Designated Office, all at such Time of Delivery. A meeting will be held at the Closing Location atp.m., New York City time, on the New York Business Day next preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Section 6, "*New York Business Day*" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

7. (A) The Company agrees with each of the Underwriters:

(a) To prepare the Prospectus in a form approved by you and to file such Prospectus pursuant to Rule 497 under the Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement, or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Act; to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Time of Delivery which shall be disapproved by you promptly after reasonable notice thereof; to advise you, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish you with copies thereof; to advise you, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus in respect of the Shares, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus or suspending any such qualification, to promptly use its best efforts to obtain the withdrawal of such order;

(b) Promptly from time to time to take such action as you may reasonably request to qualify the Shares for offering and sale under the securities laws of such jurisdictions as you may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Shares, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction;

(c) Prior to 3:00 p.m., New York City time, on the New York Business Day next succeeding the date of this Agreement and from time to time, to furnish the Underwriters with written and electronic copies of the Prospectus in New York City in such quantities as you may reasonably request, and, if the delivery of a prospectus is required at any time prior to the expiration of nine

months after the time of issue of the Prospectus in connection with the offering or sale of the Shares and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus in order to comply with the Act, to notify you and upon your request to prepare and furnish without charge to each Underwriter and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance; and in case any Underwriter is required to deliver a prospectus in connection with sales of any of the Shares at any time nine months or more after the time of issue of the Prospectus, upon your request but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many written and electronic copies as you may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Act;

(d) To make generally available to the Company's securityholders as soon as practicable, but in any event not later than 16 months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158);

(e) During the period beginning from the date hereof and continuing to and including the date 180 days after the date of the Prospectus (the "*Lock-Up Period*"), not to offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose, except as provided hereunder, of any securities of the Company that are substantially similar to the Shares, including but not limited to any options or warrants to purchase shares of Stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, Stock or any such substantially similar securities (other than pursuant to a dividend reinvestment plan described in the Pricing Prospectus), without your prior written consent; *provided, however*, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or announces material news or a material event or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 15-day period following the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be automatically extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the announcement of the material news or material event, as applicable, unless each of Goldman, Sachs & Co. and UBS Securities LLC waives, in writing, such extension; the Company will provide Goldman, Sachs & Co. and UBS Securities LLC and each stockholder subject to the Lock-Up Period pursuant to the lockup letters described in Section 10(n) with prior notice of any such announcement that gives rise to an extension of the Lock-up Period;

(f) To furnish to its stockholders as soon as practicable after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and cash flows of the Company and its consolidated subsidiaries certified by independent public accountants) and, as soon as practicable after the end of each of the first three quarters of each fiscal year (beginning with the fiscal quarter ending after the effective date of the Registration Statement), to make available to its stockholders consolidated summary financial information of the Company and its subsidiaries for such quarter in reasonable detail;

(g) During a period of five years from the effective date of the Registration Statement and only to the extent not otherwise available on the Commission's EDGAR system, to furnish to you copies of all reports or other communications (financial or other) furnished to stockholders, and to deliver to you (i) as soon as they are available, copies of any reports and financial statements

furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as you may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission);

(h) To use the net proceeds received by it from the sale of the Shares pursuant to this Agreement in the manner specified in the Pricing Prospectus under the caption "Use of Proceeds";

(i) To use its best efforts to list, subject to notice of issuance, the Shares on the New York Stock Exchange (the "Exchange");

(j) To file with the Commission such information on Form 10-Q or Form 10-K as may be required by Rule 463 under the Act;

(k) If the Company elects to rely upon Rule 462(b), the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 P.M., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for the Rule 462(b) Registration Statement or give irrevocable instructions for the payment of such fee pursuant to Rule 111(b) under the Act;

(l) Upon request of any Underwriter, to furnish, or cause to be furnished, to such Underwriter an electronic version of the Company's trademarks, servicemarks and corporate logo for use on the website, if any, operated by such Underwriter for the purpose of facilitating the on-line offering of the Shares (the "License"); *provided, however*, that the License shall be used solely for the purpose described above, is granted without any fee and may not be assigned or transferred;

(m) To use its best efforts to cause the Company to qualify for and elect, effective January 2, 2008, to be treated as a regulated investment company under Subchapter M of the Code; and to use its commercially reasonable efforts to maintain such qualification and election in effect for each taxable year during which it is a BDC under the Investment Company Act;

(n) The Company, during a period of two years from the effective date of the Registration Statement, will use its best efforts to maintain its status as a business development company; provided, however, the Company may change the nature of its business so as to cease to be, or to withdraw its election as, a BDC, with the approval of the board of directors and a vote of stockholders as required by Section 58 of the Investment Company Act or any successor provision;

(o) Not to take, directly or indirectly, any action designed, or which could reasonably be expected to cause or result in, under the Exchange Act, in the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Shares; and

(p) To maintain a transfer agent and, if necessary under the jurisdiction of incorporation of the Company, a registrar for the Stock.

(B) The Adviser agrees with each of the Underwriters not to take, directly or indirectly, any action designed, or which could reasonably be expected to cause or result in, under the Exchange Act, in the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Shares.

8. The Company represents and agrees that, without the prior consent of the Representatives, (i) it will not distribute any offering material other than the Registration Statement, the Pricing Prospectus or the Prospectus, and (ii) it has not made and will not make any offer relating to the Shares that would constitute a "free writing prospectus" as defined in Rule 405 under the Act and which

the parties agree, for the purposes of this Agreement, includes (x) any "advertisement" as defined in Rule 482 under the Act; and (y) any sales literature, materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Shares, including any in-person roadshow or investor presentations (including slides and scripts relating thereto) made to investors by or on behalf of the Company (the materials and information referred to in this Section 8 are herein referred to as an "Additional Disclosure Item"); any Additional Disclosure Item the use of which has been consented to by the Representatives is listed on Schedule II(a) hereto.

9. The Company covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Shares under the Act and all other expenses in connection with the preparation, printing, reproduction and filing of the Registration Statement, any Preliminary Prospectus, and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any Agreement among Underwriters, this Agreement, the Blue Sky Memorandum, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Shares; (iii) all expenses in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 7A(b) hereof, including the fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey; (iv) all fees and expenses in connection with listing the Shares on the Exchange; (v) the filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with, any required review by the Financial Industry Regulatory Authority, Inc. of the terms of the sale of the Shares (including the expenses of Goldman, Sachs & Co. acting as "qualified independent underwriter" within the meaning of the aforementioned Rule 2720 of FINRA); (vi) the cost of preparing stock certificates; (vii) the cost and charges of any transfer agent or registrar; (viii) all costs and expenses in connection with matters related to the Reserved Securities and the establishment and administration of the program for the sale of the Reserved Securities; (ix) fifty percent of "road show" expenses of the Company and the Underwriters (including but not limited to travel and accommodations) and (ix) all other costs and expenses incident to the performance of the Company, the Adviser and the Administrator of their obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section, and Sections 11, 12 and 15 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Shares by them, and any advertising expenses connected with any offers they may make.

10. The obligations of the Underwriters hereunder, as to the Shares to be delivered at each Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company, the Adviser and the Administrator herein are, at and as of such Time of Delivery, true and correct, the condition that the Company, the Adviser and the Administrator shall have performed all of their respective obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 497 under the Act within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 7A(a) hereof; if the Company has elected to rely upon Rule 462(b) under the Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 P.M., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; no stop order suspending or preventing the use of the Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to your reasonable satisfaction;

(b) Sullivan & Cromwell LLP, counsel for the Underwriters, shall have furnished to you such written opinion or opinions, dated such Time of Delivery, in form and substance satisfactory to you, with respect to such matters as you may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(c) Sutherland Asbill & Brennan LLP, counsel for the Company, shall have furnished to you their written opinion (a draft of such opinion is attached as Annex II(b) hereto), dated such Time of Delivery, in form and substance satisfactory to you.

(d) Richards, Layton & Finger, P.A., special Delaware counsel to the Limited Partnership and the Company, shall have furnished to you their written opinion (a draft of such opinion being attached as Annex II(d) hereto), dated such Time of Delivery in form and substance satisfactory to you.

(e) Sutherland Asbill & Brennan LLP, counsel for the Adviser and the Administrator, shall have furnished to you their written opinion (a draft of such opinion being attached as Annex II(e) hereto), dated such Time of Delivery in form and substance satisfactory to you.

(f) On the date of the Prospectus at a time prior to the execution of this Agreement, at 9:30 a.m., New York City time, on the effective date of any post-effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also at such Time of Delivery, Grant Thornton LLP shall have furnished to you a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you, to the effect set forth in Annex I hereto (the executed copy of the letter delivered prior to the execution of this Agreement is attached as Annex I(a) hereto and a draft of the form of letter to be delivered on the effective date of any post-effective amendment to the Registration Statement and as of each Time of Delivery is attached as Annex I(b) hereto);

(g) (i) The Company shall have not sustained since the date of the latest audited financial statements included in the Pricing Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus, and (ii) since the respective dates as of which information is given in the Pricing Prospectus there shall not have been any change in the capital stock or long-term debt of the Company or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company, otherwise than as set forth or contemplated in the Pricing Prospectus, the effect of which, in any such case described in clause (i) or (ii), is in your judgment so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery the terms and in the manner contemplated in the Prospectus;

(h) On or after the Applicable Time (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any "*nationally recognized statistical rating organization*", as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities;

(i) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the Exchange; (ii) a suspension or material limitation in trading in the Company's securities on the Exchange; (iii) a general moratorium on commercial banking activities declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or

clearance services in the United States; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in your judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus;

(j) The Shares to be sold at such Time of Delivery shall have been duly listed, subject to notice of issuance, on the Exchange;

(k) The Company shall have complied with the provisions of Section 7A(c) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement;

(l) The Company, the Adviser and the Administrator shall have furnished or caused to be furnished to you at such Time of Delivery certificates of their respective officers satisfactory to you as to the accuracy of the representations and warranties of the Company, the Adviser and the Administrator herein at and as of such Time of Delivery, as to the performance by the Company, the Adviser and the Administrator of all of their respective obligations hereunder to be performed at or prior to such Time of Delivery, as to the matters set forth in subsections (a) and (f) of this Section and as to such other matters as you may reasonably request;

(m) The Merger shall have become effective and the Company shall be regulated as a BDC under the Investment Company Act; and

(n) The Company shall have obtained and delivered to the Underwriters executed copies of an agreement from each of the directors and officers of the Company, and the stockholders holding substantially all of the Stock of the Company (as considered prior to the First Time of Delivery), substantially to the effect set forth in Section 7A(e) hereof in form and substance satisfactory to you.

11. (a) The Company will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein.

(b) The Adviser and the Administrator, severally and not jointly, will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item, in reliance upon and in conformity with written information furnished to the Company by the Adviser (in the case of the Adviser) or the Administrator (in the case of the Administrator), respectively.

(c) Each Underwriter will indemnify and hold harmless the Company, the Adviser and the Administrator against any losses, claims, damages or liabilities to which it may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item, in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives expressly for use therein; and will reimburse the Company, the Adviser and the Administrator for any legal or other expenses reasonably incurred by the Company, the Adviser or the Administrator in connection with investigating or defending any such action or claim as such expenses are incurred.

(d) In addition to and without limitation to the indemnification obligations of the Company pursuant to the other provisions of this Section 11 and Section 12 hereof, the Company agrees to indemnify and hold harmless the DSP Administrator, each person, if any, who controls the DSP Administrator within the meaning of the Act, and each broker-dealer affiliate of such DSP Administrator, as follows: (i) against any and all loss, claim, damage and expense whatsoever, as incurred, (A) arising out of the violation of any applicable laws, rules or regulations of any foreign jurisdictions where Reserved Securities have been or are offered or sold, (B) arising out of any untrue statement or alleged untrue statement of a material fact contained in any prospectus "wrapper" or other material prepared by or with the consent of the Company for delivery or distribution to Reserved Securities Offerees or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (C) arising out of the failure of any Reserved Security Offeree to pay for or accept delivery of the Reserved Securities which such Reserved Security Offeree agreed (orally or in writing, including, without limitation, by email, by notice of acceptance given by means of a website or by any other form of electronic communication) to purchase, or (D) otherwise arising out of or in connection with the offering or sale of the Reserved Securities; (ii) against any and all loss, liability, claim, damages or liabilities and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim

whatsoever based upon any matter referred to in (B) above; provided that (subject to Section 11(e) below) any such settlement is effected with the written consent of the Company; and (iii) against any and all expense whatsoever (including the fees and disbursements of counsel chosen by the DSP Administrator), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any matter referred to in (i) above, to the extent that any such expense is not paid under (i) or (ii) above.

(e) Promptly after receipt by an indemnified party under subsection (a), (b), (c) or (d) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(f) If the indemnification provided for in this Section 11 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a), (b), (c) or (d) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company, the Adviser and the Administrator on the one hand and the Underwriters on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (e) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company, the Adviser and the Administrator on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations, or, in the case of indemnification pursuant to subsection (d), matters referred to in such subsection. The relative benefits received by the Company, the Adviser and the Administrator on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a

material fact relates to information supplied by the Company, the Adviser or the Administrator on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission, or, in the case of indemnification pursuant to subsection (d), matters referred to in such subsection. The Company, the Adviser and the Administrator and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (f) were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (f). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (f) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (f), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (f) to contribute are several in proportion to their respective underwriting obligations and not joint.

(g) The obligations of the Company, the Adviser and the Administrator under this Section 11 shall be in addition to any liability which the Company, the Adviser and the Administrator may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act and each broker-dealer affiliate of any Underwriter; and the obligations of the Underwriters under this Section 11 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company (including any person who, with his or her consent, is named in the Registration Statement as about to become a director of the Company) and the Adviser and to each person, if any, who controls the Company, the Adviser and the Administrator within the meaning of the Act. No party shall be entitled to indemnification under this Section 11 or Section 12 below if such indemnification of such party would violate Section 17(i) of the Investment Company Act.

12. (a) The Company will indemnify and hold harmless Goldman, Sachs & Co., in its capacity as QIU, against any losses, claims, damages or liabilities, joint or several, to which the QIU may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Additional Disclosure Item, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any act or omission to act or any alleged act or omission to act by Goldman, Sachs & Co. as QIU in connection with any transaction contemplated by this Agreement or undertaken in preparing for the purchase, sale and delivery of the Shares, except as to this clause (iii) to the extent that any such loss, claim, damage or liability results from the gross negligence or bad faith of Goldman, Sachs & Co. in performing the services as QIU, and will reimburse the QIU for any legal or other expenses reasonably incurred by the QIU in connection with investigating or defending any such action or claim as such expenses are incurred.

(b) Promptly after receipt by the QIU under subsection (a) above of notice of the commencement of any action, the QIU shall, if a claim in respect thereof is to be made against the Company under such subsection, notify the Company in writing of the commencement thereof; but the omission so to

notify the Company shall not relieve it from any liability which it may have to the QIU otherwise than under such subsection. In case any such action shall be brought against the QIU and it shall notify the Company of the commencement thereof, the Company shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to the QIU (who shall not, except with the consent of the QIU, be counsel to the Company), and, after notice from the Company to the QIU of its election so to assume the defense thereof, the Company shall not be liable to the QIU under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by the QIU, in connection with the defense thereof other than reasonable costs of investigation. The Company shall not, without the written consent of the QIU, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the QIU is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the QIU from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of QIU.

(c) If the indemnification provided for in this Section 12 is unavailable to or insufficient to hold harmless Goldman, Sachs & Co., in its capacity as QIU, under subsection (a) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then the Company shall contribute to the amount paid or payable by the QIU as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the QIU on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the QIU failed to give the notice required under subsection (b) above, then the Company shall contribute to such amount paid or payable by the QIU in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the QIU on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the QIU on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company, as set forth in the table on the cover page of the Prospectus, bear to the expenses reimbursed to the QIU in such capacity pursuant to Section 9. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the QIU on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the QIU agree that it would not be just and equitable if contributions pursuant to this subsection (c) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (c). The amount paid or payable by the QIU as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (c) shall be deemed to include any legal or other expenses reasonably incurred by the QIU in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(d) The obligations of the Company under this Section 12 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the QIU within the meaning of the Act.

13. (a) If any Underwriter shall default in its obligation to purchase the Shares which it has agreed to purchase hereunder at a Time of Delivery, you may in your discretion arrange for you or another party or other parties to purchase such Shares on the terms contained herein. If within thirty-six hours after such default by any Underwriter you do not arrange for the purchase of such Shares, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Shares on such terms. In the event that, within the respective prescribed periods, you notify the Company that you have so arranged for the purchase of such Shares, or the Company notifies you that it has so arranged for the purchase of such Shares, you or the Company shall have the right to postpone such Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in your opinion may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Shares.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased does not exceed one-eleventh of the aggregate number of all the Shares to be purchased at such Time of Delivery, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of shares which such Underwriter agreed to purchase hereunder at such Time of Delivery and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the number of Shares which such Underwriter agreed to purchase hereunder) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased exceeds one-eleventh of the aggregate number of all the Shares to be purchased at such Time of Delivery, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Shares of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to the Second Time of Delivery, the obligations of the Underwriters to purchase and of the Company to sell the Optional Shares) shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Company, except for the expenses to be borne by the Company and the Underwriters as provided in Section 9 hereof and the indemnity and contribution agreements in Sections 11 and 12 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

14. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Adviser, the Administrator and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Shares.

15. If this Agreement shall be terminated pursuant to Section 13 hereof, the Company, the Adviser and the Administrator shall not then be under any liability to any Underwriter except as provided in Sections 9, 11 and 12 hereof; but, if for any other reason, any Shares are not delivered by or on behalf of the Company as provided herein, the Company will reimburse the Underwriters through you for all out-of-pocket expenses approved in writing by you, including fees and

disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Shares not so delivered, but the Company shall then be under no further liability to any Underwriter except as provided in Sections 9, 11 and 12 hereof.

16. In all dealings hereunder, you shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by you jointly or by Goldman, Sachs & Co., UBS Securities LLC or Wachovia Capital Markets, LLC on behalf of you as the representatives.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to you as the representatives in care of Goldman, Sachs & Co., 85 Broad Street, 23rd Floor, New York, New York 10004, Attention: Registration Department and UBS Securities LLC, 299 Park Avenue, New York, NY 10171-0026, Attention: Syndicate Department; and if to the Company shall be delivered or sent by mail, telex or facsimile transmission to the address of the Company set forth in the Registration Statement, Attention: Secretary; *provided, however*, that any notice to an Underwriter pursuant to Section 11(e) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire, or telex constituting such Questionnaire, which address will be supplied to the Company by you upon request; *provided, however*, that notices under subsection 7A(e) shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to you as the representatives at Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004, Attention: Control Room and UBS Securities LLC, 299 Park Avenue, New York, NY 10171-0026, Attention: Syndicate Department. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the underwriters to properly identify their respective clients.

17. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company, the Adviser and the Administrator and, to the extent provided in Sections 11, 12 and 14 hereof, the officers and directors of the Company and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Shares from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

18. Time shall be of the essence of this Agreement. As used herein, the term "*business day*" shall mean any day when the Commission's office in Washington, D.C. is open for business.

19. Each of the Company, the Adviser and the Administrator hereby acknowledges and agrees that (i) the purchase and sale of the Shares pursuant to this Agreement is an arm's-length commercial transaction between the Company, the Adviser and the Administrator on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Company, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Company, the Adviser or the Administrator with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) or any other obligation to the Company, the Adviser or the Administrator except the obligations expressly set forth in this Agreement and (iv) each of the Company, the Adviser or the Administrator has consulted its own legal and financial advisors to the extent it deemed appropriate. Each of the Company, the Adviser and the Administrator agrees that it

will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, the Adviser and the Administrator in connection with such transaction or the process leading thereto.

20. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Adviser and the Administrator on the one hand and the Underwriters on the other, or any of them, with respect to the subject matter hereof.

21. **This Agreement shall be governed by and construed in accordance with the laws of the State of New York.**

22. The Company, Adviser, Administrator and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

23. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

24. Notwithstanding anything herein to the contrary, the Company is authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company relating to that treatment and structure, without the Underwriters imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "*tax structure*" is limited to any facts that may be relevant to that treatment.

25. Except as set forth below, no claim, counterclaim or dispute of any kind or nature whatsoever arising out of or in any way relating to this Agreement (a "*Claim*") may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company, the Adviser and the Administrator each consents to the jurisdiction of such courts and personal service with respect thereto. The Company, the Adviser and the Administrator each hereby consents to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against any Underwriter or any indemnified party. Each Underwriter and the Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates), the Adviser and the Administrator (each on its behalf and, to the extent permitted by applicable law, its members and affiliates) each waive all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The Company, the Adviser and the Administrator each agrees that a final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon each of the Company, the Adviser and the Administrator and may be enforced in any other courts to the jurisdiction of which any of the Company, the Adviser or the Administrator each is or may be subject, by suit upon such judgment.

If the foregoing is in accordance with your understanding, please sign and return to us five counterparts hereof, and upon the acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof shall constitute a binding agreement between each of the Underwriters and the Company. It is understood that your acceptance of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on your part as to the authority of the signers thereof.

Very truly yours,

Fifth Street Finance Corp.

By:

Name: Bernard D. Berman
Title: Executive Vice President and Secretary

Fifth Street Management LLC

By:

Name: Bernard D. Berman
Title: Partner

FSC, Inc.

By:

Name: Leonard M. Tannenbaum
Title: President

Accepted as of the date hereof:

Goldman, Sachs & Co.

By:

(Goldman, Sachs & Co.)

UBS Securities LLC

By:

By:

Wachovia Capital Markets, LLC

By:

(Authorized Signatory)

on behalf of each of the Underwriters

QuickLinks

[Fifth Street Finance Corp. Common Stock, \\$0.01 par value per share](#)

CUSTODIAL AGREEMENT
For
Fifth Street Finance Corp
("Customer")

The Customer wishes to establish a Custodial Account (the "Account") with Bank of America, N.A. (the "Bank") under this Custodial Agreement (the "Agreement"), and the Bank has agreed to perform such services in accordance with the terms and conditions of the Agreement. Schedules A through C are attached hereto and made a part of this Agreement.

TERMS AND CONDITIONS

I. APPOINTMENT AND ACCEPTANCE

The Customer appoints the Bank as custodian, to hold and maintain cash, securities and other property deposited with the Bank in accordance with this agreement and accompanying instructions incorporated herein. This agreement and accompanying instructions set out the Bank's responsibilities with respect to the services to be performed, including: safekeeping and delivery of Account assets; use of automated depositories and book-entry securities movement; collection of ordinary dividends, distributions and interest; cash sweep services; presentation of maturities for payment; provision of monthly asset statements and monthly transaction statements; notifications of corporate reorganization and capital changes; trade settlement processing and transaction processing. The Bank will not be responsible for any cash, security or other property that is not delivered to it. The Bank will provide cash management services only if directed to do so by the Customer herein. The Customer will be responsible for cash and other property paid or delivered to any broker or other person at the direction of the Customer.

The Bank will only take actions with respect to the Account upon the receipt of instructions which the Bank reasonably believes to have been delivered by an Authorized Representative of the Customer as identified in Schedule C.

II. SEGREGATION OF SECURITIES AND OTHER PROPERTY

The Bank will provide the Customer with a separate Account and will segregate on its books and records all securities and other property belonging to the Customer.

III. INVESTMENT ADVICE

The Bank will **not** provide investment advice and will not act in any fiduciary capacity for the Customer.

IV. CORPORATE ACTIONS

The Bank will be responsible for monitoring reporting services and publications generally accepted by the securities industry and will notify the Customer of all information received by the Bank from these sources pertaining to calls or voluntary capital changes that require special action. The Bank is not responsible for determining whether any securities are subject to calls or other actions prior to delivery.

If the Customer determines that action should be taken with regard to any tender, exchange or similar transaction, it should notify the Bank no later than three business days prior to the expiration of such event.

If the Customer gives instruction on the last permissible day of a period established by an exchange offer, tender offer or proxy solicitation, the Bank will make reasonable efforts to effect the instructions, but the Customer agrees to hold the Bank harmless from any adverse consequences if the Bank is unable to do so. If the securities held in the Account are called for partial redemption by the issuer of the securities, the Bank will allot the called portion to the beneficial holders in a manner that it deems to be fair and equitable.

V. REGISTRATION

The securities held in the Account may be registered in the name of the Bank or any of its nominees.

VI. SETTLEMENT OF TRANSACTIONS

The settlement of all securities transactions will be made upon the instructions of the Customer. The Bank will notify the Customer promptly of any failure to receive or deliver securities. With respect to the purchase of securities, the Bank will debit the Account for the payment of securities and credit the Account with the securities. With respect to the sale of securities, the Bank will credit the Account with the sale price of the securities and debit the Account for the securities. The Bank may reverse any credits if the transactions fail to settle within a reasonable period.

VII. FRACTIONAL INTERESTS

The Bank will sell fractional interests that result from a rights issue, stock dividend or stock split with respect to the securities in the Account. The Bank also reserves the right to liquidate fractional interests or portions of debt securities having a face amount of less than \$1,000.

VIII. USE OF AFFILIATES, AGENTS AND DEPOSITORIES

The Bank may use affiliates, agents, correspondents and sub-custodians and is authorized to use the services of regulated clearing agents and securities depositories, both domestic and foreign, to assist in the fulfillment of the Bank's duties as custodian. The Bank may utilize the services of registered broker or securities dealers, including brokers or dealers owning or owned by or under common ownership or control with the Bank. Such broker or dealer (including any affiliated broker or dealer) may receive the usual commission or mark-up earned on such transactions without further or more specific authority from the Customer. In the event that an affiliate broker or dealer is employed, the commission or mark-up received by such broker or dealer will not be greater than that which would be charged to the most favored but unaffiliated customers of such broker or dealer.

IX. FEES AND EXPENSES

Fees payable to the Bank for handling the Account will be computed in accordance with the Bank's Fee Schedule as presently in effect and as amended from time to time. The Customer acknowledges receipt of the Fee Schedule. The Bank will send the Customer a copy of any amendment or superseding Fee Schedule, which will become effective no earlier than ten (10) days after it is mailed to the Customer. Unless otherwise agreed in writing, expenses and fees incurred by the Bank in connection with the Account will be charged to the Account as and when incurred, and the Bank may, without further authority, liquidate assets in the Account to pay fees. Fees charged against the Account shall be charged against principal or income.

X. INSTRUCTIONS

The Bank will act on securities trade instructions (to deliver or receive, present for payment or receive securities against payment), cash management instructions (including instructions to transfer

funds from one Account to another by any method other than wire transfer) and corporate action instructions that are transmitted to the Bank either electronically, in writing or by facsimile. The Bank will also act upon instructions made by a financial institution (including investment managers, brokers, etc.) authorized by the Customer to act on its behalf pursuant to Article XIV.

If any securities trade instructions need to be corrected or canceled, the Bank will advise the appropriate broker or dealer of the corrective action to be taken and will not be liable for actions taken or not taken by such broker or dealer. The Bank will not be required to comply with any direction to purchase any securities unless there is sufficient cash in the Customer's Account or with any direction to sell any securities unless such securities are held in the Account at that time in deliverable form.

The Bank will not be liable for acting on any instruction (either written, oral, electronic or facsimile) made by a person who the Bank, in good faith, believes to be so authorized on behalf of the Customer. The Customer acknowledges the inherent risks of reliance upon facsimile, telephone and electronic messages and assumes all responsibility for the use, security and confidentiality of such instructions by the Customer, its employees, agents and third parties. The Customer agrees to indemnify the Bank against any loss, liability or expense (including attorneys' fees and expenses) incurred by the Bank in reliance upon any instructions believed in good faith by the Bank to be authorized by or on behalf of the Customer.

Customers who want to send wire transfer instructions to the Bank must sign a Funds Transfer Agreement. All customer requests for wire transfers are subject to the Bank's funds transfer procedures, which include funds availability requirements, verification procedures, and a requirement that instructions be received prior to 2:45 p.m. ET for same-day processing.

All actions taken by the Bank under this agreement will be for the Customer's Account and at the Customer's risk. The Bank will not have any liability or responsibility for any action taken or not taken or information given or not given in good faith, or for any loss or reduction in value, or lack of or reduction in income (including but not limited to any adverse tax consequences), resulting from any such action or information, except that the Bank may be liable to the company for any action taken or not taken or information given or not given, where the bank acted with negligence or willful misconduct. The Bank will not have any liability for failure to comply with any direction given by the Customer or any instruction contained in this agreement if it has: (i) made a good faith effort to comply with such direction or instructions; or (ii) determined in good faith that compliance with such direction would violate any rule of law or result in personal liability to the Bank.

Without limiting the generality of the foregoing, the Bank will not be responsible for any losses or delays caused by unclear, incomplete, contradictory or duplicative instructions.

XI. TERMINATION AND AMENDMENT

The Bank may terminate this agreement upon sixty (60) days notice to the Customer. The Customer may terminate this agreement upon sixty (60) days notice to the Bank. The fees for the final period will be determined in accordance with the fee schedule in effect at the time of termination. After payment of any charges, the Bank will deliver to the successor custodian at the written direction of the Customer all property held in the Account. Fee charges may be changed in accordance with Article IX. Other terms of this agreement may be amended by a writing signed by the Bank and the Customer.

The rights and obligations of the Bank under this agreement will pass automatically to any bank or trust company into or with which the Bank merges, and may be transferred by the Bank to any other bank or trust company owning or owned by or under common ownership or control with the Bank, subject to the approval of the Board of Directors of the Customer.

XII. VOTING

The Bank will not vote any securities held in the Account of the Customer. Proxies and proxy soliciting materials will be forwarded to (check one) Customer Agent. When the securities are held in the name of the Bank or any of its nominees, the proxies will be executed by the registered holder and forwarded to the party selected above for voting.

XIII. SHAREHOLDER COMMUNICATIONS

The Bank will transmit to the Customer any financial reports, stockholder communications and notices received by the Bank from the issuers of the securities held in the Account. In accordance with applicable regulations, the Bank will provide the Customer's name, address and share position to a company issuing securities held by the Customer's Account unless the Customer objects as follows.

Check the following if appropriate:

- The Customer objects to the release of its name, address and share position to issuers of the securities held in the Customer's Account.

XIV. DESIGNATION OF AGENT

The Customer appoints the following agent (an investment manager) to make securities trades, to receive Customer statements and transaction advice, and to receive and act upon proxy materials, shareholder communications and corporate action information on the Customer's behalf.

Fifth Street Management LLC

(Name of Investment Manager)

445 Hamilton Ave

Suite 1206

White Plains, NY 10601

(Address)

The Bank is entitled to rely upon the authority of the agent and the representatives designated by the agent until written revocation of authority is received by the Bank. Notwithstanding the appointment of an investment manager as the Customer's agent, the Bank is also directed to honor all instructions given directly by the Customer.

The Bank is is not directed to pay fees billed by the agent designated above; if neither box is checked, the Bank will not pay such fees. The Bank will have no obligation to assess the accuracy or reasonableness of such fees.

XV. COLLECTION AND DISBURSEMENT OF INCOME

The Bank will collect and credit the Account with all income and other distributions due or payable on the securities held. After payment of any charges against it, cash income will be:

Accumulated and added to principal

Accumulated and added to income

Accumulated and added to income with transfer of income balance to principal:

Monthly on

(Day of month)

Quarterly on

(Dates)

Accumulated and paid to the Customer:

Annually on

(Date)

Semi-annually on

and

(Date)

(Date)

Quarterly on

(Dates)

Monthly on

(Date)

Amount of payment:

Such payments will be sent to the Customer at:

(Address)

Payments to the Customer will be net of any back-up withholding or similar taxes or penalties. The Bank will not be obligated, except for claims made in the ordinary course, to take any action, including legal action, to secure payment of any distributions on the Customer's behalf.

XVI. STATEMENTS

The Bank will furnish statements to the Customer:

Monthly:

Quarterly:

(Specify months)

Annually:

(Specify date)

The Bank will send statements reflecting the date of execution; identity, price and number of shares or units (or principal amount in the case of debt securities) of securities purchased or sold; the fees received or to be received from the Customer by any broker/ dealer in connection with transactions; fees to be received by the Bank; and the name of the broker-dealer used. Upon specific request of the Customer, the Bank will furnish, without additional charge, written notification of securities transactions as early as five (5) days from the date of the transaction, or, if a broker-dealer is used, within five (5) business days from receipt by the Bank of the broker-dealer's confirmation.

Statements will be mailed to the Customer (and/or authorized representatives) at the following address(es):

_____	_____
_____	_____
_____	_____
<i>(Address)</i>	<i>(Address)</i>

XVII. CASH AWAITING INVESTMENT AND DISTRIBUTION (CASH SWEEP)

At the Customer's direction, the Bank will use any available cash awaiting investment or distribution in the Customer's Account to purchase interest bearing Accounts, certificates of deposit, commercial paper, treasury bills, master notes, repurchase agreements, money market instruments, including, without limitation, certificates of deposit and interest bearing Accounts of the Bank or a Bank affiliate and shares of money market and other mutual funds for which the Bank or a Bank affiliate receives management, administrative or advisory compensation, or for which the Bank or a Bank affiliate receives compensation, at a percentage of net assets in recognition of shareholder servicing functions.

Funds Awaiting Investment or Distribution

Cash in the Account awaiting distribution or further investment will be placed in the short-term investment medium designated below (check one):

- Money market deposit account maintained by the Bank or its affiliate
- Columbia Government Plus Reserves
- Columbia Treasury Reserves
- Columbia Money Market Reserves
- Columbia Government Reserves
- Columbia Tax-Exempt Reserves
- Columbia Cash Reserves
- ADD APPROPRIATE FUNDS

XVIII. CHOICE OF LAW

This Agreement will be construed in accordance with the law of the state where the Account is principally administered, as designated by the Bank.

XIX. REPRESENTATION

The person executing this agreement certifies that he or she is authorized to enter into this agreement and that a certified copy of the authorizing resolution or by-law (or other appropriate certifications) and a list of the names and titles of all persons authorized to give instructions and

approvals regarding this Account, along with specimen signatures, will be supplied to the Bank immediately. The authority of such persons will continue until written notice is received by the Bank of the revocation of such persons' authority.

XX. PLEDGE OF ASSETS AND WAIVER OF CONFLICTS

The Customer retains the right to pledge some or all of the Account as collateral for loans to the Customer or other parties.

The lender may be the Bank or a Bank affiliate and the Customer waives all conflicts of interest that may arise from such loans. The Customer hereby directs the Bank to follow any order of the lender directing sale or transfer of all or part of the Account, and remitting the proceeds to the lender, without further consent from or notice to the Customer. The Customer agrees to hold the Bank harmless against any and all claims, liabilities and expenses incurred by reason of compliance with such orders from the lender. The Customer understands that if the lender is the Bank or a Bank affiliate, the Bank may take action to protect its interests as lender, which could be contrary to the Customer's interests and investment objectives.

XXI. RESOLVING DISPUTES OR CONTROVERSIES

If the Customer or the Bank request, any controversy or claim ("Controversy") concerning this Agreement or the Account, including any claim based on or arising from an alleged tort, will be determined by arbitration, reference or trial by a judge as provided below. A Controversy that involves a dispute less than \$1 Million (exclusive of punitive damages) will be determined by arbitration as described below. Any other Controversy will be determined by judicial reference of the Controversy to a referee, or by trial by a judge without a jury, as described below. The arbitration, judicial reference or trial by a judge will take place on an individual basis without resort to any form of class action.

WHETHER THE CONTROVERSY IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, THE CUSTOMER AGREES AND UNDERSTANDS: (I) THAT THE CUSTOMER AND THE BANK ARE GIVING UP THE RIGHT TO TRIAL BY JURY, AND THERE WILL BE NO JURY AND (II) THAT THIS SECTION PRECLUDES THE CUSTOMER AND THE BANK FROM HAVING THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY FORM OF CLASS ACTION OR ANY OTHER LITIGATION FILED IN COURT BY OTHERS.

1. Since this Agreement touches and concerns interstate commerce, arbitration under this Agreement will be conducted in accordance with the United States Arbitration Act (Title 9, United States Code), notwithstanding any choice of law provision in this Agreement. Arbitration, including selection of an arbitrator, will be conducted in accordance with the then-current rules for arbitration of financial disputes of J.A.M.S. ("JAMS"). The Customer may call JAMS at the telephone number in his local directory or at 1.800.352.5267 to obtain rules and forms to initiate arbitration or visit their web site at www.jamsadr.com for more information. If JAMS is unable or unwilling to serve as the provider of arbitration, Bank may substitute another national arbitration organization with similar procedures. The arbitrator(s) will follow the law and will give effect to statutes of limitation in determining any claim. Any Controversy concerning whether an issue is arbitral will be determined by the arbitrator(s). The award of the arbitrator(s) will be in writing and include a statement of reasons for the award. The award will be final. Judgment upon the award may be entered in any court having jurisdiction, and no challenge to entry of judgment upon the award will be entertained except as provided by section 10 of the United States Arbitration Act or upon a finding of manifest injustice.

2. If the Customer or the Bank request, any Controversy concerning the Customer's Account relationship with the Bank that is not submitted to arbitration as provided above will be determined by reference to a referee appointed by the court who, sitting alone without a jury, will decide all questions of law and fact. The referee will be an active attorney or retired judge. If the court where the Controversy is venued lacks the power to appoint a referee, the Controversy instead will be decided by a judge without a jury.
3. Either the Customer or the Bank may obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration or reference. Neither the obtaining nor the exercise of any such remedy will waive arbitration or reference as provided above.

Any arbitration, lawsuit or other proceeding regarding the Customer's Account must be brought in the state whose law governs or controls the Account, as described below and the Customer submits to that state.

FOR SIGNATURE BY A LEGAL ENTITY:

Customer:	_____	Custodian:	BANK OF AMERICA, N.A.
	(Account Name)		_____
By:	_____	By:	_____
	(Its duly authorized Agent)		(Its duly authorized Agent)
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
Customer's fiscal year-end:	_____		
Customer's tax identification number:	_____		

FOR SIGNATURE BY AN INDIVIDUAL CUSTOMER:

Customer:	_____	Custodian:	_____
	(Account Name)		Bank of America, N.A.
_____	_____	By:	_____
	(Customer's Signature)		(Its duly authorized Agent)
Print Name:	_____	Print Name:	_____
		Title:	_____
Date:	_____	Accepted:	_____
Customer's Social Security Number:	_____		

QuickLinks

[CUSTODIAL AGREEMENT For Fifth Street Finance Corp \("Customer"\)](#)

CREDIT AGREEMENT

DATED AS OF JANUARY 15, 2008,

AMONG

FIFTH STREET FINANCE CORP.,

THE LENDERS FROM TIME TO TIME PARTIES HERETO,

AND

BANK OF MONTREAL,
AS ADMINISTRATIVE AGENT

BMO CAPITAL MARKETS, AS SOLE LEAD ARRANGER AND SOLE BOOK RUNNER

TABLE OF CONTENTS

SECTION	HEADING	PAGE
SECTION 1.	THE CREDIT FACILITIES	1
Section 1.1.	Revolving Credit Commitments	1
Section 1.2.	Letters of Credit	1
Section 1.3.	Applicable Interest Rates	4
Section 1.4.	Minimum Borrowing Amounts; Maximum Eurodollar Loans	6
Section 1.5.	Manner of Borrowing Loans and Designating Applicable Interest Rates	6
Section 1.6.	Swing Loans	7
Section 1.7.	Maturity of Loans	9
Section 1.8.	Prepayments	9
Section 1.9.	Default Rate	10
Section 1.10.	Evidence of Indebtedness	11
Section 1.11.	Funding Indemnity	11
Section 1.12.	Commitment Terminations	12
Section 1.13.	Substitution of Lenders	12
SECTION 2.	FEES	12
Section 2.1.	Fees	12
SECTION 3.	PLACE AND APPLICATION OF PAYMENTS	13
Section 3.1.	Place and Application of Payments	13
Section 3.2.	Account Debit	14
SECTION 4.	GUARANTIES AND COLLATERAL	14
Section 4.1.	Guaranties	14
Section 4.2.	Collateral	14
Section 4.3.	Further Assurances	15
SECTION 5.	DEFINITIONS; INTERPRETATION	15
Section 5.1.	Definitions	15
Section 5.2.	Interpretation	27
Section 5.3.	Change in Accounting Principles	27
SECTION 6.	REPRESENTATIONS AND WARRANTIES	28
Section 6.1.	Organization and Qualification	28
Section 6.2.	Subsidiaries	28
Section 6.3.	Authority and Validity of Obligations	28
Section 6.4.	Use of Proceeds; Margin Stock	29
Section 6.5.	Financial Reports	29
Section 6.6.	No Material Adverse Change	29
Section 6.7.	Full Disclosure	29
Section 6.8.	Trademarks, Franchises, and Licenses	30
Section 6.9.	Governmental Authority and Licensing	30
Section 6.10.	Good Title	30
Section 6.11.	Litigation and Other Controversies	30
Section 6.12.	Taxes	30
Section 6.13.	Approvals	30
Section 6.14.	Affiliate Transactions	31
Section 6.15.	Investment Company	31
Section 6.16.	ERISA	31
Section 6.17.	Compliance with Laws	31
Section 6.18.	Solvency	31
Section 6.19.	No Broker Fees	31
Section 6.20.	Material Agreements	32

Section 6.21.	Other Agreements	32
Section 6.22.	No Default	32
SECTION 7.	CONDITIONS PRECEDENT	32
Section 7.1.	All Credit Events	32
Section 7.2.	Initial Credit Event	32
SECTION 8.	COVENANTS	34
Section 8.1.	Maintenance of Business	34
Section 8.2.	Maintenance of Properties	34
Section 8.3.	Taxes and Assessments	34
Section 8.4.	Insurance	34
Section 8.5.	Financial Reports	34
Section 8.6.	Inspection	36
Section 8.7.	Borrowings and Guarantees	36
Section 8.8.	Liens	37
Section 8.9.	Investments and Acquisitions	37
Section 8.10.	Mergers, Consolidations, Amalgamations, and Sales of Assets	38
Section 8.11.	Maintenance of Subsidiaries	39
Section 8.12.	Dividends and Certain Other Restricted Payments	39
Section 8.13.	ERISA	40
Section 8.14.	Compliance with Laws	40
Section 8.15.	RIC and BDC	40
Section 8.16.	Investment Policies	40
Section 8.17.	Burdensome Contracts With Affiliates	40
Section 8.18.	No Changes in Fiscal Year	41
Section 8.19.	Formation of Subsidiaries	41
Section 8.20.	Change in the Nature of Business	41
Section 8.21.	Use of Proceeds	41
Section 8.22.	Portfolio Valuation and Diversification Etc.	41
Section 8.23.	Calculation of Borrowing Base	43
Section 8.24.	No Restrictions	45
Section 8.25.	Financial Covenants	45
Section 8.26.	Post Closing	45
SECTION 9.	EVENTS OF DEFAULT AND REMEDIES	46
Section 9.1.	Events of Default	46
Section 9.2.	Non-Bankruptcy Defaults	47
Section 9.3.	Bankruptcy Defaults	47
Section 9.4.	Collateral for Undrawn Letters of Credit	48
Section 9.5.	Notice of Default	48
SECTION 10.	CHANGE IN CIRCUMSTANCES	48
Section 10.1.	Change of Law	48
Section 10.2.	Unavailability of Deposits or Inability to Ascertain, or Inadequacy of, LIBOR	49
Section 10.3.	Increased Cost and Reduced Return	49
Section 10.4.	Lending Offices	50
Section 10.5.	Discretion of Lender as to Manner of Funding	50
SECTION 11.	THE ADMINISTRATIVE AGENT	50
Section 11.1.	Appointment and Authorization of Administrative Agent	50

Section 11.2.	Administrative Agent and its Affiliates	51
Section 11.3.	Action by Administrative Agent	51
Section 11.4.	Consultation with Experts	51
Section 11.5.	Liability of Administrative Agent; Credit Decision	51
Section 11.6.	Indemnity	52
Section 11.7.	Resignation of Administrative Agent and Successor Administrative Agent	52
Section 11.8.	L/C Issuer and Swing Line Lender	53
Section 11.9.	Hedging Liability and Funds Transfer and Deposit Account Liability Arrangements	53
Section 11.10.	Designation of Additional Agents	53
Section 11.11.	Authorization to Release or Subordinate or Limit Liens	53
Section 11.12.	Authorization to Enter into, and Enforcement of, the Collateral Documents	54
SECTION 12.	MISCELLANEOUS	54
Section 12.1.	Withholding Taxes	54
Section 12.2.	No Waiver, Cumulative Remedies	55
Section 12.3.	Non-Business Days	55
Section 12.4.	Documentary Taxes	55
Section 12.5.	Survival of Representations	55
Section 12.6.	Survival of Indemnities	56
Section 12.7.	Sharing of Set-Off	56
Section 12.8.	Notices	56
Section 12.9.	Counterparts	56
Section 12.10.	Successors and Assigns	57
Section 12.11.	Participants	57
Section 12.12.	Assignments	57
Section 12.13.	Amendments	59
Section 12.14.	Headings	59
Section 12.15.	Costs and Expenses; Indemnification	59
Section 12.16.	Set-off	61
Section 12.17.	Entire Agreement	61
Section 12.18.	Governing Law	61
Section 12.19.	Severability of Provisions	61
Section 12.20.	Excess Interest	61
Section 12.21.	Construction	62
Section 12.22.	Lender's and L/C Issuer's Obligations Several	62
Section 12.23.	Submission to Jurisdiction; Waiver of Jury Trial	62
Section 12.24.	USA Patriot Act	62
Section 12.25.	Confidentiality	62
Signature Page		64
EXHIBIT A—NOTICE OF PAYMENT REQUEST		
EXHIBIT B—NOTICE OF BORROWING		
EXHIBIT C—NOTICE OF CONTINUATION/CONVERSION		
EXHIBIT D-1—REVOLVING NOTE		
EXHIBIT D-2—SWING NOTE		
EXHIBIT E—BORROWING BASE CERTIFICATE		
EXHIBIT F—COMPLIANCE CERTIFICATE		
EXHIBIT G—ASSIGNMENT AND ACCEPTANCE		

SCHEDULE 1—COMMITMENTS
SCHEDULE 6.2—SUBSIDIARIES
SCHEDULE 6.10(A)—INVESTMENTS
SCHEDULE 6.10(B)—LIENS
SCHEDULE 6.20—MATERIAL AGREEMENTS

CREDIT AGREEMENT

This Credit Agreement is entered into as of January 15, 2008, by and among FIFTH STREET FINANCE CORP., a Delaware corporation (the "Borrower"), the several financial institutions from time to time party to this Agreement, as Lenders, and BANK OF MONTREAL, a Canadian chartered bank acting through its Chicago branch, as Administrative Agent as provided herein. All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in Section 5.1 hereof.

PRELIMINARY STATEMENT

The Borrower has requested, and the Lenders have agreed to extend, certain credit facilities on the terms and conditions of this Agreement.

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

SECTION 1. THE CREDIT FACILITIES.

Section 1.1. Revolving Credit Commitments. Subject to the terms and conditions hereof, each Lender, by its acceptance hereof, severally agrees to make a loan or loans (individually a "Revolving Loan" and collectively for all the Lenders the "Revolving Loans") in U.S. Dollars to the Borrower from time to time on a revolving basis up to the amount of such Lender's Revolving Credit Commitment, subject to any reductions thereof pursuant to the terms hereof, before the Revolving Credit Termination Date. The sum of the aggregate principal amount of Revolving Loans, Swing Loans, and L/C Obligations at any time outstanding shall not exceed the lesser of (i) the Revolving Credit Commitments in effect at such time and (ii) the Borrowing Base as then determined and computed. Each Borrowing of Revolving Loans shall be made ratably by the Lenders in proportion to their respective Revolver Percentages. As provided in Section 1.5(a) hereof, the Borrower may elect that each Borrowing of Revolving Loans be either Base Rate Loans or Eurodollar Loans. Revolving Loans may be repaid and the principal amount thereof reborrowed before the Revolving Credit Termination Date, subject to the terms and conditions hereof.

Section 1.2. Letters of Credit. (a) *General Terms.* Subject to the terms and conditions hereof, as part of the Revolving Credit, the L/C Issuer shall issue standby letters of credit (each a "Letter of Credit") for the account of the Borrower in an aggregate undrawn face amount up to the L/C Sublimit. Each Letter of Credit shall be issued by the L/C Issuer, but each Lender shall be obligated to reimburse the L/C Issuer for such Lender's Revolver Percentage of the amount of each drawing thereunder and, accordingly, each Letter of Credit shall constitute usage of the Revolving Credit Commitment of each Lender pro rata in an amount equal to its Revolver Percentage of the L/C Obligations then outstanding.

(b) *Applications.* At any time before the Revolving Credit Termination Date, the L/C Issuer shall, at the request of the Borrower, issue one or more Letters of Credit in U.S. Dollars, in a form satisfactory to the L/C Issuer, with expiration dates no later than 12 months from the date of issuance (or which are cancelable not later than 12 months from the date of issuance and each renewal) in an aggregate face amount as set forth above, upon the receipt of an application duly executed by the Borrower for the relevant Letter of Credit in the form then customarily prescribed by the L/C Issuer for the Letter of Credit requested (each an "Application"). On the Revolving Credit Termination Date, the Borrower shall pay to the Administrative Agent an amount equal to 105% of the aggregate undrawn amounts on all Letters of Credit then outstanding to be held as cash collateral in the Collateral Account. Notwithstanding anything contained in any Application to the contrary: (i) the Borrower shall pay fees in connection with each Letter of Credit as set forth in Section 2.1 hereof, (ii) except as otherwise provided in Section 1.8 hereof, unless an Event of Default exists, prior to the Revolving Credit Termination Date the L/C Issuer will not call for the funding by the Borrower of any amount under a Letter of Credit before being presented with a drawing thereunder, and (iii) if the L/C

Issuer is not timely reimbursed for the amount of any drawing under a Letter of Credit on the date such drawing is paid, the Borrower's obligation to reimburse the L/C Issuer for the amount of such drawing shall bear interest (which the Borrower hereby promises to pay) from and after the date such drawing is paid at a rate per annum equal to the sum of the Applicable Margin for Reimbursement Obligations plus the Base Rate from time to time in effect (computed on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed). If the L/C Issuer issues any Letter of Credit with an expiration date that is automatically extended unless the L/C Issuer gives notice that the expiration date will not so extend beyond its then scheduled expiration date, unless the Administrative Agent or the Required Lenders instruct the L/C Issuer otherwise, the L/C Issuer will give such notice of non-renewal before the time necessary to prevent such automatic extension if before such required notice date: (i) the Revolving Credit Commitments have been terminated or (ii) a Default or an Event of Default exists and either the Administrative Agent or the Required Lenders (with notice to the Administrative Agent) have given the L/C Issuer instructions not to so permit the extension of the expiration date of such Letter of Credit. The L/C Issuer agrees to issue amendments to the Letter(s) of Credit increasing the amount, or extending the expiration date, thereof at the request of the Borrower subject to the conditions of Section 7 hereof and the other terms of this Section 1.2.

(c) *The Reimbursement Obligations.* Subject to Section 1.2(b) hereof, the obligation of the Borrower to reimburse the L/C Issuer for all drawings under a Letter of Credit (a "*Reimbursement Obligation*") shall be governed by the Application related to such Letter of Credit, except that reimbursement shall be made by no later than 12:00 Noon (Chicago time) on the date when each drawing is to be paid if the Borrower has been informed of such drawing by the L/C Issuer on or before 11:00 a.m. (Chicago time) on the date when such drawing is to be paid or, if notice of such drawing is given to the Borrower after 11:00 a.m. (Chicago time) on the date when such drawing is to be paid, by no later than 12:00 Noon (Chicago time) on the following Business Day, in immediately available funds at the Administrative Agent's principal office in Chicago, Illinois or such other office as the Administrative Agent may designate in writing to the Borrower (who shall thereafter cause to be distributed to the L/C Issuer such amount(s) in like funds). If the Borrower does not make any such reimbursement payment on the date due and the Participating Lenders fund their participations therein in the manner set forth in Section 1.2(e) below, then all payments thereafter received by the Administrative Agent in discharge of any of the relevant Reimbursement Obligations shall be distributed in accordance with Section 1.2(e) below.

(d) *Obligations Absolute.* The Borrower's obligation to reimburse L/C Obligations as provided in subsection (c) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement and the relevant Application under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not strictly comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders, or the L/C Issuer shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the L/C Issuer; *provided* that the foregoing shall

not be construed to excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the L/C Issuer may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(e) *The Participating Interests.* Each Lender (other than the Lender acting as L/C Issuer in issuing the relevant Letter of Credit), by its acceptance hereof, severally agrees to purchase from the L/C Issuer, and the L/C Issuer hereby agrees to sell to each such Lender (a "*Participating Lender*"), an undivided percentage participating interest (a "*Participating Interest*"), to the extent of its Revolver Percentage, in each Letter of Credit issued by, and each Reimbursement Obligation owed to, the L/C Issuer. Upon any failure by the Borrower to pay any Reimbursement Obligation at the time required on the date the related drawing is to be paid, as set forth in Section 1.2(c) above, or if the L/C Issuer is required at any time to return to the Borrower or to a trustee, receiver, liquidator, custodian or other Person any portion of any payment of any Reimbursement Obligation, each Participating Lender shall, not later than the Business Day it receives a certificate in the form of Exhibit A hereto from the L/C Issuer (with a copy to the Administrative Agent) to such effect, if such certificate is received before 1:00 p.m. (Chicago time), or not later than 1:00 p.m. (Chicago time) the following Business Day, if such certificate is received after such time, pay to the Administrative Agent for the account of the L/C Issuer an amount equal to such Participating Lender's Revolver Percentage of such unpaid or recaptured Reimbursement Obligation together with interest on such amount accrued from the date the related payment was made by the L/C Issuer to the date of such payment by such Participating Lender at a rate per annum equal to: (i) from the date the related payment was made by the L/C Issuer to the date two (2) Business Days after payment by such Participating Lender is due hereunder, the Federal Funds Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Participating Lender to the date such payment is made by such Participating Lender, the Base Rate in effect for each such day. Each such Participating Lender shall thereafter be entitled to receive its Revolver Percentage of each payment received in respect of the relevant Reimbursement Obligation and of interest paid thereon, with the L/C Issuer retaining its Revolver Percentage thereof as a Lender hereunder. The several obligations of the Participating Lenders to the L/C Issuer under this Section 1.2 shall be absolute, irrevocable, and unconditional under any and all circumstances whatsoever and shall not be subject to any set-off, counterclaim or defense to payment which any Participating Lender may have or have had against the Borrower, the L/C Issuer, the Administrative Agent, any Lender or any other Person whatsoever. Without limiting the generality of the foregoing, such obligations shall not be affected by any Default or Event of Default or by any reduction or termination of any Commitment of any Lender, and each payment by a Participating Lender under this Section 1.2 shall be made without any offset, abatement, withholding or reduction whatsoever.

(f) *Indemnification.* The Participating Lenders shall, to the extent of their respective Revolver Percentages, indemnify the L/C Issuer (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such L/C Issuer's gross negligence or willful misconduct) that the L/C Issuer may suffer or incur in connection with any Letter of Credit issued by it. The obligations of the

Participating Lenders under this Section 1.2(f) and all other parts of this Section 1.2 shall survive termination of this Agreement and of all Applications, Letters of Credit, and all drafts and other documents presented in connection with drawings thereunder.

(g) *Manner of Requesting a Letter of Credit.* The Borrower shall provide at least five (5) Business Days' advance written notice to the Administrative Agent of each request for the issuance of a Letter of Credit, such notice in each case to be accompanied by an Application for such Letter of Credit properly completed and executed by the Borrower and, in the case of an extension or amendment or an increase in the amount of a Letter of Credit, a written request therefor, in a form acceptable to the Administrative Agent and the L/C Issuer, in each case, together with the fees called for by this Agreement. The Administrative Agent shall promptly notify the L/C Issuer of the Administrative Agent's receipt of each such notice (and the L/C Issuer shall be entitled to assume that the conditions precedent to any such issuance, extension, amendment or increase have been satisfied unless notified to the contrary by the Administrative Agent or the Required Lenders) and the L/C Issuer shall promptly notify the Administrative Agent and the Lenders of the issuance of the Letter of Credit so requested.

(h) *Replacement of the L/C Issuer.* The L/C Issuer may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of the L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer. From and after the effective date of any such replacement (i) the successor L/C Issuer shall have all the rights and obligations of the L/C Issuer under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to refer to such successor or to any previous L/C Issuer, or to such successor and all previous L/C Issuers, as the context shall require. After the replacement of a L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of a L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

Section 1.3. Applicable Interest Rates. (a) *Base Rate Loans.* Each Base Rate Loan made or maintained by a Lender shall bear interest (computed on the basis of a year of 365 or 366 days, as the case may be, and the actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced, or created by conversion from a Eurodollar Loan, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin for Base Rate Loans plus the Base Rate from time to time in effect, payable by the Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

"Base Rate" means for any day the greater of: (i) the rate of interest announced or otherwise established by the Administrative Agent from time to time as its prime commercial rate, or its equivalent, for U.S. Dollar loans to borrowers located in the United States as in effect on such day, with any change in the Base Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate (it being acknowledged and agreed that such rate may not be the Administrative Agent's best or lowest rate) and (ii) the sum of (x) the rate determined by the Administrative Agent to be the average (rounded upward, if necessary, to the next higher 1/100 of 1%) of the rates per annum quoted to the Administrative Agent at approximately 10:00 a.m. (Chicago time) (or as soon thereafter as is practicable) on such day (or, if such day is not a Business Day, on the immediately preceding Business Day) by two or more Federal funds brokers selected by the Administrative Agent for sale to the Administrative Agent at face value of Federal funds in the secondary market in an amount equal or comparable to the principal amount for which such rate is being determined, plus (y) $\frac{1}{2}$ of 1%.

(b) *Eurodollar Loans*. Each Eurodollar Loan made or maintained by a Lender shall bear interest during each Interest Period it is outstanding (computed on the basis of a year of 360 days and actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced or continued, or created by conversion from a Base Rate Loan, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin for Eurodollar Loans plus the Adjusted LIBOR applicable for such Interest Period, payable by the Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

"Adjusted LIBOR" means, for any Borrowing of Eurodollar Loans, a rate per annum determined in accordance with the following formula:

$$\text{Adjusted LIBOR} = \frac{\text{LIBOR}}{1 - \text{Eurodollar Reserve Percentage}}$$

"Eurodollar Reserve Percentage" means, for any Borrowing of Eurodollar Loans, the daily average for the applicable Interest Period of the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any supplemental, marginal, and emergency reserves) are imposed during such Interest Period by the Board of Governors of the Federal Reserve System (or any successor) on "eurocurrency liabilities", as defined in such Board's Regulation D (or in respect of any other category of liabilities that includes deposits by reference to which the interest rate on Eurodollar Loans is determined or any category of extensions of credit or other assets that include loans by non-United States offices of any Lender to United States residents), subject to any amendments of such reserve requirement by such Board or its successor, taking into account any transitional adjustments thereto. For purposes of this definition, the Eurodollar Loans shall be deemed to be "eurocurrency liabilities" as defined in Regulation D without benefit or credit for any prorations, exemptions or offsets under Regulation D.

"LIBOR" means, for an Interest Period for a Borrowing of Eurodollar Loans, (a) the LIBOR Index Rate for such Interest Period, if such rate is available, and (b) if the LIBOR Index Rate cannot be determined, the arithmetic average of the rates of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) at which deposits in U.S. Dollars in immediately available funds are offered to the Administrative Agent at 11:00 a.m. (London, England time) two (2) Business Days before the beginning of such Interest Period by three (3) or more major banks in the interbank eurodollar market selected by the Administrative Agent for delivery on the first day of and for a period equal to such Interest Period and in an amount equal or comparable to the principal amount of the Eurodollar Loan scheduled to be made as part of such Borrowing.

"LIBOR Index Rate" means, for any Interest Period, the rate per annum (rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point) for deposits in U.S. Dollars for a period equal to such Interest Period, which appears on the LIBOR01 Page as of 11:00 a.m. (London, England time) on the day 2 Business Days before the commencement of such Interest Period.

"LIBOR01 Page" means the display designated as "Reuters Screen LIBOR01 Page" (or such other page as may replace the LIBOR01 Page on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for U.S. Dollar deposits).

(c) *Rate Determinations*. The Administrative Agent shall determine each interest rate applicable to the Loans and the Reimbursement Obligations hereunder, and its determination thereof shall be conclusive and binding except in the case of manifest error.

Section 1.4. Minimum Borrowing Amounts; Maximum Eurodollar Loans. Each Borrowing of Base Rate Loans advanced under a Credit shall be in an amount not less than \$100,000. Each Borrowing of Eurodollar Loans advanced, continued or converted under a Credit shall be in an amount equal to \$1,000,000 or such greater amount which is an integral multiple of \$500,000. Without the Administrative Agent's consent, there shall not be more than eight (8) Borrowings of Eurodollar Loans outstanding hereunder at any one time.

Section 1.5. Manner of Borrowing Loans and Designating Applicable Interest Rates. (a) *Notice to the Administrative Agent.* The Borrower shall give notice to the Administrative Agent by no later than 10:00 a.m. (Chicago time): (i) at least 3 Business Days before the date on which the Borrower requests the Lenders to advance a Borrowing of Eurodollar Loans and (ii) on the date the Borrower requests the Lenders to advance a Borrowing of Base Rate Loans. The Loans included in each Borrowing shall bear interest initially at the type of rate specified in such notice of a new Borrowing. Thereafter, subject to the terms and conditions hereof, the Borrower may from time to time elect to change or continue the type of interest rate borne by each Borrowing or, subject to the minimum amount requirement for each outstanding Borrowing set forth in Section 1.4 hereof, a portion thereof, as follows: (i) if such Borrowing is of Eurodollar Loans, on the last day of the Interest Period applicable thereto, the Borrower may continue part or all of such Borrowing as Eurodollar Loans or convert part or all of such Borrowing into Base Rate Loans or (ii) if such Borrowing is of Base Rate Loans, on any Business Day, the Borrower may convert all or part of such Borrowing into Eurodollar Loans for an Interest Period or Interest Periods specified by the Borrower. The Borrower shall give all such notices requesting the advance, continuation or conversion of a Borrowing to the Administrative Agent by telephone, telecopy, or other telecommunication device acceptable to the Administrative Agent (which notice shall be irrevocable once given and, if by telephone, shall be promptly confirmed in writing), substantially in the form attached hereto as Exhibit B (Notice of Borrowing) or Exhibit C (Notice of Continuation/Conversion), as applicable, or in such other form acceptable to the Administrative Agent. Notice of the continuation of a Borrowing of Eurodollar Loans for an additional Interest Period or of the conversion of part or all of a Borrowing of Base Rate Loans into Eurodollar Loans must be given by no later than 10:00 a.m. (Chicago time) at least three (3) Business Days before the date of the requested continuation or conversion. All such notices concerning the advance, continuation or conversion of a Borrowing shall specify the date of the requested advance, continuation or conversion of a Borrowing (which shall be a Business Day), the amount of the requested Borrowing to be advanced, continued or converted, the type of Loans to comprise such new, continued or converted Borrowing and, if such Borrowing is to be comprised of Eurodollar Loans, the Interest Period applicable thereto. Upon notice to the Borrower by the Administrative Agent or the Required Lenders, no Borrowing of Eurodollar Loans shall be advanced, continued, or created by conversion if any Default or Event of Default then exists. The Borrower agrees that the Administrative Agent may rely on any such telephonic, telecopy or other telecommunication notice given by any person the Administrative Agent in good faith believes is an Authorized Representative without the necessity of independent investigation, and in the event any such notice by telephone conflicts with any written confirmation such telephonic notice shall govern if the Administrative Agent has acted in reliance thereon.

(b) *Notice to the Lenders.* The Administrative Agent shall give prompt telephonic, telecopy or other telecommunication notice to each Lender of any notice from the Borrower received pursuant to Section 1.5(a) above and, if such notice requests the Lenders to make Eurodollar Loans, the Administrative Agent shall give notice to the Borrower and each Lender by like means of the interest rate applicable thereto promptly after the Administrative Agent has made such determination.

(c) *Borrower's Failure to Notify.* If the Borrower fails to give notice pursuant to Section 1.5(a) above of the continuation or conversion of any outstanding principal amount of a Borrowing of Eurodollar Loans before the last day of its then current Interest Period within the period required by

Section 1.5(a) and such Borrowing is not prepaid in accordance with Section 1.8(a), such Borrowing shall automatically be converted into a Borrowing of Base Rate Loans. In the event the Borrower fails to give notice pursuant to Section 1.5(a) above of a Borrowing equal to the amount of a Reimbursement Obligation and has not notified the Administrative Agent by 12:00 noon (Chicago time) on the day such Reimbursement Obligation becomes due that it intends to repay such Reimbursement Obligation through funds not borrowed under this Agreement, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans under the Revolving Credit (or, at the option of the Swing Line Lender, under the Swing Line) on such day in the amount of the Reimbursement Obligation then due, which Borrowing shall be applied to pay the Reimbursement Obligation then due.

(d) *Disbursement of Loans.* Not later than 1:00 p.m. (Chicago time) on the date of any requested advance of a new Borrowing, subject to Section 7 hereof, each Lender shall make available its Loan comprising part of such Borrowing in funds immediately available at the principal office of the Administrative Agent in Chicago, Illinois (or at such other location as the Administrative Agent shall designate). The Administrative Agent shall make the proceeds of each new Borrowing available to the Borrower at the Administrative Agent's principal office in Chicago, Illinois (or at such other location as the Administrative Agent shall designate), by depositing or wire transferring such proceeds to the credit of the Borrower's Designated Disbursement Account or as the Borrower and the Administrative Agent may otherwise agree.

(e) *Administrative Agent Reliance on Lender Funding.* Unless the Administrative Agent shall have been notified by a Lender prior to (or, in the case of a Borrowing of Base Rate Loans, by 1:00 p.m. (Chicago time) on) the date on which such Lender is scheduled to make payment to the Administrative Agent of the proceeds of a Loan (which notice shall be effective upon receipt) that such Lender does not intend to make such payment, the Administrative Agent may assume that such Lender has made such payment when due and the Administrative Agent may in reliance upon such assumption (but shall not be required to) make available to the Borrower the proceeds of the Loan to be made by such Lender and, if any Lender has not in fact made such payment to the Administrative Agent, such Lender shall, on demand, pay to the Administrative Agent the amount made available to the Borrower attributable to such Lender together with interest thereon in respect of each day during the period commencing on the date such amount was made available to the Borrower and ending on (but excluding) the date such Lender pays such amount to the Administrative Agent at a rate per annum equal to: (i) from the date the related advance was made by the Administrative Agent to the date two (2) Business Days after payment by such Lender is due hereunder, the Federal Funds Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Lender to the date such payment is made by such Lender, the Base Rate in effect for each such day. If such amount is not received from such Lender by the Administrative Agent immediately upon demand, the Borrower will, on demand, repay to the Administrative Agent the proceeds of the Loan attributable to such Lender with interest thereon at a rate per annum equal to the interest rate applicable to the relevant Loan, but without such payment being considered a payment or prepayment of a Loan under Section 1.11 hereof so that the Borrower will have no liability under such Section with respect to such payment.

Section 1.6. Swing Loans. (a) *Generally.* Subject to the terms and conditions hereof, as part of the Revolving Credit, the Swing Line Lender may, in its discretion, make loans in U.S. Dollars to the Borrower under the Swing Line (individually a "Swing Loan" and collectively the "Swing Loans") which shall not in the aggregate at any time outstanding exceed the Swing Line Sublimit. Swing Loans may be availed of from time to time and borrowings thereunder may be repaid and used again during the period ending on the Revolving Credit Termination Date. Each Swing Loan shall be in a minimum amount of \$250,000 or such greater amount which is an integral multiple of \$100,000.

(b) *Interest on Swing Loans.* Each Swing Loan shall bear interest until maturity (whether by acceleration or otherwise) at a rate per annum equal to (i) the sum of the Base Rate plus the Applicable Margin for Base Rate Loans under the Revolving Credit as from time to time in effect (computed on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days elapsed) or (ii) the Swing Line Lender's Quoted Rate (computed on the basis of a year of 360 days for the actual number of days elapsed). Interest on each Swing Loan shall be due and payable by the Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

(c) *Requests for Swing Loans.* The Borrower shall give the Administrative Agent prior notice (which may be written or oral) no later than 12:00 Noon (Chicago time) on the date upon which the Borrower requests that any Swing Loan be made, of the amount and date of such Swing Loan, and, if applicable, the Interest Period requested therefor. The Administrative Agent shall promptly advise the Swing Line Lender of any such notice received from the Borrower. After receiving such notice, the Swing Line Lender shall in its discretion quote an interest rate to the Borrower at which the Swing Line Lender would be willing to make such Swing Loan available to the Borrower for the Interest Period so requested (the rate so quoted for a given Interest Period being herein referred to as "Swing Line Lender's Quoted Rate"). The Borrower acknowledges and agrees that the interest rate quote is given for immediate and irrevocable acceptance. If the Borrower does not so immediately accept the Swing Line Lender's Quoted Rate for the full amount requested by the Borrower for such Swing Loan, the Swing Line Lender's Quoted Rate shall be deemed immediately withdrawn and such Swing Loan shall bear interest at the rate per annum determined by adding the Applicable Margin for Base Rate Loans under the Revolving Credit to the Base Rate as from time to time in effect. Subject to the terms and conditions hereof, the proceeds of each Swing Loan extended to the Borrower shall be deposited or otherwise wire transferred to the Borrower's Designated Disbursement Account or as the Borrower, the Administrative Agent, and the Swing Line Lender may otherwise agree. Anything contained in the foregoing to the contrary notwithstanding, the undertaking of the Swing Line Lender to make Swing Loans shall be subject to all of the terms and conditions of this Agreement (provided that the Swing Line Lender shall be entitled to assume that the conditions precedent to an advance of any Swing Loan have been satisfied unless notified to the contrary by the Administrative Agent or the Required Lenders).

(d) *Refunding Loans.* In its sole and absolute discretion, the Swing Line Lender may at any time, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to act on its behalf for such purpose) and with notice to the Borrower and the Administrative Agent, request each Lender to make a Revolving Loan in the form of a Base Rate Loan in an amount equal to such Lender's Revolver Percentage of the amount of the Swing Loans outstanding on the date such notice is given. Unless an Event of Default described in Section 9.1(j) or 9.1(k) exists with respect to the Borrower, regardless of the existence of any other Event of Default, each Lender shall make the proceeds of its requested Revolving Loan available to the Administrative Agent for the account of the Swing Line Lender, in immediately available funds, at the Administrative Agent's office in Chicago, Illinois (or such other location designated by the Administrative Agent), before 12:00 Noon (Chicago time) on the Business Day following the day such notice is given. The Administrative Agent shall promptly remit the proceeds of such Borrowing to the Swing Line Lender to repay the outstanding Swing Loans.

(e) *Participations.* If any Lender refuses or otherwise fails to make a Revolving Loan when requested by the Swing Line Lender pursuant to Section 1.6(d) above (because an Event of Default described in Section 9.1(j) or 9.1(k) exists with respect to the Borrower or otherwise), such Lender will, by the time and in the manner such Revolving Loan was to have been funded to the Swing Line Lender, purchase from the Swing Line Lender an undivided participating interest in the outstanding Swing Loans in an amount equal to its Revolver Percentage of the aggregate principal amount of Swing Loans that were to have been repaid with such Revolving Loans. Each Lender that so purchases a

participation in a Swing Loan shall thereafter be entitled to receive its Revolver Percentage of each payment of principal received on the Swing Loan and of interest received thereon accruing from the date such Lender funded to the Swing Line Lender its participation in such Loan. The several obligations of the Lenders under this Section shall be absolute, irrevocable, and unconditional under any and all circumstances whatsoever and shall not be subject to any set-off, counterclaim or defense to payment which any Lender may have or have had against the Borrower, any other Lender, or any other Person whatsoever. Without limiting the generality of the foregoing, such obligations shall not be affected by any Default or Event of Default or by any reduction or termination of the Commitments of any Lender, and each payment made by a Lender under this Section shall be made without any offset, abatement, withholding, or reduction whatsoever.

Section 1.7. *Maturity of Loans.*

(a) *Revolving Loans.* Each Revolving Loan, both for principal and interest not sooner paid, shall mature and be due and payable by the Borrower on the Revolving Credit Termination Date.

(b) *Swing Loans.* Each Swing Loan, both for principal and interest not sooner paid, shall mature and be due and payable by the Borrower on the Revolving Credit Termination Date.

Section 1.8. Prepayments. (a) *Optional.* The Borrower may prepay without premium or fee (other than funding indemnity amounts called for by Section 1.11 hereof), and in whole or in part (but, if in part, then: (i) if such Borrowing is of Base Rate Loans, in an amount not less than \$100,000, (ii) if such Borrowing is of Eurodollar Loans, in an amount not less than \$500,000, and (iii) in each case, in an amount such that the minimum amount required for a Borrowing pursuant to Section 1.4 and 1.6 hereof remains outstanding), any Borrowing of Eurodollar Loans at any time upon three (3) Business Days prior notice by the Borrower to the Administrative Agent or, in the case of a Borrowing of Base Rate Loans, notice delivered by the Borrower to the Administrative Agent no later than 10:00 a.m. (Chicago time) on the date of prepayment (or, in any case, such shorter period of time then agreed to by the Administrative Agent), such prepayment to be made by the payment of the principal amount to be prepaid and, in the case of any Eurodollar Loans or Swing Loans, accrued interest thereon to the date fixed for prepayment plus any amounts due the Lenders under Section 1.11 hereof.

(b) *Mandatory.* (i) *Borrowing Base Deficiency.* In the event that at any time any Borrowing Base Deficiency shall exist, the Borrower shall immediately and without notice or demand prepay the Loans (and provide cash collateral for Letters of Credit as contemplated by Section 9.4) in such amounts as shall be necessary so that such Borrowing Base Deficiency is immediately cured, *provided* that (i) each such prepayment of the Obligations hereunder shall be applied first to the Swing Loans and then to the Revolving Loans until paid in full with any remaining balance to be held by the Administrative Agent in the Collateral Account as security for the Obligations owing with respect to the Letters of Credit, and (ii) if, within five (5) Business Days after delivery of a Borrowing Base Certificate demonstrating such Borrowing Base Deficiency (and/or at such other times as the Borrower has knowledge of such Borrowing Base Deficiency), the Borrower shall present the Administrative Agent a reasonably feasible plan to enable such Borrowing Base Deficiency to be cured within thirty (30) Business Days (which 30-Business Day period shall include the 5 Business Days permitted for delivery of such plan), then such prepayment or reduction shall not be required to be effected immediately but may be effected in accordance with such plan (with such modifications as the Borrower may reasonably determine), so long as such Borrowing Base Deficiency is cured within such 30-Business Day period.

(ii) *Change in Investment Policies.* In the event that at any time the Borrower or any of its Subsidiaries shall change or modify in any material respect the Investment Policies except as permitted by Section 8.16 below, upon written notice to the Borrower from the Administrative Agent or the Required Lenders (which notice may be provided on the same day notice of any such change or modification in the Investment Policies is brought to the attention of the Administrative Agent or the Lenders), the Commitments and the remaining obligations of the Lenders hereunder shall terminate and all outstanding Obligations (including, without limitation, all principal of and accrued interest on the Loans) shall forthwith be due and payable without further demand, presentment, protest, or notice of any kind and the Borrower shall prefund the full amount of L/C Obligations then outstanding (whether or not any drawings have been made on any such Letters of Credit, with such amount to be held in the Collateral Account referred to in Section 9.4 hereof).

(iii) The Borrower shall, on each date the Revolving Credit Commitments are reduced pursuant to Section 1.12 hereof, prepay the Revolving Loans, Swing Loans, and, if necessary, prefund the L/C Obligations by the amount, if any, necessary to reduce the sum of the aggregate principal amount of Revolving Loans, Swing Loans, and L/C Obligations then outstanding to the amount to which the Revolving Credit Commitments have been so reduced.

(iv) Unless the Borrower otherwise directs, prepayments of Loans under this Section 1.8(b) shall be applied first to Borrowings of Base Rate Loans until payment in full thereof with any balance applied to Borrowings of Eurodollar Loans in the order in which their Interest Periods expire. Each prepayment of Loans under this Section 1.8(b) shall be made by the payment of the principal amount to be prepaid and, in the case of any Eurodollar Loans or Swing Loans, accrued interest thereon to the date of prepayment together with any amounts due the Lenders under Section 1.11 hereof. Each prefunding of L/C Obligations shall be made in accordance with Section 9.4 hereof.

(c) Any amount of Revolving Loans and Swing Loans paid or prepaid before the Revolving Credit Termination Date may, subject to the terms and conditions of this Agreement, be borrowed, repaid and borrowed again.

Section 1.9. Default Rate. Notwithstanding anything to the contrary contained herein, while any Event of Default exists or after acceleration, the Borrower shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all Loans and Reimbursement Obligations, and letter of credit fees at a rate per annum equal to:

(a) for any Base Rate Loan or any Swing Loan bearing interest based on the Base Rate, the sum of 2.0% *plus* the Applicable Margin *plus* the Base Rate from time to time in effect;

(b) for any Eurodollar Loan or any Swing Loan bearing interest at the Administrative Agent's Quoted Rate, the sum of 2.0% *plus* the rate of interest in effect thereon at the time of such default until the end of the Interest Period applicable thereto and, thereafter, at a rate per annum equal to the sum of 2.0% *plus* the Applicable Margin for Base Rate Loans *plus* the Base Rate from time to time in effect;

(c) for any Reimbursement Obligation, the sum of 2.0% *plus* the amounts due under Section 1.2 with respect to such Reimbursement Obligation; and

(d) for any Letter of Credit, the sum of 2.0% *plus* the letter of credit fee due under Section 2.1 with respect to such Letter of Credit;

provided, however, that in the absence of acceleration, any adjustments pursuant to this Section shall be made at the election of the Administrative Agent, acting at the request or with the consent of the Required Lenders, with written notice to the Borrower. While any Event of Default exists or after acceleration, interest shall be paid on demand of the Administrative Agent at the request or with the consent of the Required Lenders.

Section 1.10. Evidence of Indebtedness. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, the type thereof and the Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to paragraphs (a) and (b) above shall be *prima facie* evidence of the existence and amounts of the Obligations therein recorded; *provided, however*, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(d) Any Lender may request that its Loans be evidenced by a promissory note or notes in the forms of Exhibit D-1 (in the case of its Revolving Loans and referred to herein as a "*Revolving Note*"), or D-2 (in the case of its Swing Loans and referred to herein as a "*Swing Note*"), as applicable (the Revolving Notes, and Swing Note being hereinafter referred to collectively as the "*Notes*" and individually as a "*Note*"). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender or its registered assigns in the amount of the relevant Commitment or Swing Line Sublimit, as applicable. Thereafter, the Loans evidenced by such Note or Notes and interest thereon shall at all times (including after any assignment pursuant to Section 12.12) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 12.12, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in subsections (a) and (b) above.

Section 1.11. Funding Indemnity. If any Lender shall incur any loss, cost or expense (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or re-employment of deposits or other funds acquired by such Lender to fund or maintain any Eurodollar Loan or Swing Loan or the relending or reinvesting of such deposits or amounts paid or prepaid to such Lender) as a result of:

- (a) any payment, prepayment or conversion of a Eurodollar Loan or Swing Loan on a date other than the last day of its Interest Period,
- (b) any failure (because of a failure to meet the conditions of Section 7 or otherwise) by the Borrower to borrow or continue a Eurodollar Loan or Swing Loan, or to convert a Base Rate Loan into a Eurodollar Loan or Swing Loan, on the date specified in a notice given pursuant to Section 1.5(a) or 1.6 hereof,
- (c) any failure by the Borrower to make any payment of principal on any Eurodollar Loan or Swing Loan when due (whether by acceleration or otherwise), or
- (d) any acceleration of the maturity of a Eurodollar Loan or Swing Loan as a result of the occurrence of any Event of Default hereunder,

then, upon the demand of such Lender, the Borrower shall pay to such Lender such amount as will reimburse such Lender for such loss, cost or expense. If any Lender makes such a claim for compensation, it shall provide to the Borrower, with a copy to the Administrative Agent, a certificate setting forth the amount of such loss, cost or expense in reasonable detail (including an explanation of

the basis for and the computation of such loss, cost or expense) and the amounts shown on such certificate shall be conclusive if reasonably determined, absent manifest error.

Section 1.12. Commitment Terminations. (a) *Optional Revolving Credit Terminations.* The Borrower shall have the right at any time and from time to time, upon five (5) Business Days prior written notice to the Administrative Agent (or such shorter period of time agreed to by the Administrative Agent), to terminate the Revolving Credit Commitments without premium or penalty and in whole or in part, any partial termination to be (i) in an amount not less than \$5,000,000 (or such greater amount which is an integral multiple of \$100,000) and (ii) allocated ratably among the Lenders in proportion to their respective Revolver Percentages, provided that the Revolving Credit Commitments may not be reduced to an amount less than the sum of the aggregate principal amount of Revolving Loans, Swing Loans, and L/C Obligations then outstanding. Any termination of the Revolving Credit Commitments below the L/C Sublimit or the Swing Line Sublimit then in effect shall reduce the L/C Sublimit and Swing Line Sublimit, as applicable, by a like amount. The Administrative Agent shall give prompt notice to each Lender of any such termination of the Revolving Credit Commitments.

(b) *Mandatory Revolving Credit Termination.* In the event any prepayment is due under Section 1.8(b)(ii) hereof as a result of a change in Investment Policies, the Commitments shall terminate in full on the date stated in such notice of prepayment.

(c) Any termination of the Commitments pursuant to this Section 1.12 may not be reinstated.

Section 1.13. Substitution of Lenders. In the event (a) the Borrower receives a claim from any Lender for compensation under Section 10.3 or 12.1 hereof, (b) the Borrower receives notice from any Lender of any illegality pursuant to Section 10.1 hereof, (c) any Lender is in default in any material respect with respect to its obligations under the Loan Documents, or (d) a Lender fails to consent to an amendment or waiver requested under Section 12.13 hereof at a time when the Required Lenders have approved such amendment or waiver (any such Lender referred to in clause (a), (b), (c), or (d) above being hereinafter referred to as an "Affected Lender"), the Borrower may, in addition to any other rights the Borrower may have hereunder or under applicable law, require, at its expense, any such Affected Lender to assign, at par, without recourse, all of its interest, rights, and obligations hereunder (including all of its Commitments and the Loans and participation interests in Letters of Credit and other amounts at any time owing to it hereunder and the other Loan Documents) to an Eligible Assignee specified by the Borrower, *provided* that (i) such assignment shall not conflict with or violate any law, rule or regulation or order of any court or other governmental authority, (ii) the Borrower shall have paid to the Affected Lender all monies (together with amounts due such Affected Lender under Section 1.11 hereof as if the Loans owing to it were prepaid rather than assigned) other than such principal owing to it hereunder, and (iii) the assignment is entered into in accordance with, and subject to the consents required by, Section 12.12 hereof (provided any assignment fees and reimbursable expenses due thereunder shall be paid by the Borrower).

SECTION 2. FEES.

Section 2.1. Fees. (a) *Revolving Credit Commitment Fee.* The Borrower shall pay to the Administrative Agent for the ratable account of the Lenders in accordance with their Revolver Percentages a commitment fee at the rate per annum equal to the Applicable Margin for commitment fees (computed on the basis of a year of 360 days and the actual number of days elapsed) on the average daily Unused Revolving Credit Commitments. Such commitment fee shall be payable quarterly in arrears on the last day of each March, June, September, and December in each year (commencing on the first such date occurring after the date hereof) and on the Revolving Credit Termination Date, unless the Revolving Credit Commitments are terminated in whole on an earlier date, in which event the commitment fee for the period to the date of such termination in whole shall be paid on the date of such termination.

(b) *Letter of Credit Fees.* On the date of issuance or extension, or increase in the amount, of any Letter of Credit pursuant to Section 1.2 hereof, the Borrower shall pay to the L/C Issuer for its own account a fronting fee equal to 0.125% of the face amount of (or of the increase in the face amount of) such Letter of Credit. Quarterly in arrears, on the last day of each March, June, September, and December, commencing on the first such date occurring after the date hereof, the Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders in accordance with their Revolver Percentages, a letter of credit fee at a rate per annum equal to the Applicable Margin for Letters of Credit (computed on the basis of a year of 360 days and the actual number of days elapsed) in effect during each day of such quarter applied to the daily average face amount of Letters of Credit outstanding during such quarter. In addition, the Borrower shall pay to the L/C Issuer for its own account the L/C Issuer's standard issuance, drawing, negotiation, amendment, assignment, and other administrative fees for each Letter of Credit as established by the L/C Issuer from time to time.

(c) *Administrative Agent Fees.* The Borrower shall pay to the Administrative Agent, for its own use and benefit, the fees agreed to between the Administrative Agent and the Borrower in a fee letter dated January 15, 2008, or as otherwise agreed to in writing between them.

(d) *Audit Fees.* The Borrower shall pay to the Administrative Agent for its own use and benefit charges for audits of the Collateral performed by the Administrative Agent or its agents or representatives in such amounts as the Administrative Agent may from time to time request (the Administrative Agent acknowledging and agreeing that such charges shall be computed in the same manner as it at the time customarily uses for the assessment of charges for similar collateral audits); *provided, however*, that in the absence of any Default and Event of Default, the Borrower shall not be required to pay the Administrative Agent for more than one (1) such audit per calendar year.

SECTION 3. PLACE AND APPLICATION OF PAYMENTS.

Section 3.1. Place and Application of Payments. All payments of principal of and interest on the Loans and the Reimbursement Obligations, and of all other Obligations payable by the Borrower under this Agreement and the other Loan Documents, shall be made by the Borrower to the Administrative Agent by no later than 12:00 Noon (Chicago time) on the due date thereof at the office of the Administrative Agent in Chicago, Illinois (or such other location as the Administrative Agent may designate to the Borrower) for the benefit of the Lender(s) or L/C Issuer entitled thereto. Any payments received after such time shall be deemed to have been received by the Administrative Agent on the next Business Day. All such payments shall be made in U.S. Dollars, in immediately available funds at the place of payment, in each case without set-off or counterclaim. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest on Loans and on Reimbursement Obligations in which the Lenders have purchased Participating Interests ratably to the Lenders and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. If the Administrative Agent causes amounts to be distributed to the Lenders in reliance upon the assumption that the Borrower will make a scheduled payment and such scheduled payment is not so made, each Lender shall, on demand, repay to the Administrative Agent the amount distributed to such Lender together with interest thereon in respect of each day during the period commencing on the date such amount was distributed to such Lender and ending on (but excluding) the date such Lender repays such amount to the Administrative Agent, at a rate per annum equal to: (i) from the date the distribution was made to the date two (2) Business Days after payment by such Lender is due hereunder, the Federal Funds Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Lender to the date such payment is made by such Lender, the Base Rate in effect for each such day.

Anything contained herein to the contrary notwithstanding (including, without limitation, Section 1.8(b) hereof), all payments and collections received in respect of the Obligations and all

proceeds of the Collateral received, in each instance, by the Administrative Agent or any of the Lenders after acceleration or the final maturity of the Obligations or termination of the Commitments as a result of an Event of Default shall be remitted to the Administrative Agent and distributed as follows:

- (a) first, to the payment of any outstanding costs and expenses incurred by the Administrative Agent, and any security trustee therefor, in monitoring, verifying, protecting, preserving or enforcing the Liens on the Collateral, in protecting, preserving or enforcing rights under the Loan Documents, and in any event including all costs and expenses of a character which the Borrower has agreed to pay the Administrative Agent under Section 12.15 hereof (such funds to be retained by the Administrative Agent for its own account unless it has previously been reimbursed for such costs and expenses by the Lenders, in which event such amounts shall be remitted to the Lenders to reimburse them for payments theretofore made to the Administrative Agent);
- (b) second, to the payment of the Swing Loans, both for principal and accrued but unpaid interest;
- (c) third, to the payment of any outstanding interest and fees due under the Loan Documents to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof;
- (d) fourth, to the payment of principal on the Loans (other than Swing Loans), unpaid Reimbursement Obligations, together with amounts to be held by the Administrative Agent as collateral security for any outstanding L/C Obligations pursuant to Section 9.4 hereof (until the Administrative Agent is holding an amount of cash equal to the then outstanding amount of all such L/C Obligations), and Hedging Liability, the aggregate amount paid to, or held as collateral security for, the Lenders and L/C Issuer and, in the case of Hedging Liability, their Affiliates to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof;
- (e) fifth, to the payment of all other unpaid Obligations and all other indebtedness, obligations, and liabilities of the Borrower and its Subsidiaries secured by the Loan Documents (including, without limitation, Funds Transfer and Deposit Account Liability) to be allocated pro rata in accordance with the aggregate unpaid amounts owing to each holder thereof; and
- (f) finally, to the Borrower or whoever else may be lawfully entitled thereto.

Section 3.2. Account Debit. The Borrower hereby irrevocably authorizes the Administrative Agent to charge any of the Borrower's deposit accounts maintained with the Administrative Agent for the amounts from time to time necessary to pay any then due interest or fee payments hereunder; *provided* that the Borrower acknowledges and agrees that the Administrative Agent shall not be under an obligation to do so and the Administrative Agent shall not incur any liability to the Borrower or any other Person for the Administrative Agent's failure to do so.

SECTION 4. GUARANTIES AND COLLATERAL.

Section 4.1. Guaranties. The payment and performance of the Secured Obligations shall at all times be guaranteed by each direct and indirect Subsidiary of the Borrower pursuant to the Guarantee and Security Agreement (each such Subsidiary executing and delivering the Guarantee and Security Agreement or a supplement thereto being referred to herein as a "*Guarantor*" and collectively the "*Guarantors*"); *provided, however*, that no Financing Subsidiary shall be required to be a Guarantor hereunder.

Section 4.2. Collateral. The Secured Obligations shall be secured by valid, perfected, and enforceable Liens on all right, title, and interest of each Credit Party in all of the Collateral. The Borrower acknowledges and agrees that the Liens on the Collateral shall be granted to the

Administrative Agent for the benefit of the holders of the Secured Obligations and shall be valid and perfected first priority Liens subject only to Permitted Liens.

Section 4.3. Further Assurances. The Borrower agrees that it shall, and shall cause each other Credit Party to, from time to time at the request of the Administrative Agent or the Required Lenders, execute and deliver such documents and do such acts and things as the Administrative Agent or the Required Lenders may reasonably request in order to provide for or perfect or protect such Liens on the Collateral. In the event any Credit Party forms or acquires any other Subsidiary after the date hereof, except as otherwise provided in Section 4.1 above, the Borrower shall promptly upon such formation or acquisition cause such newly formed or acquired Subsidiary to execute a supplement to the Guarantee and Security Agreement and such other Collateral Documents as the Administrative Agent may then require, and the Borrower shall also deliver to the Administrative Agent, or cause such Credit Party to deliver to the Administrative Agent, at the Borrower's cost and expense, such other instruments, documents, certificates, and opinions reasonably required by the Administrative Agent in connection therewith.

SECTION 5. DEFINITIONS; INTERPRETATION.

Section 5.1. Definitions. The following terms when used herein shall have the following meanings:

"Adjusted Borrowing Base" means the Borrowing Base *minus* the aggregate amount of Cash and Cash Equivalents included in the Portfolio Investments held by the Credit Parties.

"Adjusted Covered Debt Balance" means, on any date, the aggregate Covered Debt Amount on such date *minus* the aggregate amount of Cash and Cash Equivalents included in the Portfolio Investments held by the Credit Parties (excluding any cash held by the Administrative Agent pursuant to Section 9.4).

"Adjusted LIBOR" is defined in Section 1.3(b) hereof.

"Advance Rate" has the meaning assigned to such term in Section 8.23.

"Administrative Agent" means Bank of Montreal, in its capacity as Administrative Agent hereunder, and any successor in such capacity pursuant to Section 11.7 hereof.

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

"Affiliate" means any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person for purposes of this definition if such Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the other Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise; *provided that*, in any event for purposes of this definition, any Person that owns, directly or indirectly, 25% or more of the securities having the ordinary voting power for the election of directors or governing body of a corporation or 25% or more of the partnership or other ownership interest of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person.

"Affiliate Agreements" means, collectively, (a) the Investment Advisory Agreement dated as of December 14, 2007, between the Borrower and Fifth Street Management LLC, (b) the Administration Agreement dated as of December 14, 2007, between the Borrower and FSC, Inc., and (c) the Trademark License Agreement dated as of December 14, 2007, between the Borrower and Fifth Street Capital LLC.

"*Agreement*" means this Credit Agreement, as the same may be amended, modified, restated or supplemented from time to time pursuant to the terms hereof.

"*Applicable Margin*" means: (a) 0.0% with respect to Base Rate Loans and Reimbursement Obligations, (b) 1.50% with respect to Eurodollar Loans and Letter of Credit fees, and (b) 0.30% with respect to commitment fees.

"*Application*" is defined in Section 1.2(b) hereof.

"*Approved Dealer*" means (a) in the case of any Portfolio Investment that is not a U.S. Government Security, a bank or a broker-dealer registered under the Securities Exchange Act of 1934 of nationally recognized standing or an Affiliate thereof (b) in the case of a U.S. Government Security, any primary dealer in U.S. Government Securities, and (c) in the case of any foreign Portfolio Investment, any foreign broker-dealer of internationally recognized standing or an Affiliate thereof, in each case which bank or broker-dealer referred to in clauses (a), (b) and (c) above is acceptable to the Administrative Agent in its reasonable determination.

"*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.

"*Approved Pricing Service*" means a pricing or quotation service approved by the Board of Directors of the Borrower and designated in writing to the Administrative Agent (which designation shall be accompanied by a copy of a resolution of the Board of Directors of the Borrower that such pricing or quotation service has been approved by the Borrower).

"*Approved Third-Party Appraiser*" means any Independent third-party appraisal firm designated by the Borrower in writing to the Administrative Agent (which designation shall be accompanied by a copy of a resolution of the Board of Directors of the Borrower that such firm has been approved by the Borrower for purposes of assisting the Board of Directors of the Borrower in making valuations of portfolio assets to determine the Borrower's compliance with the applicable provisions of the Investment Company Act). It is understood and agreed that, so long as the same are Independent third-party appraisal firms approved by the Board of Directors of the Borrower, Houlihan Lokey Howard & Zukin Capital, Inc., Duff & Phelps LLC, Murray, Devine and Company and Valuation Research Corporation shall be deemed to be Approved Third-Party Appraisers.

"*Asset Coverage Ratio*" means the ratio, determined on a consolidated basis, without duplication, in accordance with GAAP, of (a) the Value of total assets of the Borrower and its Subsidiaries, less all liabilities (other than Indebtedness, including Indebtedness hereunder) of the Borrower and its Subsidiaries, to (b) the aggregate amount of Indebtedness of the Borrower and its Subsidiaries.

"*Assignment and Acceptance*" means an assignment and acceptance entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.12 hereof), and accepted by the Administrative Agent, in substantially the form of Exhibit G or any other form approved by the Administrative Agent.

"*Authorized Representative*" means those persons shown on the list of officers provided by the Borrower pursuant to Section 7.2 hereof or on any update of any such list provided by the Borrower to the Administrative Agent, or any further or different officers of the Borrower so named by any Authorized Representative of the Borrower in a written notice to the Administrative Agent.

"*Base Rate*" is defined in Section 1.3(a) hereof.

"*Base Rate Loan*" means a Loan bearing interest at a rate specified in Section 1.3(a) hereof.

"*Borrower*" is defined in the introductory paragraph of this Agreement.

"*Borrowing*" means the total of Loans of a single type advanced, continued for an additional Interest Period, or converted from a different type into such type by the Lenders under a Credit on a single date and, in the case of Eurodollar Loans, for a single Interest Period. Borrowings of Loans are made and maintained ratably from each of the Lenders under a Credit according to their Percentages of such Credit. A Borrowing is "*advanced*" on the day Lenders advance funds comprising such Borrowing to the Borrower, is "*continued*" on the date a new Interest Period for the same type of Loans commences for such Borrowing, and is "*converted*" when such Borrowing is changed from one type of Loans to the other, all as determined pursuant to Section 1.5 hereof. Borrowings of Swing Loans are made by the Swing Line Lender in accordance with the procedures set forth in Section 1.6 hereof.

"*Borrowing Base*" is defined in Section 8.23 hereof.

"*Borrowing Base Certificate*" means the certificate in the form of Exhibit E hereto, or in such other form acceptable to the Administrative Agent, to be delivered to the Administrative Agent and the Lenders pursuant to Sections 7.2 and 8.5 hereof.

"*Borrowing Base Deficiency*" means, at any date on which the same is determined, the amount, if any, that (a) the aggregate Covered Debt Amount as of such date exceeds (b) the Borrowing Base as of such date.

"*Business Day*" means any day (other than a Saturday or Sunday) on which banks are not authorized or required to close in Chicago, Illinois and, if the applicable Business Day relates to the advance or continuation of, or conversion into, or payment of a Eurodollar Loan, on which banks are dealing in U.S. Dollar deposits in the interbank eurodollar market in London, England and Nassau, Bahamas.

"*Capital Lease*" means any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

"*Capitalized Lease Obligation*" means, for any Person, the amount of the liability shown on the balance sheet of such Person in respect of a Capital Lease determined in accordance with GAAP.

"*Cash*" means any immediately available funds in Dollars or in any currency other than Dollars which is a freely convertible currency.

"*Cash Equivalents*" means investments (other than Cash) that are one or more of the following obligations: (a) U.S. Government Securities, in each case maturing within one year from the date of acquisition thereof; (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P and at least P-1 from Moody's; (c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof (i) issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof or under the laws of the jurisdiction or any constituent jurisdiction thereof of any Agreed Foreign Currency, *provided* that such certificates of deposit, banker's acceptances and time deposits are held in a securities account (as defined in the Uniform Commercial Code) through which the Administrative Agent can perfect a security interest therein and (ii) having, at such date of acquisition, a credit rating of at least A-1 from S&P and at least P-1 from Moody's; and (d) fully collateralized repurchase agreements with a term of not more than 30 days from the date of acquisition thereof for U.S. Government Securities and entered into with (i) a financial institution satisfying the criteria described in clause (c) of this definition or (ii) an

Approved Dealer having (or being a member of a consolidated group having) at such date of acquisition, a credit rating of at least A-1 from S&P and at least P-1 from Moody's, *provided* that (i) in no event shall Cash Equivalents include any obligation that provides for the payment of interest alone (for example, interest-only securities or "IOs"); (ii) if any of Moody's or S&P changes its rating system, then any ratings included in this definition shall be deemed to be an equivalent rating in a successor rating category of Moody's or S&P, as the case may be; (iii) Cash Equivalents (other than U.S. Government Securities or repurchase agreements) shall not include any such investment of more than 10% of total assets of the Borrower and its Subsidiaries in any single issuer; and (iv) in no event shall Cash Equivalents include any obligation that is not denominated in Dollars.

"*Change of Control*" means any of (a) the acquisition by any "*person*" or "*group*" (as such terms are used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) at any time of beneficial ownership of 35% or more of the outstanding capital stock or other equity interests of the Borrower on a fully-diluted basis, (b) the failure of individuals who are members of the board of directors (or similar governing body) of the Borrower on the Closing Date (together with any new or replacement directors whose initial nomination for election was approved by a majority of the directors who were either directors on the Closing Date or previously so approved) to constitute a majority of the board of directors (or similar governing body) of the Borrower, or (c) any "Change of Control" (or words of like import), as defined in any agreement or indenture relating to any issue of Indebtedness of the Borrower or any Subsidiary aggregating \$1,000,000 or more shall occur.

"*Closing Date*" means the date of this Agreement or such later Business Day upon which each condition described in Section 7.2 shall be satisfied or waived in a manner acceptable to the Administrative Agent in its discretion.

"*Code*" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

"*Collateral*" means all "Collateral" as defined in the Guarantee and Security Agreement, together with all properties, rights, interests, and privileges from time to time subject to the Liens granted to the Administrative Agent, or any security trustee therefor, by the Collateral Documents.

"*Collateral Account*" is defined in Section 9.4 hereof.

"*Collateral Documents*" means the Guarantee and Security Agreement together with all security agreements, pledge agreements, assignments, control agreements, financing statements and other documents as shall from time to time secure or relate to the Secured Obligations or any part thereof.

"*Commitments*" means the Revolving Credit Commitments.

"*Controlled Group*" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower, are treated as a single employer under Section 414 of the Code.

"*Covered Debt Amount*" means, on any date, the aggregate principal balance of all Loans and L/C Obligations on such date *minus* the L/C Obligations fully cash collateralized on such date pursuant to Section 9.4.

"*Credit Event*" means the advancing of any Loan, or the issuance of, or extension of the expiration date or increase in the amount of, any Letter of Credit.

"*Credit Parties*" means the Borrower and the Guarantors.

"*Default*" means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

"*Designated Disbursement Account*" means the account of the Borrower maintained with the Administrative Agent or its Affiliate and designated in writing to the Administrative Agent as the Borrower's Designated Disbursement Account (or such other account as the Borrower and the Administrative Agent may otherwise agree).

"*EBIT*" means, with reference to any period, Net Income of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP for such period plus all amounts deducted in arriving at such Net Income amount in respect of (a) Interest Expense for such period, and (b) federal, state, and local income taxes for such period.

"*Eligible Assignee*" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent, (ii) in the case of any assignment of a Revolving Credit Commitment, the L/C Issuer, and (iii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrower or any Guarantor or any of the Borrower's or such Guarantor's Affiliates or Subsidiaries.

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

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"*Eurodollar Loan*" means a Loan bearing interest at the rate specified in Section 1.3(b) hereof.

"*Eurodollar Reserve Percentage*" is defined in Section 1.3(b) hereof.

"*Event of Default*" means any event or condition identified as such in Section 9.1 hereof.

"*Federal Funds Rate*" means the fluctuating interest rate per annum described in part (x) of clause (ii) of the definition of Base Rate appearing in Section 1.3(a) hereof.

"*Financing Subsidiary*" means a direct or indirect Subsidiary of the Borrower to which any Credit Party sells, conveys or otherwise transfers (whether directly or indirectly) Portfolio Investments, which engages in no material activities other than in connection with the purchase or financing of such assets and which is designated by the Borrower (as provided below) as a Financing Subsidiary, provided that:

(a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is Guaranteed by any Credit Party (other than Guarantees in respect of Standard Securitization Undertakings), (ii) is recourse to or obligates any Credit Party in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property of any Credit Party, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or any Guarantee thereof,

(b) with which no Credit Party has any material contract, agreement, arrangement or understanding other than on terms no less favorable to such Credit Party than those that might be obtained at the time from Persons that are not Affiliates of any Credit Party, other than fees payable in the ordinary course of business in connection with servicing receivables, and

(c) to which no Credit Party has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Borrower shall be effected pursuant to a certificate of a Financial Officer delivered to the Administrative Agent, which certificate shall include a statement to the effect that such designation complied with the foregoing conditions. Each Subsidiary of a Financing Subsidiary shall be deemed to be a Financing Subsidiary and shall comply with the foregoing requirements of this definition.

"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 business.

"Funds Transfer and Deposit Account Liability" means the liability of any Credit Party owing to any of the Lenders, or any Affiliates of such Lenders, arising out of (a) the execution or processing of electronic transfers of funds by automatic clearing house transfer, wire transfer or otherwise to or from deposit accounts of any Credit Party now or hereafter maintained with any of the Lenders or their Affiliates, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, and (c) any other deposit, disbursement, and cash management services afforded to any Credit Party by any of such Lenders or their Affiliates.

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

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

"Guarantor" and *"Guarantors"* each is defined in Section 4.1 hereof.

"Guarantee and Security Agreement" means that certain *Guarantee and Security Agreement* dated the date of this Agreement among the Credit Parties and the Administrative Agent, as the same may be amended, modified, supplemented or restated from time to time.

"Hedging Agreement" means any interest rate protection agreement, foreign currency exchange protection agreement, commodity price protection agreement or other interest, currency, and/or commodity swap, exchange, cap, collar, floor, forward, future or option agreement, or any other similar interest, currency or commodity hedging arrangement.

"*Hedging Liability*" means the liability of any Credit Party to any of the Lenders, or any Affiliates of such Lenders, in respect of any Hedging Arrangement, as such Credit Party may from time to time enter into with any one or more of the Lenders party to this Agreement or their Affiliates.

"*Indebtedness*" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), (e) all Indebtedness of others secured by any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"*Independent*" when used with respect to any specified Person means that such Person (a) does not have any direct financial interest or any material indirect financial interest in the Borrower or any of its Subsidiaries or Affiliates (including its investment advisor or any Affiliate thereof) and (b) is not connected with the Borrower or of its Subsidiaries or Affiliates (including its investment advisor or any Affiliate thereof) as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions.

"*Industry Classification Group*" means (a) any classification groups as from time to time in effect and established by Moody's and provided by the Borrower to the Lenders, and (b) up to three additional industry group classifications established by the Borrower pursuant to Section 8.22.

"*Interest Expense*" means, with reference to any period, the sum of all interest charges (including imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"*Interest Payment Date*" means (a) with respect to any Eurodollar Loan, the last day of each Interest Period with respect to such Eurodollar Loan and on the maturity date and, if the applicable Interest Period is longer than (3) three months, on each day occurring every three (3) months after the commencement of such Interest Period, (b) with respect to any Base Rate Loan (other than Swing Loans), the last day of every calendar quarter) and on the maturity date, and (c) as to any Swing Loan, (i) bearing interest by reference to the Base Rate, the last day of every calendar month, and on the maturity date and (ii) bearing interest by reference to the Swing Line Lender's Quoted Rate, the last day of the Interest Period with respect to such Swing Loan, and on the maturity date.

"*Interest Period*" means the period commencing on the date a Borrowing of Eurodollar Loans or Swing Loans (bearing interest at the Swing Line Lender's Quoted Rate) is advanced, continued, or created by conversion and ending (a) in the case of Eurodollar Loans, 1, 2, 3, or 6 months thereafter and (b) in the case of Swing Loans bearing interest at the Swing Line Lender's Quoted

Rate, on the date 1 to 5 Business Days thereafter as mutually agreed by the Borrower and the Swing Line Lender, *provided, however*, that:

(i) no Interest Period shall extend beyond the final maturity date of the relevant Loans;

(ii) whenever the last day of any Interest Period would otherwise be a day that is not a Business Day, the last day of such Interest Period shall be extended to the next succeeding Business Day, *provided* that, if such extension would cause the last day of an Interest Period for a Borrowing of Eurodollar Loans to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Business Day; and

(iii) for purposes of determining an Interest Period for a Borrowing of Eurodollar Loans, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; *provided, however*, that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Business Day of a calendar month, then such Interest Period shall end on the last Business Day of the calendar month in which such Interest Period is to end.

"Investment" means, for any Person: (a) Equity Interests, bonds, notes, debentures or other securities of any other Person or any agreement to acquire any Equity Interests, bonds, notes, debentures or other securities of any other Person (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) deposits, advances, loans or other extensions of credit made to any other Person (including purchases of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person); or (c) Hedging Agreements.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time.

"Investment Policies" means the investment objectives, policies, restrictions and limitations set forth in the "BUSINESS" section of its Registration Statement, *provide* that at all times Investments made by the Borrower and its Subsidiaries are made to U.S. or Canadian Companies.

"L/C Issuer" means Bank of Montreal, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 1.2(h) hereof.

"L/C Obligations" means the aggregate undrawn face amounts of all outstanding Letters of Credit and all unpaid Reimbursement Obligations.

"L/C Sublimit" means \$4,000,000, as reduced pursuant to the terms hereof.

"Legal Requirement" means any treaty, convention, statute, law, regulation, ordinance, license, permit, governmental approval, injunction, judgment, order, consent decree or other requirement of any governmental authority, whether federal, state, or local.

"Lenders" means and includes BMO Capital Markets Financing, Inc., and the other financial institutions from time to time party to this Agreement, including each assignee Lender pursuant to Section 12.12 hereof and, unless the context otherwise requires, the Swing Line Lender.

"Lending Office" is defined in Section 10.4 hereof.

"Letter of Credit" is defined in Section 1.2(a) hereof.

"LIBOR" is defined in Section 1.3(b) hereof.

"*Lien*" means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

"*Loan*" means any Swing Loan or Revolving Loan, whether outstanding as a Base Rate Loan or Eurodollar Loan or otherwise, each of which is a "type" of Loan hereunder.

"*Loan Documents*" means this Agreement, the Notes (if any), the Applications, the Collateral Documents, and each other instrument or document to be delivered hereunder or thereunder or otherwise in connection therewith.

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

"*Material Adverse Effect*" means (a) a material adverse change in, or material adverse effect upon, the operations, business, Property, or condition (financial or otherwise) of the Borrower or of the Borrower and its Subsidiaries taken as a whole, (b) a material impairment of the ability of the Borrower or any Subsidiary to perform its obligations under any Loan Document or (c) a material adverse effect upon (i) the legality, validity, binding effect or enforceability against the Borrower or any Subsidiary of any Loan Document or the rights and remedies of the Administrative Agent and the Lenders thereunder or (ii) the perfection or priority of any Lien granted under any Collateral Document.

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

"*Net Income*" means, with reference to any period, the net income (or net loss) of the Borrower and its Subsidiaries for such period computed on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from Net Income (a) the net income (or net loss) of any Person accrued prior to the date it becomes a Subsidiary of, or has merged into or consolidated with, the Borrower or another Subsidiary, and (b) the net income (or net loss) of any Person (other than a Subsidiary) in which the Borrower or any of its Subsidiaries has a equity interest in, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries during such period.

"*Note*" and "*Notes*" each is defined in Section 1.10 hereof.

"*Obligations*" means all obligations of the Borrower to pay principal and interest on the Loans, all Reimbursement Obligations owing under the Applications, all fees and charges payable hereunder, and all other payment obligations of the Borrower or any of its Subsidiaries arising under or in relation to any Loan Document, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

"*Other Permitted Indebtedness*" means (a) accrued expenses and current trade accounts payable incurred in the ordinary course of the Borrower's business which are not overdue for a period of more than 90 days or which are being contested in good faith by appropriate proceedings, (b) Indebtedness (other than Indebtedness for borrowed money) arising in connection with transactions in the ordinary course of the Borrower's business in connection with its purchasing of securities, derivatives transactions, reverse repurchase agreements or dollar rolls to the extent such transactions are permitted under the Investment Company Act and the Borrower's Investment Policies, *provided* that such Indebtedness does not arise in connection with the purchase of Portfolio Investments other than Cash Equivalents and U.S. Government Securities and (c) Indebtedness in respect of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as such judgments or awards do not constitute an Event of Default under Section 9.1(g) hereof.

"*Participating Interest*" is defined in Section 1.2(e) hereof.

"Participating Lender" is defined in Section 1.2(e) hereof.

"PBGC" means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

"Percentage" means, for any Lender, its Revolver Percentage.

"Permitted Liens" means (a) Liens imposed by any Governmental Authority for taxes, assessments or charges not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower in accordance with GAAP; (b) Liens of clearing agencies, broker-dealers and similar Liens incurred in the ordinary course of business, *provided* that such Liens (i) attach only to the securities (or proceeds) being purchased or sold and (ii) secure only obligations incurred in connection with such purchase or sale, and not any obligation in connection with margin financing; (c) Liens imposed by law, such as materialmen's, mechanics', carriers', workmens', storage and repairmen's Liens and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower in accordance with GAAP; (d) Liens incurred or pledges or deposits made to secure obligations incurred in the ordinary course of business under workers' compensation laws, unemployment insurance or other similar social security legislation (other than in respect of employee benefit plans subject to ERISA) or to secure public or statutory obligations; (e) Liens securing the performance of, or payment in respect of, bids, insurance premiums, deductibles or co-insured amounts, tenders, government or utility contracts (other than for the repayment of borrowed money), surety, stay, customs and appeal bonds and other obligations of a similar nature incurred in the ordinary course of business; (f) Liens arising out of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as such judgments or awards do not constitute an Event of Default under Section 9.1(g) hereof; (g) customary rights of setoff and liens upon (i) deposits of cash in favor of banks or other depository institutions in which such cash is maintained in the ordinary course of business, (ii) cash and financial assets held in securities accounts in favor of banks and other financial institutions with which such accounts are maintained in the ordinary course of business and (iii) assets held by a custodian in favor of such custodian in the ordinary course of business securing payment of fees, indemnities and other similar obligations; (h) Liens arising solely from precautionary filings of financing statements under the Uniform Commercial Code of the applicable jurisdictions in respect of operating leases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business; and (i) Liens securing Indebtedness relating to the acquisition or financing of specific equipment and fixtures to the extent such Indebtedness is permitted by Section 8.7(h), *provided* that (A) each such Lien is given solely to secure the purchase price of such Property, does not extend to any other Property and is given at the time of acquisition of the Property, and (B) the Indebtedness secured thereby does not exceed the lesser of the cost of such Property or its fair market value at the time of acquisition.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

"Plan" means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code that either (a) is maintained by a member of the Controlled Group for employees of a member of the Controlled Group or (b) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group is

then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

"Portfolio Investment" means any Investment held by the Credit Parties in their asset portfolio (and solely for purposes of determining the Borrowing Base, Cash).

"Property" means, as to any Person, all types of real, personal, tangible, intangible or mixed property owned by such Person whether or not included in the most recent balance sheet of such Person and its subsidiaries under GAAP.

"Registration Statement" means the Registration Statement filed by the Borrower with the Securities and Exchange Commission on October 16, 2007, as amended December 10, 2007.

"Regulations D, T, U and X" means, respectively, Regulations D, T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

"Reimbursement Obligation" is defined in Section 1.2(c) hereof.

"Required Lenders" means, as of the date of determination thereof, Lenders whose outstanding Loans and interests in Letters of Credit and Unused Revolving Credit Commitments constitute more than 50% of the sum of the total outstanding Loans, interests in Letters of Credit, and Unused Revolving Credit Commitments of the Lenders.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any shares of any class of capital stock of the Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of the Borrower or any of its Subsidiaries or any option, warrant or other right to acquire any such shares of capital stock of the Borrower or any of its Subsidiaries. For clarity, any management fees, administrative fees, license fees, or other advisory fees or reimbursement for costs and expenses due pursuant to the Affiliate Agreements are not Restricted Payments hereunder.

"Revolver Percentage" means, for each Lender, the percentage of the Revolving Credit Commitments represented by such Lender's Revolving Credit Commitment or, if the Revolving Credit Commitments have been terminated, the percentage held by such Lender (including through participation interests in Reimbursement Obligations) of the aggregate principal amount of all Revolving Loans and L/C Obligations then outstanding.

"Revolving Credit" means the credit facility for making Revolving Loans and Swing Loans and issuing Letters of Credit described in Sections 1.1, 1.2 and 1.6 hereof.

"Revolving Credit Commitment" means, as to any Lender, the obligation of such Lender to make Revolving Loans and to participate in Swing Loans and Letters of Credit issued for the account of the Borrower hereunder in an aggregate principal or face amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1 attached hereto and made a part hereof, as the same may be reduced or modified at any time or from time to time pursuant to the terms hereof. The Borrower and the Lenders acknowledge and agree that the Revolving Credit Commitments of the Lenders aggregate \$50,000,000 on the date hereof.

"Revolving Credit Termination Date" means January 13, 2009, or such earlier date on which the Revolving Credit Commitments are terminated in whole pursuant to Section 1.12, 9.2 or 9.3 hereof.

"*Revolving Loan*" is defined in Section 1.1 hereof and, as so defined, includes a Base Rate Loan or a Eurodollar Loan, each of which is a "*type*" of Revolving Loan hereunder.

"*Revolving Note*" is defined in Section 1.10 hereof.

"*RIC*" means a person qualifying for treatment as a "regulated investment company" under the Code.

"*S&P*" means Standard & Poor's Ratings Services Group, a division of The McGraw-Hill Companies, Inc.

"*Secured Obligations*" means the Obligations, the Hedging Liability, and the Funds Transfer and Deposit Account Liability (including all interest, costs, fees, and charges after the entry of an order for relief against any Credit Party in a case under Title 11 of the United States Bankruptcy Code or any similar bankruptcy or insolvency statute applicable to it (a "*Bankruptcy Case*"), whether or not such interest, costs, fees and charges would be an allowed claim against such Credit Party in such Bankruptcy Case), in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

"*Shareholders' Equity*" means, at any date, the amount determined on a consolidated basis, without duplication, in accordance with GAAP, of shareholders equity for the Borrower and its Subsidiaries at such date.

"*Standard Securitization Undertakings*" means, collectively, (a) customary arms-length servicing obligations (together with any related performance guarantees), (b) obligations (together with any related performance guarantees) to refund the purchase price or grant purchase price credits for dilutive events or misrepresentations (in each case unrelated to the collectibility of the assets sold or the creditworthiness of the associated account debtors) and (c) representations, warranties, covenants and indemnities (together with any related performance guarantees) of a type that are reasonably customary in accounts receivable securitizations.

"*Subsidiary*" means, as to any particular parent corporation or organization, any other corporation or organization more than 50% of the outstanding Voting Stock of which is at the time directly or indirectly owned by such parent corporation or organization or by any one or more other entities which are themselves subsidiaries of such parent corporation or organization. Anything herein to the contrary notwithstanding, the term "*Subsidiary*" shall not include any Person that constitutes an Investment held by the Borrower in the ordinary course of business and that is not, under GAAP, consolidated on the financial statements of the Borrower and its Subsidiaries. Unless otherwise expressly noted herein, the term "*Subsidiary*" means a Subsidiary of the Borrower or of any of its direct or indirect Subsidiaries.

"*Swing Line*" means the credit facility for making one or more Swing Loans described in Section 1.6 hereof.

"*Swing Line Lender*" means BMO Capital Markets Financing, Inc., acting in its capacity as the Lender of Swing Loans hereunder, or any successor Lender acting in such capacity appointed pursuant to Section 12.12 hereof.

"*Swing Line Lender's Quoted Rate*" is defined in Section 1.6(c) hereof.

"*Swing Line Sublimit*" means \$10,000,000, as reduced pursuant to the terms hereof.

"*Swing Loan*" and "*Swing Loans*" each is defined in Section 1.6 hereof.

"*Swing Note*" is defined in Section 1.10 hereof.

"*Unfunded Vested Liabilities*" means, for any Plan at any time, the amount (if any) by which the present value of all vested nonforfeitable accrued benefits under such Plan exceeds the fair

market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the Controlled Group to the PBGC or the Plan under Title IV of ERISA.

"Unsecured Longer-Term Indebtedness" means any Indebtedness of the Borrower (which may be Guaranteed by Subsidiary Guarantors) that (a) has no amortization prior to, and a final maturity date not earlier than, six months after the Revolving Credit Termination Date, (b) is incurred pursuant to documentation containing other terms (including interest, amortization, covenants and events of default) that are no more restrictive in any material respect upon the Borrower and its Subsidiaries than those set forth in this Agreement, and (c) is not secured by any assets of any Credit Party.

"Unused Revolving Credit Commitments" means, at any time, the difference between the Revolving Credit Commitments then in effect (taking into account any reductions pursuant to Section 1.12 hereof) and the aggregate outstanding principal amount of Revolving Loans and L/C Obligations.

"U.S. Government Securities" means securities that are direct obligations of, and obligations the timely payment of principal and interest on which is fully guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States and in the form of conventional bills, bonds, and notes.

"U.S. Dollars" and *"\$"* each means the lawful currency of the United States of America.

"Value" has the meaning assigned to such term in Section 8.23.

"Voting Stock" of any Person means capital stock or other equity interests of any class or classes (however designated) having ordinary power for the election of directors or other similar governing body of such Person, other than stock or other equity interests having such power only by reason of the happening of a contingency.

"Welfare Plan" means a "welfare plan" as defined in Section 3(1) of ERISA.

"Wholly-owned Subsidiary" means a Subsidiary of which all of the issued and outstanding shares of capital stock (other than directors' qualifying shares as required by law) or other equity interests are owned by the Borrower and/or one or more Wholly-owned Subsidiaries within the meaning of this definition.

Section 5.2. Interpretation. The foregoing definitions are equally applicable to both the singular and plural forms of the terms defined. The words *"hereof"*, *"herein"*, and *"hereunder"* and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to time of day herein are references to Chicago, Illinois, time unless otherwise specifically provided. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, it shall be done in accordance with GAAP except where such principles are inconsistent with the specific provisions of this Agreement.

Section 5.3. Change in Accounting Principles. If, after the date of this Agreement, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 6.5 hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement, either the Borrower or the Required Lenders may by notice to the Lenders and the Borrower, respectively, require that the Lenders and the Borrower negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Borrower and its Subsidiaries shall be the same as if such

change had not been made. No delay by the Borrower or the Required Lenders in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 5.3, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles. Without limiting the generality of the foregoing, the Borrower shall neither be deemed to be in compliance with any financial covenant hereunder nor out of compliance with any financial covenant hereunder if such state of compliance or noncompliance, as the case may be, would not exist but for the occurrence of a change in accounting principles after the date hereof.

SECTION 6. REPRESENTATIONS AND WARRANTIES.

The Borrower represents and warrants to the Administrative Agent, the Lenders, and the L/C Issuer as follows:

Section 6.1. Organization and Qualification. The Borrower is duly organized, validly existing, and in good standing as a corporation under the laws of the State of Delaware, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying, except where the failure to do so would not have a Material Adverse Effect.

Section 6.2. Subsidiaries. Each Subsidiary is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying, except where the failure to do so would not have a Material Adverse Effect. Schedule 6.2 hereto identifies each Subsidiary, the jurisdiction of its organization, the percentage of issued and outstanding shares of each class of its capital stock or other equity interests owned by the Borrower and the other Subsidiaries and, if such percentage is not 100% (excluding directors' qualifying shares as required by law), a description of each class of its authorized capital stock and other equity interests and the number of shares of each class issued and outstanding. All of the outstanding shares of capital stock and other equity interests of each Subsidiary are validly issued and outstanding and fully paid and nonassessable and all such shares and other equity interests indicated on Schedule 6.2 as owned by the Borrower or another Subsidiary are owned, beneficially and of record, by the Borrower or such Subsidiary free and clear of all Liens. There are no outstanding commitments or other obligations of any Subsidiary to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Subsidiary.

Section 6.3. Authority and Validity of Obligations. The Borrower has full right and authority to enter into this Agreement and the other Loan Documents executed by it, to make the borrowings herein provided for, to grant to the Administrative Agent the Liens described in the Collateral Documents executed by the Borrower, and to perform all of its obligations hereunder and under the other Loan Documents executed by it. Each Guarantor has full right and authority to enter into the Loan Documents executed by it, to guarantee the Obligations, Hedging Liability, and Funds Transfer and Deposit Account Liability, to grant to the Administrative Agent the Liens described in the Collateral Documents executed by such Person, and to perform all of its obligations under the Loan Documents executed by it. The Loan Documents delivered by a Credit Party have been duly authorized, executed, and delivered by such Credit Party and constitute valid and binding obligations of such Credit Party enforceable against it in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is

considered in a proceeding in equity or at law); and this Agreement and the other Loan Documents do not, nor does the performance or observance by any Credit Party of any of the matters and things herein or therein provided for, (a) contravene or constitute a default under any provision of law or any judgment, injunction, order or decree binding upon such Credit Party or any provision of the organizational documents (*e.g.*, charter, certificate or articles of incorporation and by-laws, certificate or articles of association and operating agreement, partnership agreement, or other similar organizational documents) of such Credit Party, (b) contravene or constitute a default under any covenant, indenture or agreement of or affecting such Credit Party or any of its Property, in each case where such contravention or default, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (c) result in the creation or imposition of any Lien on any Property of such Credit Party other than the Liens granted in favor of the Administrative Agent pursuant to the Collateral Documents.

Section 6.4. Use of Proceeds; Margin Stock. The Borrower shall use the proceeds of the Revolving Credit only for its general corporate purposes in the ordinary course of business as are consistent with all applicable laws, including the acquisition and funding (either directly or through one or more wholly-owned Subsidiaries) of leveraged loans, senior loans, junior lien loans, mezzanine loans, high-yield securities, convertible securities, preferred stock, common stock and other Portfolio Investments (*provided that* neither the Administrative Agent nor any Lender shall have any responsibility as to the use of any of such proceeds) but specifically not including the funding or carrying of Margin Stock. No part of the proceeds of any extension of credit hereunder will be used in violation of applicable law or, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any Margin Stock. Margin Stock shall be purchased by the Credit Parties only with the proceeds of Indebtedness not directly or indirectly secured by Margin Stock, or with the proceeds of equity capital of the Borrower. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any extension of credit hereunder will be used to buy or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock. Margin Stock constitutes less than 25% of the assets of the Borrower and its Subsidiaries which are subject to any limitation on sale, pledge or other restriction hereunder.

Section 6.5. Financial Reports. The consolidated balance sheet of the Borrower and its Subsidiaries as at September 30, 2007, and the related consolidated statements of income, retained earnings and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, and accompanying notes thereto, which financial statements are accompanied by the audit report of Grant Thornton LLP, independent public accountants, heretofore furnished to the Administrative Agent and the Lenders, fairly present the consolidated financial condition of the Borrower and its Subsidiaries as at said dates and the consolidated results of their operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis. Neither the Borrower nor any Subsidiary has contingent liabilities which are material to it other than as indicated on such financial statements or, with respect to future periods, on the financial statements furnished pursuant to Section 8.5 hereof.

Section 6.6. No Material Adverse Change. Since September 30, 2007 (or, if later, the date of the most recent financial statements of the Borrower delivered under Section 8.5 hereof), there has been no change in the business, Portfolio Investments and other assets, liabilities, condition (financial or otherwise) or business prospects of the Borrower or any Subsidiary except those occurring in the ordinary course of business, none of which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 6.7. Full Disclosure. The statements and information furnished to the Administrative Agent and the Lenders in connection with the negotiation of this Agreement and the other Loan Documents and the commitments by the Lenders to provide all or part of the financing contemplated

hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading, the Administrative Agent and the Lenders acknowledging that as to any projections furnished to the Administrative Agent and the Lenders, the Borrower only represents that the same were prepared on the basis of information and estimates the Borrower believed to be reasonable.

Section 6.8. Trademarks, Franchises, and Licenses. The Borrower and its Subsidiaries own, possess, or have the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets, know how, and confidential commercial and proprietary information to conduct their businesses as now conducted, without known conflict with any patent, license, franchise, trademark, trade name, trade style, copyright or other proprietary right of any other Person.

Section 6.9. Governmental Authority and Licensing. The Borrower and its Subsidiaries have received all licenses, permits, and approvals of all federal, state, and local governmental authorities, if any, necessary to conduct their businesses, in each case where the failure to obtain or maintain the same could reasonably be expected to have a Material Adverse Effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit or approval is pending or, to the knowledge of the Borrower, threatened.

Section 6.10. Good Title. The Borrower and its Subsidiaries have good and defensible title (or valid leasehold interests) to their assets as reflected on the most recent consolidated balance sheet of the Borrower and its Subsidiaries furnished to the Administrative Agent and the Lenders (except for sales of assets in the ordinary course of business), subject to no Liens other than such thereof as are permitted by Section 8.8 hereof. Set forth on Schedule 6.10(a) hereof is a complete and correct list of all Investments (other than Investments of the types referred to in subsections (b), (c) and (d) of Section 8.9) held by the Borrower or any of its Subsidiaries in any Person on the Closing Date hereof and, for each such Investment, (x) the identity of the Person or Persons holding such Investment and (y) the nature of such Investment. Except as disclosed therein, each of the Borrower and its Subsidiaries owns, free and clear of all Liens (other than Liens created pursuant to the Collateral Documents), all such Investments. Schedule 6.10(b) is a complete and correct list of each Lien securing Indebtedness of any Person outstanding on the Closing Date covering any Property of the Borrower or any of its Subsidiaries, and the aggregate Indebtedness secured (or that may be secured) by each such Lien and the Property covered by each such Lien is correctly described therein.

Section 6.11. Litigation and Other Controversies. There is no litigation or governmental or arbitration proceeding or labor controversy pending, nor to the knowledge of the Borrower threatened, against the Borrower or any Subsidiary or any of their Property which if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.12. Taxes. All tax returns required to be filed by the Borrower or any Subsidiary in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees, and other governmental charges upon the Borrower or any Subsidiary or upon any of its Property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees and governmental charges, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Borrower does not know of any proposed additional tax assessment against it or its Subsidiaries for which adequate provisions in accordance with GAAP have not been made on their accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Borrower and each Subsidiary have been made for all open years, and for its current fiscal period.

Section 6.13. Approvals. No authorization, consent, license or exemption from, or filing or registration with, any court or governmental department, agency or instrumentality, nor any approval or

consent of any other Person, is or will be necessary to the valid execution, delivery or performance by the Borrower or any other Credit Party of any Loan Document, except for such approvals which have been obtained prior to the date of this Agreement and remain in full force and effect.

Section 6.14. Affiliate Transactions. Other than the Affiliate Agreements, neither the Borrower nor any Subsidiary is a party to any contracts or agreements with any of its Affiliates on terms and conditions which are less favorable to the Borrower or such Subsidiary than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other. The Borrower has heretofore delivered to each of the Lenders true and complete copies of each of the Affiliate Agreements (including and schedules and exhibits thereto, and any amendments, supplements or waivers executed and delivered thereunder) in effect on the Closing Date, each of which is in full force and effect.

Section 6.15. Investment Company. (a) *Status as Business Development Company.* The Borrower is an "investment company" that has elected to be regulated as a "business development company" within the meaning of the Investment Company Act and treated as a RIC under the Code.

(b) *Compliance with Investment Company Act.* The business and other activities of the Borrower and its Subsidiaries, including the transactions contemplated by the Loan Documents, do not result in a violation or breach in any material respect of the provisions of the Investment Company Act or any rules, regulations or orders issued by the Securities and Exchange Commission thereunder.

(c) *Investment Policies.* The Borrower is in compliance in all material respects with the Investment Policies, and, except as expressly permitted by Section 8.16 below, there have been no material changes or modifications in the Investment Policies.

Section 6.16. ERISA. The Borrower and each other member of its Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all material respects with ERISA and the Code to the extent applicable to it and has not incurred any liability to the PBGC or a Plan under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA. Neither the Borrower nor any Subsidiary has any contingent liabilities with respect to any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in article 6 of Title I of ERISA.

Section 6.17. Compliance with Laws. The Borrower and its Subsidiaries are in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to their Property or business operations (including, without limitation, the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act of 1990, and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), where any such non-compliance, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any Subsidiary has received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health, and safety statutes and regulations or is the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where any such non-compliance or remedial action, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.18. Solvency. The Borrower and its Subsidiaries are solvent, able to pay their debts as they become due, and have sufficient capital to carry on their business and all businesses in which they are about to engage.

Section 6.19. No Broker Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated thereby; and the Borrower hereby agrees to indemnify the Administrative Agent and the Lenders against, and agree that they will hold the Administrative Agent and the Lenders harmless from, any claim, demand, or liability for any such

broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable attorneys' fees) arising in connection with any such claim, demand, or liability.

Section 6.20. Material Agreements. Schedule 6.20 is a complete and correct list of each credit agreement, loan agreement, indenture, purchase agreement, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness or any extension of credit (or commitment for any extension of credit) to, or guarantee by, the Borrower or any of its Subsidiaries outstanding on the Closing Date, and the aggregate principal or face amount outstanding or that is, or may become, outstanding under each such arrangement is correctly described therein.

Section 6.21. Other Agreements. Neither the Borrower nor any Subsidiary is in default under the terms of any covenant, indenture or agreement of or affecting such Person or any of its Property, which default if uncured could reasonably be expected to have a Material Adverse Effect.

Section 6.22. No Default. No Default or Event of Default has occurred and is continuing.

SECTION 7. CONDITIONS PRECEDENT.

Section 7.1. All Credit Events. At the time of each Credit Event hereunder:

- (a) each of the representations and warranties set forth herein and in the other Loan Documents shall be and remain true and correct as of said time, except to the extent the same expressly relate to an earlier date;
- (b) no Default or Event of Default shall have occurred and be continuing or would occur as a result of such Credit Event;
- (c) after giving effect to such extension of credit, (i) the aggregate principal amount of all Revolving Loans, Swing Loans, and L/C Obligations outstanding under this Agreement shall not exceed the Revolving Credit Commitments and (ii) no Borrowing Base Deficiency shall exist;
- (d) in the case of a Borrowing the Administrative Agent shall have received the notice required by Section 1.5 hereof, in the case of the issuance of any Letter of Credit the L/C Issuer shall have received a duly completed Application for such Letter of Credit together with any fees called for by Section 2.1 hereof, and, in the case of an extension or increase in the amount of a Letter of Credit, a written request therefor in a form acceptable to the L/C Issuer together with fees called for by Section 2.1 hereof; and
- (e) such Credit Event shall not violate any order, judgment or decree of any court or other authority or any provision of law or regulation applicable to the Administrative Agent, the L/C Issuer or any Lender (including, without limitation, Regulation U of the Board of Governors of the Federal Reserve System) as then in effect.

Each request for a Borrowing hereunder and each request for the issuance of, increase in the amount of, or extension of the expiration date of, a Letter of Credit shall be deemed to be a representation and warranty by the Borrower on the date on such Credit Event as to the facts specified in subsections (a) through (d), both inclusive, of this Section; *provided, however*, that the Lenders may continue to make advances under the Revolving Credit, in the sole discretion of the Lenders with Revolving Credit Commitments, notwithstanding the failure of the Borrower to satisfy one or more of the conditions set forth above and any such advances so made shall not be deemed a waiver of any Default or Event of Default or other condition set forth above that may then exist.

Section 7.2. Initial Credit Event. Before or concurrently with the initial Credit Event:

- (a) the Administrative Agent shall have received this Agreement duly executed by the Borrower and the Lenders;

(b) if requested by any Lender, the Administrative Agent shall have received for such Lender such Lender's duly executed Notes of the Borrower dated the date hereof and otherwise in compliance with the provisions of Section 1.10 hereof;

(c) the Administrative Agent shall have received the Guarantee and Security Agreement duly executed by the Borrower, together with UCC financing statements to be filed against the Borrower, as debtor, in favor of the Administrative Agent, as secured party;

(d) the Administrative Agent shall have received copies of the Borrower's articles of incorporation and bylaws (or comparable organizational documents) and any amendments thereto, certified in each instance by its Secretary or Assistant Secretary;

(e) the Administrative Agent shall have received copies of resolutions of the Borrower's Board of Directors (or similar governing body) authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, together with specimen signatures of the persons authorized to execute such documents on each Credit Party's behalf, all certified in each instance by its Secretary or Assistant Secretary;

(f) the Administrative Agent shall have received copies of the certificates of good standing for the Borrower (dated no earlier than 30 days prior to the date hereof) from the office of the secretary of the state of its incorporation or organization and of each state in which it is qualified to do business as a foreign corporation or organization;

(g) the Administrative Agent shall have received a list of the Borrower's Authorized Representatives;

(h) the Administrative Agent shall have received the initial fees called for by Section 2.1 hereof;

(i) the Administrative Agent shall have received duly completed Borrowing Base Certificate containing calculations of the Borrowing Base as of the Closing Date;

(j) the Administrative Agent shall have received financing statement, tax, and judgment lien search results against the Property of the Borrower evidencing the absence of Liens on its Property except as permitted by Section 8.8 hereof;

(k) the Administrative Agent shall have received pay-off and lien release letters from secured creditors of the Borrower setting forth, among other things, the total amount of indebtedness outstanding and owing to them (or outstanding letters of credit issued for the account of the Borrower) and containing an undertaking to cause to be delivered to the Administrative Agent UCC termination statements and any other lien release instruments necessary to release their Liens on the assets of the Borrower, which pay-off and lien release letters shall be in form and substance acceptable to the Administrative Agent;

(l) the Administrative Agent shall have received the favorable written opinion of counsel to each Credit Party, in form and substance satisfactory to the Administrative Agent; and

(m) the Administrative Agent shall have received such other agreements, instruments, documents, certificates, and opinions as the Administrative Agent may reasonably request.

SECTION 8. COVENANTS.

The Borrower agrees that, so long as any credit is available to or in use by the Borrower hereunder, except to the extent compliance in any case or cases is waived in writing pursuant to the terms of Section 12.13 hereof:

Section 8.1. Maintenance of Business. The Borrower shall, and shall cause each Subsidiary to, preserve and maintain its existence, except as otherwise provided in Section 8.10 hereof. The Borrower shall, and shall cause each Subsidiary to, preserve and keep in force and effect all licenses, permits, franchises, approvals, patents, trademarks, trade names, trade styles, copyrights, and other proprietary rights necessary to the proper conduct of its business where the failure to do so could reasonably be expected to have a Material Adverse Effect.

Section 8.2. Maintenance of Properties. The Borrower shall, and shall cause each Subsidiary to, maintain, preserve, and keep its property, plant, and equipment in good repair, working order and condition (ordinary wear and tear excepted), and shall from time to time make all needful and proper repairs, renewals, replacements, additions, and betterments thereto so that at all times the efficiency thereof shall be fully preserved and maintained, except to the extent that, in the reasonable business judgment of such Person, any such Property is no longer necessary for the proper conduct of the business of such Person.

Section 8.3. Taxes and Assessments. The Borrower shall duly pay and discharge, and shall cause each Subsidiary to duly pay and discharge, all taxes, rates, assessments, fees, and governmental charges upon or against it or its Property, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves are provided therefor.

Section 8.4. Insurance. The Borrower shall insure and keep insured, and shall cause each Subsidiary to insure and keep insured, with good and responsible insurance companies, all insurable Property owned by it which is of a character usually insured by Persons similarly situated and operating like Properties against loss or damage from such hazards and risks, and in such amounts, as are insured by Persons similarly situated and operating like Properties; and the Borrower shall insure, and shall cause each Subsidiary to insure, such other hazards and risks (including, without limitation, business interruption, employers' and public liability risks) with good and responsible insurance companies as and to the extent usually insured by Persons similarly situated and conducting similar businesses. The Borrower shall, upon the request of the Administrative Agent, furnish to the Administrative Agent and the Lenders a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section.

Section 8.5. Financial Reports. The Borrower shall, and shall cause each Subsidiary to, maintain a standard system of accounting in accordance with GAAP and shall furnish to the Administrative Agent, each Lender, the L/C Issuer and each of their duly authorized representatives such information respecting the business and financial condition of the Borrower and each Subsidiary as the Administrative Agent or such Lender may reasonably request; and without any request, shall furnish to the Administrative Agent, the Lenders, and L/C Issuer:

(a) as soon as available, and in any event no later than twenty (20) days after the last day of each calendar month, a Borrowing Base Certificate showing the computation of the Borrowing Base in reasonable detail as of the close of business on the last day of such month, prepared by the Borrower and certified to by its chief financial officer or another officer of the Borrower acceptable to the Administrative Agent;

(b) as soon as available, and in any event no later than forty-five (45) days after the last day of each fiscal quarter of each fiscal year of the Borrower (sixty (60) days in the case of the fiscal

quarter ending December 31, 2007), a copy of the consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the last day of such fiscal quarter and the consolidated and consolidating statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the fiscal quarter and for the fiscal year-to-date period then ended, each in reasonable detail showing in comparative form (beginning June 30, 2008) the figures for the corresponding date and period in the previous fiscal year, prepared by the Borrower in accordance with GAAP (subject to the absence of footnote disclosures and year-end audit adjustments) and certified to by its chief financial officer or another officer of the Borrower acceptable to the Administrative Agent;

(c) as soon as available, and in any event no later than forty-five (45) days after the last day of each fiscal quarter of each fiscal year of the Borrower (sixty (60) days in the case of the fiscal quarter ending December 31, 2007), copies of the valuation and appraisal reports and reviews required to be made or obtained pursuant to Section 8.22 hereof, certified to as true and correct copies of the same by its chief financial officer or another officer of the Borrower acceptable to the Administrative Agent;

(d) as soon as available, and in any event no later than ninety (90) days after the last day each fiscal year of the Borrower, a copy of the consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the last day of the fiscal year then ended and the consolidated and consolidating statements of income, retained earnings, and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied in the case of the consolidated financial statements by an unqualified opinion of Grant Thornton LLP or another firm of independent public accountants of recognized national standing, selected by the Borrower and reasonably satisfactory to the Administrative Agent, to the effect that the consolidated financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the consolidated financial condition of the Borrower and its Subsidiaries as of the close of such fiscal year and the results of their operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(e) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of the Borrower's or any Subsidiary's operations and financial affairs given to it by its independent public accountants;

(f) promptly after the sending or filing thereof, copies of each financial statement, report, notice or proxy statement sent by the Borrower or any Subsidiary to its stockholders or other equity holders, and copies of each regular, periodic or special report, registration statement or prospectus (including all Form 10-K, Form 10-Q and Form 8-K reports) filed by the Borrower or any Subsidiary with any securities exchange or the Securities and Exchange Commission or any successor agency;

(g) promptly after receipt thereof, a copy of each audit made by any regulatory agency of the books and records of the Borrower or any Subsidiary or of notice of any material noncompliance with any applicable law, regulation or guideline relating to the Borrower or any Subsidiary, or its business;

(h) as soon as available, and in any event no later than 90 days after the end of each fiscal year of the Borrower, a copy of the Borrower's consolidated and consolidating business plan for the then current fiscal year, such business plan to show the Borrower's projected consolidated and consolidating revenues, expenses and balance sheet on a quarter-by-quarter basis, such business

plan to be in reasonable detail prepared by the Borrower and in form satisfactory to the Administrative Agent and the Required Lenders (which shall include a summary of all assumptions made in preparing such business plan);

(i) notice of any Change of Control;

(j) promptly after knowledge thereof shall have come to the attention of any responsible officer of the Borrower, written notice of (i) any threatened or pending litigation or governmental or arbitration proceeding or labor controversy against the Borrower or any Subsidiary or any of their Property which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, (ii) any Borrowing Base Deficiency, and (iii) the occurrence of any Default or Event of Default hereunder; and

(k) with each of the financial statements delivered pursuant to subsections (b) and (d) above, a written certificate in the form attached hereto as Exhibit F signed by the chief financial officer of the Borrower or another officer of the Borrower acceptable to the Administrative Agent to the effect that to the best of such officer's knowledge and belief the financial statements concurrently being delivered to the Lenders are consistent with the financial statements filed by the Borrower with the Securities and Exchange Commission and that no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by the Borrower or any Subsidiary to remedy the same. Such certificate shall also set forth the calculations supporting such statements in respect of Section 8.25 hereof.

Section 8.6. Inspection. The Borrower shall, and shall cause each Subsidiary to, permit the Administrative Agent, each Lender, the L/C Issuer and each of their duly authorized representatives and agents to visit and inspect any of its Property, corporate books, and financial records, to examine and make copies of its books of accounts and other financial records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers, employees and independent public accountants (and by this provision the Borrower hereby authorizes such accountants to discuss with the Administrative Agent, such Lenders, and L/C Issuer the finances and affairs of the Borrower and its Subsidiaries) at such reasonable times and intervals as the Administrative Agent or any such Lender or L/C Issuer may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to the Borrower.

Section 8.7. Borrowings and Guarantees. The Borrower shall not, nor shall it permit any Subsidiary to, issue, incur, assume, create or have outstanding any Indebtedness, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another; *provided, however,* that the foregoing shall not restrict nor operate to prevent:

(a) the Obligations, Hedging Liability, and Funds Transfer and Deposit Account Liability of the Borrower and its Subsidiaries owing to the Administrative Agent and the Lenders (and their Affiliates);

(b) endorsement of items for deposit or collection of commercial paper received in the ordinary course of business;

(c) repurchase obligations arising in the ordinary course of business with respect to U.S. Government Securities;

(d) obligations payable to clearing agencies, brokers or dealers in connection with the purchase or sale of securities in the ordinary course of business;

(e) Indebtedness of Financing Subsidiaries;

(f) obligations in respect of Standard Securitization Undertakings;

(g) Unsecured Longer-Term Indebtedness so long as (i) no Default or Event of Default exists at the time of, or after giving effect to, the incurrence thereof, and (ii) the aggregate amount of such Indebtedness, taken together with other then-outstanding Indebtedness, does not exceed the amount required to comply with the provisions of Section 8.24(b) hereof (Asset Coverage Ratio);

(h) Indebtedness consisting of purchase money indebtedness or Capitalized Lease Obligations incurred in the ordinary course of business to finance equipment and fixtures; *provided* that (i) such Indebtedness does not exceed \$1,000,000 in the aggregate at any time outstanding and (ii) the aggregate amount of such Indebtedness, taken together with other then-outstanding Indebtedness, does not exceed the amount required to comply with the provisions of Section 8.24(b) hereof; and

(i) Other Permitted Indebtedness.

Section 8.8. Liens. The Borrower shall not, nor shall it permit any Subsidiary to, create, incur or permit to exist any Lien of any kind on any Property owned by any such Person or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof; *provided, however*, that the foregoing shall not apply to nor operate to prevent:

(a) Permitted Liens;

(b) Liens granted in favor of the Administrative Agent pursuant to the Collateral Documents; and

(c) Liens on the assets of a Financing Subsidiary securing obligations of such Financing Subsidiary.

Section 8.9. Investments and Acquisitions. The Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly, make, retain or have outstanding any Investments in or to any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof; *provided, however*, that the foregoing shall not apply to nor operate to prevent:

(a) Investments in Cash Equivalents;

(b) Investments by the Borrower and the Guarantors in the Borrower and the other Guarantors;

(c) Hedging Agreements entered into in the ordinary course of the Borrower's financial planning and not for speculative purposes;

(d) Investments in Financing Subsidiaries in the ordinary course of business;

(e) Portfolio Investments by the Borrower and its Subsidiaries to the extent such Portfolio Investments are permitted under the Investment Company Act and the Borrower's Investment Policies; and

(f) other Investments in addition to those otherwise permitted by this Section in an amount not to exceed \$1,000,000 in the aggregate at any one time outstanding.

In determining the amount of Investments permitted under this Section, the aggregate amount of an Investment at any time shall be deemed to be equal to (x) the aggregate amount of cash, together with the aggregate fair market value of property, loaned, advanced, contributed, transferred or otherwise

invested that gives rise to such Investment *minus* (y) the aggregate amount of dividends, distributions or other payments received in cash in respect of such Investment, *provided* that in no event shall the aggregate amount of such Investment be deemed to be less than zero; and the amount of an Investment shall not in any event be reduced by reason of any write-off of such Investment nor increased by any increase in the amount of earnings retained in the Person in which such Investment is made that have not been dividended, distributed or otherwise paid out.

Section 8.10. Mergers, Consolidations, Amalgamations, and Sales of Assets. The Borrower shall not, nor shall it permit any of its Subsidiaries (other than Financing Subsidiaries) to, enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution). The Borrower shall not, nor shall it permit any of its Subsidiaries (other than Financing Subsidiaries) to, acquire any business or property from, or capital stock of, or be a party to any acquisition of, any Person, except for purchases or acquisitions of Portfolio Investments and other assets in the normal course of the day-to-day business activities of the Borrower and its Subsidiaries and not in violation of the terms and conditions of this Agreement or any other Loan Document. The Borrower shall not, nor shall it permit any of its Subsidiaries (other than Financing Subsidiaries) to, convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, any part of its assets, whether now owned or hereafter acquired, but excluding (x) assets (other than Portfolio Investments) sold or disposed of in the ordinary course of business (including to make expenditures of cash in the normal course of the day-to-day business activities of the Borrower and its Subsidiaries) and (y) subject to the provisions of subsections (d) and (e) below, Portfolio Investments. Notwithstanding the foregoing provisions of this Section:

- (a) any Subsidiary Guarantor of the Borrower may be merged or consolidated with or into the Borrower or any other Subsidiary Guarantor; *provided* that if any such transaction shall be between a Subsidiary Guarantor and a wholly owned Subsidiary Guarantor, the wholly owned Subsidiary Guarantor shall be the continuing or surviving corporation;
- (b) any Subsidiary of the Borrower may sell, lease, transfer or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any other Credit Party which is a Wholly-owned Subsidiary of the Borrower;
- (c) the capital stock of any Subsidiary of the Borrower may be sold, transferred or otherwise disposed of to the Borrower or any other Credit Party which is a Wholly-owned Subsidiary of the Borrower;
- (d) the Credit Parties may sell, transfer or otherwise dispose of Portfolio Investments to third parties (other than Financing Subsidiaries) so long as (i) no Default or Event of Default then exists or would arise after giving effect thereto, (ii) the net cash proceeds of such disposition are applied to reduce the Obligations, and (iii) after giving effect to such disposition the Covered Debt Amount does not exceed the Borrowing Base and the Borrower delivers to the Administrative Agent a certificate from its chief financial officer (or such other officer of the Borrower acceptable to the Administrative Agent) to such effect;
- (e) the Credit Parties may sell Portfolio Investments to one or more Financing Subsidiaries so long as (i) no Default or Event of Default then exists or would arise after giving effect thereto, (ii) the net cash proceeds of such disposition are applied to reduce the Obligations, (iii) after giving effect to such disposition the Covered Debt Amount does not exceed the Borrowing Base and the Borrower delivers to the Administrative Agent a certificate from its chief financial officer (or such other officer of the Borrower acceptable to the Administrative Agent) to such effect, and (iv) either (x) the amount by which the Borrowing Base exceeds the Covered Debt Amount immediately prior to such disposition is not diminished as a result of such disposition or (y) immediately after giving effect to such disposition the Borrowing Base immediately after giving effect to such release is at least 110% of the Covered Debt Amount; and

(f) the Borrower and its Subsidiaries may sell, lease, transfer or otherwise dispose of equipment or other property or assets that do not consist of Portfolio Investments so long as the aggregate amount of all such sales, leases, transfer and dispositions does not exceed \$1,000,000 in any fiscal year.

So long as no Default or Event of Default has occurred and is continuing or would arise as a result thereof, upon the written request of the Borrower, the Administrative Agent shall release its Lien on any Property sold pursuant to the foregoing provisions.

Section 8.11. Maintenance of Subsidiaries. The Borrower shall, and shall cause each of its Subsidiaries to, take such action from time to time as shall be necessary to ensure that each of its Subsidiaries is a Wholly owned Subsidiary except as provided in subsection (a) below. The Borrower shall not assign, sell or transfer, nor shall it permit any Subsidiary to issue, assign, sell or transfer, any shares of capital stock or other equity interests of a Subsidiary; *provided, however*, that the foregoing shall not operate to prevent (a) the issuance, sale and transfer to any person of any shares of capital stock of a Subsidiary solely for the purpose of qualifying, and to the extent legally necessary to qualify, such person as a director of such Subsidiary, and (b) any transaction permitted by Section 8.10(a) above.

Section 8.12. Dividends and Certain Other Restricted Payments. The Borrower shall not, nor shall it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; *provided, however*, that the foregoing shall not operate to prevent:

(a) dividends with respect to the capital stock of the Borrower payable solely in additional shares of the Borrower's common stock;

(b) dividends and distributions in either case in cash or other property (excluding for this purpose the Borrower's common stock) in any taxable year of the Borrower in amounts not to exceed the amount that is estimated in good faith by the Borrower to be required to (i) reduce to zero for such taxable year or for the previous taxable year, its investment company taxable income (within the meaning of Section 852(b)(2) of the Code) and reduce to zero the tax imposed by Section 852(b)(3) of the Code, and (ii) avoid federal excise taxes for such taxable year imposed by Section 4982 of the Code;

(c) dividends and distributions in each case in cash or other property (excluding for this purpose the Borrower's common stock) in addition to the dividends and distributions permitted under the foregoing subsections (a) and (b), so long as on the date of such Restricted Payment and after giving effect thereto: (i) no Default or Event of Default exists or shall arise after giving effect to such payment; and (ii) the aggregate amount of Restricted Payments made during any taxable year of the Borrower after the date hereof under this subsection (c) shall not exceed the sum of (x) an amount equal to 10% of the taxable income of the Borrower for such taxable year determined under Section 852(b)(2) of the Code, but without regard to subparagraphs (A), (B) or (D) thereof, *minus* (y) the amount, if any, by which dividends and distributions made during such taxable year pursuant to the foregoing subsection (b) (whether in respect of such taxable year or the previous taxable year) based upon the Borrower's estimate of taxable income exceeded the actual amounts specified in subclauses (i) and (ii) of such foregoing subsection (b) for such taxable year;

(d) other Restricted Payments paid no more frequently than quarter-annually so long as (i) on the date of such other Restricted Payment and after giving effect thereto (x) the Covered Debt Amount does not exceed 90% of the Borrowing Base and (y) no Default or Event of Default exists or shall arise after giving effect to such payment and (ii) on the date of such other Restricted Payment the Borrower delivers to the Administrative Agent and each Lender a Borrowing Base Certificate as at such date demonstrating compliance with clause (x) above after

giving effect to such Restricted Payment. For purposes of preparing such Borrowing Base Certificate, (A) the fair market value of Portfolio Investments for which market quotations are readily available shall be the most recent quotation available for such Portfolio Investment and (B) the fair market value of Portfolio Investments for which market quotations are not readily available shall be the Value set forth in the Borrowing Base Certificate most recently delivered by the Borrower to the Administrative Agent and the Lenders pursuant to Section 8.5(a); *provided* that the Borrower shall reduce the Value of any Portfolio Investment referred to in this subclause (B) to the extent necessary to take into account any events of which the Borrower has knowledge that adversely affect the value of such Portfolio Investment; and

(e) Restricted Payments by any Subsidiary of the Borrower to the Borrower or to any other Credit Party.

Section 8.13. ERISA. The Borrower shall, and shall cause each Subsidiary to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of a Lien against any of its Property. The Borrower shall, and shall cause each Subsidiary to, promptly notify the Administrative Agent and each Lender of: (a) the occurrence of any reportable event (as defined in ERISA) with respect to a Plan, (b) receipt of any notice from the PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor, (c) its intention to terminate or withdraw from any Plan, and (d) the occurrence of any event with respect to any Plan which would result in the incurrence by the Borrower or any Subsidiary of any material liability, fine or penalty, or any material increase in the contingent liability of the Borrower or any Subsidiary with respect to any post-retirement Welfare Plan benefit.

Section 8.14. Compliance with Laws. The Borrower shall, and shall cause each Subsidiary to, comply in all material respects with the requirements of all federal, state, and local laws, rules, regulations, ordinances and orders applicable to or pertaining to its Property or business operations, where any such non-compliance, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or result in a Lien upon any of its Property. Without limiting the generality of the foregoing, the Borrower shall, and shall cause its Subsidiaries to, conduct its business and other activities in compliance in all material respects with the provisions of the Investment Company Act and any applicable rules, regulations or orders issued by the Securities and Exchange Commission thereunder.

Section 8.15. RIC and BDC. The Borrower shall at all times maintain its status as a RIC under the Code, and as a "business development company" under the Investment Company Act.

Section 8.16. Investment Policies. The Borrower shall at all times be in compliance in all material respects with its Investment Policies; *provided* that it shall not be deemed a material change in the Investment Policies if (a) investment size (which as of the Closing Date is to normally range from between \$5,000,000 and \$50,000,000) proportionately increases as the size of the Borrower's capital base changes, (b) to the extent permitted by applicable law and consistent with this Agreement, Portfolio Investments are expanded to include sale-leaseback transactions, or (c) such changes or amendments are required to comply with the provisions of applicable law, including the Investment Company Act.

Section 8.17. Burdensome Contracts With Affiliates. Except as otherwise set forth for in the Affiliate Agreements as in effect on the date hereof, the Borrower shall not, nor shall it permit any Subsidiary to, enter into any contract, agreement or business arrangement with any of its Affiliates on terms and conditions which are less favorable to the Borrower or such Subsidiary than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

Section 8.18. No Changes in Fiscal Year. The fiscal year of the Borrower and its Subsidiaries ends on September 30th of each year; and the Borrower shall not, nor shall it permit any Subsidiary to, change its fiscal year from its present basis.

Section 8.19. Formation of Subsidiaries. Promptly upon the formation or acquisition of any Subsidiary, the Borrower shall provide the Administrative Agent and the Lenders notice thereof and timely comply with the requirements of Section 4 hereof (at which time Schedule 6.2 shall be deemed amended to include reference to such Subsidiary).

Section 8.20. Change in the Nature of Business. Except as permitted pursuant to Section 8.16 hereof, the Borrower shall not, nor shall it permit any Subsidiary to, engage in any business or activity if as a result the general nature of the business of the Borrower or any Subsidiary would be changed in any material respect from the general nature of the business engaged in by it as of the Closing Date.

Section 8.21. Use of Proceeds. The Borrower shall use the credit extended under this Agreement solely for the purposes set forth in, or otherwise permitted by, Section 6.4 hereof.

Section 8.22. Portfolio Valuation and Diversification Etc.. (a) Industry Classification Groups. For purposes of this Agreement, the Borrower shall assign each Portfolio Investment to an Industry Classification Group. To the extent that any Portfolio Investment is not correlated with the risks of other Portfolio Investments in an Industry Classification Group established by Moody's, such Portfolio Investment may be assigned by the Borrower to an Industry Classification Group that is more closely correlated to such Portfolio Investment.

(b) Portfolio Valuation Etc.

(i) Settlement Date Basis. For purposes of this Agreement, all determinations of whether an investment is to be included as a Portfolio Investment shall be determined on a settlement-date basis (meaning that any investment that has been purchased will not be treated as a Portfolio Investment until such purchase has settled, and any Portfolio Investment which has been sold will not be excluded as a Portfolio Investment until such sale has settled), *provided* that no such investment shall be included as a Portfolio Investment to the extent it has not been paid for in full.

(ii) Determination of Values. The Borrower will conduct reviews of the value to be assigned to each of its Portfolio Investment as follows:

(A) Quoted Investments External Review. With respect to Portfolio Investments (including Cash Equivalents) for which market quotations are readily available, the Borrower shall, not less frequently than once each calendar week, determine the market value of such Portfolio Investments which shall, in each case, be determined in accordance with one of the following methodologies (as selected by the Borrower):

(w) in the case of public and 144A securities, the average of the mean prices as determined by two Approved Dealers selected by the Borrower,

(x) in the case of bank loans, the mean price as determined by one Approved Dealer selected by the Borrower,

(y) in the case of any Portfolio Investment traded on an exchange, the closing price for such Portfolio Investment most recently posted on such exchange, and

(z) in the case of any other Portfolio Investment, the fair market value thereof as determined by an Approved Pricing Service.

(B) Unquoted Investments External Review. With respect to Portfolio Investments for which market quotations are not readily available, the Borrower shall request an Approved Third-Party Appraiser to assist the Board of Directors of the Borrower in determining the fair

market value of such Portfolio Investments, as at the last day of each fiscal quarter, *provided* that

(x) the Value of any such Portfolio Investment (*i.e.*, a Portfolio Investment for which market quotations are not readily available) acquired during a fiscal quarter shall be deemed to be equal to the cost of such Portfolio Investment until such time as the fair market value of such Portfolio Investment is determined in accordance with the foregoing provisions of this subsection (B) as at the last day of such fiscal quarter, and

(y) notwithstanding the foregoing, the Board of Directors of the Borrower may, without the assistance of an Approved Third-Party Appraiser, determine the fair market value of Portfolio Investments so long as the aggregate Value thereof so determined does not at any time exceed 10% of the gross Value of all Portfolio Investments (determined exclusive of Portfolio Investments excluded from the Borrowing Base pursuant to Section 8.23(d) or Section 8.23(e)), except that the fair market value of any Portfolio Investment that has been determined without the assistance of an Approved Third-Party Appraiser as at the last day of any fiscal quarter shall be deemed to be zero as at the last day of the immediately succeeding fiscal quarter (but effective upon the date upon which the Borrowing Base Certificate for such last day is required to be delivered hereunder) if an Approved Third-Party Appraiser has not assisted the Board of Directors of the Borrower in determining the fair market value of such Portfolio Investments, as at such date.

(C) *Internal Review.* The Borrower shall conduct internal reviews of all Portfolio Investments at least once each calendar month which shall take into account any events of which the Borrower has knowledge that adversely affect the value of the Portfolio Investments. If the value of any Portfolio Investment as most recently determined by the Borrower pursuant to this Section 8.22 (b)(ii)(C) is lower than the value of such Portfolio Investment as most recently determined pursuant to Section 8.22 (b)(ii)(A) and (B), such lower value shall be deemed to be the "Value" of such Portfolio Investment for purposes hereof; *provided* that the Value of any Portfolio Investment of the Borrower and its Subsidiaries shall be increased by the net unrealized gain as at the date such Value is determined of any Hedging Agreement entered into to hedge risks associated with such Portfolio Investment and reduced by the net unrealized loss as at such date of any such Hedging Agreement (such net unrealized gain or net unrealized loss, on any date, to be equal to the aggregate amount receivable or payable under the related Hedging Agreement if the same were terminated on such date).

(D) *Failure to Determine Values.* If the Borrower shall fail to determine the value of any Portfolio Investment as at any date pursuant to the requirements of the foregoing subsections (A), (B) or (C), then the "Value" of such Portfolio Investment as at such date shall be deemed to be zero. It being acknowledged and agreed that so long as no Loans or Letters of Credit are outstanding hereunder, the Borrower shall not be required to conduct reviews of the value of its Portfolio Investments pursuant to the requirements of this Section 8.22(b)(ii), *provided* that updated current valuations in accordance with the requirements of this Section 8.22(b)(ii) shall be required as a condition to any credit being made available hereunder and shall also be required so long as any credit remains outstanding.

(c) *Investment Company Diversification Requirements.* The Borrower will, and will cause its Subsidiaries (other than Financing Subsidiaries that are exempt from the Investment Company Act) at all times to (i) comply in all material respects with the portfolio diversification and similar requirements set forth in the Investment Company Act applicable to business development companies and (ii) subject

to applicable grace periods set forth in the Code, comply with the portfolio diversification and similar requirements set forth in the Code applicable to RIC's. It is hereby mutually acknowledged that the valuation and diversification requirements of this section are for the benefit of the Administrative Agent and the Lenders in connection with, among other things, determination of the Borrowing Base and nothing contain herein shall modify the Borrower's requirements at law or otherwise be deemed the valuation of the Borrower's assets for the purposes of the Investment Company Act or any public reporting requirements (for example, an asset may have a value of zero dollars (\$0.00) for the purposes of this Section 8.22 and this Agreement, but may have a different value for the purposes of the Borrower's valuation required by law).

Section 8.23. Calculation of Borrowing Base. For purposes of this Agreement, the "Borrowing Base" shall be determined, as at any date of determination, as the sum of the Advance Rates of the Value of each Portfolio Investment (excluding any cash held by the Administrative Agent pursuant to Section 9.4), provided that:

(a) The Advance Rate applicable to that portion of the aggregate Value of the Portfolio Investments in a consolidated group of corporations or other entities (collectively, a "Consolidated Group"), in accordance with GAAP, that exceeds 10% of Shareholders' Equity of the Borrower (which, for purposes of this calculation shall exclude the aggregate amount of investments in, and advances to, Financing Subsidiaries) shall be 50% of the Advance Rate otherwise applicable;

(b) The Advance Rate applicable to that portion of the aggregate Value of the Portfolio Investments of all issuers in a consolidated group of corporations or other entities, exceeding 20% of Shareholders' Equity of the Borrower (which, for purposes of this calculation shall exclude the aggregate amount of investments in, and advances to, Financing Subsidiaries) shall be 0%;

(c) The Advance Rate applicable to that portion of the aggregate Value of the Portfolio Investments in any single Industry Classification Group that exceeds 20% of Shareholders' Equity of the Borrower (which for purposes of this calculation shall exclude the aggregate amount of investments in, and advances to, Financing Subsidiaries) shall be 0%;

(d) No Portfolio Investment may be included in the Borrowing Base if the obligor or issuer thereof, or any guarantor of the obligations relating thereto, is an Affiliate of the Borrower or any of its Subsidiaries or a director, officer, employee, or family member of the Borrower or any such Subsidiary or Affiliate; and

(e) No Portfolio Investment may be included in the Borrowing Base unless the Administrative Agent maintains a first priority, perfected Lien on such Portfolio Investment and, at all times on and after the 30th day after the Closing Date, such Portfolio Investment has been Delivered (as defined in the Guarantee and Security Agreement) to the Administrative Agent, and then only for so long as such Portfolio Investment continues to be Delivered as contemplated therein.

As used herein, the following terms have the following meanings:

"Advance Rate" means, as to any Portfolio Investment and subject to adjustment as provided in Section 8.23(a), (b) and (c), the following percentages with respect to such Portfolio Investment:

Portfolio Investment	Quoted	Unquoted
Cash, Cash Equivalents and Short-Term U.S. Government Securities	100%	n.a.
Long-Term U.S. Government Securities	95%	n.a.
Performing First Lien Bank Loans	50%	50%
Performing Second Lien Bank Loans	35%	35%
Performing Cash Pay High Yield Securities	30%	30%
Performing Cash Pay Mezzanine Investments	25%	25%

"*Bank Loans*" means debt obligations (including, without limitation, term loans, revolving loans, debtor-in-possession financings, the funded and unfunded portion of revolving credit lines and letter of credit facilities and other similar loans and investments including interim loans and senior subordinated loans) which are generally under a syndicated loan or credit facility.

"*Capital Stock*" of any Person means any and all shares of corporate stock (however designated) of and any and all other Equity Interests and participations representing ownership interests (including membership interests and limited liability company interests) in, such Person.

"*Cash*" has the meaning assigned to such term in Section 5.1 hereof.

"*Cash Equivalents*" has the meaning assigned to such term in Section 1.01 hereof.

"*First Lien Bank Loan*" means a Bank Loan that is entitled to the benefit of a first lien and first priority perfected security interest on a substantial portion of the assets of the respective borrower and guarantors obligated in respect thereof.

"*High Yield Securities*" means debt Securities (a) issued by public or private issuers, (b) issued pursuant to an effective registration statement or pursuant to Rule 144A under the Securities Act (or any successor provision thereunder), and (c) that are not Cash Equivalents, Mezzanine Investments or Bank Loans.

"*Long-Term U.S. Government Securities*" means U.S. Government Securities maturing more than one year from the applicable date of determination.

"*Mezzanine Investments*" means debt Securities (a) issued by public or private issuers, (b) issued without registration under the Securities Act, (c) not issued pursuant to Rule 144A under the Securities Act (or any successor provision thereunder), (d) that are not Cash Equivalents, and (e) contractually subordinated in right of payment to other debt of the same issuer.

"*Performing*" means (a) with respect to any Portfolio Investment that is debt, the issuer of such Portfolio Investment is not in default of any payment obligations in respect thereof after the expiration of any applicable grace period, and (b) with respect to any Portfolio Investment that is Preferred Stock, the issuer of such Portfolio Investment has not failed to meet any scheduled redemption obligations or to pay its latest declared cash dividend, after the expiration of any applicable grace period.

"*Performing Cash Pay High Yield Securities*" means High Yield Securities (a) as to which, at the time of determination, not less than 2/3rds of the interest (including accretions and "pay-in-kind" interest) for the current monthly, quarterly, semiannual or annual period (as applicable) is payable in cash and (b) which are Performing.

"*Performing Cash Pay Mezzanine Investments*" means Mezzanine Investments (a) as to which, at the time of determination, not less than 2/3rds of the interest (including accretions and "pay-in-kind" interest) for the current monthly, quarterly, semi-annual or annual period (as applicable) is payable in cash and (b) which are Performing.

"*Performing First Lien Bank Loans*" means First Lien Bank Loans which are Performing.

"*Performing Second Lien Bank Loans*" means Second Lien Bank Loans which are Performing.

"*Preferred Stock*" as applied to the Capital Stock of any Person, means Capital Stock of such Person of any class or classes (however designated) that ranks 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 any shares (or other interests) of other Capital Stock

of such Person, and shall include, without limitation, cumulative preferred, non-cumulative preferred, participating preferred and convertible preferred Capital Stock.

"*Second Lien Bank Loan*" means a Bank Loan that is entitled to the benefit of a junior lien and junior priority perfected security interest on a substantial portion of the assets of the respective Borrower and guarantors obligated in respect thereof.

"*Securities*" means common and preferred stock, units and participations. Member interests in limited liability companies, partnership interests in partnerships, notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, including debt instruments of public and private issuers and tax-exempt securities (including warrants, rights, put and call options and other options relating thereto, representing rights, or any combination thereof) and other property or interests commonly regarded as securities or any form of interest or participation therein, but not including Bank Loans.

"*Securities Act*" means the United States Securities Act of 1933, as amended.

"*Short-Term U.S. Government Securities*" means U.S. Government Securities maturing within one year of the applicable date of determination.

"*U.S. Government Securities*" has the meaning assigned to such term in Section 5.1 hereof.

"*Value*" means, with respect to any Portfolio Investment, the lower of the most recent internal market value as determined pursuant to Section 8.22(b)(ii)(C) and the most recent external market value as determined pursuant to Section 8.22(b)(ii)(A) and (B).

Section 8.24. No Restrictions. Except as provided herein, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of the Borrower or any Subsidiary to: (a) pay dividends or make any other distribution on any Subsidiary's capital stock or other equity interests owned by the Borrower or any other Subsidiary, (b) pay any indebtedness owed to the Borrower or any other Subsidiary, (c) make loans or advances to the Borrower or any other Subsidiary, (d) transfer any of its Property to the Borrower or any other Subsidiary or (e) guarantee the Obligations, Hedging Liability, and Funds Transfer and Deposit Account Liability and/or grant Liens on its assets to the Administrative Agent as required by the Loan Documents.

Section 8.25. Financial Covenants. (a) *Minimum Shareholders' Equity.* The Borrower will not permit Shareholders' Equity at any time to be less than \$155,000,000.

(b) *Asset Coverage Ratio.* The Borrower will not permit the Asset Coverage Ratio to be less than 3.5 to 1 at any time.

(c) *Liquidity Test.* The Borrower will not permit the aggregate Value of the Portfolio Investments that can be converted to Cash in fewer than 10 Business Days without more than a 5% change in price to be less than 10% of the Covered Debt Amount during any period when the Adjusted Covered Debt Balance is greater than 90% of the Adjusted Borrowing Base.

(d) *Interest Coverage Ratio.* As of the last day of each fiscal quarter of the Borrower, the Borrower shall maintain a ratio of (i) EBIT for the four fiscal quarters of the Borrower then ended, to (ii) Interest Expense for the same four fiscal quarters then ended of not less than 1.10 to 1.0.

Section 8.26. Post Closing The Borrower shall cause to be executed and delivered to the Administrative Agent within thirty (30) days after the Closing Date (a) a Custody and Securities Account Control Agreement duly executed and delivered by the Credit Parties, the Administrative Agent, and the Custodian (as such term is defined in the Guarantee and Security Agreement), which Custody and Securities Account Control Agreement shall be in form and substance acceptable to the Administrative Agent and (b) deposit account, securities account, and commodity account control

agreements relating to the existing Collateral, which shall be in form and substance acceptable to the Administrative Agent.

SECTION 9. EVENTS OF DEFAULT AND REMEDIES.

Section 9.1. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

- (a) default in the payment when due of all or any part of the principal of any Loan (whether at the stated maturity thereof or at any other time provided for in this Agreement) or of any Reimbursement Obligation, or default for a period of 5 Business Days in the payment when due of any fee or other Obligation payable hereunder or under any other Loan Document;
- (b) (i) default in the observance or performance of any covenant set forth in Sections 8.5, 8.7, 8.8, 8.9, 8.10, 8.12, 8.17, 8.18, 8.19, 8.21, 8.23 (after giving effect to Section 1.8(b)(i) hereof), 8.24, 8.25, or 8.26 hereof or of any provision in any Loan Document dealing with the use, disposition or remittance of the proceeds of Collateral or (ii) default for a period of 15 days in the observance or performance of any covenant set forth in Sections 8.15, 8.16, or 8.22 hereof;
- (c) default in the observance or performance of any other provision hereof or of any other Loan Document which is not remedied within 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of the Borrower or (ii) written notice thereof is given to the Borrower by the Administrative Agent;
- (d) any representation or warranty made herein or in any other Loan Document or in any certificate furnished to the Administrative Agent or the Lenders pursuant hereto or thereto or in connection with any transaction contemplated hereby or thereby proves untrue in any material respect as of the date of the issuance or making or deemed making thereof;
- (e) any event occurs or condition exists (other than those described in subsections (a) through (d) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents shall for any reason not be or shall cease to be in full force and effect or is declared to be null and void, or any of the Collateral Documents shall for any reason fail to create a valid and perfected first priority Lien in favor of the Administrative Agent in any Collateral purported to be covered thereby except as expressly permitted by the terms thereof, or any Subsidiary takes any action for the purpose of terminating, repudiating or rescinding any Loan Document executed by it or any of its obligations thereunder;
- (f) default shall occur under any Indebtedness issued, assumed or guaranteed by the Borrower or any Subsidiary aggregating in excess of \$1,000,000, or under any indenture, agreement or other instrument under which the same may be issued, and such default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such Indebtedness (whether or not such maturity is in fact accelerated), or any such Indebtedness shall not be paid when due (whether by demand, lapse of time, acceleration or otherwise);
- (g) any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, shall be entered or filed against the Borrower or any Subsidiary, or against any of its Property, in an aggregate amount in excess of \$1,000,000 (except to the extent fully covered by insurance pursuant to which the insurer has accepted liability therefor in writing), and which remains undischarged, unvacated, unbonded or unstayed for a period of 30 days;
- (h) the Borrower or any Subsidiary, or any member of its Controlled Group, shall fail to pay when due an amount or amounts aggregating in excess of \$1,000,000 which it shall have become liable to pay to the PBGC or to a Plan under Title IV of ERISA; or notice of intent to terminate a Plan or Plans having aggregate Unfunded Vested Liabilities in excess of \$1,000,000 (collectively, a "Material Plan") shall be filed under Title IV of ERISA by the Borrower or any Subsidiary, or

any other member of its Controlled Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Material Plan or a proceeding shall be instituted by a fiduciary of any Material Plan against the Borrower or any Subsidiary, or any member of its Controlled Group, to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within 30 days thereafter; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated;

(i) any Change of Control shall occur;

(j) the Borrower or any Subsidiary shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 9.1(k) hereof; or

(k) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any Subsidiary, or any substantial part of any of its Property, or a proceeding described in Section 9.1(j)(v) shall be instituted against the Borrower or any Subsidiary, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 60 days.

Section 9.2. Non-Bankruptcy Defaults. When any Event of Default (other than those described in subsection (j) or (k) of Section 9.1 hereof with respect to the Borrower) has occurred and is continuing, the Administrative Agent shall, by written notice to the Borrower: (a) if so directed by the Required Lenders, terminate the remaining Commitments and all other obligations of the Lenders hereunder on the date stated in such notice (which may be the date thereof); (b) if so directed by the Required Lenders, declare the principal of and the accrued interest on all outstanding Loans to be forthwith due and payable and thereupon all outstanding Loans, including both principal and interest thereon, shall be and become immediately due and payable together with all other amounts payable under the Loan Documents without further demand, presentment, protest or notice of any kind; and (c) if so directed by the Required Lenders, demand that the Borrower immediately pay to the Administrative Agent the full amount then available for drawing under each or any Letter of Credit, and the Borrower agrees to immediately make such payment and acknowledges and agrees that the Lenders would not have an adequate remedy at law for failure by the Borrower to honor any such demand and that the Administrative Agent, for the benefit of the Lenders, shall have the right to require the Borrower to specifically perform such undertaking whether or not any drawings or other demands for payment have been made under any Letter of Credit. The Administrative Agent, after giving notice to the Borrower pursuant to Section 9.1(c) or this Section 9.2, shall also promptly send a copy of such notice to the other Lenders, but the failure to do so shall not impair or annul the effect of such notice.

Section 9.3. Bankruptcy Defaults. When any Event of Default described in subsections (j) or (k) of Section 9.1 hereof with respect to the Borrower has occurred and is continuing, then all outstanding Loans shall immediately become due and payable together with all other amounts payable

under the Loan Documents without presentment, demand, protest or notice of any kind, the obligation of the Lenders to extend further credit pursuant to any of the terms hereof shall immediately terminate and the Borrower shall immediately pay to the Administrative Agent the full amount then available for drawing under all outstanding Letters of Credit, the Borrower acknowledging and agreeing that the Lenders would not have an adequate remedy at law for failure by the Borrower to honor any such demand and that the Lenders, and the Administrative Agent on their behalf, shall have the right to require the Borrower to specifically perform such undertaking whether or not any draws or other demands for payment have been made under any of the Letters of Credit.

Section 9.4. *Collateral for Undrawn Letters of Credit.* (a) If the prepayment of the amount available for drawing under any or all outstanding Letters of Credit is required under Section 1.8(b) or under Section 9.2 or 9.3 above, the Borrower shall forthwith pay the amount required to be so prepaid (not to exceed 105% of the L/C Obligations then outstanding), to be held by the Administrative Agent as provided in subsection (b) below.

(b) All amounts prepaid pursuant to subsection (a) above shall be held by the Administrative Agent in one or more separate collateral accounts (each such account, and the credit balances, properties, and any investments from time to time held therein, and any substitutions for such account, any certificate of deposit or other instrument evidencing any of the foregoing and all proceeds of and earnings on any of the foregoing being collectively called the "*Collateral Account*") as security for, and for application by the Administrative Agent (to the extent available) to, the reimbursement of any payment under any Letter of Credit then or thereafter made by the L/C Issuer, and to the payment of the unpaid balance of all other Secured Obligations. The Collateral Account shall be held in the name of and subject to the exclusive dominion and control of the Administrative Agent for the benefit of the Administrative Agent, the Lenders, and the L/C Issuer. If and when requested by the Borrower, the Administrative Agent shall invest funds held in the Collateral Account from time to time in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America with a remaining maturity of one year or less, *provided* that the Administrative Agent is irrevocably authorized to sell investments held in the Collateral Account when and as required to make payments out of the Collateral Account for application to amounts due and owing from the Borrower to the L/C Issuer, the Administrative Agent or the Lenders; *provided, however*, that (i) if the Borrower shall have made payment of all obligations referred to in subsection (a) above required under Section 1.8(b) hereof, at the request of the Borrower the Administrative Agent shall release to the Borrower amounts held in the Collateral Account so long as at the time of the release and after giving effect thereto no Default or Event of Default exists, and (ii) if the Borrower shall have made payment of all obligations referred to in subsection (a) above required under Section 9.2 or 9.3 hereof, so long as no Letters of Credit, Commitments, Loans or other Secured Obligations remain outstanding, at the request of the Borrower the Administrative Agent shall release to the Borrower any remaining amounts held in the Collateral Account.

Section 9.5. *Notice of Default.* The Administrative Agent shall give notice to the Borrower under Section 9.1(c) hereof promptly upon being requested to do so by any Lender and shall thereupon notify all the Lenders thereof.

SECTION 10. CHANGE IN CIRCUMSTANCES.

Section 10.1. *Change of Law.* Notwithstanding any other provisions of this Agreement or any other Loan Document, if at any time any change in applicable law or regulation or in the interpretation thereof makes it unlawful for any Lender to make or continue to maintain any Eurodollar Loans or to perform its obligations as contemplated hereby, such Lender shall promptly give notice thereof to the Borrower and such Lender's obligations to make or maintain Eurodollar Loans under this Agreement shall be suspended until it is no longer unlawful for such Lender to make or maintain Eurodollar Loans. The Borrower shall prepay on demand the outstanding principal amount of any such affected

Eurodollar Loans, together with all interest accrued thereon and all other amounts then due and payable to such Lender under this Agreement; *provided, however*, subject to all of the terms and conditions of this Agreement, the Borrower may then elect to borrow the principal amount of the affected Eurodollar Loans from such Lender by means of Base Rate Loans from such Lender, which Base Rate Loans shall not be made ratably by the Lenders but only from such affected Lender.

Section 10.2. *Unavailability of Deposits or Inability to Ascertain, or Inadequacy of, LIBOR.* If on or prior to the first day of any Interest Period for any Borrowing of Eurodollar Loans:

(a) the Administrative Agent determines that deposits in U.S. Dollars (in the applicable amounts) are not being offered to it in the interbank eurodollar market for such Interest Period, or that by reason of circumstances affecting the interbank eurodollar market adequate and reasonable means do not exist for ascertaining the applicable LIBOR, or

(b) the Required Lenders advise the Administrative Agent that (i) LIBOR as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of funding their Eurodollar Loans for such Interest Period or (ii) that the making or funding of Eurodollar Loans become impracticable,

then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, the obligations of the Lenders to make Eurodollar Loans shall be suspended.

Section 10.3. *Increased Cost and Reduced Return.* (a) If, on or after the date hereof, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) or the L/C Issuer with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) shall subject any Lender (or its Lending Office) or the L/C Issuer to any tax, duty or other charge with respect to its Eurodollar Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligations owed to it or its obligation to make Eurodollar Loans, issue a Letter of Credit, or to participate therein, or shall change the basis of taxation of payments to any Lender (or its Lending Office) or the L/C Issuer of the principal of or interest on its Eurodollar Loans, Letter(s) of Credit, or participations therein or any other amounts due under this Agreement or any other Loan Document in respect of its Eurodollar Loans, Letter(s) of Credit, any participation therein, any Reimbursement Obligations owed to it, or its obligation to make Eurodollar Loans, or issue a Letter of Credit, or acquire participations therein (except for changes in the rate of tax on the overall net income of such Lender or its Lending Office or the L/C Issuer imposed by the jurisdiction in which such Lender's or the L/C Issuer's principal executive office or Lending Office is located); or

(ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding with respect to any Eurodollar Loans any such requirement included in an applicable Eurodollar Reserve Percentage) against assets of, deposits with or for the account of, or credit extended by, any Lender (or its Lending Office) or the L/C Issuer or shall impose on any Lender (or its Lending Office) or the L/C Issuer or on the interbank market any other condition affecting its Eurodollar Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligation owed to it, or its obligation to make Eurodollar Loans, or to issue a Letter of Credit, or to participate therein;

and the result of any of the foregoing is to increase the cost to such Lender (or its Lending Office) or the L/C Issuer of making or maintaining any Eurodollar Loan, issuing or maintaining a Letter of Credit, or participating therein, or to reduce the amount of any sum received or receivable by such Lender (or its Lending Office) or the L/C Issuer under this Agreement or under any other Loan Document with respect thereto, by an amount deemed by such Lender or L/C Issuer to be material, then, within 15 days after demand by such Lender or L/C Issuer (with a copy to the Administrative Agent), the Borrower shall be obligated to pay to such Lender or L/C Issuer such additional amount or amounts as will compensate such Lender or L/C Issuer for such increased cost or reduction.

(b) If, after the date hereof, any Lender, the L/C Issuer or the Administrative Agent shall have determined that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) or the L/C Issuer or any corporation controlling such Lender or L/C Issuer with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has had the effect of reducing the rate of return on such Lender's or L/C Issuer or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender or L/C Issuer or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or L/C Issuer's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender or L/C Issuer to be material, then from time to time, within 15 days after demand by such Lender or L/C Issuer (with a copy to the Administrative Agent), the Borrower shall pay to such Lender or L/C Issuer, as applicable, such additional amount or amounts as will compensate such Lender or L/C Issuer for such reduction.

(c) A certificate of a Lender or L/C Issuer claiming compensation under this Section 10.3 and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive if reasonably determined, absent manifest error. In determining such amount, such Lender or L/C Issuer may use any reasonable averaging and attribution methods.

Section 10.4. *Lending Offices.* Each Lender may, at its option, elect to make its Loans hereunder at the branch, office or affiliate specified on the appropriate signature page hereof (each a "*Lending Office*") for each type of Loan available hereunder or at such other of its branches, offices or affiliates as it may from time to time elect and designate in a written notice to the Borrower and the Administrative Agent. To the extent reasonably possible, a Lender shall designate an alternative branch or funding office with respect to its Eurodollar Loans to reduce any liability of the Borrower to such Lender under Section 10.3 hereof or to avoid the unavailability of Eurodollar Loans under Section 10.2 hereof, so long as such designation is not otherwise disadvantageous to the Lender.

Section 10.5. *Discretion of Lender as to Manner of Funding.* Notwithstanding any other provision of this Agreement, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it sees fit, it being understood, however, that for the purposes of this Agreement all determinations hereunder with respect to Eurodollar Loans shall be made as if each Lender had actually funded and maintained each Eurodollar Loan through the purchase of deposits in the interbank eurodollar market having a maturity corresponding to such Loan's Interest Period, and bearing an interest rate equal to LIBOR for such Interest Period.

SECTION 11. THE ADMINISTRATIVE AGENT.

Section 11.1. *Appointment and Authorization of Administrative Agent.* Each Lender and the L/C Issuer hereby appoints Bank of Montreal as the Administrative Agent under the Loan Documents and hereby authorizes the Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under the Loan Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto. The Lenders and

L/C Issuer expressly agree that the Administrative Agent is not acting as a fiduciary of the Lenders or the L/C Issuer in respect of the Loan Documents, the Borrower or otherwise, and nothing herein or in any of the other Loan Documents shall result in any duties or obligations on the Administrative Agent or any of the Lenders or L/C Issuer except as expressly set forth herein.

Section 11.2. Administrative Agent and its Affiliates. The Administrative Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any other Lender and may exercise or refrain from exercising such rights and power as though it were not the Administrative Agent, and the Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Affiliate of the Borrower as if it were not the Administrative Agent under the Loan Documents. The term "*Lender*" as used herein and in all other Loan Documents, unless the context otherwise clearly requires, includes the Administrative Agent in its as a Lender (if applicable).

Section 11.3. Action by Administrative Agent. If the Administrative Agent receives from the Borrower a written notice of an Event of Default pursuant to Section 8.5 hereof, the Administrative Agent shall promptly give each of the Lenders and L/C Issuer written notice thereof. The obligations of the Administrative Agent under the Loan Documents are only those expressly set forth therein. Without limiting the generality of the foregoing, the Administrative Agent shall not be required to take any action hereunder with respect to any Default or Event of Default, except as expressly provided in Sections 9.2 and 9.5. Upon the occurrence of an Event of Default, the Administrative Agent shall take such action to enforce its Lien on the Collateral and to preserve and protect the Collateral as may be directed by the Required Lenders. Unless and until the Required Lenders give such direction, the Administrative Agent may (but shall not be obligated to) take or refrain from taking such actions as it deems appropriate and in the best interest of all the Lenders and L/C Issuer. In no event, however, shall the Administrative Agent be required to take any action in violation of applicable law or of any provision of any Loan Document, and the Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder or under any other Loan Document unless it first receives any further assurances of its indemnification from the Lenders that it may require, including prepayment of any related expenses and any other protection it requires against any and all costs, expense, and liability which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall be entitled to assume that no Default or Event of Default exists unless notified in writing to the contrary by a Lender, the L/C Issuer, or the Borrower. In all cases in which the Loan Documents do not require the Administrative Agent to take specific action, the Administrative Agent shall be fully justified in using its discretion in failing to take or in taking any action thereunder. Any instructions of the Required Lenders, or of any other group of Lenders called for under the specific provisions of the Loan Documents, shall be binding upon all the Lenders and the holders of the Obligations.

Section 11.4. Consultation with Experts. The Administrative Agent may consult with legal counsel, independent public accountants, and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5. Liability of Administrative Agent; Credit Decision. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or not taken by it in connection with the Loan Documents: (i) with the consent or at the request of the Required Lenders or (ii) in the absence of its own gross negligence or willful misconduct. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify: (i) any statement, warranty or representation made in connection with this Agreement, any other Loan Document or any Credit Event; (ii) the performance or observance of any of the covenants or agreements of the Borrower or any Subsidiary contained herein or in any other Loan Document; (iii) the satisfaction of any condition specified in Section 7

hereof, except receipt of items required to be delivered to the Administrative Agent; or (iv) the validity, effectiveness, genuineness, enforceability, perfection, value, worth or collectibility hereof or of any other Loan Document or of any other documents or writing furnished in connection with any Loan Document or of any Collateral; and the Administrative Agent makes no representation of any kind or character with respect to any such matter mentioned in this sentence. The Administrative Agent may execute any of its duties under any of the Loan Documents by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, the L/C Issuer, the Borrower, or any other Person for the default or misconduct of any such agents or attorneys-in-fact selected with reasonable care. The Administrative Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, other document or statement (whether written or oral) believed by it to be genuine or to be sent by the proper party or parties. In particular and without limiting any of the foregoing, the Administrative Agent shall have no responsibility for confirming the accuracy of any compliance certificate or other document or instrument received by it under the Loan Documents. The Administrative Agent may treat the payee of any Obligation as the holder thereof until written notice of transfer shall have been filed with the Administrative Agent signed by such payee in form satisfactory to the Administrative Agent. Each Lender and L/C Issuer acknowledges that it has independently and without reliance on the Administrative Agent or any other Lender or L/C Issuer, and based upon such information, investigations and inquiries as it deems appropriate, made its own credit analysis and decision to extend credit to the Borrower in the manner set forth in the Loan Documents. It shall be the responsibility of each Lender and L/C Issuer to keep itself informed as to the creditworthiness of the Borrower and its Subsidiaries, and the Administrative Agent shall have no liability to any Lender or L/C Issuer with respect thereto.

Section 11.6. Indemnity. The Lenders shall ratably, in accordance with their respective Percentages, indemnify and hold the Administrative Agent, and its directors, officers, employees, agents, and representatives harmless from and against any liabilities, losses, costs or expenses suffered or incurred by it under any Loan Document or in connection with the transactions contemplated thereby, regardless of when asserted or arising, except to the extent they are promptly reimbursed for the same by the Borrower and except to the extent that any event giving rise to a claim was caused by the gross negligence or willful misconduct of the party seeking to be indemnified. The obligations of the Lenders under this Section shall survive termination of this Agreement. The Administrative Agent shall be entitled to offset amounts received for the account of a Lender under this Agreement against unpaid amounts due from such Lender to the Administrative Agent hereunder (whether as fundings of participations, indemnities or otherwise), but shall not be entitled to offset against amounts owed to the Administrative Agent by any Lender arising outside of this Agreement and the other Loan Documents.

Section 11.7. Resignation of Administrative Agent and Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders, the L/C Issuer, and the Borrower. Upon any such resignation of the Administrative Agent, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which may be any Lender hereunder or any commercial bank, or an Affiliate of a commercial bank, having an office in the United States of America and having a combined capital and surplus of at least \$200,000,000. Upon the acceptance of its appointment as the Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Administrative Agent under the Loan Documents, and the retiring Administrative Agent shall be discharged from its duties and obligations thereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 11 and all protective provisions of the other Loan Documents shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent, but no successor

Administrative Agent shall in any event be liable or responsible for any actions of its predecessor. If the Administrative Agent resigns and no successor is appointed, the rights and obligations of such Administrative Agent shall be automatically assumed by the Required Lenders and (i) the Borrower shall be directed to make all payments due each Lender and L/C Issuer hereunder directly to such Lender or L/C Issuer and (ii) the Administrative Agent's rights in the Collateral Documents shall be assigned without representation, recourse or warranty to the Lenders and L/C Issuer as their interests may appear.

Section 11.8. L/C Issuer and Swing Line Lender. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Swing Line Lender shall act on behalf of the Lenders with respect to the Swing Loans made hereunder. The L/C Issuer and the Swing Line Lender shall each have all of the benefits and immunities (i) provided to the Administrative Agent in this Section 11 with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the Applications pertaining to such Letters of Credit or by the Swing Line Lender in connection with Swing Loans made or to be made hereunder as fully as if the term "Administrative Agent", as used in this Section 11, included the L/C Issuer and the Swing Line Lender with respect to such acts or omissions and (ii) as additionally provided in this Agreement with respect to such L/C Issuer or Swing Line Lender, as applicable.

Section 11.9. Hedging Liability and Funds Transfer and Deposit Account Liability Arrangements. By virtue of a Lender's execution of this Agreement or an assignment agreement pursuant to Section 12.12 hereof, as the case may be, any Affiliate of such Lender with whom any Credit Party has entered into an agreement creating Hedging Liability or Funds Transfer and Deposit Account Liability shall be deemed a Lender party hereto for purposes of any reference in a Loan Document to the parties for whom the Administrative Agent is acting, it being understood and agreed that the rights and benefits of such Affiliate under the Loan Documents consist exclusively of such Affiliate's right to share in payments and collections out of the Collateral and the guaranties as more fully set forth in Section 3.1 hereof. In connection with any such distribution of payments and collections, or any request for the release of the guaranties and the Administrative Agent's Liens in connection with the termination of the Commitments and the payment in full of the Obligations, the Administrative Agent shall be entitled to assume no amounts are due to any Lender or its Affiliate with respect to Hedging Liability or Funds Transfer and Deposit Account Liability unless such Lender has notified the Administrative Agent in writing of the amount of any such liability owed to it or its Affiliate prior to such distribution or payment or release of guaranties and Liens.

Section 11.10. Designation of Additional Agents. The Administrative Agent shall have the continuing right, for purposes hereof, at any time and from time to time to designate one or more of the Lenders (and/or its or their Affiliates) as "syndication agents," "documentation agents," "book runners," "lead arrangers," "arrangers" or other designations for purposes hereto, but such designation shall have no substantive effect, and such Lenders and their Affiliates shall have no additional powers, duties or responsibilities as a result thereof.

Section 11.11. Authorization to Release or Subordinate or Limit Liens. The Administrative Agent is hereby irrevocably authorized by each of the Lenders and the L/C Issuer to (a) release any Lien covering any Collateral that is sold, transferred, or otherwise disposed of in accordance with the terms and conditions of this Agreement and the relevant Collateral Documents (including a sale, transfer, or disposition permitted by the terms of Section 8.10 hereof or which has otherwise been consented to in accordance with Section 12.13 hereof), (b) release or subordinate any Lien on Collateral consisting of goods financed with purchase money indebtedness or under a Capital Lease to the extent such Indebtedness is permitted by Sections 8.7(h) hereof, and (c) release Liens on the Collateral following termination or expiration of the Commitments and payment in full in cash of the Obligations and, if then due, Hedging Liability and Funds Transfer and Deposit Account Liability.

Section 11.12. Authorization to Enter into, and Enforcement of, the Collateral Documents. The Administrative Agent is hereby irrevocably authorized by each of the Lenders and the L/C Issuer to execute and deliver the Collateral Documents on behalf of each of the Lenders and their Affiliates and the L/C Issuer and to take such action and exercise such powers under the Collateral Documents as the Administrative Agent considers appropriate, *provided* the Administrative Agent shall not amend the Collateral Documents unless such amendment is agreed to in writing by the Required Lenders. Each Lender and L/C Issuer acknowledges and agrees that it will be bound by the terms and conditions of the Collateral Documents upon the execution and delivery thereof by the Administrative Agent. Except as otherwise specifically provided for herein, no Lender (or its Affiliates) or L/C Issuer, other than the Administrative Agent, shall have the right to institute any suit, action or proceeding in equity or at law for the foreclosure or other realization upon any Collateral or for the execution of any trust or power in respect of the Collateral or for the appointment of a receiver or for the enforcement of any other remedy under the Collateral Documents; it being understood and intended that no one or more of the Lenders (or their Affiliates) or L/C Issuer shall have any right in any manner whatsoever to affect, disturb or prejudice the Lien of the Administrative Agent (or any security trustee therefor) under the Collateral Documents by its or their action or to enforce any right thereunder, and that all proceedings at law or in equity shall be instituted, had, and maintained by the Administrative Agent (or its security trustee) in the manner provided for in the relevant Collateral Documents for the benefit of the Lenders, the L/C Issuer, and their Affiliates.

SECTION 12. MISCELLANEOUS.

Section 12.1. Withholding Taxes. (a) *Payments Free of Withholding.* Except as otherwise required by law and subject to Section 12.1(b) hereof, each payment by the Borrower under this Agreement or the other Loan Documents shall be made without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient) imposed by or within the jurisdiction in which the Borrower is domiciled, any jurisdiction from which the Borrower makes any payment, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Borrower shall make the withholding, pay the amount withheld to the appropriate governmental authority before penalties attach thereto or interest accrues thereon, and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by each Lender, the L/C Issuer, and the Administrative Agent free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which that Lender, L/C Issuer, or the Administrative Agent (as the case may be) would have received had such withholding not been made. If the Administrative Agent, the L/C Issuer, or any Lender pays any amount in respect of any such taxes, penalties or interest, the Borrower shall reimburse the Administrative Agent, the L/C Issuer, or such Lender for that payment on demand in the currency in which such payment was made. If the Borrower pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to the Lender, the L/C Issuer or Administrative Agent on whose account such withholding was made (with a copy to the Administrative Agent if not the recipient of the original) on or before the thirtieth day after payment.

(b) *U.S. Withholding Tax Exemptions.* Each Lender or L/C Issuer that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall submit to the Borrower and the Administrative Agent on or before the date the initial Credit Event is made hereunder or, if later, the date such financial institution becomes a Lender or L/C Issuer hereunder, two duly completed and signed copies of (i) either Form W-8 BEN (relating to such Lender or L/C Issuer and entitling it to a complete exemption from withholding under the Code on all amounts to be received by such Lender or L/C Issuer, including fees, pursuant to the Loan Documents and the Obligations) or Form W-8 ECI (relating to all amounts to be received by such Lender or L/C Issuer, including fees, pursuant to the Loan Documents and the Obligations) of the United States Internal Revenue Service or (ii) solely if such Lender is claiming exemption from United States withholding tax under Section 871(h) or 881(c)

of the Code with respect to payments of "portfolio interest", a Form W-8 BEN, or any successor form prescribed by the Internal Revenue Service, and a certificate representing that such Lender is not a bank for purposes of Section 881(c) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3) (B) of the Code) of the Borrower and is not a controlled foreign corporation related to the Borrower (within the meaning of Section 864(d)(4) of the Code). Thereafter and from time to time, each Lender and L/C Issuer shall submit to the Borrower and the Administrative Agent such additional duly completed and signed copies of one or the other of such Forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) and such other certificates as may be (i) requested by the Borrower in a written notice, directly or through the Administrative Agent, to such Lender or L/C Issuer and (ii) required under then-current United States law or regulations to avoid or reduce United States withholding taxes on payments in respect of all amounts to be received by such Lender or L/C Issuer, including fees, pursuant to the Loan Documents or the Obligations. Upon the request of the Borrower or the Administrative Agent, each Lender and L/C Issuer that is a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall submit to the Borrower and the Administrative Agent a certificate to the effect that it is such a United States person.

(c) *Inability of Lender to Submit Forms.* If any Lender or L/C Issuer determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is unable to submit to the Borrower or the Administrative Agent any form or certificate that such Lender or L/C Issuer is obligated to submit pursuant to subsection (b) of this Section 12.1 or that such Lender or L/C Issuer is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Lender or L/C Issuer shall promptly notify the Borrower and Administrative Agent of such fact and the Lender or L/C Issuer shall to that extent not be obligated to provide any such form or certificate and will be entitled to withdraw or cancel any affected form or certificate, as applicable.

Section 12.2. No Waiver, Cumulative Remedies. No delay or failure on the part of the Administrative Agent, the L/C Issuer, or any Lender, or on the part of the holder or holders of any of the Obligations, in the exercise of any power or right under any Loan Document shall operate as a waiver thereof or as an acquiescence in any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The rights and remedies hereunder of the Administrative Agent, the L/C Issuer, the Lenders, and of the holder or holders of any of the Obligations are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have.

Section 12.3. Non-Business Days. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment shall be extended to the next succeeding Business Day on which date such payment shall be due and payable. In the case of any payment of principal falling due on a day which is not a Business Day, interest on such principal amount shall continue to accrue during such extension at the rate per annum then in effect, which accrued amount shall be due and payable on the next scheduled date for the payment of interest.

Section 12.4. Documentary Taxes. The Borrower agrees to pay on demand any documentary, stamp or similar taxes payable in respect of this Agreement or any other Loan Document, including interest and penalties, in the event any such taxes are assessed, irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

Section 12.5. Survival of Representations. All representations and warranties made herein or in any other Loan Document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Agreement and the other Loan Documents, and shall continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 12.6. Survival of Indemnities. All indemnities and other provisions relative to reimbursement to the Lenders and L/C Issuer of amounts sufficient to protect the yield of the Lenders and L/C Issuer with respect to the Loans and Letters of Credit, including, but not limited to, Sections 1.11, 10.3, and 12.15 hereof, shall survive the termination of this Agreement and the other Loan Documents and the payment of the Obligations.

Section 12.7. Sharing of Set-Off. Each Lender agrees with each other Lender a party hereto that if such Lender shall receive and retain any payment, whether by set-off or application of deposit balances or otherwise, on any of the Loans or Reimbursement Obligations in excess of its ratable share of payments on all such Obligations then outstanding to the Lenders, then such Lender shall purchase for cash at face value, but without recourse, ratably from each of the other Lenders such amount of the Loans or Reimbursement Obligations, or participations therein, held by each such other Lenders (or interest therein) as shall be necessary to cause such Lender to share such excess payment ratably with all the other Lenders; *provided, however*, that if any such purchase is made by any Lender, and if such excess payment or part thereof is thereafter recovered from such purchasing Lender, the related purchases from the other Lenders shall be rescinded ratably and the purchase price restored as to the portion of such excess payment so recovered, but without interest. For purposes of this Section, amounts owed to or recovered by the L/C Issuer in connection with Reimbursement Obligations in which Lenders have been required to fund their participation shall be treated as amounts owed to or recovered by the L/C Issuer as a Lender hereunder.

Section 12.8. Notices. Except as otherwise specified herein, all notices hereunder and under the other Loan Documents shall be in writing (including, without limitation, notice by telecopy) and shall be given to the relevant party at its address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the Administrative Agent and the Borrower given by courier, by United States certified or registered mail, by telecopy or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices under the Loan Documents to any Lender shall be addressed to its address or telecopier number set forth on its Administrative Questionnaire; and notices under the Loan Documents to the Borrower, the Administrative Agent, or L/C Issuer shall be addressed to its respective address or telecopier number set forth below:

to the Borrower (or any Guarantor):

Fifth Street Finance Corp.
445 Hamilton Avenue, 12th Floor
White Plains, New York 10601
Attention: Leonard Tannenbaum
Telephone: (914) 286-6800
Telecopy: (914) 328-4214

to the Administrative Agent and L/C Issuer:

Bank of Montreal
111 West Monroe Street
Chicago, Illinois 60603
Attention: Catherine Grycz
Telephone: (312) 461-7875
Telecopy: (312) 765-8382

Each such notice, request or other communication shall be effective (i) if given by telecopier, when such telecopy is transmitted to the telecopier number specified in this Section or in the relevant Administrative Questionnaire and a confirmation of such telecopy has been received by the sender, (ii) if given by mail, 5 days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section or in the relevant Administrative Questionnaire; *provided* that any notice given pursuant to Section 1 hereof shall be effective only upon receipt.

Section 12.9. Counterparts. This Agreement may be executed in any number of counterparts, and by the different parties hereto on separate counterpart signature pages, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

Section 12.10. Successors and Assigns. This Agreement shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of the Administrative Agent, the L/C Issuer, and each of the Lenders, and the benefit of their respective successors and assigns, including any subsequent holder of any of the Obligations. The Borrower may not assign any of its rights or obligations under any Loan Document without the written consent of all of the Lenders and, with respect to any Letter of Credit or the Application therefor, the L/C Issuer.

Section 12.11. Participants. Each Lender shall have the right at its own cost to grant participations (to be evidenced by one or more agreements or certificates of participation) in the Loans made and Reimbursement Obligations and/or Commitments held by such Lender at any time and from time to time to one or more other Persons; provided that no such participation shall relieve any Lender of any of its obligations under this Agreement, and, provided, further that no such participant shall have any rights under this Agreement except as provided in this Section, and the Administrative Agent shall have no obligation or responsibility to such participant. Any agreement pursuant to which such participation is granted shall provide that the granting Lender shall retain the sole right and responsibility to enforce the obligations of the Borrower under this Agreement and the other Loan Documents including, without limitation, the right to approve any amendment, modification or waiver of any provision of the Loan Documents, except that such agreement may provide that such Lender will not agree to any modification, amendment or waiver of the Loan Documents that would reduce the amount of or postpone any fixed date for payment of any Obligation in which such participant has an interest. Any party to which such a participation has been granted shall have the benefits of Section 1.11 and Section 10.3 hereof. The Borrower authorizes each Lender to disclose to any participant or prospective participant under this Section any financial or other information pertaining to the Borrower or any Subsidiary.

Section 12.12. Assignments. (a) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts.* (A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans and participation interest in L/C Obligations at the time owing to it 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 (B) in any case not described in subsection (a)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans and participation interest in L/C Obligations outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans and participation interest in L/C Obligations of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Effective Date" is specified in the Assignment and Acceptance, as of the Effective Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit, 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);

(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 Loan or the Commitment assigned.

(iii) *Required Consents.* No consent shall be required for any assignment except to the extent required by Section 12.12(a)(i)(B) and, in addition:

(a) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at

the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(b) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of the Revolving Credit if such assignment is to a Person that is not a Lender with a Commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(c) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(d) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Swing Loans (whether or not then outstanding).

(iv) *Assignment and Acceptance.* The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500, and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) *No Assignment to Borrower or Parent.* No such assignment shall be made to the Borrower or any of its Affiliates or Subsidiaries.

(vi) *No Assignment to Natural Persons.* No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 12.12(b) hereof, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 12.6 and 12.15 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 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 12.11 hereof.

(b) *Register.* The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Chicago, Illinois, a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal 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. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(c) Any Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any such pledge or grant to a Federal Reserve Bank, and this Section shall not apply to any such pledge or grant of a security interest; *provided* that no such pledge or grant of a security interest shall release a Lender from any of

its obligations hereunder or substitute any such pledgee or secured party for such Lender as a party hereto; *provided further, however*, the right of any such pledgee or grantee (other than any Federal Reserve Bank) to further transfer all or any portion of the rights pledged or granted to it, whether by means of foreclosure or otherwise, shall be at all times subject to the terms of this Agreement.

(d) Notwithstanding anything to the contrary herein, if at any time the Swing Line Lender assigns all of its Revolving Credit Commitments and Revolving Loans pursuant to subsection (a) above, the Swing Line Lender may terminate the Swing Line. In the event of such termination of the Swing Line, the Borrower shall be entitled to appoint another Lender to act as the successor Swing Line Lender hereunder (with such Lender's consent); *provided, however*, that the failure of the Borrower to appoint a successor shall not affect the resignation of the Swing Line Lender. If the Swing Line Lender terminates the Swing Line, it shall retain all of the rights of the Swing Line Lender provided hereunder with respect to Swing Loans made by it and outstanding as of the effective date of such termination, including the right to require Lenders to make Revolving Loans or fund participations in outstanding Swing Loans pursuant to Section 1.6 hereof.

Section 12.13. Amendments. Any provision of this Agreement or the other Loan Documents may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by (a) the Borrower, (b) the Required Lenders, and (c) if the rights or duties of the Administrative Agent, the L/C Issuer, or the Swing Line Lender are affected thereby, the Administrative Agent, the L/C Issuer, or the Swing Line Lender, as applicable; provided that:

(i) no amendment or waiver pursuant to this Section 12.13 shall (A) increase any Commitment of any Lender without the consent of such Lender, (B) reduce the amount of or postpone the date for any scheduled payment of any principal of or interest on any Loan or of any Reimbursement Obligation or of any fee payable hereunder without the consent of the Lender to which such payment is owing or which has committed to make such Loan or Letter of Credit (or participate therein) hereunder, or (C) alter the pro rata sharing of payments and collections provided for in Sections 3.1 and 12.7 hereof without the consent of the affected Lender; and

(ii) no amendment or waiver pursuant to this Section 12.13 shall, unless signed by Lender whose outstanding Loans and interests in Letters of Credit and Unused Revolving Credit Commitments constitute 66²/₃% or more of the sum of the total outstanding Loans, interests in Letters of Credit, and Unused Revolving Credit Commitments of the Lenders, amend the definition of Advance Rate, Borrowing Base or limits on the Portfolio Investments contained therein so as to make more credit available hereunder; and

(iii) no amendment or waiver pursuant to this Section 12.13 shall, unless signed by each Lender, extend the Revolving Credit Termination Date, change the definition of Required Lenders, change the provisions of this Section 12.13, release any material guarantor or all or substantially all of the Collateral (except as otherwise provided for in the Loan Documents), or affect the number of Lenders required to take any action hereunder or under any other Loan Document.

Section 12.14. Headings. Section headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

Section 12.15. Costs and Expenses; Indemnification. (a) The Borrower agrees to pay all costs and expenses of the Administrative Agent in connection with the preparation, negotiation, and administration (excluding internal overhead costs of the Administrative Agent) of the Loan Documents, including, without limitation, the reasonable fees and disbursements of counsel to the Administrative Agent, in connection with the preparation and execution of the Loan Documents (not to exceed \$75,000 plus out-of-pocket costs and expenses of attorneys' fees of the Administrative Agent in connection with the Loan Documents delivered on the Closing Date), and any amendment, waiver or consent related thereto, whether or not the transactions contemplated herein are consummated,

together with any fees and charges suffered or incurred by the Administrative Agent in connection with periodic collateral filing fees and lien searches; *provided* that, absent a Default or Event of Default, the Borrower shall only be required to reimburse the Administrative Agent for lien searches once per calendar year. For clarity, the Borrower shall not be responsible for any costs incurred by any Lender in connection with its assignment or participation of rights under the Loan Documents (except as otherwise provided for in Section 1.13 hereof). The Borrower agrees to pay to the Administrative Agent, the L/C Issuer, and each Lender, and any other holder of any Obligations outstanding hereunder, all costs and expenses reasonably incurred or paid by the Administrative Agent, the L/C Issuer, such Lender, or any such holder, including reasonable attorneys' fees and disbursements and court costs, in connection with any Default or Event of Default hereunder or in connection with the enforcement of any of the Loan Documents (including all such costs and expenses incurred in connection with any proceeding under the United States Bankruptcy Code involving the Borrower or any Guarantor as a debtor thereunder). The Borrower further agrees to indemnify the Administrative Agent, the L/C Issuer, each Lender, and any security trustee therefor, and their respective directors, officers, employees, agents, financial advisors, and consultants (each such Person being called an "*Indemnitee*") against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all reasonable fees and disbursements of counsel for any such Indemnitee and all reasonable expenses of litigation or preparation therefor, whether or not the Indemnitee is a party thereto, or any settlement arrangement arising from or relating to any such litigation) which any of them may pay or incur arising out of or relating to any Loan Document or any of the transactions contemplated thereby or the direct or indirect application or proposed application of the proceeds of any Loan or Letter of Credit, other than those which arise from the gross negligence or willful misconduct of the party claiming indemnification. The Borrower, upon demand by the Administrative Agent, the L/C Issuer, or a Lender at any time, shall reimburse the Administrative Agent, the L/C Issuer, or such Lender for any legal or other expenses (including, without limitation, all reasonable fees and disbursements of counsel for any such Indemnitee) incurred in connection with investigating or defending against any of the foregoing (including any settlement costs relating to the foregoing) except if the same is directly due to the gross negligence or willful misconduct of the party to be indemnified. To the 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 or the other Loan Documents or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. The obligations of the Borrower under this Section shall survive the termination of this Agreement.

(b) The Borrower unconditionally agrees to forever indemnify, defend and hold harmless, and covenants not to sue for any claim for contribution against, each Indemnitee for any damages, costs, loss or expense, including without limitation, response, remedial or removal costs and all fees and disbursements of counsel for any such Indemnitee, arising out of any of the following: (i) any presence, release, threatened release or disposal of any hazardous or toxic substance or petroleum by the Borrower or any Subsidiary or otherwise occurring on or with respect to its Property (whether owned or leased), (ii) the operation or violation of any environmental law, whether federal, state, or local, and any regulations promulgated thereunder, by the Borrower or any Subsidiary or otherwise occurring on or with respect to its Property (whether owned or leased), (iii) any claim for personal injury or property damage in connection with the Borrower or any Subsidiary or otherwise occurring on or with respect to its Property (whether owned or leased), and (iv) the inaccuracy or breach of any environmental representation, warranty or covenant by the Borrower or any Subsidiary made herein or in any other Loan Document evidencing or securing any Obligations or setting forth terms and conditions applicable thereto or otherwise relating thereto, except for damages arising from the willful misconduct or gross negligence of the relevant Indemnitee. This indemnification shall survive the payment and satisfaction

of all Obligations and the termination of this Agreement, and shall remain in force beyond the expiration of any applicable statute of limitations and payment or satisfaction in full of any single claim under this indemnification. This indemnification shall be binding upon the successors and assigns of the Borrower and shall inure to the benefit of each Indemnitee and its successors and assigns.

Section 12.16. Set-off. In addition to any rights now or hereafter granted under the Loan Documents or applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default, each Lender, the L/C Issuer, each subsequent holder of any Obligation, and each of their respective affiliates, is hereby authorized by the Borrower at any time or from time to time, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, to set-off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured, and in whatever currency denominated, but not including trust accounts) and any other indebtedness at any time held or owing by that Lender, L/C Issuer, subsequent holder, or affiliate, to or for the credit or the account of the Borrower, whether or not matured, against and on account of the Obligations of the Borrower to that Lender, L/C Issuer, or subsequent holder under the Loan Documents, including, but not limited to, all claims of any nature or description arising out of or connected with the Loan Documents, irrespective of whether or not (a) that Lender, L/C Issuer, or subsequent holder shall have made any demand hereunder or (b) the principal of or the interest on the Loans and other amounts due hereunder shall have become due and payable pursuant to Section 9 and although said obligations and liabilities, or any of them, may be contingent or unmatured.

Section 12.17. Entire Agreement. The Loan Documents constitute the entire understanding of the parties thereto with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

Section 12.18. Governing Law. This Agreement and the other Loan Documents (except as otherwise specified therein), and the rights and duties of the parties hereto, shall be construed and determined in accordance with the internal laws of the State of Illinois.

Section 12.19. Severability of Provisions. Any provision of any Loan Document which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Agreement and the other Loan Documents may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Agreement and other Loan Documents are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Agreement or the other Loan Documents invalid or unenforceable.

Section 12.20. Excess Interest. Notwithstanding any provision to the contrary contained herein or in any other Loan Document, no such provision shall require the payment or permit the collection of any amount of interest in excess of the maximum amount of interest permitted by applicable law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the Loans or other obligations outstanding under this Agreement or any other Loan Document ("*Excess Interest*"). If any Excess Interest is provided for, or is adjudicated to be provided for, herein or in any other Loan Document, then in such event (a) the provisions of this Section shall govern and control, (b) neither the Borrower nor any guarantor or endorser shall be obligated to pay any Excess Interest, (c) any Excess Interest that the Administrative Agent or any Lender may have received hereunder shall, at the option of the Administrative Agent, be (i) applied as a credit against the then outstanding principal amount of Obligations hereunder and accrued and unpaid interest thereon (not to exceed the maximum amount permitted by applicable law), (ii) refunded to the Borrower, or (iii) any combination of the foregoing, (d) the interest rate payable hereunder or under any other Loan Document shall be

automatically subject to reduction to the maximum lawful contract rate allowed under applicable usury laws (the "*Maximum Rate*"), and this Agreement and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in the relevant interest rate, and (e) neither the Borrower nor any guarantor or endorser shall have any action against the Administrative Agent or any Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest. Notwithstanding the foregoing, if for any period of time interest on any of Borrower's Obligations is calculated at the Maximum Rate rather than the applicable rate under this Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on the Borrower's Obligations shall remain at the Maximum Rate until the Lenders have received the amount of interest which such Lenders would have received during such period on the Borrower's Obligations had the rate of interest not been limited to the Maximum Rate during such period.

Section 12.21. Construction. The parties acknowledge and agree that the Loan Documents shall not be construed more favorably in favor of any party hereto based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation of the Loan Documents. The provisions of this Agreement relating to Subsidiaries shall only apply during such times as the Borrower has one or more Subsidiaries. NOTHING CONTAINED HEREIN SHALL BE DEEMED OR CONSTRUED TO PERMIT ANY ACT OR OMISSION WHICH IS PROHIBITED BY THE TERMS OF ANY COLLATERAL DOCUMENT, THE COVENANTS AND AGREEMENTS CONTAINED HEREIN BEING IN ADDITION TO AND NOT IN SUBSTITUTION FOR THE COVENANTS AND AGREEMENTS CONTAINED IN THE COLLATERAL DOCUMENTS.

Section 12.22. Lender's and L/C Issuer's Obligations Several. The obligations of the Lenders and L/C Issuer hereunder are several and not joint. Nothing contained in this Agreement and no action taken by the Lenders or L/C Issuer pursuant hereto shall be deemed to constitute the Lenders and L/C Issuer a partnership, association, joint venture or other entity.

Section 12.23. Submission to Jurisdiction; Waiver of Jury Trial. The Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of Illinois and of any Illinois State court sitting in the City of Chicago for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. THE BORROWER, THE ADMINISTRATIVE AGENT, THE L/C ISSUER, AND THE LENDERS HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

Section 12.24. USA Patriot Act. Each Lender and L/C Issuer that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Act*") hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify, and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or L/C Issuer to identify the Borrower in accordance with the Act.

Section 12.25. Confidentiality. Each of the Administrative Agent, the Lenders, and the L/C Issuer severally agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors to the extent any such Person has a need to know such Information (it being understood that the Persons to whom such disclosure is made will first 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 (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 suit, 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 (A) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary and its obligations, (g) with the prior written consent of the Borrower, (h) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Lender or the L/C Issuer on a non-confidential basis from a source other than the Borrower or any Subsidiary or any of their directors, officers, employees or agents, including accountants, legal counsel and other advisors, (i) to rating agencies if requested or required by such agencies in connection with a rating relating to the Loans or Commitments hereunder, or (j) to entities which compile and publish information about the syndicated loan market, *provided* that only basic information about the pricing and structure of the transaction evidenced hereby may be disclosed pursuant to this subsection (j). For purposes of this Section, "*Information*" means all information received from the Borrower or any of the Subsidiaries or from any other Person on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries or from any other Person on behalf of the Borrower or any of the Subsidiaries.

[SIGNATURE PAGES TO FOLLOW]

"BORROWER"

FIFTH STREET FINANCE CORP.

By /s/ BERNANRD D. BERMAN

Name Bernard D. Berman
Title Executive Vice President

"ADMINISTRATIVE AGENT AND L/C ISSUER"

BANK OF MONTREAL, as L/C Issuer and as Administrative Agent

By /s/ SCOTT M. FERRIS

Name Scott M. Ferris
Title Managing Director

"LENDERS"

BMO CAPITAL MARKETS FINANCING, INC.

By /s/ SCOTT M. FERRIS

Name Scott M. Ferris
Title Managing Director

GUARANTEE AND SECURITY AGREEMENT

GUARANTEE AND SECURITY AGREEMENT dated as of January 15, 2008, among FIFTH STREET FINANCE CORP., a corporation duly organized and validly existing under the laws of the State of Delaware (the "*Borrower*"), each entity that becomes a "GUARANTOR" after the date hereof pursuant to Section 5.4 hereof (collectively, the "*Guarantors*" and, together with the Borrower, the "*Obligors*"), and BANK OF MONTREAL, as administrative agent under the Credit Agreement for the Secured Parties referred to below (in such capacity, together with its successors in such capacity, the "*Agent*").

PRELIMINARY STATEMENTS

A. Concurrently with the execution and delivery of this Agreement the Borrower, certain lenders and letter of credit issuer(s), and the Agent are entering into a Credit Agreement dated as of the date hereof (the "*Credit Agreement*"), pursuant to which such lenders have agreed to extend credit to the Borrower from time to time.

B. To induce such lenders and letter of credit issuer(s) to extend credit to the Borrower under the Credit Agreement, (a) the Guarantors have agreed to guarantee the payment of the Guaranteed Obligations (as hereinafter defined), and (b) the Borrower and the Guarantors have agreed to provide collateral security for the Secured Obligations (as hereinafter defined).

D. The Obligors are engaged in related businesses and integrated to such an extent that the financial strength and flexibility of the Borrower has a direct impact on the success of each Guarantor. Each Guarantor will derive substantial direct and indirect benefit from the extensions of credit hereunder and the execution and delivery of this Agreement (or an Guarantee Assumption Agreement as provided for herein), and the performance of such Guarantor's obligations hereunder, is necessary or convenient to the conduct, promotion or attainment of such Guarantor's business.

NOW THEREFORE, the parties hereto agree as follows:

SECTION 1. DEFINITIONS, ETC.

Section 1.1. Certain Uniform Commercial Code Terms. As used herein, the terms "Account", "Chattel Paper", "Commercial Tort Claims", "Commodity Account", "Commodity Contract", "Deposit Account", "Document", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangible", "Goods", "Instrument", "Inventory", "Investment Property", "Letter-of-Credit Right", "Payment Intangibles", "Proceeds", "Promissory Note", and "Tangible Chattel Paper" have the respective meanings set forth in Article 9 of the ILUCC, and the terms "Certificated Security", "Clearing Corporation", "Entitlement Holder", "Financial Asset", "Indorsement", "Securities Account", "Security", "Security Entitlement" and "Uncertificated Security" have the respective meanings set forth in Article 8 of the ILUCC.

Section 1.2. Additional Definitions. Except as otherwise provided herein, all capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement. In addition, as used herein:

"*Agent Members*" means members of, or participants in, a depository, including the Depository, Euroclear or Clearstream.

"*Clearing Corporation Security*" means a security that is registered in the name of, or indorsed to, a Clearing Corporation or its nominee or is in the possession of the Clearing Corporation in bearer form or Indorsed in blank by an appropriate Person.

"*Clearstream*" means Clearstream Banking, société anonyme, a corporation organized under the laws of the Grand Duchy of Luxembourg.

"*Clearstream Security*" means a Security that (a) is a debt or equity security and (b) is capable of being transferred to an Agent Member's account at Clearstream pursuant to the definition of "Delivery", whether or not such transfer has occurred.

"*Collateral*" has the meaning assigned to such term in Section 4.

"*Control*" means "control" as defined in Section 9-104, 9-105, 9-106 or 9-107 of the ILUCC.

"*Credit Agreement Obligations*" means all Obligations as defined in the Credit Agreement, whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired, and including all interest and expenses accrued or incurred subsequent to the commencement of any bankruptcy or insolvency proceeding with respect to any Obligor, whether or not such interest or expenses are allowed as a claim in such proceeding.

"*Custodian*" means a bank or other company whose functions and physical facilities are supervised by Federal or State authority selected by the Borrower and reasonably acceptable to the Agent who shall act as custodian holding Portfolio Investments on behalf of the Obligors, or any successor in such capacity. The term "Custodian" includes any agent or sub-custodian acting on behalf of the Custodian.

"*Debt Documents*" means, collectively, the Credit Agreement and the Loan Documents relating thereto, any agreements evidencing or relating to any Funds Transfer and Deposit Account Liability, and any Hedging Agreement evidencing or relating to any Hedging Liability.

"*Deliver*", "*Delivered*" or "*Delivery*" (whether to the Agent or otherwise) means, with respect to any Portfolio Investment or other Collateral, that such Portfolio Investment or other Collateral is covered by a recorded UCC-1 financing statement perfecting the Agent's security interest therein and within thirty (30) days of the date hereof is held or registered as described below, in each case in a manner satisfactory to the Agent:

(a) subject to clause (l) below, in the case of each Certificated Security (other than a U.S. Government Security, Clearing Corporation Security, Euroclear Security or Clearstream Security), that such Certificated Security is (i) in the possession of the Custodian and registered in the name of the Custodian (or its nominee) or Indorsed in blank and the Custodian has either (A) agreed in documentation reasonably satisfactory to the Agent to hold such Certificated Security as bailee on behalf of the Agent or (B) credited the same to a Securities Account for which the Custodian is a Securities Intermediary and has agreed that such Certificated Security constitutes a Financial Asset and that the Agent has Control over such Securities Account or (ii) if required by the Agent after the occurrence and during the continuation of any Event of Default, in the possession of the Agent and registered in the name of the Agent (or its nominee) or Indorsed to the Agent or in blank;

(b) subject to clause (l) below, in the case of each Instrument, that such Instrument is (i) in the possession of the Custodian and indorsed to the Custodian or in blank and where the Custodian has agreed in documentation reasonably satisfactory to the Agent to hold such Instrument as bailee on behalf of the Agent or (ii) if required by the Agent after the occurrence and during the continuation of any Event of Default, in the possession of the Agent and indorsed to the Agent or in blank;

(c) subject to clause (l) below, in the case of each Uncertificated Security (other than a U.S. Government Security, Clearing Corporation Security, Euroclear Security or Clearstream Security), that such Uncertificated Security is (i) registered on the books of the issuer thereof to the Custodian (or its nominee) under an arrangement where the Custodian has credited the same to a Securities Account for which the Custodian is a Securities Intermediary and has

agreed that such Uncertificated Security constitutes a Financial Asset and that the Agent has Control over such Securities Account, or (ii) if required by the Agent after the occurrence and during the continuation of any Event of Default, registered on the books of the issuer thereof to the Agent (or its nominee); *provided* that, unless such Uncertificated Security is included by the Borrower in the Borrowing Base, absent an Event of Default the relevant Obligor shall not be required to comply with this clause (c);

(d) subject to clause (l) below, in the case of each Clearing Corporation Security, that such Clearing Corporation Security is (i) credited to a Securities Account of the Custodian at such Clearing Corporation (and, if a Certificated Security, so held in the possession of such Clearing Corporation, or of an agent or custodian on its behalf) and the Security Entitlement of the Custodian in such Clearing Corporation Securities Account has been credited by the Custodian to a Securities Account for which the Custodian is a Securities Intermediary under an arrangement where the Custodian has agreed that such Security constitutes a Financial Asset and that the Agent has Control over such Securities Account or (ii) if required by the Agent after the occurrence and during the continuation of any Event of Default, credited to a Securities Account of the Agent at such Clearing Corporation (and, if such Clearing Corporation Security is a Certificated Security, that the same is in the possession of such Clearing Corporation);

(e) in the case of each Euroclear Security and Clearstream Security, that the actions described in clause (d) above have been taken with respect to such Security as if such Security were a Clearing Corporation Security and Euroclear and Clearstream were Clearing Corporations; *provided*, that such additional actions shall have been taken as shall be necessary under the law of Belgium (in the case of Euroclear) and Luxembourg (in the case of Clearstream) to accord the Agent rights substantially equivalent to Control over such Security under the ILUCC;

(f) in the case of each U.S. Government Security, that such U.S. Government Security is (i) credited to a Securities Account of the Custodian at a Federal Reserve Bank and the Security Entitlement of the Custodian in such Federal Reserve Bank Securities Account has been credited by the Custodian to a Securities Account for which the Custodian is a Securities Intermediary under an arrangement where the Custodian has agreed that such U.S. Government Security constitutes a Financial Asset and that the Agent has Control over such Securities Account or (ii) if required by the Agent after the occurrence and during the continuation of any Event of Default, credited to a securities account of the Agent at a Federal Reserve Bank;

(g) in the case of any Tangible Chattel Paper, that the original of such Tangible Chattel Paper is (i) in the possession of the Custodian in the United States under an arrangement where the Custodian has agreed to hold such Tangible Chattel Paper as bailee on behalf of the Agent, and in each case any agreements that constitute or evidence such Tangible Chattel Paper is free of any marks or notations indicating that it is then pledged, assigned or otherwise conveyed to any Person other than the Agent or (ii) if required by the Agent after the occurrence and during the continuation of any Event of Default, in the possession of the Agent in the United States;

(h) in the case of each General Intangible (including any participation in a debt obligation) of an Obligor organized in the United States, that such General Intangible falls within the collateral description of a UCC-1 financing statement, naming the relevant Obligor as debtor and the Agent as secured party and filed in the jurisdiction of organization of such relevant Obligor; *provided* that in the case of a participation in a debt obligation where such participation obligation is evidenced by an Instrument, either (i) such Instrument is in the

possession of the applicable participating institution in the United States, and such participating institution has agreed that it holds possession of such Instrument for the benefit of the Agent (or for the benefit of the Custodian, and the Custodian has agreed that it holds the interest in such Instrument as bailee on behalf of the Agent) or (ii) such Instrument is in the possession of the applicable participating institution outside of the United States and such participating institution (and, if applicable, the obligor that issued such Instrument) has taken such actions as shall be necessary under the law of the jurisdiction where such Instrument is physically located to accord the Agent rights equivalent to Control over such Instrument under the ILUCC;

(i) in the case of each General Intangible (including any participation in a debt obligation) of an Obligor not organized in the United States, that such Obligor shall have taken such action as shall be necessary to accord the Agent rights substantially equivalent to a perfected first-priority security interest in such General Intangible under the ILUCC;

(j) in the case of any Deposit Account or Securities Account, that the bank or Securities Intermediary at which such Deposit Account or Securities Account, as applicable, is located has agreed that the Agent has Control over such Deposit Account or Securities Account, or that such Deposit Account or Securities Account is in the name of the Custodian and the Custodian has credited its rights in respect of such Deposit Account or Securities Account (the "*Underlying Accounts*") to a Securities Account for which the Custodian is a Securities Intermediary under an arrangement where the Custodian has agreed that the rights of the Custodian in such Underlying Accounts constitute a Financial Asset and that the Agent has Control over such Securities Account;

(k) in the case of any money (regardless of currency), that such money has been credited to a Deposit Account over which the Agent has Control as described in clause (j) above;

(l) in the case of any Certificated Security, Uncertificated Security, Instrument or Special Equity Interest issued by a Person organized outside of the United States, that such additional actions shall have been taken as shall be necessary under applicable law to accord the Agent rights substantially equivalent to those accorded to a secured party under the ILUCC that has possession or control of such Certificated Security, Uncertificated Security, Instrument or Special Equity Interest; and

(m) in the case of each Portfolio Investment not of a type covered by the foregoing clauses (a) through (l) that such Portfolio Investment has been transferred to the Agent in accordance with applicable law and regulation.

"*Depository*" means The Depository Trust Company, its nominees and their respective successors.

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

"*Euroclear*" means Euroclear Bank, S.A., as operator of the Euroclear system.

"*Euroclear Security*" means a Security that (a) is a debt or equity Security and (b) is capable of being transferred to an Agent Member's account at Euroclear, whether or not such transfer has occurred.

"*Funds Transfer and Deposit Account Agreement Obligations*" means, collectively, all Funds Transfer and Deposit Account Liability as defined in the Credit Agreement, whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and

howsoever evidenced, held or acquired, and including all interest and expenses accrued or incurred subsequent to the commencement of any bankruptcy or insolvency proceeding with respect to any Obligor, whether or not such interest or expenses are allowed as a claim in such proceeding.

"Governmental Authority" means the government of the United States of America, or of any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee Assumption Agreement" means a Guarantee Assumption Agreement substantially in the form of Exhibit A, between the Agent and an entity that, pursuant to Section 5.4, is required to become a "Guarantor" hereunder (with such changes as the Agent shall reasonably request, consistent with the requirements of Section 5.4).

"Guaranteed Obligation" means, collectively, the Credit Agreement Obligations, Funds Transfer and Deposit Account Agreement Obligations, and the Hedging Agreement Obligations.

"Hedging Agreement Obligations" means, collectively, all Hedging Liability as defined in the Credit Agreement, whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired, and including all interest and expenses accrued or incurred subsequent to the commencement of any bankruptcy or insolvency proceeding with respect to any Obligor, whether or not such interest or expenses are allowed as a claim in such proceeding.

"ILUCC" means the Uniform Commercial Code as in effect from time to time in the State of Illinois.

"Indorsed" means, with respect to any Certificated Security, that such Certificated Security has been assigned or transferred to the applicable transferee pursuant to an effective Indorsement.

"Investment" means, for any Person: (a) Equity Interests, bonds, notes, debentures or other securities of any other Person or any agreement to acquire any Equity Interests, bonds, notes, debentures other securities of any other Person (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) deposits, advances, loans or other extensions of credit made to any other Person (including purchases of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person); or (c) Hedging Agreements.

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

"Obligors" has the meaning given to such term in the preamble of this Agreement.

"Portfolio Investments" means any Investment held by the Obligors in their asset portfolio. Without limiting the generality of the foregoing, it is understood that Portfolio Investments includes any right, title and interest of the Obligors in, to and under Hedging Agreements.

"Secured Obligations" means, collectively, (a) in the case of the Borrower, the Credit Agreement Obligations, Funds Transfer and Deposit Account Agreement Obligations, and the Hedging Agreement Obligations, (b) in the case of the Guarantors, the Guaranteed Obligations pursuant to Section 3 hereof.

"Secured Parties" means, collectively, the Lenders, the L/C Issuers, the Agent and any other holder from time to time of the Secured Obligations or any part thereof.

"Shares" means shares of capital stock of a corporation, limited liability company interests, partnership interests and other ownership or equity interests of any class in any Person.

"Guarantors" has the meaning given to such term in the preamble of this Agreement.

Section 1.3. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Exhibits and Annexes shall be construed to refer to Sections of, and Exhibits and Annexes to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 2. REPRESENTATIONS AND WARRANTIES.

Each Obligor represents and warrants to the Secured Parties that:

Section 2.1. Organization. Such Obligor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

Section 2.2. Authorization; Enforceability. The execution, delivery and performance of this Agreement, and the granting of the Liens contemplated hereunder, are within such Obligor's corporate or other powers and have been duly authorized by all necessary corporate or other action. This Agreement has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 2.3. Governmental Approvals; No Conflicts. The execution, delivery and performance of this Agreement, and the granting of the Liens contemplated hereunder, (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for (i) such as have been or will be obtained or made and are in full force and effect and (ii) filings and recordings in respect of the Liens created pursuant hereto, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of any Obligor or any order of any Governmental Authority, (c) will not violate or result in a default in any material respect under any indenture, agreement or other instrument binding upon any Obligor or any of its assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) except for the Liens created pursuant hereto, will not result in the creation or imposition of any Lien on any asset of any Obligor.

Section 2.4. Title. Such Obligor is the sole beneficial owner of the Collateral in which a security interest is granted by such Obligor hereunder and no Lien exists upon such Collateral other than (a) the security interest created or provided for herein, which security interest constitutes a valid first and prior perfected Lien on the Collateral and (b) other Permitted Liens.

Section 2.5. Names, Etc. The full and correct legal name, type of organization, jurisdiction of organization, organizational ID number (if applicable) and mailing address of each Obligor are correctly set forth in Annex 1 (and, for any additional Obligor, as set forth in the supplement to Annex 1 in Appendix A to the Guarantee Assumption Agreement executed and delivered by such Obligor). No Obligor has transacted business at any time during the immediately preceding five-year period, and does not currently transact business, under any other legal names or trade names other than the prior legal names and trade names (if any) set forth in Annex 1 (and, for any additional Obligor, as set forth in the supplement to Annex 1 in Exhibit A to the Guarantee Assumption Agreement executed and delivered by such Obligor).

Section 2.6. Chances in Circumstances. No Obligor has (a) within the period of four months prior to the date hereof (or, for any additional Obligor, within the period of four months prior to the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement), changed its location (as defined in Section 9-307 of the ILUCC), (b) as of the date hereof (or, for any additional Obligor, as of the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement), changed its name, or (c) as of the date hereof (or, for any additional Obligor, as of the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement), become a "new debtor" (as defined in Section 9-102(a)(56) of the ILUCC) with respect to a currently effective security agreement previously entered into by any other Person and binding upon such Obligor, in each case except as notified in writing to the Agent prior to the date hereof (or, for any additional Obligor, prior to the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement).

Section 2.7. Location of Collateral. Annex 1 sets forth a complete and correct list of all locations of the Borrower's tangible Collateral on the date hereof (and, for any additional Obligor, on the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement) (collectively, the "*Permitted Collateral Locations*"), except for tangible Collateral held by the Custodian or the Agent or tangible Collateral aggregating less than \$250,000 in value at any one time outstanding. If for any reason any tangible Collateral is at any time kept or located at a location other than a Permitted Collateral Location, the Agent shall nevertheless have and retain a security interest therein. Except to the extent otherwise disclosed on Annex 1, the Obligors own the Permitted Collateral Locations. No Obligor shall permit any tangible Collateral to be located at a location other than a Permitted Collateral Location or as permitted above, in each case without first providing the Agent at least 30 days prior written notice of the Obligor's intent to do so; *provided* that each Obligor shall at all times maintain the Permitted Collateral Locations in the United States of America unless specifically agreed to in writing by the Agent and such Obligor shall have taken all action reasonably requested by the Agent to maintain the security interest of the Agent in the Collateral at all times fully perfected and in full force and effect. If any Collateral is in the possession or control of any agents or processors of an Obligor and the Agent so requests, such Obligor agrees to notify such agents or processors in writing of the Agent's security interest therein and instruct them to hold all such Collateral for the Agent's account and subject to the Agent's instructions. Each Obligor will, upon the written request of the Agent, authorize and instruct all bailees and any other parties, if any, at any time processing, labeling, packaging, holding, storing, shipping or transferring all or any part of the Collateral to permit the Agent and its representatives to examine and inspect any of the Collateral then in such party's possession and to verify from such party's own books and records any information concerning the Collateral or any part thereof which the Agent or its representatives may seek to verify. Each Obligor warrants and agrees that none of its Inventory is or will be consigned to any other person without the Agent's prior written consent.

Section 2.8. Promissory Notes. Annex 2 sets forth a complete and correct list of all Promissory Notes (other than any previously delivered to the Custodian or held in a Securities Account referred to in Annex 3) held by the Borrower on the date hereof (or held by a Guarantor on the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement) and having an aggregate unpaid principal amount in excess of \$500,000.

Section 2.9. Deposit Accounts and Securities Accounts. Annex 3 sets forth a complete and correct list of all Deposit Accounts, Securities Accounts, and Commodity Accounts of the Borrower on the date hereof (and of any Guarantor on the date it becomes a party hereto pursuant to a Guarantee Assumption Agreement), except for any Deposit Account specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments. Each Obligor represents that on the date of this Agreement, none of its Investment Property consists of margin stock (as such term is defined in Regulation U of the Board of Governors of the Federal Reserve System) except to the extent such Obligor has delivered to the Agent a duly executed and completed Form U-1 with respect to such stock. If at any time the Investment Property or any part thereof consists of margin stock, the relevant Obligor shall promptly so notify the Agent and deliver to the Agent a duly executed and completed Form U-1 and such other instruments and documents reasonably requested by the Agent in form and substance satisfactory to the Agent.

Section 2.10. Fixtures. Except for Equipment from time to time located on the real estate described on Annex 4, none of the Equipment is or will be attached to real estate in such a manner that the same may become a Fixture.

Section 2.11. Intellectual Property. Annex 5 attached hereto contains a true, complete, and current listing of all patents, trademarks, tradestyles, copyrights, and other intellectual property rights (including all registrations and applications therefor) owned by each of the Obligors as of the date hereof that are registered with any governmental authority. Each Obligor owns or possesses rights to use all franchises, licenses, patents, trademarks, trade names, tradestyles, copyrights, and rights with respect to the foregoing which are required to conduct its business and which do not, to the best of such Obligor's knowledge, infringe on the rights of any third party. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, and the Obligors are not liable to any person for infringement under applicable law with respect to any such rights as a result of its business operations, where such revocation or termination could reasonably be expected to have a Material Adverse Effect.

Section 2.12. Commercial Tort Claims. Annex 6 attached hereto contains a true, complete and current listing of all Commercial Tort Claims held by the Obligors as of the date hereof, each described by referring to a specific incident giving rise to the claim.

SECTION 3. GUARANTEE.

Section 3.1. The Guarantee. The Guarantors hereby jointly and severally guarantee to each of the Secured Parties and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Guaranteed Obligations. The Guarantors hereby further jointly and severally agree that if the Borrower shall fail to pay in full when due (whether at stated or extended maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will jointly and severally pay the same without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 3.2. Obligations Unconditional. The obligations of the Guarantors under this Section 3 are irrevocable, absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Borrower under this Agreement, the other

Debt Documents or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 3 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Without limitation, the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of this Agreement, the other Debt Documents or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any, respect, or any right under this Agreement, the other Debt Documents or any other agreement or instrument referred to herein or therein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or
- (d) any lien or security interest granted to, or in favor of, any Secured Party as security for any of the Guaranteed Obligations shall fail to be perfected.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right power or remedy or proceed against the Borrower under this Agreement, the other Debt Documents or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

Section 3.3. Reinstatement. The obligations of the Guarantors under this Section 3 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including reasonable fees and other charges of counsel) incurred by the Secured Parties in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

Section 3.4. Subrogation. The Guarantors hereby jointly and severally agree that until the payment and satisfaction in full of all Guaranteed Obligations, and the expiration and termination of all commitments to extend credit under all Debt Documents and of all letters of credit issued under the Debt Documents, they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in Section 3.1, whether by subrogation or otherwise, against the Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

Section 3.5. Remedies. The Guarantors jointly and severally agree that, as between the Guarantors and the Secured Parties, a Guaranteed Obligation may be declared to be forthwith due and

payable as provided in the respective Debt Document therefor including, in the case of the Credit Agreement, Section 9 thereof (and shall be deemed to have become automatically due and payable in the circumstances provided therein including, in the case of the Credit Agreement, such Section 9) for purposes of this Section, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower or any Guarantors and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 3.1.

Section 3.6. Continuing Guarantee. The guarantee in this Section 3 is a continuing guarantee of payment (and not of collection), and shall apply to all Guaranteed Obligations whenever arising.

Section 3.7. Rights of Contribution. The Obligor hereby agree, as between themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Guaranteed Obligations, then each other Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Guarantor to any Excess Funding Guarantor under this Section shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Section 3 and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

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

Section 3.8. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate or other law or any Federal or state bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 3.1 would otherwise, taking into account the provisions of Section 3.8, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 3.1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Secured Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 3.9. Credit Agreement. Each Guarantor agrees to perform, comply with and be bound by the covenants contained in the Credit Agreement applicable to such Guarantor as if each Guarantor were a signatory to the Credit Agreement. Without limiting the foregoing, each Guarantor shall take such action as the Borrower is required by the Credit Agreement to cause such Guarantor to take, and shall refrain from taking such action as the Borrower is required by the Credit Agreement to prohibit such Guarantor from taking.

SECTION 4. COLLATERAL

As collateral security for prompt payment and performance of its Secured Obligations, each Obligor hereby pledges and grants to the Agent for the benefit of the Secured Parties as hereinafter provided a security interest in all of such Obligor's right, title and interest in, to and under the following property, in each case whether tangible or intangible, wherever located, and whether now owned by such Obligor or hereafter acquired and whether now existing or hereafter coming into existence (all of the property described in this Section 4 being collectively referred to herein as "*Collateral*"):

- (a) all Accounts;
- (b) all Chattel Paper (including all Electronic Chattel Paper and Tangible Chattel Paper);
- (c) all Commercial Tort Claims (as described on Annex 6 hereto or on one or more supplements to this Agreement);
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all Equipment (including all software, whether or not the same constitutes embedded software, used in the operation thereof);
- (g) all Fixtures;
- (h) General Intangibles (including all Payment Intangibles and Software, patents, trademarks, tradestyles, copyrights, and all other intellectual property rights, including all applications, registration, and licenses therefor, and all goodwill of the business connected therewith or represented thereby);
- (i) all Instruments (including all Promissory Notes);
- (j) all Inventory all other Goods (including rights to returned or repossessed Goods and rights of stoppage in transit);
- (k) all Investment Property (including all Securities, all Securities Accounts and all Security Entitlements with respect thereto and Financial Assets carried therein, and all Commodity Accounts and Commodity Contracts);
- (l) all Letter-of-Credit Rights;
- (m) all Supporting Obligations;
- (n) all monies, personal property, and interests in personal property of such Obligor of any kind or description now held by any Secured Party or at any time hereafter transferred or delivered to, or coming into the possession, custody or control of, any Secured Party, or any agent or affiliate of any Secured Party, whether expressly as collateral security or for any other purpose (whether for safekeeping, custody, collection or otherwise), and all dividends and distributions on or other rights in connection with any such property;

(o) all supporting evidence and documents relating to any of the above-described property, including, without limitation, computer programs, disks, tapes and related electronic data processing media, and all rights of such Obligor to retrieve the same from third parties, written applications, credit information, account cards, payment records, correspondence, delivery and installation certificates, invoice copies, delivery receipts, notes and other evidences of indebtedness, insurance certificates and the like, together with all books of account, ledgers, and cabinets in which the same are reflected or maintained;

(p) Accessions and additions to, and substitutions and replacements of, any and all of the foregoing; and

(q) Proceeds and products of the foregoing, and all insurance of the foregoing and proceeds thereof.

IT BEING UNDERSTOOD, HOWEVER, that in no event shall the security interest granted under this Section 4 attach to any contract, property rights, obligation, instrument or agreement to which an Obligor is a party (or to any of its rights or interests thereunder) if the grant of such security interest would constitute or result in either the abandonment, invalidation or unenforceability of any right, title or interest of such Obligor therein or in a breach or termination pursuant to the terms of, or a default under, any such contract, property rights, obligation, instrument or agreement (in each case, other than to the extent that any such term would be rendered ineffective by Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code as in effect in the relevant jurisdiction).

SECTION 5. COVENANTS OF THE OBLIGORS.

In furtherance of the grant of the security interest pursuant to Section 4, each Obligor hereby agrees with the Agent for the benefit of the Secured Parties as follows:

Section 5.1. Delivery and Other Perfection. (a) Within twenty (20) days after the acquisition by an Obligor of any Portfolio Investment constituting part of the Collateral as to which physical possession by the Agent or the Custodian is required in order for such Portfolio Investment to have been "Delivered" (subject to the definition of "Delivery" for the first thirty (30) days after the date hereof), such Obligor shall take such actions as shall be necessary to effect Delivery of such Portfolio Investment. As to all other Portfolio Investments constituting part of the Collateral, such Obligor shall cause the same to be Delivered within five (5) Business Days of the acquisition thereof (subject to the definition of "Delivery" for the first thirty (30) days after the date hereof). In addition, and without limiting the generality of the foregoing, each Obligor shall, upon the Agent's written request, promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, account control agreements or any other agreements or consents or other papers as may be necessary in the judgment of the Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable the Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

(i) keep full and accurate books and records relating to the Collateral in all material respects; and

(ii) permit representatives of the Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral; *provided* that each such Obligor shall be entitled to have its representatives and advisors present during any inspection of its books and records at such Obligor's place of business.

(b) Unless released from the Collateral pursuant to the Credit Agreement, once any Portfolio Investment has been Delivered, the Obligors shall not take or permit any action that would result in such Portfolio Investment no longer being Delivered hereunder and shall, upon the Agent's written

request, promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, account control agreements or any other agreements or consents or other papers as may be necessary or desirable in the judgment of the Agent to continue the Delivered status of any Collateral. Without limiting the generality of the foregoing, the Obligors shall not terminate any arrangement with the Custodian unless and until a successor Custodian satisfactory to the Agent has been appointed and has executed all documentation necessary to continue the Delivered status of the Collateral, which documentation shall be in form and substance reasonably satisfactory to the Agent.

Section 5.2. Name; Jurisdiction of Organization, Etc. Each Obligor agrees that (a) without providing at least ten (10) days prior written notice to the Agent, such Obligor will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if such Obligor does not have an organizational identification number and later obtains one, such Obligor will forthwith notify the Agent of such organizational identification number, and (c) such Obligor will not change its type of organization, jurisdiction of organization or other legal structure.

Section 5.3. Other Financing Statements or Control. Except as permitted under Section 8.8 of the Credit Agreement, the Obligors shall not (a) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which the Agent is not named as the sole Agent for the benefit of the Secured Parties, or (b) cause or permit any Person other than the Agent to have Control of any Deposit Account, Electronic Chattel Paper, Investment Property or Letter-of-Credit Right constituting part of the Collateral.

Section 5.4. Additional Guarantors. As contemplated by Section 4.1 of the Credit Agreement, new Subsidiaries of the Borrower formed or acquired by the Borrower after the date hereof (other than Financing Subsidiaries) are required to become a "Guarantor" under this Agreement, by executing and delivering to the Agent a Guarantee Assumption Agreement in the form of Exhibit A hereto. Accordingly, upon the execution and delivery of any such Guarantee Assumption Agreement by any such Subsidiary, such new Subsidiary shall automatically and immediately, and without any further action on the part of any Person, become a "Guarantor" and an "Obligor" for all purposes of this Agreement, and Annexes 1 through 6, inclusive, hereto shall be deemed to be supplemented in the manner specified in such Guarantee Assumption Agreement. In addition, upon execution and delivery of any such Guarantee Assumption Agreement, the new Guarantor makes the representations and warranties set forth in Section 2 as of the date of such Guarantee Assumption Agreement.

Section 5.5. Control Agreements. No Obligor shall open any account with any bank, securities intermediary or commodities intermediary (other than (i) any payroll account, (ii) any withholding tax and fiduciary accounts, and (iii) any account in which the aggregate value of deposits therein, together with all other such accounts under this clause (iii), does not at any time exceed \$250,000) unless such Obligor has notified the Agent of such new account and the Agent has Control over such account pursuant to a control agreement in form and substance satisfactory to the Agent.

Section 5.6. Collection of Payments. Each Obligor shall make collection of all sums due with respect to the Collateral (collectively, "*Collateral Payments*") unless notified to the contrary by the Agent after the occurrence and during the continuance of any Event of Default to pay the same over to the Agent (which proceeds shall be held, applied, or otherwise distributed in accordance with Section 6 hereof); *provided* that, other than in the ordinary course of such Obligor's business and consistent with past practice and its commercially reasonable discretion, no Obligor shall, without the prior written consent of the Agent, grant any extension of the time of payment of any Collateral Payment, compromise or settle any Collateral Payment for less than the full amount thereof, release (in

whole or in part) any person or property liable for the payment thereof or granted as collateral security therefor, or allow any credit, discount, modification, rescission, or cancellation whatsoever thereon.

Section 5.7. Use of Collateral. Each Obligor agrees it will not waste or destroy the Collateral or any part thereof and will not be negligent in the care or use of any Collateral. Each Obligor agrees it will not use, manufacture, sell or distribute any Collateral in violation of any statute, ordinance or other governmental requirement. Each Obligor will perform in all material respects its obligations under any contract or other agreement constituting part of the Collateral, it being understood and agreed that the Secured Parties have no responsibility to perform such obligations.

Section 5.8. Dispositions of Collateral. Except as permitted by the Credit Agreement, each Obligor agrees it will not, without the Agent's prior written consent, sell, assign, mortgage, lease, or otherwise dispose of the Collateral or any interest therein.

Section 5.9. Insurance. To the extent an Obligor has any material portions of Collateral consisting of tangible personal property, such Obligor will insure such Collateral against such risks and hazards as other companies similarly situated insure against, and including in any event loss or damage by fire, theft, burglary, pilferage, and loss in transit, in amounts and under policies containing loss payable clauses to the Agent as its interest may appear (and, if the Agent requests, naming the Secured Parties as additional insureds therein) by insurers reasonably acceptable to the Agent. All premiums on such insurance shall be paid by the Obligors and the policies of such insurance (or certificates therefor) delivered to the Agent. All insurance required hereby shall provide that any loss shall be payable notwithstanding any act or negligence of the relevant Obligor, shall provide that no cancellation thereof shall be effective until at least 30 days after receipt by the relevant Obligor and the Agent of written notice thereof, and shall be reasonably satisfactory to the Agent in all other respects. In case of any material loss, damage to or destruction of the Collateral or any part thereof, the relevant Obligor shall promptly give written notice thereof to the Agent generally describing the nature and extent of such damage or destruction. In case of any loss, damage to or destruction of the Collateral or any part thereof, the relevant Obligor, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for that purpose, at such Obligor's cost and expense, will promptly repair or replace the Collateral so lost, damaged or destroyed, except to the extent such Collateral is not necessary to the conduct of such Obligor's business in the ordinary course. In the event any Obligor shall receive any proceeds of such insurance, such Obligor shall immediately pay over such proceeds of insurance to the Agent which will thereafter be applied to the reduction of the Secured Obligations (whether or not then due) or held as collateral security therefor, as the Agent may then determine or as otherwise provided for in the Credit Agreement; *provided, however*, that the Agent agrees to release such insurance proceeds to the relevant Obligor for replacement or restoration of the portion of the Collateral lost, damaged or destroyed if, but only if, (i) at the time of release no Default or Event of Default exists, (ii) written application for such release is received by the Agent from the relevant Debtor within 30 days of the receipt of such proceeds, and (iii) the Agent has received evidence reasonably satisfactory to it that the collateral lost, damaged or destroyed has been or will be replaced or restored to its condition immediately prior to the loss, destruction or other event giving rise to the payment of such insurance proceeds. Each Obligor hereby authorizes the Agent, at the Agent's option, to adjust, compromise, and settle any losses under any insurance afforded at any time after the occurrence and during the continuation of any Default or Event of Default, and such Obligor does hereby irrevocably constitute the Agent, its officers, agents, and attorneys, as such Obligor's attorneys-in-fact, with full power and authority after the occurrence and during the continuation of any Default or Event of Default to effect such adjustment, compromise, and/or settlement and to endorse any drafts drawn by an insurer of the Collateral or any part thereof and to do everything necessary to carry out such purposes and to receive and receipt for any unearned premiums due under policies of such insurance. Unless the Agent elects to adjust, compromise or settle losses as aforesaid, any adjustment, compromise, and/or settlement of any losses under any insurance shall be made by the

relevant Obligor subject to final approval of the Agent (regardless of whether or not an Event of Default shall have occurred) in the case of losses exceeding \$250,000. All insurance proceeds shall be subject to the lien and security interest of the Agent hereunder.

UNLESS THE OBLIGORS PROVIDE THE AGENT WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT, THE AGENT MAY PURCHASE INSURANCE AT THE OBLIGORS' EXPENSE TO PROTECT THE AGENT'S INTERESTS IN THE COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT ANY OBLIGOR'S INTERESTS IN THE COLLATERAL. THE COVERAGE PURCHASED BY THE AGENT MAY NOT PAY ANY CLAIMS THAT ANY OBLIGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST SUCH OBLIGOR IN CONNECTION WITH THE COLLATERAL. THE OBLIGORS MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY THE AGENT, BUT ONLY AFTER PROVIDING THE AGENT WITH EVIDENCE THAT THE OBLIGORS HAVE OBTAINED INSURANCE AS REQUIRED BY THIS AGREEMENT. IF THE AGENT PURCHASES INSURANCE FOR THE COLLATERAL, THE OBLIGORS WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT THE AGENT MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE SECURED OBLIGATIONS SECURED HEREBY. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE THE OBLIGORS MAY BE ABLE TO OBTAIN ON THEIR OWN.

Section 5.10. Collateral Information. Each Obligor agrees from time to time to deliver to the Agent such evidence of the existence, identity, and location of its Collateral and of its availability as collateral security pursuant hereto, in each case as the Agent may reasonably request in writing. The Agent shall have the right to verify all or any part of the Collateral in any manner, and through any medium, which the Agent considers appropriate and reasonable, and each Obligor agrees to furnish all assistance and information, and perform any acts, which the Agent may require in connection therewith. The Obligors shall promptly notify the Agent in writing of any additions after the date hereof to the information provided on Annexes 1-6, and shall submit to the Agent a supplement to Annexes 1-6, as applicable, to reflect such additions (provided any Obligor's failure to do so shall not impair the Agent's security interest in the Collateral).

Section 5.11. First Priority Liens. The Collateral and every part thereof is and shall be free and clear of all security interests, liens (including, without limitation, mechanics', laborers' and statutory liens), attachments, levies, and encumbrances of every kind, nature, and description and whether voluntary or involuntary, except for the security interest of the Agent therein and other Permitted Liens. Each Obligor shall warrant and defend the Collateral against any claims and demands of all Persons at any time claiming the same or any interest in the Collateral adverse to the Secured Parties.

Section 5.12. Further Assurances. Upon Agent's written request, each Obligor agrees to execute and deliver to the Agent such further agreements, assignments, instruments, and documents, and to do all such other things, as the Agent may reasonably deem necessary or appropriate to assure the Agent its lien and security interest hereunder, including, without limitation, (i) such financing statements or other instruments and documents as the Agent may from time to time reasonably require to comply with the UCC and any other applicable law, (ii) such agreements with respect to patents, trademarks, copyrights, and similar intellectual property rights as the Agent may from time to time reasonably require to comply with the filing requirements of the United States Patent and Trademark Office and the United States Copyright Office, and (iii) such control agreements with respect to Deposit Accounts, Investment Property, Letter-of-Credit Rights, and electronic Chattel Paper, and to cause the relevant depository institutions, financial intermediaries, and issuers to execute and deliver such control agreements, as the Agent may from time to time reasonably require. Upon the Agent's written request, each Obligor shall at its own cost and expense cause the lien of the Agent in and to any portion of the Collateral subject to a certificate of title law to be duly noted on such certificate of title or to be otherwise filed in such manner as is prescribed by law in order to perfect such lien and will cause all such certificates of title and evidences of lien to be deposited with the Agent. Each Obligor agrees to

execute and deliver to the Agent an agreement in the form attached hereto as Exhibit B, or in such other form reasonably acceptable to the Agent, promptly upon becoming aware of any Commercial Tort Claim of such Obligor arising after the date hereof (provided any Obligor's failure to do so shall not impair the Agent's security interest therein). Each Obligor hereby authorizes the Agent to file any and all financing statements covering the Collateral or any part thereof as the Agent may require, including financing statements describing the Collateral as "all assets" or "all personal property" or words of like meaning. The Agent may order lien searches from time to time against any Obligor and the Collateral, and the Obligors shall promptly reimburse the Agent for all reasonable costs and expenses incurred in connection with such lien searches (subject to Section 12.15 of the Credit Agreement). In the event for any reason the law of any jurisdiction other than Illinois becomes or is applicable to the Collateral or any part thereof, or to any of the Secured Obligations, each Obligor agrees to execute and deliver all such agreements, assignments, instruments, and documents and to do all such other things as the Agent deems necessary or appropriate to preserve, protect, and enforce the security interest of the Agent under the law of such other jurisdiction.

Section 5.13. Right to Perform; Right to Reimbursement. On failure of any Obligor to perform any of the covenants and agreements herein contained, the Agent may, at its option, perform the same and in so doing may expend such sums as the Agent deems advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, liens, and encumbrances, expenditures made in defending against any adverse claims, and all other expenditures which the Agent may be compelled to make by operation of law or which the Agent may make by agreement or otherwise for the protection of the security hereof. All such sums and amounts so expended shall be repayable by the Obligors upon written demand, shall constitute additional Secured Obligations secured hereunder, and shall bear interest from the date said amounts are expended at the rate per annum (computed on the basis of a year of 360 days for the actual number of days elapsed) determined by adding 2.0% per annum to the Base Rate from time to time in effect plus the Applicable Margin from time to time in effect for Base Rate Loans under the Revolving Credit, with any change in such rate per annum as so determined by reason of a change in such Base Rate to be effective on the date of such change in said Base Rate (such rate per annum as so determined being hereinafter referred to as the "*Default Rate*"). No such performance of any covenant or agreement by the Agent on behalf of a Obligor, and no such advancement or expenditure therefor, shall relieve any Obligor of any default under the terms of this Agreement or in any way obligate any Secured Party to take any further or future action with respect thereto. The Agent, in making any payment hereby authorized, may do so according to any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim. The Agent, in performing any act hereunder, shall be the sole judge of whether the relevant Obligor is required to perform the same under the terms of this Agreement. The Agent is hereby authorized to charge any account of any Obligor maintained with any Secured Party for the amount of such sums and amounts so expended.

SECTION 6. EVENTS OF DEFAULT; REMEDIES.

Section 6.1. Events of Default, Etc. The occurrence of any event or the existence of any condition specified as an "Event of Default" under the Credit Agreement shall constitute an "*Event of Default*" hereunder. During the period during which an Event of Default shall have occurred and be continuing:

- (a) The Agent shall have, in addition to all other rights provided herein or by law, the rights and remedies of a secured party under the ILUCC (regardless of whether the ILUCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the ILUCC applies to the affected Collateral), and further the Agent may, without demand and, to the extent permitted by applicable law, without advertisement, notice, hearing or process of law, all of which

each Obligor hereby waives to the extent permitted by applicable law, at any time or times, sell and deliver any or all Collateral held by or for it at public or private sale, at any securities exchange or broker's board or at the Agent's office or elsewhere, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its discretion. In the exercise of any such remedies, the Agent may sell the Collateral as a unit even though the sales price thereof may be in excess of the amount remaining unpaid on the Secured Obligations. Also, if less than all the Collateral is sold, the Agent shall have no duty to marshal or apportion the part of the Collateral so sold as between the Obligors, or any of them, but may sell and deliver any or all of the Collateral without regard to which of the Obligors are the owners thereof. In addition to all other sums due any Secured Party hereunder, each Obligor shall pay the Secured Parties all costs and expenses incurred by the Secured Parties, including reasonable attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of Collateral or the Secured Obligations or in the prosecution or defense of any action or proceeding by or against any Secured Party or any Obligor concerning any matter arising out of or connected with this Agreement or the Collateral or the Secured Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Obligors in accordance with Section 8.1 hereof at least 10 days before the time of sale or other event giving rise to the requirement of such notice; *provided, however*, no notification need be given to a Obligor if such Obligor has signed, after an Event of Default hereunder has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. Any Secured Party may be the purchaser at any such sale. Each Obligor hereby waives all of its rights of redemption from any such sale. The Agent may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Agent may further postpone such sale by announcement made at such time and place. The Agent has no obligation to prepare the Collateral for sale. The Agent may sell or otherwise dispose of the Collateral without giving any warranties as to the Collateral or any part thereof, including disclaimers of any warranties of title or the like, and each Obligor acknowledges and agrees that the absence of such warranties shall not render the disposition commercially unreasonable.

(b) In addition to all other rights provided herein or by law, (i) the Agent shall have the right to take physical possession of any and all of the Collateral and anything found therein, the right for that purpose to enter without legal process any premises where the Collateral may be found (provided such entry be done lawfully), and the right to maintain such possession on the relevant Obligor's premises (each Obligor hereby agreeing, to the extent it may lawfully do so, to lease such premises without cost or expense to the Agent or its designee if the Agent so requests) or to remove the Collateral or any part thereof to such other places as the Agent may desire, (ii) the Agent shall have the right to direct any intermediary at any time holding any Investment Property or other Collateral, or any issuer thereof, to deliver such Collateral or any part thereof to the Agent and/or to liquidate such Collateral or any part thereof and deliver the proceeds thereof to the Agent (including, without limitation, the right to deliver a notice of control with respect to any Collateral held in a securities account or commodities account and deliver all entitlement orders with respect thereto), (iii) the Agent shall have the right to exercise any and all rights with respect to all Deposit Accounts of each Obligor, including, without limitation, the right to direct the disposition of the funds in each Deposit Account and to collect, withdraw, and receive all amounts due or to become due or payable thereunder, and (iv) each Obligor shall, upon the Agent's demand, promptly assemble the Collateral and make it available to the Agent at a place reasonably designated by the Agent. If the Agent exercises its right to take possession of the

Collateral, each Obligor shall also at its expense perform any and all other steps requested by the Agent to preserve and protect the security interest hereby granted in the Collateral, such as placing and maintaining signs indicating the security interest of the Agent, appointing overseers for the Collateral and maintaining Collateral records.

(c) All rights of the Obligors to exercise voting and/or consensual powers which they are entitled to exercise regarding the Collateral and/or to receive and retain the distributions regarding the Collateral, shall, at the option of the Agent, cease and thereupon become vested in the Agent, which, in addition to all other rights provided herein or by law, shall then be entitled solely and exclusively to exercise all voting and other consensual powers pertaining to the Collateral and/or to receive and retain the distributions which such Obligor would otherwise have been entitled to receive and shall then be entitled solely and exclusively to exercise any and all rights of conversion, exchange or subscription or any other rights, privileges or options pertaining to any Collateral as if the Agent were the absolute owner thereof including, without limitation, the rights to exchange, at its discretion, all Investment Property or any part thereof upon the merger, consolidation, reorganization, recapitalization or other readjustment of the respective issuer thereof or upon the exercise by or on behalf of any such issuer or the Agent of any right, privilege or option pertaining to any Investment Property and, in connection therewith, to deposit and deliver the Investment Property or any part thereof with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Agent may determine.

(d) In the event the Agent requests any Obligor to do so: (i) all Instruments and tangible Chattel Paper at any time constituting part of the Collateral (including any postdated checks) shall, upon receipt by such Obligor, be immediately endorsed to and deposited with Agent; and/or (ii) such Obligor shall instruct all customers and account debtors to remit all payments in respect of the Collateral to a lockbox or lockboxes under the sole custody and control of the Agent and which are maintained at one or more post offices selected by the Agent. The Agent or its designee may notify the relevant Obligor's customers and account debtors at any time that the Collateral has been assigned to the Agent or of the Agent's security interest therein, and either in its own name, or such Obligor's name, or both, demand, collect (including, without limitation, through a lockbox analogous to that described above), receive, receipt for, sue for, compound and give acquittance for any or all amounts due or to become due on the Collateral, and in the Agent's discretion file any claim or take any other action or proceeding which the Agent may deem necessary or appropriate to protect and realize upon the security interest of the Agent in the Collateral. Any proceeds of Collateral transmitted to or otherwise received by the Agent hereof may be handled and administered by the Agent in and through a remittance account or accounts maintained at the Agent or by the Agent at a commercial bank or banks selected by the Agent (collectively the "*Depository Banks*" and individually a "*Depository Bank*"), and each Obligor acknowledges that the maintenance of such remittance accounts by the Agent is solely for the Agent's convenience and that the Obligors do not have any right, title or interest in such remittance accounts or any amounts at any time standing to the credit thereof. The Agent may apply all or any part of any proceeds of Collateral received by it from any source to the payment of the Secured Obligations (whether or not then due and payable), such applications to be made in such amounts, in such manner and order, and at such intervals as the Agent may from time to time in its discretion determine. The Agent need not apply or give credit for any item included in proceeds of Collateral until the Depository Bank has received final payment therefor at its office in cash or final solvent credits current at the site of deposit acceptable to the Agent and the Depository Bank as such. However, if the Agent does permit credit to be given for any item prior to a Depository Bank receiving final payment therefor and such Depository Bank fails to receive such final payment or an item is charged back to the Agent or any Depository Bank for any reason, the Agent may at its election in either instance charge the amount of such item back against any such remittance accounts or any Deposit Account of any Obligor subject to the security

interest of this Agreement, together with interest thereon at the Default Rate. Concurrently with each transmission of any proceeds of Collateral to any such remittance account, upon the Agent's request, the relevant Obligor shall furnish the Agent with a report in such form as Agent shall reasonably require identifying the particular Collateral from which the same arises or relates. Each Obligor hereby indemnifies the Secured Parties from and against all liabilities, damages, losses, actions, claims, judgments, and all reasonable costs, expenses, charges, and attorneys' fees suffered or incurred by any Secured Party because of the maintenance of the foregoing arrangements; *provided, however*, that no Obligor shall be required to indemnify any Secured Party for any of the foregoing to the extent they arise solely from the gross negligence or willful misconduct of the person seeking to be indemnified. The Secured Parties shall have no liability or responsibility to any Obligor for the Agent or any Depository Bank accepting any check, draft or other order for payment of money bearing the legend "payment in full" or words of similar import or any other restrictive legend or endorsement whatsoever or be responsible for determining the correctness of any remittance.

(e) Without in any way limiting the foregoing, each Obligor hereby grants to the Agent a royalty-free irrevocable license and right to use all of such Obligor's patents, patent applications, patent licenses, trademarks, trademark registrations, trademark licenses, trade names, trade styles, and similar intangibles in connection with any foreclosure or other realization by the Agent on all or any part of the Collateral to the extent permitted by law. The license and right granted the Agent hereby shall be without any royalty or fee or charge whatsoever.

THE OBLIGORS RECOGNIZE THAT, BY REASON OF CERTAIN PROHIBITIONS CONTAINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, THE AGENT MAY BE COMPELLED, WITH RESPECT TO ANY SALE OF ALL OR ANY PART OF THE COLLATERAL, TO LIMIT PURCHASERS TO THOSE WHO WILL AGREE, AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN ACCOUNT, FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR RESALE THEREOF. THE OBLIGORS ACKNOWLEDGE THAT ANY SUCH PRIVATE SALES MAY BE AT PRICES AND ON TERMS LESS FAVORABLE TO THE AGENT THAN THOSE OBTAINABLE THROUGH A PUBLIC SALE WITHOUT SUCH RESTRICTIONS, AND, NOTWITHSTANDING SUCH CIRCUMSTANCES, AGREE THAT TO THE EXTENT ANY SUCH PRIVATE SALE IS CONDUCTED BY THE AGENT IN A COMMERCIALY REASONABLE MANNER, THE AGENT SHALL HAVE NO OBLIGATION TO ENGAGE IN PUBLIC SALES AND NO OBLIGATION TO DELAY THE SALE OF ANY COLLATERAL FOR THE PERIOD OF TIME NECESSARY TO PERMIT THE OBLIGORS, OR THE ISSUER THEREOF, TO REGISTER IT FOR PUBLIC SALE. IN THE EVENT THE AGENT IN GOOD FAITH BELIEVES ANY OF THE COLLATERAL CONSTITUTES RESTRICTED SECURITIES WITHIN THE MEANING OF ANY APPLICABLE SECURITIES LAWS, ANY DISPOSITION THEREOF IN COMPLIANCE WITH SUCH LAWS SHALL NOT RENDER THE DISPOSITION COMMERCIALY UNREASONABLE.

Section 6.2. Private Sale. The Agent and the Secured Parties shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale conducted in a commercially reasonable manner. Each Obligor hereby waives any claims against the Agent or any other Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Agent accepts the first offer received and does not offer the Collateral to more than one offeree, so long as such private sale was conducted in a commercially reasonable manner.

Section 6.3. Attorney-in-Fact. Without limiting any rights or powers granted by this Agreement to the Agent, each Obligor hereby appoints the Agent, its nominee, or any other person whom the Agent may designate as such Obligor's attorney-in-fact, with full power and authority upon the occurrence and during the continuation of any Event of Default to sign such Obligor's name on verifications of Receivables and other Collateral; to send requests for verification of Collateral to such Obligor's customers, account debtors, and other obligors; to endorse such Obligor's name on any checks, notes, acceptances, money orders, drafts, and any other forms of payment or security that may come into the Agent's possession; to endorse the Collateral in blank or to the order of the Agent or its nominee; to sign such Obligor's name on any invoice or bill of lading relating to any Collateral, on claims to enforce collection of any Collateral, on notices to and drafts against customers and account debtors and other obligors, on schedules and assignments of Collateral, on notices of assignment and on public records; to notify the post office authorities to change the address for delivery of such Obligor's mail to an address designated by the Agent; to receive, open, and dispose of all mail addressed to such Obligor; and to do all things necessary to carry out this Agreement. Each Obligor hereby ratifies and approves all acts of any such attorney and agrees that neither the Agent nor any such attorney will be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than such person's gross negligence or willful misconduct. The foregoing powers of attorney, being coupled with an interest, are irrevocable until the Secured Obligations have been fully paid and satisfied and the commitments of the Lenders to extend credit to or for the account of the Borrower under the Credit Agreement have expired or otherwise terminated.

Section 6.4. Application of Proceeds; Deficiency; Surplus. The proceeds and avails of the Collateral at any time received by the Agent upon the occurrence and during the continuation of any Event of Default shall, when received by the Agent in cash or its equivalent, be applied by the Agent in reduction of, or held as collateral security for, the Secured Obligations in accordance with the terms of the Credit Agreement. The Obligors shall remain liable to the Secured Parties for any deficiency. Any surplus remaining after the full payment and satisfaction of the Secured Obligations shall be returned to the Borrower, as agent for the Obligors, or to whomsoever the Agent reasonably determines is lawfully entitled thereto.

Section 6.5. Preservation of Rights. The powers conferred upon the Secured Parties hereunder are solely to protect their interest in the Collateral and shall not impose on them any duty to exercise such powers. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession or control if such Collateral is accorded treatment substantially equivalent to that which the Agent accords its own property, consisting of similar type assets, it being understood, however, that the Agent shall have no responsibility for (i) ascertaining or taking any action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Agent has or is deemed to have knowledge of such matters, (ii) taking any necessary steps to preserve rights against any parties with respect to any Collateral, or (iii) initiating any action to protect the Collateral or any part thereof against the possibility of a decline in market value. This Agreement constitutes an assignment of rights only and not an assignment of any duties or obligations of the Obligors in any way related to the Collateral, and the Agent shall have no duty or obligation to discharge any such duty or obligation. Neither any Secured Party nor any party acting as attorney for any Secured Party shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than such person's gross negligence or willful misconduct.

Section 6.6. Direct and Primary Security. The security interest herein created and provided for stand as direct and primary security for the Secured Obligations. No application of any sums received by the Secured Parties in respect of the Collateral or any disposition thereof to the reduction of the Secured Obligations or any part thereof shall in any manner entitle any Obligor to any right, title or interest in or to the Secured Obligations or any collateral or security therefor, whether by subrogation

or otherwise, unless and until all Secured Obligations have been fully paid and satisfied and all commitments to extend credit to or for the account of the Borrower under the Credit Agreement have expired or otherwise terminated. Each Obligor acknowledges and agrees that the security interest hereby created and provided are absolute and unconditional and shall not in any manner be affected or impaired by any acts of omissions whatsoever of any Secured Party or any other holder of any Secured Obligations, and without limiting the generality of the foregoing, the security interest hereof shall not be impaired by any acceptance by any Secured Party or any other holder of any Secured Obligations of any other security for or guarantors upon any of the Secured Obligations or by any failure, neglect or omission on the part of any Secured Party or any other holder of any of the Secured Obligations to realize upon or protect any of the Secured Obligations or any collateral or security therefor. The security interest hereof shall not in any manner be impaired or affected by (and the Secured Parties, without notice to anyone, are hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Obligations or of any collateral or security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. The Secured Parties may at their discretion at any time grant credit to the Borrower without notice to the other Obligors in such amounts and on such terms as the Secured Parties may elect without in any manner impairing the security interest created and provided for. In order to realize hereon and to exercise the rights granted the Secured Parties hereunder and under applicable law, there shall be no obligation on the part of any Secured Party or any other holder of any Secured Obligations at any time to first resort for payment to the Borrower or any other Obligor or to any guaranty of the Secured Obligations or any portion thereof or to resort to any other collateral, security, property, liens or any other rights or remedies whatsoever, and the Secured Parties shall have the right to enforce this Agreement against any Obligor or its Collateral irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

SECTION 7. THE AGENT.

Section 7.1. The Agent. In acting under or by virtue of this Agreement, the Agent shall be entitled to all the rights, authority, privileges, and immunities provided in the Credit Agreement, all of which provisions of said Credit Agreement (including, without limitation, Section 11 thereof) are incorporated by reference herein with the same force and effect as if set forth herein in their entirety. The Agent hereby disclaims any representation or warranty to the Secured Parties or any other holders of the Secured Obligations concerning the perfection of the liens and security interests granted hereunder or in the value of any of the Collateral.

SECTION 8. MISCELLANEOUS.

Section 8.1. Notices. Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by telecopy) and shall be given to the relevant party as set forth in Section 12.8 of the Credit Agreement.

Section 8.2. No Waiver. Failure by the Agent to exercise any right, remedy or option under this Agreement or any other agreement between any Obligor and the Agent or provided by law, or delay by the Agent in exercising the same, shall not operate as a waiver; and no waiver shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. The rights and remedies of the Secured Parties under this Agreement shall be cumulative and not exclusive of any other right or remedy which any Secured Party may have.

Section 8.3. Amendments, Etc. Except as otherwise provided in any Collateral Document, the terms of this Agreement and the other Collateral Documents may be waived, altered or amended only by an instrument in writing duly executed by each Obligor and the Agent with the consent of the requisite Lenders (as determined in accordance with the Credit Agreement), *provided* that the Agent is

authorized to release any Collateral and/or any Guarantor to the extent permitted by or otherwise provided for in the Credit Agreement. Any such amendment or waiver shall be binding upon the Agent, each Secured Party and each Obligor.

Section 8.4. Continuing Agreement. This Agreement shall be a continuing agreement in every respect and shall remain in full force and effect until all of the Secured Obligations and the Guaranteed Obligations, both for principal and interest, have been fully paid and satisfied and the commitments of the Lenders to extend credit to or for the account of the Borrower under the Credit Agreement have expired or otherwise terminated. Upon such termination of this Agreement, the Agent shall, upon the request and at the expense of the Obligors, forthwith release its liens and security interests hereunder.

Section 8.4. Expenses: Indemnity.

(a) *Costs and Expenses.* The Obligors hereby jointly and severally agree to reimburse the Agent and each of the other Secured Parties and their respective affiliates for all reasonable out-of-pocket costs and expenses incurred by them (including the reasonable fees, charges and disbursements of legal counsel) in connection with (i) any Default or Event of Default and any enforcement or collection proceeding resulting therefrom, including all manner of participation in or other involvement with (w) performance by the Agent of any obligations of the Obligors in respect of the Collateral that the Obligors have failed or refused to perform in the time period required under this Agreement, (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings of any Obligor, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of the Agent in respect thereof, by litigation or otherwise, including expenses of insurance, (y) judicial or regulatory proceedings arising from or related to this Agreement and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (ii) the enforcement of this Section, and all such costs and expenses shall be Secured Obligations entitled to the benefits of the collateral security provided pursuant to Section 4.

(b) *Indemnification by the Obligors.* The Obligors shall indemnify the Agent, the other Secured Parties, any security trustee therefor, and their respective directors, officers, employees, agents, financial advisors, and consultants (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 any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the willful misconduct or gross negligence of such Indemnitee.

Section 8.5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Obligors and the Secured Parties (*provided* that none of the Obligors shall assign or transfer its rights or obligations hereunder without the prior written consent of the Agent). Without limiting the generality of the foregoing, and subject to the provisions of the Credit Agreement, any Secured Party may assign or otherwise transfer any indebtedness held by it secured or guaranteed by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits of the security and guarantees provided for herein.

Section 8.6. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement constitutes the entire contract between and among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Each Obligor acknowledges that this Agreement is and shall be effective upon its execution and delivery by such Obligor to the Agent, and it shall not be necessary for the Agent or any Secured Party to execute this Agreement or any other acceptance hereof or otherwise to signify or express its acceptance hereof.

(b) *Electronic Execution of Assignments.* The words "execution," "signed," "signature" 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 Electronic Signatures and Records Act of Illinois, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 8.7. Severability. In the event and to the extent that any provision hereof shall be deemed to be invalid or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court, this Agreement shall to such extent be construed as not containing such provision, but only as to such jurisdictions where such law or interpretation is operative, and the invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions hereof, and any and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect. Without limiting the generality of the foregoing, in the event that this Agreement shall be deemed to be invalid or otherwise unenforceable with respect to any Obligor, such invalidity or unenforceability shall not affect the validity of this Agreement with respect to the other Obligors.

Section 8.8. Governing Law; Submission to Jurisdiction.

(a) *Governing Law.* This Agreement shall be construed in accordance with and governed by the law of the State of Illinois.

(b) *Submission to Jurisdiction.* Each Obligor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the United States District Court for the Northern District of Illinois and of any Illinois state court sitting in the City of Chicago, Illinois, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against any Obligor or its properties in the courts of any jurisdiction.

(c) *Waiver of Venue.* Each Obligor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives,

to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 8.9. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 8.10. Headings. Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Guarantee and Security Agreement to be duly executed and delivered as of the day and year first above written.

FIFTH STREET FINANCE CORP.

By

Name

Title

Accepted and agreed to in Chicago, Illinois, as of the date first above written.

BANK OF MONTREAL, as Agent

By

Name

Title

QuickLinks

[GUARANTEE AND SECURITY AGREEMENT](#)
[PRELIMINARY STATEMENTS](#)

FIRST AMENDMENT TO CREDIT AGREEMENT

This First Amendment to Credit Agreement (herein, the "*Amendment*") is entered into as of May 1, 2008, by and among FIFTH STREET FINANCE CORP., a Delaware corporation (the "*Borrower*"), the several financial institutions party to this Amendment, as Lenders, and BANK OF MONTREAL, as Administrative Agent.

PRELIMINARY STATEMENTS

A. The Borrower, the Lenders, the Administrative Agent are parties to a certain Credit Agreement, dated as of January 15, 2008 (the "*Credit Agreement*"). All capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement.

B. The Borrower has requested that the Credit Amendment be amended, and the Required Lenders are willing to do so under the terms and conditions set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. AMENDMENT.

Subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Credit Agreement shall be and hereby is amended as follows:

1.1. The definitions of "Affiliate Agreements" and "Change of Control" set forth in Section 5.1 of the Credit Agreement (*Definitions*) shall each be amended and restated in its entirety to read as follows:

"*Affiliate Agreements*" means, collectively, (a) the Amended and Restated Investment Advisory Agreement dated as of April 30, 2008, between the Borrower and Fifth Street Management LLC, (b) the Administration Agreement dated as of December 14, 2007, between the Borrower and FSC, Inc., and (c) the Trademark License Agreement dated as of December 14, 2007, between the Borrower and Fifth Street Capital LLC, in each case as the same may be amended from time to time with the prior written consent of the Required Lenders.

"*Change of Control*" means any of (a) the acquisition by any "*person*" or "*group*" (as such terms are used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) at any time of beneficial ownership of 35% or more of the outstanding capital stock or other equity interests of the Borrower on a fully-diluted basis, (b) the failure of individuals who are members of the board of directors (or similar governing body) of the Borrower on the Closing Date (together with any new or replacement directors whose initial nomination for election was approved by a majority of the directors who were either directors on the Closing Date or previously so approved) to constitute a majority of the board of directors (or similar governing body) of the Borrower, or (c) any "Change of Control" (or words of like import), as defined in any instrument, document, agreement or indenture relating to any issue of Indebtedness or any issuance of equity of any class or series of the Borrower or any Subsidiary aggregating \$1,000,000 or more shall occur (*provided, however*, with respect to the documents evidencing Borrower's Series A preferred stock, the parties acknowledge that the change of control provisions have been modified and/or waived as set forth in a certain letter agreement dated April 25, 2008, by and between Fifth Street and the holder thereof).

1.2. Subsection (d) of Section 8.12 of the Credit Agreement (*Dividends and Certain Other Restricted Payments*) shall be amended and restated in its entirety to read as follows:

(d) other Restricted Payments paid no more frequently than monthly so long as on the date of such other Restricted Payment and after giving effect thereto (x) the Covered Debt

Amount does not exceed 90% of the Borrowing Base and (y) no Default or Event of Default exists or shall arise after giving effect to such payment. For purposes of determining compliance with clause (x) above, (A) the fair market value of Portfolio Investments for which market quotations are readily available shall be the most recent quotation available for such Portfolio Investment and (B) the fair market value of Portfolio Investments for which market quotations are not readily available shall be the Value set forth in the Borrowing Base Certificate most recently delivered by the Borrower to the Administrative Agent and the Lenders pursuant to Section 8.5(a); *provided* that the Borrower shall reduce the Value of any Portfolio Investment referred to in this subclause (B) to the extent necessary to take into account any events of which the Borrower has knowledge that adversely affect the value of such Portfolio Investment; and

1.3. The phrase "Except as otherwise set forth for in the Affiliate Agreements as in effect on the date hereof," appearing at the beginning of Section 8.17 of the Credit Agreement (*Burdensome Contracts With Affiliates*) shall be deleted and the phrase "Except as otherwise set forth for in the Affiliate Agreements," shall be inserted in lieu thereof.

1.4. Section 8.26 of the Credit Agreement (*Post Closing*) shall be amended and restated in its entirety to read as follows:

Section 8.26. Post Closing. The Borrower shall cause to be executed and delivered to the Administrative Agent by no later than May 15, 2008, one or more Pledged Collateral Account Control Agreements covering all securities accounts of the Credit Parties duly executed and delivered by the Credit Parties, the Administrative Agent, and the Custodian (as such term is defined in the Guarantee and Security Agreement), which shall be in form and substance acceptable to the Administrative Agent (the Borrower acknowledging and agreeing that failure to do so shall constitute an Event of Default hereunder).

SECTION 2. CONDITIONS PRECEDENT.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

2.1. The Borrower and the Required Lenders shall have executed and delivered this Amendment.

2.2. The Borrower shall have executed and delivered a First Amendment to Guarantee and Security Agreement in the form attached hereto as Exhibit A.

2.3. The Borrower shall have delivered to the Administrative Agent true and correct copies of (i) the Amended and Restated Investment Advisory Agreement dated as of April 30, 2008, between the Borrower and Fifth Street Management LLC, (ii) the Certificate of Amendment to the Restated Certificate of Incorporation of Fifth Street Finance Corp. filed April 24, 2008, with the Secretary of State of Delaware and (iii) the side letter dated April 25, 2008, between the Borrower and the holder of Borrower's Series A preferred stock.

2.4. Legal matters incident to the execution and delivery of this Amendment shall be satisfactory to the Administrative Agent and its counsel.

SECTION 3. REPRESENTATIONS.

In order to induce the Lenders to execute and deliver this Amendment, the Borrower hereby represents to the Lenders that as of the date hereof, after giving effect to the amendment set forth in Section 1 above, (a) the representations and warranties set forth in Section 6 of the Credit Agreement and in the other Loan Documents are and shall be and remain true and correct in all materials respects (except that the representations contained in Section 6.5 shall be deemed to refer to the most recent financial statements of the Borrower delivered to the Lenders) and (b) the Borrower is in compliance with the terms and conditions of the Credit Agreement and the other Loan Documents and no Default or Event of Default exists or shall result after giving effect to this Amendment.

SECTION 4. MISCELLANEOUS.

4.1. The Borrower heretofore executed and delivered to the Administrative Agent and the Lenders the Collateral Documents. The Borrower hereby acknowledges and agrees that the Liens created and provided for by the Collateral Documents continue to secure, among other things, the Obligations arising under the Credit Agreement as amended hereby; and the Collateral Documents and the rights and remedies of the Administrative Agent and the Lenders thereunder, the obligations of the Borrower thereunder, and the Liens created and provided for thereunder remain in full force and effect and shall not be affected, impaired or discharged hereby. Nothing herein contained shall in any manner affect or impair the priority of the Liens created and provided for by the Collateral Documents as to the indebtedness which would be secured thereby prior to giving effect to this Amendment.

4.2. Except as specifically amended herein, the Credit Agreement shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in the Credit Agreement, the Notes, or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Credit Agreement, any reference in any of such items to the Credit Agreement being sufficient to refer to the Credit Agreement as amended hereby.

4.3. The Borrower agrees to pay on demand all reasonable costs and expenses of or incurred by the Administrative Agent in connection with the negotiation, preparation, execution and delivery of this Amendment and the other instruments and documents to be executed and delivered in connection herewith, including the fees and expenses of counsel for the Administrative Agent.

4.4. This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of a counterpart hereof by facsimile transmission or by e-mail transmission of an Adobe Portable Document Format File (also known as a "PDF" file) shall be effective as delivery of a manually executed counterpart hereof. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of Illinois (without regard to principles of conflicts of laws).

[SIGNATURE PAGE TO FOLLOW]

This First Amendment to Credit Agreement is entered into as of the date and year first above written.

FIFTH STREET FINANCE CORP.

By

Name

Title

Accepted and agreed to.

BANK OF MONTREAL, as Administrative Agent

By

Name

Title

BMO CAPITAL MARKETS FINANCING, INC.

By

Name

Title

QuickLinks

[FIRST AMENDMENT TO CREDIT AGREEMENT
PRELIMINARY STATEMENTS](#)

FIRST AMENDMENT TO GUARANTEE AND SECURITY AGREEMENT

This First Amendment to Guarantee and Security Agreement (herein, the "Amendment") is entered into as of May 1, 2008, by and among FIFTH STREET FINANCE CORP., a Delaware corporation (the "Borrower"), and BANK OF MONTREAL, as Agent.

PRELIMINARY STATEMENTS

A. The Borrower and the Agent are parties to a certain Guarantee and Security Agreement, dated as of January 15, 2008 (the "Guarantee and Security Agreement"). All capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Guarantee and Security Agreement.

B. The Borrower and the Administrative Agent (acting at the direction of the Required Lenders) have agreed to amend the Guarantee and Security Amendment under the terms and conditions set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. AMENDMENT.

Subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Credit Agreement shall be and hereby is amended as follows:

1.1. The definition of "Deliver", "Delivered" or "Delivery" set forth in Section 1.2 of the Guarantee and Security Agreement (*Additional Definitions*) shall be amended by striking the phrase "and within thirty (30) days of the date hereof" appearing in the lead-in sentence and inserting the phrase "and at all times on and after May 15, 2008" in lieu thereof.

1.2. Section 5.1 of the Guarantee and Security Agreement (*Control Agreements*) shall be amended by striking the phrase "(subject to the definition of "Delivery" for the first thirty (30) days after the date hereof)" and inserting the phrase "(subject to the definition of "Delivery" for periods prior to May 15, 2008)" in lieu thereof.

1.3. Section 5.5 of the Guarantee and Security Agreement (*Control Agreements*) shall be amended and restated in its entirety to read as follows:

Section 5.5. Control Agreements. No Obligor shall open or maintain any account with any depository, securities intermediary or commodities intermediary (other than (i) any payroll account, (ii) any withholding tax and fiduciary accounts, and (iii) any account in which the aggregate value of deposits therein, together with all other such accounts under this clause (iii), does not at any time exceed \$1,000,000) unless such Obligor has notified the Agent of such account and the Agent has Control over such account pursuant to a control agreement in form and substance satisfactory to the Agent; *provided* that (a) proceeds of any Collateral in the Borrowing Base shall at all times be initially deposited into an account (including, without limitation, a securities account) in which the Agent has Control pursuant to a control agreement in form and substance satisfactory to the Agent and (b) upon the occurrence and during the continuation of any Default or Event of Default, upon the request of the Agent, each Obligor shall, and shall cause each depository, securities intermediary and commodities intermediary holding or maintaining any Deposit Accounts, Securities Accounts, or Commodity Accounts for any Obligor (including, without limitation, any such accounts otherwise subject to clause (iii) of the sentence above) to, enter into such agreements with the Agent so that the Agent has Control over such accounts pursuant to a control agreement in form and substance satisfactory to the Agent.

1.4. Annex 3 to the Guarantee and Security Agreement shall be amended and restated in its entirety to read asset forth on Annex 3 attached hereto and made a part hereof.

SECTION 2. CONDITIONS PRECEDENT.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

2.1. The Borrower and the Agent shall have executed and delivered this Amendment.

2.2. Legal matters incident to the execution and delivery of this Amendment shall be satisfactory to the Agent and its counsel.

SECTION 3. MISCELLANEOUS.

3.1. The Borrower hereby acknowledges and agrees that the Liens created and provided for by the Guarantee and Security Agreement continue to secure, among other things, the Secured Obligations; and the Guarantee and Security Agreement, and the rights and remedies of the Agent and the Lenders thereunder, the obligations of the Borrower thereunder, and the Liens created and provided for thereunder remain in full force and effect and shall not be affected, impaired or discharged hereby. Nothing herein contained shall in any manner affect or impair the priority of the Liens created and provided for by the Guarantee and Security Agreement as to the indebtedness which would be secured thereby prior to giving effect to this Amendment.

3.2. Except as specifically amended herein, the Guarantee and Security Agreement shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in the Guarantee and Security Agreement, the Credit Agreement, or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Guarantee and Security Agreement, any reference in any of such items to the Guarantee and Security Agreement being sufficient to refer to the Guarantee and Security Agreement as amended hereby.

3.3. The Borrower agrees to pay on demand all reasonable costs and expenses of or incurred by the Agent in connection with the negotiation, preparation, execution and delivery of this Amendment and the other instruments and documents to be executed and delivered in connection herewith, including the fees and expenses of counsel for the Agent.

3.4. This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of a counterpart hereof by facsimile transmission or by e-mail transmission of an Adobe Portable Document Format File (also known as a "PDF" file) shall be effective as delivery of a manually executed counterpart hereof. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of Illinois (without regard to principles of conflicts of laws).

[SIGNATURE PAGE TO FOLLOW]

This First Amendment to Guarantee and Security Agreement is entered into as of the date and year first above written.

FIFTH STREET FINANCE CORP.

By _____

Name _____

Title _____

Accepted and agreed to.

BANK OF MONTREAL, as Agent

By _____

Name _____

Title _____

QuickLinks

[FIRST AMENDMENT TO GUARANTEE AND SECURITY AGREEMENT
PRELIMINARY STATEMENTS](#)

[Letterhead of Sutherland Asbill & Brennan LLP]

June 6, 2008

Fifth Street Finance Corp.
White Plains Plaza
445 Hamilton Avenue, Suite 1206
White Plains, NY 10601

Re: Fifth Street Finance Corp.
Registration Statement on Form N-2
File No. 333-146743

Ladies and Gentlemen:

We have acted as counsel to Fifth Street Finance Corp., a Delaware corporation (the "**Company**"), in connection with the registration statement on Form N-2 (File No. 333-146743) (the "**Registration Statement**") filed by the Company with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Act**"), relating to 11,500,000 shares of the Company's common stock, par value \$0.01 per share (the "**Shares**"), together with any additional Shares that may be issued by the Company pursuant to Rule 462(b) under the Act (as prescribed by the Commission pursuant to the Act) in connection with the offering described in the Registration Statement.

As counsel to the Company, we have participated in the preparation of the Registration Statement and have examined originals or copies, certified or otherwise identified to our satisfaction by public officials or officers of the Company as authentic copies of originals, of (i) the Company's restated certificate of incorporation, as amended to date (the "**Certificate of Incorporation**"), and its amended and restated bylaws (the "**Bylaws**"), (ii) a Certificate of Good Standing, dated June 4, 2008, with respect to the Company issued by the Delaware Secretary of State; (iii) resolutions of the board of directors of the Company (the "**Board**") relating to the authorization and approval of the preparation and filing of the Registration Statement and the authorization, issuance, offer and sale of the Common Stock pursuant to the Registration Statement (the "**Resolutions**"), and (iv) such other documents or matters of law as in our judgment were necessary to enable us to render the opinions expressed below.

With respect to such examination and our opinion expressed herein, we have assumed, without any independent investigation or verification (i) the genuineness of all signatures on all documents submitted to us for examination, (ii) the legal capacity of all natural persons, (iii) the authenticity of all documents submitted to us as originals, (iv) the conformity to original documents of all documents submitted to us as conformed or reproduced copies and the authenticity of the originals of such copied documents, and (v) that all certificates issued by public officials have been properly issued. We also have assumed without independent investigation or verification the accuracy and completeness of all corporate records made available to us by the Company.

Where factual matters material to this opinion letter were not independently established, we have relied upon certificates and/or representations of officers of the Company. We have also relied on certificates of public officials. Except as otherwise stated herein, we have not independently established the facts, or in the case of certificates of public officials, the other statements, so relied upon.

This opinion is limited to the General Corporation Law of the State of Delaware, as in effect on the date hereof, and we express no opinion with respect to any other laws of the State of Delaware or the laws of any other jurisdiction. We express no opinion as to any state securities or broker-dealer laws or regulations thereunder relating to the offer, issuance and sale of the Shares.

Based upon and subject to the foregoing, we are of the opinion that:

Assuming that (i) the final terms and conditions of the issuance, offer and sale of the Shares, including those relating to price and amount of Shares to be issued, offered and sold, have been duly authorized and determined or otherwise established by proper action of the Board in accordance with the Company's Certificate of Incorporation and Bylaws and the Resolutions, and are consistent with the descriptions thereof in the Registration Statement, (ii) the Shares have been delivered to, and the agreed consideration has been fully paid in accordance with the Resolutions at the time of such delivery by, the purchasers thereof, and (iii) the Registration Statement has become effective under the Act and remains effective at the time of the offer and sale of the Shares, the Shares will be duly authorized, validly issued, fully paid and non-assessable.

This opinion is limited to the matters expressly set forth herein, and no opinion may be implied or inferred beyond those expressly stated. Our opinions and other statements expressed herein are as of the date hereof, and we have no obligation to update this letter or to advise you of any changes in applicable law or any other matters that may come to our attention after the date hereof.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm in the "Legal Matters" section of the Registration Statement. We do not admit by giving this consent that we are in the category of persons whose consent is required under Section 7 of the Act.

Respectfully submitted,

/s/ SUTHERLAND ASBILL & BRENNAN LLP

SUTHERLAND ASBILL & BRENNAN LLP

