
United States
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended August 30, 2009

OR

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

For the transition period from _____ to _____

Commission File Number 1-9102

AMERON INTERNATIONAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware **77-0100596**
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

245 South Los Robles Avenue
Pasadena, CA 91101-3638
(Address of principal executive offices)

(626) 683-4000
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined in Rule 12b-2 of the Exchange Act).

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

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

The number of outstanding shares of Common Stock, \$2.50 par value, was 9,215,491 on August 30, 2009. No other class of Common Stock exists.

AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

FORM 10-Q

For the Quarter Ended August 30, 2009

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PART I – FINANCIAL INFORMATION

ITEM 1 – FINANCIAL STATEMENTS

CONSOLIDATED STATEMENTS OF INCOME (UNAUDITED)

	Three Months Ended		Nine Months Ended	
	August 30, 2009	August 31, 2008	August 30, 2009	August 31, 2008
(Dollars in thousands, except per share data)				
Sales	\$ 131,378	\$ 170,107	\$ 410,300	\$ 479,669
Cost of sales	(95,760)	(132,652)	(303,211)	(369,016)
Gross profit	35,618	37,455	107,089	110,653
Selling, general and administrative expenses	(25,602)	(25,795)	(77,887)	(77,462)
Other income, net	418	2,252	3,320	5,802
Income before interest, income taxes and equity in (loss)/earnings of joint venture	10,434	13,912	32,522	38,993
Interest (expense)/income, net	(373)	(19)	(692)	412
Income before income taxes and equity in (loss)/earnings of joint venture	10,061	13,893	31,830	39,405
Provision for income taxes	(3,778)	(3,079)	(8,397)	(12,008)
Income before equity in (loss)/earnings of joint venture	6,283	10,814	23,433	27,397
Equity in (loss)/earnings of joint venture, net of taxes	(335)	4,184	(4,233)	13,671
Net income	\$ 5,948	\$ 14,998	\$ 19,200	\$ 41,068
Basic net income per share	\$.65	\$ 1.64	\$ 2.10	\$ 4.50
Diluted net income per share	\$.65	\$ 1.63	\$ 2.09	\$ 4.48
Weighted-average shares (basic)	9,173,955	9,134,672	9,164,093	9,118,768
Weighted-average shares (diluted)	9,195,970	9,208,536	9,180,304	9,171,103
Cash dividends per share	\$.30	\$.30	\$.90	\$.85

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

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS – ASSETS (UNAUDITED)

(Dollars in thousands)	August 30, 2009	November 30, 2008
ASSETS		
Current assets		
Cash and cash equivalents	\$ 170,208	\$ 143,561
Receivables, less allowances of \$6,412 in 2009 and \$7,009 in 2008	147,228	181,961
Inventories	72,179	95,645
Deferred income taxes	21,238	25,582
Prepaid expenses and other current assets	12,408	10,053
Total current assets	423,261	456,802
Investments in joint ventures		
Equity method	19,744	14,428
Loans	12,500	-
Cost method	3,784	3,784
Property, plant and equipment		
Land	44,170	38,679
Buildings	95,957	85,555
Machinery and equipment	326,252	306,177
Construction in progress	44,417	37,386
Total property, plant and equipment at cost	510,796	467,797
Accumulated depreciation	(279,049)	(261,635)
Total property, plant and equipment, net	231,747	206,162
Deferred income taxes	4,763	4,763
Goodwill and intangible assets, net of accumulated amortization of \$1,242 in 2009 and \$1,197 in 2008	2,088	2,108
Other assets	39,629	38,275
Total assets	\$ 737,516	\$ 726,322

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

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS – LIABILITIES AND STOCKHOLDERS' EQUITY (UNAUDITED)

<u>(Dollars in thousands, except per share data)</u>	August 30, 2009	November 30, 2008
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	\$ 17,088	\$ 16,763
Trade payables	43,725	52,613
Accrued liabilities	79,121	79,538
Income taxes payable	1,297	10,443
Total current liabilities	141,231	159,357
Long-term debt, less current portion	37,455	35,989
Other long-term liabilities	55,035	53,856
Total liabilities	233,721	249,202
Commitments and contingencies		
Stockholders' equity		
Common Stock, par value \$2.50 per share, authorized 24,000,000 shares, outstanding 9,215,491 shares in 2009 and 9,188,692 shares in 2008, net of treasury shares	29,920	29,805
Additional paid-in capital	58,357	54,447
Retained earnings	489,882	478,968
Accumulated other comprehensive loss	(18,747)	(31,475)
Treasury Stock (2,752,701 shares in 2009 and 2,733,300 shares in 2008)	(55,617)	(54,625)
Total stockholders' equity	503,795	477,120
Total liabilities and stockholders' equity	\$ 737,516	\$ 726,322

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

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)

(Dollars in thousands)	Nine Months Ended	
	August 30, 2009	August 31, 2008
OPERATING ACTIVITIES		
Net income	\$ 19,200	\$ 41,068
Adjustments to reconcile net income to net cash provided by/(used in) operating activities:		
Depreciation	15,229	14,733
Amortization	28	82
Loss/(earnings in excess of distributions) from joint ventures	4,684	(4,316)
(Gain)/loss from sale of property, plant and equipment	(72)	15
Stock compensation expense	3,229	4,873
Changes in operating assets and liabilities:		
Receivables, net	37,013	15,168
Inventories	25,604	3,194
Prepaid expenses and other current assets	(2,009)	(163)
Other assets	(210)	(5,500)
Trade payables	(10,226)	7,802
Accrued liabilities and income taxes payable	(11,332)	(24,490)
Other long-term liabilities and deferred income taxes	5,844	7,048
Net cash provided by operating activities	<u>86,982</u>	<u>59,514</u>
INVESTING ACTIVITIES		
Proceeds from sale of property, plant and equipment	552	1,290
Additions to property, plant and equipment	(35,245)	(44,539)
Investment in joint venture	(10,000)	-
Loan to joint venture	(12,500)	-
Net cash used in investing activities	<u>(57,193)</u>	<u>(43,249)</u>
FINANCING ACTIVITIES		
Issuance of debt	447	-
Repayment of debt	-	(4,073)
Debt issuance costs	(953)	-
Dividends on Common Stock	(8,286)	(7,792)
Issuance of Common Stock	-	846
Excess tax benefits related to stock-based compensation	796	1,251
Purchase of treasury stock	(992)	(2,754)
Net cash used in financing activities	<u>(8,988)</u>	<u>(12,522)</u>
Effect of exchange rate changes on cash and cash equivalents	5,846	(899)
Net change in cash and cash equivalents	<u>26,647</u>	<u>2,844</u>
Cash and cash equivalents at beginning of period	<u>143,561</u>	<u>155,433</u>
Cash and cash equivalents at end of period	<u>\$ 170,208</u>	<u>\$ 158,277</u>

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

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 – BASIS OF PRESENTATION

Consolidated financial statements for the interim periods included herein are unaudited; however, such financial statements contain all adjustments, including normal recurring accruals, which, in the opinion of Management, are necessary for the fair statement of the consolidated financial position of Ameron International Corporation and all subsidiaries (the "Company" or "Ameron" or the "Registrant") as of August 30, 2009, and consolidated results of operations and cash flows for the nine months ended August 30, 2009. Accounting measurements at interim dates inherently involve greater reliance on estimates than at year-end. Results of operations for the periods presented are not necessarily indicative of the results to be expected for the full year.

For accounting consistency, the quarter typically ends on the Sunday closest to the end of the relevant calendar month. The Company's fiscal year ends on November 30, regardless of the day of the week. Each quarter consists of approximately 13 weeks, but the number of days per quarter can change from period to period. The quarters ended August 30, 2009 and August 31, 2008 each consisted of 91 days. The nine months ended August 30, 2009 and August 31, 2008 consisted of 273 days and 275 days, respectively.

The consolidated financial statements do not include certain footnote disclosures and financial information normally included in consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States of America and, therefore, should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended November 30, 2008 ("2008 Annual Report"). The Company evaluated material subsequent events through the date these consolidated financial statements were issued.

NOTE 2 – RECENT ACCOUNTING PRONOUNCEMENTS

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 157, "Fair Value Measurements." SFAS No. 157 establishes a framework for measuring fair value in accordance with U.S. generally accepted accounting principles, and expands disclosure about fair value measurements. SFAS No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. Relative to SFAS No. 157, the FASB issued FASB Staff Position ("FSP") FASB Statements ("FAS") 157-1, FAS 157-2 and FAS 157-3 in 2008. FSP FAS 157-1 amends SFAS No. 157 to exclude SFAS No. 13, "Accounting for Leases," and its related interpretive accounting pronouncements that address leasing transactions. FSP FAS 157-2 delays the effective date of SFAS No. 157 to fiscal years beginning after November 15, 2008 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis. FSP FAS 157-3 clarifies how SFAS No. 157 should be applied when valuing securities in markets that are not active. The Company adopted SFAS No. 157, as amended, effective December 1, 2007 with the exception of the application of SFAS No. 157 to non-recurring, non-financial assets and non-financial liabilities which was adopted as of December 1, 2008. The adoption of SFAS No. 157 did not have a significant impact on the Company's financial results of operations or financial position.

In September 2006, the FASB issued Emerging Issues Task Force ("EITF") Issue No. 06-4, "Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements," effective for fiscal years beginning after December 15, 2007. EITF Issue No. 06-4 requires that, for split-dollar life insurance arrangements providing a benefit to an employee extending to postretirement periods, an employer should recognize a liability for future benefits in accordance with SFAS No. 106. EITF Issue No. 06-4 requires that recognition of the effects of adoption should be either by (a) a change in accounting principle through a cumulative-effect adjustment to retained earnings as of the beginning of the year of adoption or (b) a change in accounting principle through retrospective application to all prior periods. The Company adopted EITF Issue No. 06-4 as of December 1, 2008, and adoption did not have a material effect on the Company's consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities – an amendment of FASB Statement No. 133," effective for fiscal years beginning after November 15, 2008, with early application encouraged. SFAS No. 161 amends and expands the disclosure requirements for derivative instruments and hedging activities by requiring enhanced disclosures about how and why the Company uses derivative instruments, how derivative instruments and related hedged items are accounted for, and how derivative instruments and related hedged items affect the Company's financial position, financial performance and cash flows. The Company adopted SFAS No. 161 as of December 1, 2008, and adoption did not have a material effect on the Company's consolidated financial statements.

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

In June 2008, the FASB issued FSP EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities," which addresses whether unvested instruments granted in share-based payment transactions that contain nonforfeitable rights to dividends or dividend equivalents are participating securities subject to the two-class method of computing earnings per share under SFAS No. 128, "Earnings Per Share." FSP EITF 03-6-1 is effective for financial statements issued for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company will adopt FSP EITF 03-6-1 as of the fiscal year beginning December 1, 2009. The adoption of FSP EITF 03-6-1 is not expected to have a material effect on the Company's consolidated financial statements.

In December 2008, the FASB issued FSP FAS 132(R)-1, "Employers' Disclosures about Postretirement Benefit Plan Assets," amending SFAS No. 132(R), "Employers' Disclosures about Pensions and Other Postretirement Benefits," effective for fiscal years ending after December 15, 2009. FSP FAS 132(R)-1 requires an employer to disclose investment policies and strategies, categories, fair value measurements, and significant concentration of risk among its postretirement benefit plan assets. The Company will adopt FSP FAS 132(R)-1 as of the fiscal year beginning December 1, 2009. The adoption of FSP FAS 132(R)-1 is not expected to have a material effect on the Company's consolidated financial statements.

In April 2009, the FASB issued FSP FAS 107-1 and Accounting Principles Board ("APB") 28-1 which amended SFAS No. 107, "Disclosures about Fair Value of Financial Instruments," to require disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. FSP FAS 107-1 and APB 28-1 also amend APB Opinion No. 28, "Interim Financial Reporting," to require those disclosures in summarized financial information at interim reporting periods. FSP FAS 107-1 and APB 28-1 are effective for interim reporting periods ending after June 15, 2009. The Company adopted FSP FAS 107-1 and APB 28-1 as of June 1, 2009, and adoption did not have a material effect on the Company's consolidated financial statements.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)." SFAS No. 167 was issued to amend FASB Interpretation No. 46(R) to require an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a variable interest entity. SFAS No. 167 shall be effective as of the Company's first annual reporting period and interim reporting periods beginning after November 15, 2009. Earlier application is prohibited. The first such reporting period for the Company will be the fiscal year beginning December 1, 2009. The Company is evaluating whether the adoption of SFAS No. 167 will have a material effect on its consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles," to establish the FASB Accounting Standards Codification ("Codification") as the single source of authoritative United States Generally Accepted Accounting Principles ("GAAP") to be applied by nongovernmental entities, except for the rules and interpretive releases of the Securities and Exchange Commission ("SEC") under authority of federal securities laws, which are sources of authoritative GAAP for SEC registrants. While not intended to change U.S. GAAP, the Codification significantly changes the way in which the accounting literature is referenced and organized. SFAS No. 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The Company will adopt SFAS No. 168 as of August 31, 2009. The adoption of SFAS No. 168 is not expected to have a material effect on the Company's consolidated financial statements.

NOTE 3 – RECEIVABLES

The Company's receivables consisted of the following:

(In thousands)	August 30, 2009	November 30, 2008
Trade	\$ 126,109	\$ 155,061
Joint ventures	2,469	1,380
Other	25,062	32,529
Allowances	(6,412)	(7,009)
	\$ 147,228	\$ 181,961

Trade receivables included unbilled receivables related to percentage-of-completion revenue recognition of \$28,276,000 and \$24,706,000 at August 30, 2009 and November 30, 2008, respectively.

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NOTE 4 – INVENTORIES

Inventories are stated at the lower of cost or market. Inventories consisted of the following:

(In thousands)	August 30, 2009	November 30, 2008
Finished products	\$ 36,564	\$ 44,033
Materials and supplies	18,361	33,485
Products in process	17,254	18,127
	\$ 72,179	\$ 95,645

NOTE 5 – SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

Supplemental cash flow information included the following:

(In thousands)	Nine Months Ended	
	August 30, 2009	August 31, 2008
Interest paid	\$ 1,002	\$ 1,827
Income taxes paid	8,094	14,808

NOTE 6 – JOINT VENTURES

Operating results of TAMCO, an investment which is accounted for under the equity method, were as follows:

(In thousands)	Three Months Ended		Nine Months Ended	
	August 30, 2009	August 31, 2008	August 30, 2009	August 31, 2008
Net sales	\$ 25,543	\$ 113,762	\$ 65,800	\$ 332,220
Gross profit/(loss)	1,099	18,721	(10,179)	61,520
Net (loss)/income	(741)	9,258	(9,367)	30,247

Investments in Ameron Saudi Arabia, Ltd. ("ASAL") and Bondstrand, Ltd. ("BL") are accounted for under the cost method due to Management's current assessment of the Company's influence over these joint ventures. Earnings from ASAL and BL, if any, are included in other income, net.

Earnings and dividends from the Company's joint ventures were as follows:

(In thousands)	Three Months Ended		Nine Months Ended	
	August 30, 2009	August 31, 2008	August 30, 2009	August 31, 2008
Earnings from joint ventures				
Equity in (loss)/earnings of TAMCO before income taxes	\$ (371)	\$ 4,629	\$ (4,684)	\$ 15,124
Less benefit/(provision) for income taxes	36	(445)	451	(1,453)
Equity in (loss)/earnings of TAMCO, net of taxes	\$ (335)	\$ 4,184	\$ (4,233)	\$ 13,671
Dividends received from joint ventures				
TAMCO	\$ -	\$ 5,748	\$ -	\$ 10,808
ASAL	-	-	-	1,496
BL	-	1,227	2,207	1,227

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

TAMCO's shareholders made a \$20,000,000 capital contribution to TAMCO in February 2009. The Company's share of the funding from TAMCO's shareholders totaled \$10,000,000. In July 2009, TAMCO entered into a senior secured credit facility with TAMCO's shareholders which provided TAMCO up to \$40,000,000 for operating needs and to replace an existing bank line. The shareholder credit facility bears interest at LIBOR plus 3.25% per annum and is scheduled to mature January 31, 2011. As of August 30, 2009, TAMCO borrowed \$25,000,000 under the facility, of which \$12,500,000 was provided by the Company. The Company continues to have a 50% ownership interest in TAMCO and accounts for its investment under the equity method of accounting.

NOTE 7 – NET INCOME PER SHARE

Basic net income per share is computed on the basis of the weighted-average number of common shares outstanding during the periods presented. Diluted net income per share is computed on the basis of the weighted-average number of common shares outstanding plus the effect of outstanding stock options and restricted stock, using the treasury stock method. The computations of earnings per share for the quarter and nine months ended August 30, 2009 do not include 45,138 shares reserved for issuance upon exercise of stock options and for restricted shares because their inclusion would have been anti-dilutive. The computations of earnings per share for the quarter and nine months ended August 31, 2008 do not include 58,802 shares reserved for issuance upon exercise of stock options and for restricted shares because their inclusion would have been anti-dilutive.

Following is a reconciliation of the weighted-average number of shares used in the computation of basic and diluted net income per share:

(In thousands, except per share data)	Three Months Ended		Nine Months Ended	
	August 30, 2009	August 31, 2008	August 30, 2009	August 31, 2008
Numerator:				
Net income	\$ 5,948	\$ 14,998	\$ 19,200	\$ 41,068
Denominator for basic income per share:				
Weighted-average shares outstanding, basic	9,173,955	9,134,672	9,164,093	9,118,768
Denominator for diluted income per share:				
Weighted-average shares outstanding, basic	9,173,955	9,134,672	9,164,093	9,118,768
Dilutive effect of stock options and restricted stock	22,015	73,864	16,211	52,335
Weighted-average shares outstanding, diluted	9,195,970	9,208,536	9,180,304	9,171,103
Basic net income per share	\$.65	\$ 1.64	\$ 2.10	\$ 4.50
Diluted net income per share	\$.65	\$ 1.63	\$ 2.09	\$ 4.48

NOTE 8 – COMPREHENSIVE INCOME

Comprehensive income was as follows:

(In thousands)	Three Months Ended		Nine Months Ended	
	August 30, 2009	August 31, 2008	August 30, 2009	August 31, 2008
Net income	\$ 5,948	\$ 14,998	\$ 19,200	\$ 41,068
Foreign currency translation adjustment	2,246	(6,354)	12,728	896
Comprehensive income from joint venture	-	(5)	-	(5)
Comprehensive income	\$ 8,194	\$ 8,639	\$ 31,928	\$ 41,959

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NOTE 9 – DEBT

The Company's long-term debt consisted of the following:

(In thousands)	August 30, 2009	November 30, 2008
Fixed-rate notes:		
5.36%, payable in annual principal installments of \$10,000	\$ 10,000	\$ 10,000
4.25%, payable in Singapore dollars, in annual principal installments of \$7,088	28,353	27,052
Variable-rate industrial development bonds:		
payable in 2016 (.80% at August 30, 2009)	7,200	7,200
payable in 2021 (.80% at August 30, 2009)	8,500	8,500
Variable-rate bank revolving credit facility (8.50% at August 30, 2009)	490	-
Total long-term debt	54,543	52,752
Less current portion	(17,088)	(16,763)
Long-term debt, less current portion	\$ 37,455	\$ 35,989

The Company maintains a \$100,000,000 revolving credit facility with six banks (the “Revolver”). Under the Revolver, the Company may, at its option, borrow up to the available amount at floating interest rates or utilize for letters of credit (LIBOR plus a spread ranging from 2.75% to 3.75%, based on the Company's financial condition and performance), at any time until maturity, when all borrowings under the Revolver must be repaid and letters of credit cancelled. In August 2009, the maturity of the Revolver was extended from September 2010 to August 2012. At August 30, 2009, \$17,932,000 of the Revolver was utilized for standby letters of credit; therefore, \$82,068,000 was available under the Revolver.

The lending agreements contain various restrictive covenants, including the requirement to maintain specified amounts of net worth and restrictions on cash dividends, borrowings, liens, capital expenditures, investments, guarantees, and financial covenants. The Company was in compliance with all covenants as of August 30, 2009. The Revolver, the 4.25% term notes and the 5.36% term notes are collateralized by substantially all of the Company's assets. The industrial development bonds are supported by standby letters of credit that are issued under the Revolver. The interest rate on the industrial development bonds is based on the Securities Industry and Financial Markets Association (“SIFMA”) Index plus a spread of .60%. Certain note agreements contain provisions regarding the Company's ability to grant security interests or liens in association with other debt instruments. If the Company grants such a security interest or lien, then such notes will be collateralized equally and ratably as long as such other debt shall be collateralized.

The following disclosure of the estimated fair value of the Company's debt is prepared in accordance with the requirements of SFAS No. 157 which defines fair value, establishes a framework for measuring fair value, establishes a fair value hierarchy based on the inputs used to measure fair value and enhances disclosure requirements for fair value measurements. The estimated fair value amounts were determined by the Company using available market information and appropriate valuation methodologies. Considerable judgment is required to develop the estimated fair value, thus the estimates provided herein are not necessarily indicative of the amounts that could be realized in a current market exchange.

(In thousands)	Carrying Amount	Fair Value
August 30, 2009		
Fixed-rate, long-term debt	\$ 38,353	\$ 38,779
Variable-rate, long-term debt	16,190	16,190
November 30, 2008		
Fixed-rate, long-term debt	37,052	35,545
Variable-rate, long-term debt	15,700	15,700

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

The Company used a discounted cash flow technique that incorporates a market interest yield curve with adjustments for duration, optionality and risk profile. The estimated fair value of the Company's fixed-rate, long-term debt is based on U.S. government notes at August 30, 2009 plus an estimated spread for similar securities with similar credit risks and remaining maturities.

NOTE 10 – SEGMENT INFORMATION

The Company provides certain information about operating segments in accordance with SFAS No. 131, “Disclosure about Segments of an Enterprise and Related Information.” In accordance with SFAS No. 131, the Company has determined that it has four operating and three reportable segments: Fiberglass-Composite Pipe, Water Transmission and Infrastructure Products. Infrastructure Products consists of two operating segments, the Pole Products and Hawaii Divisions, which are aggregated. Each of the segments has a dedicated management team and is managed separately, primarily because of differences in products. The Company's Chief Operating Decision Maker is the Chief Executive Officer who primarily reviews sales and income before interest, income taxes and equity in earnings of joint venture for each operating segment in making decisions about allocating resources and assessing performance. The Company allocates certain selling, general and administrative expenses to operating segments utilizing assumptions believed to be appropriate in the circumstances. Costs of shared services (e.g., costs of Company-wide insurance programs or benefit plans) are allocated to the operating segments based on revenue, wages or net assets employed. Other items not related to current operations or of an unusual nature are not allocated to the reportable segments, such as adjustments to reflect inventory balances of certain steel inventories under the last-in, first-out (“LIFO”) method, certain unusual legal costs and expenses, interest expense and income taxes.

Following is information related to each reportable segment included in, and in a manner consistent with, internal management reports:

(In thousands)	Three Months Ended		Nine Months Ended	
	August 30, 2009	August 31, 2008	August 30, 2009	August 31, 2008
Sales				
Fiberglass-Composite Pipe	\$ 56,842	\$ 69,956	\$ 169,115	\$ 205,187
Water Transmission	39,764	53,420	133,558	138,430
Infrastructure Products	34,773	46,862	107,639	136,981
Eliminations	(1)	(131)	(12)	(929)
Total Sales	\$ 131,378	\$ 170,107	\$ 410,300	\$ 479,669
Income Before Interest, Income Taxes and Equity in (Loss)/Earnings of Joint Venture				
Fiberglass-Composite Pipe	\$ 17,062	\$ 22,015	\$ 48,198	\$ 56,515
Water Transmission	619	(5,299)	3,314	(11,013)
Infrastructure Products	2,432	6,230	9,275	19,164
Corporate and unallocated	(9,679)	(9,034)	(28,265)	(25,673)
Total Income Before Interest, Income Taxes and Equity in (Loss)/Earnings of Joint Venture	\$ 10,434	\$ 13,912	\$ 32,522	\$ 38,993

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

(In thousands)	August 30, 2009	November 30, 2008
Assets		
Fiberglass-Composite Pipe	\$ 296,666	\$ 303,672
Water Transmission	197,269	235,664
Infrastructure Products	96,354	107,792
Corporate and unallocated	292,357	227,543
Eliminations	(145,130)	(148,349)
Total Assets	\$ 737,516	\$ 726,322

NOTE 11 – COMMITMENTS AND CONTINGENCIES

In April 2004, Sable Offshore Energy Inc. ("Sable"), as agent for certain owners of the Sable Offshore Energy Project, brought an action against various coatings suppliers and application contractors, including the Company and its subsidiary, Ameron B.V., in the Supreme Court of Nova Scotia, Canada. Sable seeks damages allegedly sustained by it resulting from performance problems with several coating systems used on the Sable Offshore Energy Project, including coatings products furnished by the Company and Ameron B.V. Sable's originating notice and statement of claim alleged a claim for damages in an unspecified amount; however, Sable has since alleged that its claim for damages against all defendants is approximately 440,000,000 Canadian dollars, a figure which the Company and Ameron B.V. contest. This matter is in discovery, and no trial date has yet been established. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

In May 2003, Dominion Exploration and Production, Inc. and Pioneer Natural Resources USA, Inc. (collectively "Dominion") brought an action against the Company in Civil District Court for the Parish of Orleans, Louisiana as owners of an offshore production facility known as a SPAR. Dominion seeks damages allegedly sustained by it resulting from delays in delivery of the SPAR caused by the removal and replacement of certain coatings containing lead and/or lead chromate for which the manufacturer of the SPAR alleged the Company was responsible. Dominion contends that the Company made certain misrepresentations and warranties to Dominion concerning the lead-free nature of those coatings. Dominion's petition as filed alleged a claim for damages in an unspecified amount; however, Dominion's economic expert has since estimated Dominion's damages at approximately \$60,000,000, a figure which the Company contests. Although this matter is still in discovery, trial is currently scheduled to commence on October 26, 2009. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

In July 2004, BP America Production Company ("BP America") brought an action against the Company in the 24th Judicial District Court, Parish of Jefferson, Louisiana in connection with fiberglass pipe sold by the Company for installation in four offshore platforms constructed for BP America. The plaintiff seeks damages allegedly sustained by it resulting from claimed defects in such pipe. BP America's petition as filed alleged a claim against the Company for rescission, products liability, negligence, breach of contract and warranty and for damages in an amount of not less than \$20,000,000, a figure which the Company contests. This matter is in discovery, and no trial date has yet been established. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

In June 2006, the Cawelo, California Water District ("Cawelo") brought an action against the Company in Kern County Superior Court, California in connection with concrete pipe sold by the Company in 1995 for a wastewater recovery pipeline in such county. Cawelo seeks damages allegedly sustained by it resulting from the failure of such pipe in 2004. Cawelo's petition as filed alleged a claim against the Company for products liability, negligence, breach of express warranty and breach of written contract and for damages in an amount of not less than \$8,000,000, a figure which the Company contests. This matter is in discovery, and no trial date has yet been established. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

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The Company is a defendant in a number of asbestos-related personal injury lawsuits. These cases generally seek unspecified damages for asbestos-related diseases based on alleged exposure to products previously manufactured by the Company and others. As of August 30, 2009, the Company was a defendant in 23 asbestos-related cases, compared to 26 cases as of May 31, 2009. During the quarter ended August 30, 2009, there were three new asbestos-related cases, six cases dismissed, no cases settled, no judgments and aggregate net costs and expenses of \$168,000. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to these cases.

In December, 2008, the Company received from the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") a Requirement to Furnish Information regarding transactions involving Iran. The Company intends to cooperate fully with OFAC on this matter. With the assistance of outside counsel, the Company conducted an internal inquiry and responded to OFAC. In the nine months ended August 30, 2009, the Company incurred \$3,598,000 for legal and professional fees in connection with this matter. Based upon the information available to it at this time, the Company is not able to predict the outcome of this matter. If the Company violated governmental regulations, material fines and penalties could be imposed.

The Company is subject to federal, state and local laws and regulations concerning the environment and is currently participating in administrative proceedings at several sites under these laws. While the Company finds it difficult to estimate with any certainty the total cost of remediation at the several sites, on the basis of currently available information and reserves provided, the Company believes that the outcome of such environmental regulatory proceedings will not have a material effect on the Company's financial position, cash flows, or results of operations.

In addition, certain other claims, suits and complaints that arise in the ordinary course of business, have been filed or are pending against the Company. Management believes that these matters are either adequately reserved, covered by insurance, or would not have a material effect on the Company's financial position, cash flows or results of operations if disposed of unfavorably.

NOTE 12 – PRODUCT WARRANTIES AND GUARANTEES

The Company's product warranty accrual reflects Management's estimate of probable liability associated with product warranties. The Company generally provides a standard product warranty covering defects for a period not exceeding one year from date of purchase. Management establishes product warranty accruals based on historical experience and other currently-available information. Changes in the product warranty accrual were as follows:

	Nine Months Ended	
	August 30, 2009	August 31, 2008
(In thousands)		
Balance, beginning of period	\$ 3,238	\$ 3,590
Payments	(2,751)	(626)
Warranties issued during the period	2,468	(395)
Balance, end of period	<u>\$ 2,955</u>	<u>\$ 2,569</u>

NOTE 13 – GOODWILL

Changes in the Company's carrying amount of goodwill by business segment were as follows:

	November 30, 2008	Foreign Currency Translation Adjustments	August 30, 2009
	(In thousands)		
Fiberglass-Composite Pipe	\$ 1,440	-	\$ 1,440
Water Transmission	360	2	362
Infrastructure Products	201	-	201
	<u>\$ 2,001</u>	<u>\$ 2</u>	<u>\$ 2,003</u>

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NOTE 14 – INCENTIVE STOCK COMPENSATION PLANS

As of August 30, 2009, the Company had outstanding grants under the following share-based compensation plans:

- 2001 Stock Incentive Plan ("2001 Plan") - The 2001 Plan was terminated in 2004, except as to the outstanding stock options and restricted stock grants. A total of 380,000 new shares of Common Stock were made available for awards to key employees and non-employee directors. Non-employee directors were granted options under the 2001 Plan to purchase the Company's Common Stock at prices not less than 100% of market value on the date of grant. Such options vested in equal annual installments over four years. Such options terminate ten years from the date of grant.
- 2004 Stock Incentive Plan ("2004 Plan") - The 2004 Plan serves as the successor to the 2001 Plan and supersedes that plan. A total of 525,000 new shares of Common Stock were made available for awards to key employees and non-employee directors and may include, but are not limited to, stock options and restricted stock grants. Non-employee directors were granted options under the 2004 Plan to purchase the Company's Common Stock at prices not less than 100% of market value on the date of grant. Such options vest in equal annual installments over four years and terminate ten years from the date of grant. Key employees and non-employee directors were granted restricted stock under the 2004 Plan. Such restricted stock grants typically vest in equal annual installments over three years. During the nine months ended August 30, 2009, the Company granted 16,200 restricted shares to key employees with a fair value on the grant date of \$806,000 and 12,000 restricted shares to non-employee directors with a fair value on the grant date of \$575,000. During the nine months ended August 31, 2008, the Company granted 19,000 restricted shares to key employees with a fair value on the grant date of \$1,976,000 and 7,200 restricted shares and 3,802 stock options to non-employee directors with fair values on the grant dates of \$675,000 and \$101,000, respectively.

In addition to the above, in 2001, non-employee directors were granted options to purchase the Company's Common Stock at prices not less than 100% of market value on the date of grant. Such options vested in equal annual installments over four years and terminate ten years from the date of grant. At August 30, 2009, there were 7,000 shares subject to such stock options.

The Company's income before income taxes and equity in earnings of joint venture for the three months ended August 30, 2009 and August 31, 2008 included compensation expenses of \$867,000 and \$1,240,000, respectively, related to stock-based compensation arrangements. Related tax benefits were \$338,000 and \$484,000, respectively. For the nine months ended August 30, 2009 and August 31, 2008, compensation expenses were \$3,229,000 and \$4,873,000, respectively, related to stock-based compensation arrangements. Related tax benefits were \$1,259,000 and \$1,901,000, respectively. There were no capitalized share-based compensation costs for the three and nine months ended August 30, 2009 and August 31, 2008.

Excess tax benefits resulting from the exercise of stock options and vesting of restricted stock units are reflected as financing cash flows in the Company's statements of cash flows. For the nine months ended August 30, 2009, excess tax benefits totaled \$796,000, compared to \$1,251,000 in the prior year.

The following table summarizes the stock option activity for the nine months ended August 30, 2009:

Options	Number of Options	Weighted- Average Exercise Price per Share	Weighted- Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at November 30, 2008	36,302	\$ 37.61		
Granted	-	-		
Exercised	-	-		
Outstanding at August 30, 2009	36,302	37.61	3.86	\$ 1,594
Options exercisable at August 30, 2009	33,451	32.18	3.47	\$ 1,594

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For the three and nine months ended August 30, 2009, no options were granted, forfeited or expired. For the three and nine months ended August 31, 2008, 3,802 options were granted; no options were forfeited or expired. The aggregate intrinsic value in the table above represents the total pretax intrinsic value, which is the difference between the closing price of the Company's Common Stock on the last trading day of the third quarter of 2009 and the exercise price times the number of shares that would have been received by the option holders if the options were exercised on such trading day, based on in-the-money options. This amount will change based on the fair market value of the Company's Common Stock. The aggregate intrinsic value of stock options exercised during the three and nine months ended August 31, 2008 were \$217,000 and \$2,006,000, respectively. As of August 30, 2009, unrecognized compensation cost related to stock-based compensation arrangements totaled \$2,972,000, which is expected to be recognized over a weighted-average period of 2.5 years.

For the three months ended August 30, 2009, no shares of restricted stock were granted. For the nine months ended August 30, 2009, 28,200 shares of restricted stock were granted. The weighted-average grant-date, fair value of such restricted stock was \$49.29 per share. The fair value of restricted stock, which vested during the nine months ended August 30, 2009, was \$2,678,000. For the three months ended August 31, 2008, no shares of restricted stock were granted. For the nine months ended August 31, 2008, 26,200 shares of restricted stock were granted. The weighted-average grant-date, fair value of such restricted stock was \$101.70 per share. The fair value of restricted stock, which vested during the nine months ended August 31, 2008, was \$5,844,000.

There were no net cash proceeds from the exercise of stock options during the nine months ended August 30, 2009. Net cash proceeds from the exercise of stock options during the nine months ended August 31, 2008 was \$846,000. The Company's policy is to issue shares from its authorized shares upon the exercise of stock options.

NOTE 15 – EMPLOYEE BENEFIT PLANS

For the three and nine months ended August 30, 2009 and August 31, 2008, net pension and postretirement costs were comprised of the following:

Employee Benefit Plans (Three Months Ended August 30, 2009 and August 31, 2008)

(In thousands)	Pension Benefits				U.S. Postretirement Benefits	
	U.S. Plans		Non-U.S. Plans		2009	2008
	2009	2008	2009	2008		
Service cost	\$ 690	\$ 744	\$ 67	\$ 110	\$ 20	\$ 24
Interest cost	3,089	2,888	561	636	56	52
Expected return on plan assets	(2,860)	(3,928)	(404)	(423)	(7)	(8)
Amortization of unrecognized prior service cost	18	29	66	77	5	5
Amortization of unrecognized net transition obligation	-	-	-	-	12	12
Amortization of accumulated loss	1,451	284	(167)	-	1	3
Net periodic cost	\$ 2,388	\$ 17	\$ 123	\$ 400	\$ 87	\$ 88

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Employee Benefit Plans (Nine Months Ended August 30, 2009 and August 31, 2008)

(In thousands)	Pension Benefits				U.S. Postretirement Benefits	
	U.S. Plans		Non-U.S. Plans		2009	2008
	2009	2008	2009	2008		
Service cost	\$ 2,070	\$ 2,232	\$ 201	\$ 330	\$ 60	\$ 72
Interest cost	9,267	8,664	1,683	1,908	168	156
Expected return on plan assets	(8,580)	(11,784)	(1,212)	(1,269)	(21)	(24)
Amortization of unrecognized prior service cost	54	87	198	231	15	15
Amortization of unrecognized net transition obligation	-	-	-	-	36	36
Amortization of accumulated loss	4,353	852	(501)	-	3	9
Net periodic cost	\$ 7,164	\$ 51	\$ 369	\$ 1,200	\$ 261	\$ 264

The Company contributed \$2,550,000 to the non-U.S. pension plans and \$8,500,000 to the U.S. pension plan in the first nine months of 2009. The Company expects to contribute an additional \$50,000 to its non-US pension plans during the remainder of 2009.

NOTE 16 – PROVISION FOR INCOME TAXES

Income taxes increased to \$3,778,000 in the third quarter of 2009, from \$3,079,000 in the same period of 2008. Income taxes decreased to \$8,397,000 in the first nine months of 2009 from \$12,008,000 in the comparable period in 2008. The effective tax rate decreased to 26.4% in the first nine months of 2009, from 30.5% in the first nine months of 2008. The effective rate was reduced by tax benefits recorded in the second quarter of 2009, including \$1,199,000 associated with the adjustment to a deferred tax liability related to earnings and profits from the Company's New Zealand subsidiary and \$277,000 related to a decrease in the valuation allowance related to net operating losses of the Company's Netherlands subsidiary. This \$1,199,000 represented a correction of an amount recorded in prior period financial statements. Management believes this amount to be immaterial to prior interim and annual financial statements. The effective tax rates for the first nine months of 2009 and 2008 were based on forecasted full-year earnings and the anticipated mix of domestic and foreign earnings and the above discrete items. Income from certain foreign operations and joint ventures is taxed at rates that are lower than the U.S. statutory tax rates. The effective tax rate for the first nine months of 2009 is not necessarily indicative of the tax rate for the full fiscal year.

At August 30, 2009, the total amount of gross unrecognized tax benefits, excluding interest, was \$8,620,000. This amount is not reduced for offsetting benefits in other tax jurisdictions and for the benefit of future tax deductions that would arise as a result of settling such liabilities as recorded. Of this amount, \$4,688,000 would reduce the Company's income tax expense and effective tax rate, after giving effect to offsetting benefits from other tax jurisdictions and resulting future deductions. At November 30, 2008, the total amount of gross unrecognized tax benefits, excluding interest, was \$7,416,000.

The Company anticipates that it is reasonably possible that the total amount of unrecognized tax benefits may significantly change within the succeeding 12 months as a result of the expiration of certain state statutes of limitations for examination and the settlement of certain state audits. The Company estimates that these events could reasonably result in a possible decrease in unrecognized tax benefits of \$1,375,000.

The Company accrues interest and penalties related to unrecognized tax benefits as income tax expense. Accruals totaling \$1,449,000 were recorded as a liability in the Company's consolidated balance sheet at August 30, 2009, compared to \$1,098,000 as of November 30, 2008.

The Company's federal income tax returns remain subject to examination for the 2007 and forward tax years. The Company files multiple state income tax returns, including California, Hawaii, Arizona and Texas, with open statutes ranging from 2000 through 2008. The Company also files multiple foreign income tax returns and remains subject to examination in major foreign jurisdictions, including the Netherlands, Singapore and Malaysia, for years ranging from 1996 through 2008.

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NOTE 17 – FAIR VALUE MEASUREMENTS

As defined in SFAS No. 157, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). The Company utilizes market data or assumptions that the Company believes market participants would use in pricing the asset or liability, including assumptions about risk and the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated or generally unobservable.

The Company primarily applies the market approach for recurring fair value measurements and endeavors to utilize the best available information. Accordingly, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. The Company is able to classify fair value balances based on the observability of those inputs.

SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement). The three levels of the fair value hierarchy defined by SFAS No. 157 are as follows:

- Level 1** Quoted prices are available in active markets for identical assets or liabilities as of the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis. Level 1 primarily consists of financial instruments such as exchange-traded derivatives, listed equities and U.S. government treasury securities.
- Level 2** Pricing inputs are other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reporting date. Level 2 includes those financial instruments that are valued using models or other valuation methodologies. These models are primarily industry-standard models that consider various assumptions, including quoted forward prices for commodities, time value, volatility factors, and current market and contractual prices for the underlying instruments, as well as other relevant economic measures. Substantially all of these assumptions are observable in the marketplace throughout the full term of the instrument, can be derived from observable data or are supported by observable levels at which transactions are executed in the marketplace. Instruments in this category include non-exchange-traded derivatives such as over the counter forwards, options and repurchase agreements.
- Level 3** Pricing inputs include significant inputs that are generally less observable from objective sources. These inputs may be used with internally developed methodologies that result in Management’s best estimate of fair value from the perspective of a market participant. Level 3 instruments include those that may be more structured or otherwise tailored to customers’ needs. At each balance sheet date, the Company performs an analysis of all instruments subject to SFAS No. 157 and includes in Level 3 all of those whose fair value is based on significant unobservable inputs.

Assets and liabilities measured at fair value on a recurring basis included the following as of August 30, 2009:

(In thousands)	Fair Value Measurements Using			Assets
	Level 1	Level 2	Level 3	At Fair Value
Assets				
Derivative assets	\$ -	\$ 10	\$ -	\$ 10
Total assets	\$ -	\$ 10	\$ -	\$ 10

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Assets and liabilities measured at fair value on a recurring basis included the following as of August 31, 2008:

(In thousands)	Fair Value Measurements Using			Liabilities
	Level 1	Level 2	Level 3	At Fair Value
Liabilities				
Derivative Liabilities	\$ -	\$ 364	\$ -	\$ 364
Total Liabilities	\$ -	\$ 364	\$ -	\$ 364

Derivatives

The Company operates internationally, giving rise to exposure to market risks from changes in foreign exchange rates. From time to time, derivative financial instruments, primarily foreign exchange contracts, are used by the Company to reduce those risks. The Company does not hold or issue financial or derivative financial instruments for trading or speculative purposes. The Company and its subsidiaries complete transactions in currencies other than their functional currencies. The Company's primary objective with respect to currency risk is to reduce net income volatility that would otherwise occur due to exchange-rate fluctuations.

In order to minimize the risk of gain or loss due to exchange rates, the Company uses foreign currency derivatives. As of August 30, 2009, the Company held one foreign currency forward contract in the amount of \$4,000,000 U.S. dollars, hedging Singapore dollars and two contracts aggregating \$850,000 U.S. dollars, hedging Euros, and no other contracts. Such contracts had a positive fair value of \$9,970 as of August 30, 2009 based on quotations from financial institutions. As of August 31, 2008, the Company held 20 foreign currency forward contracts aggregating \$10,000,000 U.S. dollars, hedging Singapore dollars, and two contracts aggregating \$1,098,000 U.S. dollars, hedging Euros, and such instruments had a negative fair value of \$364,000 based on quotations from the financial institutions as of August 31, 2008. Derivatives are reported as receivables and or liabilities on the balance sheet and recognized as other income, net, on the income statement.

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ITEM 2 – MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

INTRODUCTION

Ameron International Corporation ("Ameron", the "Company", the "Registrant" or the "Corporation") is a multinational manufacturer of highly-engineered products and materials for the chemical, industrial, energy, transportation and infrastructure markets. Ameron is a leading producer of water transmission lines; fiberglass-composite pipe for transporting oil, chemicals and corrosive fluids and specialized materials; and products used in infrastructure projects. The Company operates businesses in North America, South America, Europe and Asia. The Company has three reportable segments. The Fiberglass-Composite Pipe Group manufactures and markets filament-wound and molded composite fiberglass pipe, tubing, fittings and well screens. The Water Transmission Group manufactures and supplies concrete and steel pressure pipe, concrete non-pressure pipe, protective linings for pipe and fabricated steel products, such as large-diameter wind towers. The Infrastructure Products Group consists of two operating segments, which are aggregated: the Hawaii Division which manufactures and sells ready-mix concrete, sand, aggregates, concrete pipe and culverts and the Pole Products Division which manufactures and sells concrete and steel lighting and traffic poles. The markets served by the Fiberglass-Composite Pipe Group are worldwide in scope. The Water Transmission Group serves primarily the western U.S. for pipe and sells wind towers primarily west of the Mississippi river. The Infrastructure Products Group's quarry and ready-mix business operates exclusively in Hawaii, and poles are sold throughout the U.S. Ameron also participates in several joint-venture companies, directly in the U.S. and Saudi Arabia, and indirectly in Egypt.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Management's Discussion and Analysis of Liquidity and Capital Resources and Results of Operations are based upon the Company's consolidated financial statements, which are prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires Management to make certain estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities during the reporting periods. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

A summary of the Company's significant accounting policies is provided in Note (1) of the Notes to Consolidated Financial Statements, under Part II, Item 8, in the Company's Annual Report on Form 10-K for the fiscal year ended November 30, 2008 ("2008 Annual Report"). In addition, Management believes the following accounting policies affect the more significant estimates used in preparing the consolidated financial statements.

The consolidated financial statements include the accounts of Ameron and all wholly-owned subsidiaries. All material intercompany accounts and transactions are eliminated. The functional currencies for the Company's foreign operations are the applicable local currencies. The translation from the applicable foreign currencies to U.S. dollars is performed for balance sheet accounts using current exchange rates in effect at the balance sheet date and for revenue and expense accounts using a weighted-average exchange rate during the period. The resulting translation adjustments are recorded in accumulated other comprehensive income/(loss). The Company advances funds to certain foreign subsidiaries that are not expected to be repaid in the foreseeable future. Translation adjustments arising from these advances are also included in accumulated other comprehensive income/(loss). The timing of repayments of intercompany advances could materially impact the Company's consolidated financial statements. Additionally, earnings of foreign subsidiaries are often permanently reinvested outside the U.S. Unforeseen repatriation of such earnings could result in significant unrecognized U.S. tax liability. Gains or losses resulting from foreign currency transactions are included in other income, net.

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

Revenue for the Fiberglass-Composite Pipe and Infrastructure Products segments is recognized when risk of ownership and title pass, primarily at the time goods are shipped, provided that an agreement exists between the customer and the Company, the price is fixed or determinable and collection is reasonably assured. Revenue is recognized for the Water Transmission Group primarily under the percentage-of-completion method, typically based on completed units of production, since products are manufactured under enforceable and binding construction contracts, typically are designed for specific applications, are not interchangeable between projects, and are not manufactured for stock. Revenue for the period is determined by multiplying total estimated contract revenue by the percentage-of-completion of the contract and then subtracting the amount of previously recognized revenue. Cost of earned revenue is computed by multiplying estimated contract completion cost by the percentage-of-completion of the contract and then subtracting the amount of previously recognized cost. In some cases, if products are manufactured for stock or are not related to specific construction contracts, revenue is recognized under the same criteria used by the other two segments. Revenue under the percentage-of-completion method is subject to a greater level of estimation, which affects the timing of revenue recognition, costs and profits. Estimates are reviewed on a consistent basis and are adjusted periodically to reflect current expectations. Costs attributable to unpriced change orders are treated as costs of contract performance in the period, and contract revenue is recognized if recovery is probable. Disputed or unapproved change orders are treated as claims. Recognition of amounts of additional contract revenue relating to claims occurs when amounts have been received or awarded with recognition based on the percentage-of-completion methodology.

The Company expenses environmental clean-up costs related to existing conditions resulting from past or current operations on a site-by-site basis. Liabilities and costs associated with these matters, as well as other pending litigation and asserted claims arising in the ordinary course of business, require estimates of future costs and judgments based on the knowledge and experience of Management and its legal counsel. When the Company's exposures can be reasonably estimated and are probable, liabilities and expenses are recorded. The ultimate resolution of any such exposure to the Company may differ due to subsequent developments.

Inventories are stated at the lower of cost or market with cost determined principally on the first-in, first-out ("FIFO") method. Certain steel inventories used by the Water Transmission Group are valued using the last-in, first-out ("LIFO") method. Significant changes in steel levels or costs could materially impact the Company's financial statements. Reserves are established for excess, obsolete and rework inventories based on estimates of salability and forecasted future demand. Management records an allowance for doubtful accounts receivable based on historical experience and expected trends. A significant reduction in demand or a significant worsening of customer credit quality could materially impact the Company's consolidated financial statements.

Investments in unconsolidated joint ventures or affiliates ("joint ventures") over which the Company has significant influence are accounted for under the equity method of accounting, whereby the investment is carried at the cost of acquisition, plus the Company's equity in undistributed earnings or losses since acquisition. Investments in joint ventures over which the Company does not have the ability to exert significant influence over the investees' operating and financing activities are accounted for under the cost method of accounting. The Company's investment in TAMCO, a steel mini-mill in California, is accounted for under the equity method. Investments in Ameron Saudi Arabia, Ltd. and Bondstrand, Ltd. are accounted for under the cost method due to Management's current assessment of the Company's influence over these joint ventures.

Property, plant and equipment is stated on the basis of cost and depreciated principally using a straight-line method based on the estimated useful lives of the related assets, generally three to 40 years. The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. If the estimated future, undiscounted cash flows from the use of an asset are less than its carrying value, a write-down is recorded to reduce the related asset to estimated fair value. Actual cash flows may differ significantly from estimated cash flows. Additionally, current estimates of future cash flows may differ from subsequent estimates of future cash flows. Changes in estimated or actual cash flows could materially impact the Company's consolidated financial statements.

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The Company is self-insured for a portion of the losses and liabilities primarily associated with workers' compensation claims and general, product and vehicle liability. Losses are accrued based upon the Company's estimates of the aggregate liability for claims incurred using historical experience and certain actuarial assumptions followed in the insurance industry. The estimate of self-insurance liability includes an estimate of incurred but not reported claims, based on data compiled from historical experience. Actual experience could differ significantly from these estimates and could materially impact the Company's consolidated financial statements. The Company purchases varying levels of insurance to cover losses in excess of the self-insured limits. Currently, the Company's primary self-insurance limits or deductibles are \$1.0 million per workers' compensation claim, \$.1 million per general, property or product liability claim, and \$.25 million per vehicle liability claim.

The Company follows the guidance of Statement of Financial Accounting Standards ("SFAS") No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," SFAS No. 87, "Employers' Accounting for Pensions," and SFAS No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions," when accounting for pension and other postretirement benefits. Under these accounting standards, assumptions are made regarding the valuation of benefit obligations and the performance of plan assets that are controlled and invested by third-party fiduciaries. Delayed recognition of differences between actual results and expected or estimated results is a guiding principle of these standards. Such delayed recognition provides a gradual recognition of benefit obligations and investment performance over the working lives of the employees who benefit under the plans, based on various assumptions. Assumed discount rates are used to calculate the present values of benefit payments which are projected to be made in the future, including projections of increases in employees' annual compensation and health care costs. Management also projects the future returns on invested assets based principally on prior performance. These projected returns reduce the net benefit costs the Company records in the current period. Actual results could vary significantly from projected results, and such deviations could materially impact the Company's consolidated financial statements. Management consults with the Company's actuaries when determining these assumptions. Program changes, including termination, freezing of benefits or acceleration of benefits, could result in an immediate recognition of unrecognized benefit obligations; and such recognition could materially impact the Company's consolidated financial statements.

The Company adopted SFAS No. 157, "Fair Value Measurements," which provides a framework for measuring fair value. As defined in SFAS No. 157, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). The Company utilizes market data or assumptions that the Company believes market participants would use in pricing assets or liabilities, including assumptions about risk and the risks inherent in the inputs to valuation techniques. These inputs can be readily observable, market corroborated or generally unobservable. The Company primarily applies the market and income approaches for recurring fair value measurements and endeavors to utilize the best available information. Accordingly, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. The Company classifies fair value balances based on the observability of those inputs. The ultimate exit price could be significantly different than currently estimated by the Company.

Management incentive compensation is accrued based on current estimates of the Company's ability to achieve short-term and long-term performance targets. The Company's actual performance could be significantly different than currently estimated by the Company.

Deferred income tax assets and liabilities are computed for differences between the financial statement and income tax bases of assets and liabilities. Such deferred income tax asset and liability computations are based on enacted tax laws and rates applicable to periods in which the differences are expected to reverse. Valuation allowances are established, when necessary, to reduce deferred income tax assets to the amounts expected to be realized. Quarterly income taxes are estimated based on the mix of income by jurisdiction forecasted for the full fiscal year. The Company believes that it has adequately provided for tax-related matters. Actual income, the mix of income by jurisdiction and income taxes could be significantly different than currently estimated.

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The amount of income taxes the Company pays is subject to ongoing audits by federal, state and foreign tax authorities. The Company's estimate of the potential outcome of any uncertain tax issue is subject to Management's assessment of relevant risks, facts, and circumstances existing at that time, pursuant to the Financial Accounting Standards Board ("FASB") Interpretation ("FIN") No. 48, "Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109." FIN No. 48 requires a more-likely-than-not threshold for financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. A liability is recorded for the difference between the benefit recognized and measured pursuant to FIN No. 48 and the tax position taken or expected to be taken on the tax return. To the extent that the Company's assessment of such tax positions changes, the change in estimate is recorded in the period in which the determination is made. The Company reports tax-related interest and penalties as a component of income tax expense.

LIQUIDITY AND CAPITAL RESOURCES

As of August 30, 2009, the Company's working capital, including cash and cash equivalents and current portion of long-term debt, totaled \$282.0 million, a decrease of \$15.4 million from working capital of \$297.4 million as of November 30, 2008. The decrease resulted primarily from a decrease in receivables and inventories, partially offset by an increase in cash and cash equivalents and decreases in trade payables and income taxes payable. The reductions in receivables and inventories were primarily due to a slowdown in business activity compared to the prior year. Cash and cash equivalents totaled \$170.2 million as of August 30, 2009, compared to \$143.6 million as of November 30, 2008.

In the nine months ended August 30, 2009, net cash of \$87.0 million was generated from operating activities, compared to \$59.5 million generated in the similar period in 2008. The higher operating cash flow in 2009 was primarily due to a decline in operating assets, partially offset by lower liabilities and earnings. In the nine months ended August 30, 2009, the Company's cash provided by operating activities included net income of \$19.2 million, plus non-cash adjustments (depreciation, amortization, loss from joint venture and stock compensation expense) of \$23.1 million, plus changes in operating assets and liabilities of \$44.7 million. In the nine months ended August 31, 2008, cash from operating activities included net income of \$41.1 million, plus similar non-cash adjustments (depreciation, amortization, equity income from joint ventures in excess of dividends and stock compensation expense) of \$15.4 million, plus changes in operating assets and liabilities of \$3.0 million. The non-cash adjustments in 2009 were higher due primarily to the Company's equity in losses of TAMCO. The positive net change in cash from operating assets and liabilities in 2009 was primarily due to decreases in receivables and inventories.

Net cash used in investing activities totaled \$57.2 million in the nine months ended August 30, 2009, compared to \$43.2 million used in the nine months ended August 31, 2008. Net cash used in investing activities during the first nine months of 2009 consisted of capital expenditures of \$35.2 million, compared to \$44.5 million in the same period of 2008. In addition to normal replacement and upgrades of machinery and equipment, the Company expanded a wind tower manufacturing facility in 2008 and fiberglass pipe plants in Texas and Brazil in 2009 and 2008. Normal replacement expenditures are typically equal to depreciation. During the year ending November 30, 2009, the Company anticipates spending between \$40 and \$50 million on capital expenditures. Capital expenditures are expected to be funded by existing cash balances, cash generated from operations or additional borrowings. During the first quarter of 2009, the Company contributed capital of \$10.0 million to TAMCO, the Company's 50%-owned steel mini-mill in California. In addition, the Company provided \$12.5 million during the third quarter of 2009 in loans to TAMCO as part of a \$40.0 million senior secured credit facility provided by its shareholders to TAMCO.

Net cash used in financing activities totaled \$9.0 million during the nine months ended August 30, 2009, compared to \$12.5 million used in the nine months ended August 31, 2008. Net cash used in 2009 consisted of payment of Common Stock dividends of \$8.3 million and treasury stock purchases of \$1.0 million, related to the payment of taxes associated with the vesting of restricted shares. Also in 2009, the Company recognized tax benefits related to stock-based compensation of \$.8 million. Net cash used in 2008 consisted of net repayment of debt of \$4.1 million, payment of Common Stock dividends of \$7.8 million and similar treasury stock purchases of \$2.8 million. In 2008, the Company received \$.8 million from the issuance of Common Stock related to exercised stock options and recognized tax benefits related to stock-based compensation of \$1.3 million.

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In August 2009, the Company extended a \$100,000,000 revolving credit facility with six banks (the "Revolver"). Under the Revolver, the Company may, at its option, borrow up to the available amount at floating interest rates or utilize for letters of credit (LIBOR plus a spread ranging from 2.75% to 3.75%, determined based on the Company's financial condition and performance), at any time until August 2012, when all borrowings under the Revolver must be repaid and letters of credit cancelled. At August 30, 2009, \$82.1 million was available to be borrowed under the Revolver.

The Revolver contains various restrictive covenants, including the requirement to maintain specified amounts of net worth and restrictions on cash dividends, borrowings, liens, investments, capital expenditures, guarantees, and financial covenants. The Company is required to maintain consolidated net worth of \$375.5 million plus 50% of net income and 75% of proceeds from any equity issued after November 30, 2008. The Company's consolidated net worth exceeded the covenant amount by \$141.4 million as of August 30, 2009. The Company is required to maintain a consolidated leverage ratio of consolidated funded indebtedness to earnings before interest, taxes, depreciation and amortization ("EBITDA") of no more than 2.5 times. At August 30, 2009, the Company maintained a consolidated leverage ratio of .70 times EBITDA. The Revolver requires that the Company maintain qualified consolidated tangible assets at least equal to the outstanding secured funded indebtedness. At August 30, 2009, qualifying tangible assets equaled 3.39 times funded indebtedness. Under the most restrictive fixed charge coverage ratio, the sum of EBITDA and rental expense less cash taxes must be at least 1.30 times the sum of interest expense, rental expense, dividends and scheduled funded debt payments. At August 30, 2009, the Company maintained such a fixed charge coverage ratio of 2.26 times. Under the most restrictive provisions of the Company's lending agreements, \$25.2 million of retained earnings were not restricted at August 30, 2009, as to the declaration of cash dividends or the repurchase of Company stock. At August 30, 2009, the Company was in compliance with all covenants.

Cash and cash equivalents at August 30, 2009 totaled \$170.2 million, an increase of \$26.6 million from November 30, 2008. At August 30, 2009, the Company had total debt outstanding of \$54.5 million, compared to \$52.8 million at November 30, 2008, and approximately \$108.3 million in unused committed and uncommitted credit lines available from foreign and domestic banks. The Company's highest borrowing and the average borrowing levels during 2009 were \$54.5 million and \$53.6 million, respectively.

Cash balances are held throughout the world, including \$102.5 million held outside of the U.S. at August 30, 2009. Most of the amounts held outside of the U.S. could be repatriated to the U.S. but, under current law, would be subject to U.S. federal income taxes, less applicable foreign tax credits.

The Company contributed \$2.6 million to the non-U.S. pension plans and \$8.5 million to the U.S. pension plan in the first nine months of 2009. The Company expects to contribute an additional \$.1 million to its non-US pension plans during the remainder of 2009.

TAMCO's shareholders made a \$20.0 million capital contribution to TAMCO in February 2009. The Company's share of the capital contribution from TAMCO's shareholders totaled \$10.0 million. In July 2009, TAMCO entered into a senior secured credit facility with TAMCO's shareholders which provided TAMCO up to \$40.0 million for operating needs and to replace an existing bank line. The shareholder credit facility bears interest at LIBOR plus 3.25% per annum and is scheduled to mature January 31, 2011. As of August 30, 2009, TAMCO borrowed \$25.0 million under the facility, of which \$12.5 million was provided by the Company. The Company continues to have a 50% ownership interest in TAMCO and accounts for its investment under the equity method of accounting.

Management believes that cash flow from operations and current cash balances, together with currently available lines of credit, will be sufficient to meet operating requirements in 2009. Cash available from operations could be affected by any general economic downturn or any decline or adverse changes in the Company's business, such as a loss of customers, competitive pricing pressures or significant raw material price increases.

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The Company's contractual obligations and commercial commitments at August 30, 2009 are summarized as follows (in thousands):

Contractual Obligations	Payments Due by Period				
	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
Long-term debt	\$ 54,543	\$ 17,088	\$ 14,176	\$ 7,579	\$ 15,700
Interest payments on debt (a)	3,886	941	1,755	552	638
Operating leases	37,781	4,486	6,802	3,106	23,387
Pension funding	50	50	-	-	-
Uncertain tax positions	1,186	1,186	-	-	-
Total contractual obligations (b)	\$ 97,446	\$ 23,751	\$ 22,733	\$ 11,237	\$ 39,725

Contractual Commitments	Commitments Expiring Per Period				
	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
Standby letters of credit (c)	\$ 1,865	\$ 1,865	\$ -	\$ -	\$ -
Total commercial commitments (b)	\$ 1,865	\$ 1,865	\$ -	\$ -	\$ -

(a) Future interest payments related to debt obligations, excluding the Revolver.

(b) The Company has no capitalized lease obligations, unconditional purchase obligations or standby repurchases obligations.

(c) Not included are standby letters of credit totaling \$16,067 supporting industrial development bonds with principal of \$15,700. The principal amount of the industrial development bonds is included in long-term debt. The standby letters of credit are issued under the Revolver.

RESULTS OF OPERATIONS: 2009 COMPARED WITH 2008

General

Net income totaled \$5.9 million, or \$.65 per diluted share, on sales of \$131.4 million in the quarter ended August 30, 2009, compared to \$15.0 million, or \$1.63 per diluted share, on sales of \$170.1 million in the same period in 2008. The Fiberglass-Composite Pipe Group had lower sales and profits due primarily to continued soft market conditions and foreign exchange. The Water Transmission Group had lower sales but improved profitability due principally to better project cost control and plant efficiencies. The Infrastructure Products Group had lower sales and income due to the decline in both the Pole Products Division and the Hawaii Division associated with continued weak construction spending throughout the U.S. Quarterly net income was also lower in 2009 due to the significant decline in earnings from TAMCO, the Company's 50%-owned steel mini-mill in California.

Net income totaled \$19.2 million, or \$2.09 per diluted share, on sales of \$410.3 million in the nine months ended August 30, 2009, compared to \$41.1 million, or \$4.48 per diluted share, on sales of \$479.7 million in the same period in 2008. The Fiberglass-Composite Pipe and Infrastructure Products Groups had lower sales and income due to generally softer market conditions. The Water Transmission Group reported modestly lower sales but improved profitability due principally to higher wind tower sales and improved plant efficiencies and cost control. Nine-month net income was significantly lower in 2009 due to TAMCO's loss.

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Sales

Total consolidated sales decreased \$38.7 million, or 22.8%, in the third quarter of 2009, compared to the similar period in 2008. Total consolidated sales in the nine months ending August 30, 2009 decreased \$69.4 million, or 14.5%, compared to the similar period in the prior year. In general, total consolidated sales were down due to weak economic conditions affecting all of the Company's businesses.

Fiberglass-Composite Pipe's sales decreased \$13.1 million, or 18.7%, in the third quarter and \$36.1 million, or 17.6%, in the first nine months of 2009, compared to the similar periods in 2008. Foreign currencies accounted for \$2.6 million and \$9.6 million of the sales decline in the third quarter and first nine months of 2009, respectively. Sales in the U.S. decreased \$4.0 million and \$8.2 million, respectively, in the third quarter and first nine months of 2009, largely due to weaker oilfield piping demand and weak industrial markets. Sales from Asian operations decreased \$6.4 million and \$14.3 million, respectively, in the third quarter and first nine months of 2009, driven by weaker conditions in the Middle Eastern industrial markets and the impact of foreign exchange. Sales from European operations decreased \$1.0 million and \$5.3 million, respectively, in the third quarter and first nine months of 2009. The declines were related to softer market conditions in Europe, North Africa and Russia and foreign exchange. Sales from Brazilian operations decreased \$1.7 million and \$8.3 million, respectively, in the third quarter and first nine months of 2009, due to the impact of foreign exchange, project delays in municipal water markets, and a halt in activity in the pulp and paper market. The Group's customers in the industrial, marine, offshore and onshore oilfield markets are being impacted by the volatility of oil prices, lack of financing and lower demand. The Fiberglass-Composite Pipe Group is expected to continue to be impacted by the overall economic climate, reduced oil prices and energy demand and tight credit markets.

The Water Transmission Group's sales decreased \$ 13.7 million, or 25.6%, in the third quarter and \$4.9 million, or 3.5%, in the first nine months of 2009, compared to similar periods in 2008. The decrease in sales in the third quarter of 2009 was due to weaker demand for water pipe in the western United States and lower wind tower sales. The sales decrease for the first nine months was the result of weak demand for water pipe partially offset by increased production of wind towers. While year-to-date wind tower sales were higher than in the prior year, sales of wind towers remain challenged by the lack of project financing available to wind farm developers. Until financing and incentives are provided to the wind energy industry, wind tower activity will remain depressed. Near term, the water pipe business will also continue to experience soft market demand as order backlogs are well below historical levels; and the timing of bid activity has been negatively affected by the economy, municipal budgets and availability of financing.

Infrastructure Products' sales decreased \$12.1 million, or 25.8%, in the third quarter and \$29.3 million, or 21.4%, in the first nine months of 2009, compared to the similar periods in 2008. The Company's Hawaii Division had lower sales as residential and commercial construction markets in Hawaii continued to weaken. The Hawaii Division experienced lower demand for aggregates and ready-mix on both Oahu and Maui as construction spending continued to soften due to the recessionary economy. Military and governmental spending provided a stable base business. The Pole Products Division continued to be impacted by the decline in U.S. housing markets and reduced demand for concrete lighting poles and steel traffic poles. The Infrastructure Products Group is expected to continue to be impacted by the slowdown in construction spending in Hawaii and the low residential construction spending throughout the U.S. Housing starts and permits in the U.S. remain at historically low levels, and recovery of the residential market is not expected in the short term. An improvement for the Infrastructure Products Group is not anticipated in the near term.

Gross Profit

Gross profit in the third quarter of 2009 was \$35.6 million, or 27.1% of sales, compared to \$37.5 million, or 22.0% of sales, in the third quarter of 2008. Year-to-date gross profit in 2009 was \$107.1 million, or 26.1% of sales, compared to \$110.7 million, or 23.1% of sales, in the similar period of 2008. Gross profit decreased \$1.8 million and \$3.6 million, respectively, in the third quarter and the first nine months of 2009, compared to the similar periods in 2008, due to lower sales. The gross margin increases were related to better cost control and improved plant efficiencies in the Water Transmission Group, the mix of products and lower raw material costs.

Fiberglass-Composite Pipe Group's gross profit decreased \$5.1 million and \$10.6 million, respectively, in the third quarter and in the first nine months of 2009, compared to the similar periods in 2008, due to lower sales. Gross profit margins were 41.5% in the third quarter and 40.2% in the first nine months of 2009, compared to 41.0% in the third quarter and 38.3% in the first nine months of 2008. Margins were higher in 2009 due to favorable product mix, plant efficiencies and lower raw material costs.

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Water Transmission Group's gross profit increased \$7.0 million in the third quarter and \$16.7 million in the first nine months of 2009, compared to the similar periods in 2008. Gross profit margins were 14.1% in the third quarter and 13.2% in the first nine months of 2009, compared to a negative 2.6% in the third quarter and .7% in the first nine months of 2008. Gross profit and margins were favorably enhanced by improved plant efficiencies with the completion of the wind tower facility, cost controls and completion of low-margin pipe projects in 2008.

Gross profit of the Infrastructure Products Group decreased \$4.2 million in the third quarter and \$10.2 million in the first nine months of 2009, compared to the similar periods in 2008. Gross profit margins were 17.1% in the third quarter and 18.7% in the first nine months of 2009, compared to 21.6% in the third quarter and 22.2% in the first nine months 2008. Margins were lower in 2009 due to pricing pressures related to challenging market conditions. Lower sales negatively impacted gross profit by \$2.6 million and \$6.5 million, respectively, in the third quarter and the first nine months of 2009; while lower margins primarily related to unfavorable plant utilization decreased gross profit by \$1.6 million and \$3.7 million, respectively, in the third quarter and the first nine months of 2009.

Selling, General and Administrative Expenses

Selling, general and administrative ("SG&A") expenses totaled \$25.6 million, or 19.5% of sales, in the third quarter of 2009, compared to \$25.8 million, or 15.2% of sales, in the third quarter of 2008. In the nine months ended August 30, 2009, SG&A expenses totaled \$77.9 million, or 19.0% of sales, compared to \$77.5 million, 16.1% of sales, in the same period in 2008. The \$.4 million increase in the first nine months of 2009 was due in part to higher pension expense of \$6.0 million and higher legal expenses of \$4.2 million, due primarily to the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") inquiry, offset by lower management incentive compensation of \$1.8 million, favorable foreign exchange impact of \$2.3 million, lower stock compensation expense of \$1.6 million and lower other expenses of \$4.1 million.

Other Income, Net

Other income totaled \$.4 million in the third quarter of 2009, a decrease of \$1.8 million compared to other income in the third quarter of 2008. Other income was \$3.3 million in the nine months ended August 30, 2009, a decrease of \$2.5 million compared to other income in the similar period of 2008. The decrease in other income in the first nine months was due to higher dividend income from affiliates of \$.5 million and insurance reimbursements of \$.8 million in 2008, and lower other income of \$1.2 million in 2009. Other income also included royalties and fees from licensees, foreign currency transaction adjustments and other miscellaneous income.

Interest

Interest income was \$.2 million in the third quarter of 2009, compared to \$.8 million in the third quarter of 2008. Interest income was \$.9 million in the nine months ended August 30, 2009, a decrease of \$2.1 million compared to the similar period in 2008. The decrease was due primarily to lower interest rates on short-term investments. Interest expense was \$.6 million in the third quarter of 2009, compared to \$.8 million in the third quarter of 2008. In the nine months ended August 30, 2009, interest expense totaled \$1.6 million, compared to \$2.6 million in the same period in 2008. The decrease in interest expense was due to lower debt levels.

Provision for Income Taxes

Income taxes increased to \$3.8 million in the third quarter of 2009, from \$3.1 million in the same period of 2008. Income taxes decreased to \$8.4 million in the first nine months of 2009, from \$12.0 million in the comparable period in 2008. The effective tax rate decreased to 26.4% in the first nine months of 2009, from 30.5% in the first nine months of 2008. The effective rate was reduced by tax benefits recorded in the second quarter of 2009, including \$1.2 million associated with the adjustment to a deferred tax liability related to earnings and profits from the Company's New Zealand subsidiary and \$.3 million related to a decrease in the valuation allowance related to net operating losses of the Company's Netherlands subsidiary. This \$1.2 million represented a correction of an amount recorded in prior period financial statements. Management believes this amount to be immaterial to prior interim and annual financial statements. The effective tax rates for the first nine months of 2009 and 2008 were based on forecasted full-year earnings and the anticipated mix of domestic and foreign earnings and the above discrete items. Income from certain foreign operations and joint ventures is taxed at rates that are lower than the U.S. statutory tax rates. The effective tax rate for the first nine months of 2009 is not necessarily indicative of the tax rate for the full year.

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Equity in Earnings of Joint Venture, Net of Taxes

Equity in earnings of joint venture, which consists of the Company's share of the net income or loss of TAMCO, decreased to a loss of \$.3 million in the third quarter of 2009, compared to income of \$4.2 million in the similar period of 2008. For the first nine months of 2009, the Company's equity in TAMCO's loss totaled \$4.2 million, compared to equity in earnings of \$13.7 million in 2008. Equity income is shown net of income taxes. Losses and earnings from TAMCO were taxed at an effective rate of 9.6%, for the periods in 2009 and 2008, reflecting the dividend exclusion provided to the Company under current tax laws. The reduction in TAMCO's earnings was due to the collapse of infrastructure spending for steel rebar in California, Arizona and Nevada. TAMCO halted production in the first quarter of 2009 and had limited production during the second and third quarters of 2009. Given the low level of demand, TAMCO will continue to operate its plant intermittently as incoming orders and inventory levels warrant. Demand for steel rebar in TAMCO's key markets in the western U.S. is not expected to recover in the short term. Should the stimulus package start becoming a reality, TAMCO would be expected to benefit.

ITEM 3 – QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

No material changes have occurred in the quantitative and qualitative market risk disclosure as presented in the Company's 2008 Annual Report.

ITEM 4 – CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. Management established disclosure controls and procedures to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the officers who certify the Company's financial reports and to other members of senior Management and the Board of Directors.

The Company carried out an evaluation, under the supervision and with the participation of the Company's Management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of August 30, 2009 pursuant to Exchange Act Rule 13a-14. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 ["Exchange Act"]) are effective. "Disclosure controls and procedures" are the controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports filed or submitted by it under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms. "Disclosure controls and procedures" include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's Management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

There was no change in the Company's internal control over financial reporting that occurred during the fiscal quarter covered by this report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

FORWARD-LOOKING AND CAUTIONARY STATEMENTS

All statements and assumptions contained in this Quarterly Report on Form 10-Q and in any documents attached or incorporated by reference that do not directly and exclusively relate to historical facts constitute "forward-looking statements" within the meaning of the Safe Harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements represent current expectations and beliefs of the Company, and no assurance can be given that the results described in such statements will be achieved.

Forward-looking information contained in these statements include, among other things, statements with respect to the Company's financial condition, results of operations, cash flows, business strategies, operating efficiencies or synergies, competitive positions, growth opportunities, plans and objectives of Management, and other matters. Such statements are subject to numerous assumptions, risks, uncertainties and other factors, many of which are outside of the Company's control, which could cause actual results to differ materially from the results described in such statements. These factors include without limitation those listed below under Item 1A, Risk Factors, in the Company's 2008 Annual Report on Form 10-K and including any revisions referenced in Part II, Item 1A, herein.

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Forward-looking statements in this Quarterly Report on Form 10-Q speak only as of the date of this Quarterly Report, and forward-looking statements in documents attached or incorporated by reference speak only as to the date of those documents. The Company does not undertake any obligation to update or release any revisions to any forward-looking statement or to report any events or circumstances after the date of this Quarterly Report or to reflect the occurrence of unanticipated events, except as required by law.

PART II – OTHER INFORMATION

ITEM 1 – LEGAL PROCEEDINGS

In April 2004, Sable Offshore Energy Inc. ("Sable"), as agent for certain owners of the Sable Offshore Energy Project, brought an action against various coatings suppliers and application contractors, including the Company and its subsidiary, Ameron B.V., in the Supreme Court of Nova Scotia, Canada. Sable seeks damages allegedly sustained by it resulting from performance problems with several coating systems used on the Sable Offshore Energy Project, including coatings products furnished by the Company and Ameron B.V. Sable's originating notice and statement of claim alleged a claim for damages in an unspecified amount; however, Sable has since alleged that its claim for damages against all defendants is approximately 440 million Canadian dollars, a figure which the Company and Ameron B.V. contest. This matter is in discovery, and no trial date has yet been established. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

In May 2003, Dominion Exploration and Production, Inc. and Pioneer Natural Resources USA, Inc. (collectively "Dominion") brought an action against the Company in Civil District Court for the Parish of Orleans, Louisiana as owners of an offshore production facility known as a SPAR. Dominion seeks damages allegedly sustained by it resulting from delays in delivery of the SPAR caused by the removal and replacement of certain coatings containing lead and/or lead chromate for which the manufacturer of the SPAR alleged the Company was responsible. Dominion contends that the Company made certain misrepresentations and warranties to Dominion concerning the lead-free nature of those coatings. Dominion's petition as filed alleged a claim for damages in an unspecified amount; however, Dominion's economic expert has since estimated Dominion's damages at approximately \$60 million, a figure which the Company contests. Although this matter is still in discovery, trial is currently scheduled to commence on October 26, 2009. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

In July 2004, BP America Production Company ("BP America") brought an action against the Company in the 24th Judicial District Court, Parish of Jefferson, Louisiana in connection with fiberglass pipe sold by the Company for installation in four offshore platforms constructed for BP America. The plaintiff seeks damages allegedly sustained by it resulting from claimed defects in such pipe. BP America's petition as filed alleged a claim against the Company for rescission, products liability, negligence, breach of contract and warranty and for damages in an amount of not less than \$20 million, a figure which the Company contests. This matter is in discovery, and no trial date has yet been established. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

In June 2006, the Cawelo, California Water District ("Cawelo") brought an action against the Company in Kern County Superior Court, California in connection with concrete pipe sold by the Company in 1995 for a wastewater recovery pipeline in such county. Cawelo seeks damages allegedly sustained by it resulting from the failure of such pipe in 2004. Cawelo's petition as filed alleged a claim against the Company for products liability, negligence, breach of express warranty and breach of written contract and for damages in an amount of not less than \$8 million, a figure which the Company contests. This matter is in discovery, and no trial date has yet been established. The Company is vigorously defending itself in this action. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to this case.

The Company is a defendant in a number of asbestos-related personal injury lawsuits. These cases generally seek unspecified damages for asbestos-related diseases based on alleged exposure to products previously manufactured by the Company and others. As of August 30, 2009, the Company was a defendant in 23 asbestos-related cases, compared to 26 cases as of May 31, 2009. During the quarter ended August 30, 2009, there were three new asbestos-related cases, six cases dismissed, no cases settled, no judgments and aggregate net costs and expenses of \$.2 million. Based upon the information available to it at this time, the Company is not able to estimate the possible range of loss with respect to these cases.

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

In December, 2008, the Company received from the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") a Requirement to Furnish Information regarding transactions involving Iran. The Company intends to cooperate fully with OFAC on this matter. With the assistance of outside counsel, the Company conducted an internal inquiry and responded to OFAC. In the nine months ended August 30, 2009, the Company incurred \$3.6 million for legal and professional fees in connection with this matter. Based upon the information available to it at this time, the Company is not able to predict the outcome of this matter. If the Company violated governmental regulations, material fines and penalties could be imposed.

The Company is subject to federal, state and local laws and regulations concerning the environment and is currently participating in administrative proceedings at several sites under these laws. While the Company finds it difficult to estimate with any certainty the total cost of remediation at the several sites, on the basis of currently available information and reserves provided, the Company believes that the outcome of such environmental regulatory proceedings will not have a material effect on the Company's financial position, cash flows, or results of operations.

In addition, certain other claims, suits and complaints that arise in the ordinary course of business, have been filed or are pending against the Company. Management believes that these matters are either adequately reserved, covered by insurance, or would not have a material effect on the Company's financial position, cash flows or results of operations if disposed of unfavorably.

ITEM 1A – RISK FACTORS

There are no material changes from the risk factors previously disclosed in the Company's 2008 Annual Report as revised in the Company's Quarterly Report on Form 10-Q for the period ended May 31, 2009.

ITEM 2 – UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Terms of lending agreements which place restrictions on cash dividends are discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations under Item 2, herein, and Note (9) of the Notes to Consolidated Financial Statements, under Part I, Item 1, herein.

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total Number of Shares (or Units) Purchased	(b) Average Price Paid per Share (or Unit)	(c) Number of Shares (or Units) Purchased As Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs**
6/1/09 thru 6/28/09	-	\$ -	-	25,480
6/29/09 thru 8/2/09	-	-	-	25,480
8/3/09 thru 8/30/09	-	-	-	25,480

**Shares may be repurchased by the Company to pay taxes applicable to the vesting of restricted stock. The number of shares does not include shares which may be repurchased to pay social security taxes applicable to the vesting of such restricted stock.

ITEM 4 – SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the third quarter of 2009.

ITEM 5 – OTHER INFORMATION

No material changes have occurred in the other information disclosure as presented in the Company's 2008 Annual Report.

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ITEM 6 – EXHIBITS

The following exhibits are filed with this Quarterly Report on Form 10-Q:

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
3.1	Restated Certificate of Incorporation, effective May 4, 2009 (incorporated by reference to the Company's Quarterly Report on Form 10-Q for the period ended May 31, 2009)
3.2	Bylaws (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K dated September 26, 2008)
4.1	Amended and Restated Note Purchase Agreement dated January 24, 2003, re: \$50,000,000 5.36% Senior Secured Notes due November 30, 2009 (incorporated by reference to Exhibit 4.2 to the Company's Annual Report on Form 10-K for the year ended November 30, 2008)
4.2	Note Purchase Agreement dated November 25, 2005, re: SGD 51,000,000 4.25% Senior Secured Notes due November 25, 2012 (incorporated by reference to Exhibit 4.3 to the Company's Annual Report on Form 10-K for the year ended November 30, 2008)
4.3	Agreement to furnish to the Securities and Exchange Commission upon request a copy of instruments defining the rights of holders of certain long-term debt of the Company and consolidated subsidiaries (incorporated by reference to Exhibit 4.4 to the Company's Annual Report on Form 10-K for the year ended November 30, 2008)
10.1	Seventh Amendment to Credit Agreement dated August 28, 2009*
10.2	Amended and Restated Employment Agreement between James S. Marlen and the Company (incorporated by reference to Exhibit 10(1) to the Company's Annual Report on Form 10-K for the year ended November 30, 2003)**
10.3	First Amendment to Amended and Restated Employment Agreement between James S. Marlen and the Company (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K dated September 21, 2007)**
10.4	Performance Stock Unit Agreement between James S. Marlen and the Company (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K dated September 21, 2007)**
10.5	Change of Control Agreement between Javier Solis and the Company (incorporated by reference to Exhibit 10(2) to the Company's Annual Report on Form 10-K for the year ended November 30, 1998)**
10.6	Amendment to Change of Control Agreement between Javier Solis and the Company (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K dated December 17, 2008)**
10.7	Change of Control Agreement between Gary Wagner and the Company (incorporated by reference to Exhibit 10(3) to the Company's Annual Report on Form 10-K for the year ended November 30, 1998)**
10.8	Amendment to Change of Control Agreement between Gary Wagner and the Company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated December 17, 2008)**
10.9	Change of Control Agreement between James R. McLaughlin and the Company (incorporated by reference to Exhibit 10(5) to the Company's Annual Report on Form 10-K for the year ended November 30, 2000)**
10.10	Amendment to Change of Control Agreement between James R. McLaughlin and the Company (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K dated December 17, 2008)**
10.11	Change of Control Agreement between Stephen E. Johnson and the Company (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K dated December 17, 2008)**
10.12	2001 Stock Incentive Plan (incorporated by reference to Exhibit 2 to the Company's Proxy Statement for the Annual Meeting of Stockholders held on March 21, 2001)**
10.13	2004 Stock Incentive Plan (incorporated by reference to Exhibit E to the Company's Proxy Statement for the Annual Meeting of Stockholders held on March 24, 2004)**
10.14	Key Executive Long-Term Cash Incentive Plan (incorporated by reference to Exhibit C to the Company's Proxy Statement for the Annual Meeting of Stockholders held on March 26, 2008)**
10.15	Form of Restricted Stock Agreement for Employees (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K dated January 27, 2006)**
10.16	Form of Restricted Stock Agreement for Non-Employee Directors (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K dated March 23, 2006)**
31.1	Section 302 Certification of Chief Executive Officer
31.2	Section 302 Certification of Chief Financial Officer
32	Section 906 Certification of Chief Executive Officer and Chief Financial Officer

* Filed herewith

** Compensatory plan or arrangement

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

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

AMERON INTERNATIONAL CORPORATION

By: /s/ James R. McLaughlin
James R. McLaughlin, Senior Vice President, Chief Financial Officer & Treasurer

Date: September 25, 2009

SEVENTH AMENDMENT TO CREDIT AGREEMENT

THIS SEVENTH AMENDMENT TO CREDIT AGREEMENT (the "Amendment") dated as of August 28, 2009, is to that certain Credit Agreement dated as of January 24, 2003 (as amended and modified from time to time, the "Credit Agreement"), by and among AMERON INTERNATIONAL CORPORATION, a Delaware corporation (the "Borrower"), the subsidiaries of the Borrower from time to time parties thereto and identified as "Guarantors" on the signature pages hereto (the "Guarantors"), the persons from time to time parties thereto and identified as "Lenders" on the signature pages hereto (the "Lenders"), BANK OF AMERICA, N.A., as administrative agent (the "Administrative Agent"), WELLS FARGO BANK, N.A., as documentation agent, and BANC OF AMERICA SECURITIES LLC, as sole lead arranger and book manager.

WITNESSETH

WHEREAS, the Lenders have, pursuant to the terms of the Credit Agreement, made available to the Borrower and the Guarantors credit facilities in an aggregate amount of \$100,000,000;

WHEREAS, the parties hereto have agreed to amend the Credit Agreement as set forth herein;

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

A. Definitions. Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings assigned in the Credit Agreement (as amended by this Amendment).

B. Amendment. Effective upon satisfaction of the conditions precedent set forth in paragraph C below, the Credit Agreement (including the Schedules and Exhibits thereto) is hereby amended and restated in its entirety as set forth in Annex I attached hereto. As so amended, the Credit Agreement shall continue in full force and effect.

C. Conditions Precedent. This Amendment shall be and become effective as of date hereof when all of the conditions set forth in this paragraph C shall have been satisfied.

1. Execution of Counterparts of Amendment. The Administrative Agent shall have received counterparts of this Amendment, which collectively shall have been duly executed on behalf of each of the Borrower, the Guarantors, the Administrative Agent and the Lenders.

2. Organization Documents. The Administrative Agent shall have received (a) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the date hereof; (b) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party; and (c) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in (1) the jurisdiction of its incorporation or organization and (2) each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

3. Opinions of Counsel. The Administrative Agent shall have received, in each case dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent:

- (a) a legal opinion of Stephen Johnson, internal general counsel for the Loan Parties; and
- (b) a legal opinion of Gibson Dunn & Crutcher LLP, general counsel for the Loan Parties.

4. Mortgages. The Administrative Agent shall have received (a) amendments to the Mortgages, which collectively shall have been duly executed on behalf of each Loan Party party thereto and the Collateral Agent and (b) appropriate endorsements to the Mortgage Policies in form and substance reasonably satisfactory to the Administrative Agent.

5. Evidence of Insurance. The Administrative Agent shall have received copies of insurance policies or certificates of insurance of the Loan Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Collateral Agent as additional insured (in the case of liability insurance) or loss payee (in the case of hazard insurance) on behalf of the Lenders.

6. Officer's Certificates. The Administrative Agent shall have received a certificate or certificates executed by a Responsible Officer of the Borrower as of the date hereof, in form and substance satisfactory to the Administrative Agent, stating that (A) each Loan Party is in compliance with all existing material financial obligations, (B) all governmental, shareholder and third party consents and approvals, if any, with respect to the Loan Documents and the transactions contemplated thereby have been obtained, (C) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental instrumentality that purports to affect any Loan Party or any transaction contemplated by the Loan Documents, if such action, suit, investigation or proceeding could reasonably be expected to have a Material Adverse Effect and (D) immediately after giving effect to the transactions contemplated hereby, (1) no Default or Event of Default would result and (2) all representations and warranties contained herein and in the other Loan Documents are true and correct in all material respects (except to the extent that such representations and warranties specifically relate to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date).

7. Lender/Arranger Fees. The Borrower shall have paid (a) to the Administrative Agent, for the account of each Lender (other than the Exiting Lender (defined below)), all agreed upfront fees due and payable to such Persons on the date hereof and (b) to the Administrative Agent and the Arranger, all fees due and payable to such Persons on the date hereof (including amounts payable pursuant to the Fee Letter).

Without limiting the generality of the provisions of the last paragraph of Section 10.03 of the Credit Agreement, for purposes of determining compliance with the conditions specified in this paragraph C, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Seventh Amendment Effective Date specifying its objection thereto.

D. Expenses. The Borrower agrees to pay all reasonable costs and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including without limitation the reasonable fees and expenses of the Administrative Agent's legal counsel.

E. Effect. Except as expressly modified and amended in this Amendment, all of the terms, provisions and conditions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect and are incorporated herein by reference, and the obligations of the Borrower and the Guarantors under the Credit Agreement and under the other Loan Documents are hereby ratified and confirmed and shall remain in full force and effect. Any and all other documents heretofore, now or hereafter executed and delivered pursuant to the terms of the Credit Agreement are hereby amended so that any reference to the Credit Agreement shall mean a reference to the Credit Agreement as amended hereby. This Amendment is a Loan Document.

F. Representations and Warranties. The Borrower and each Guarantor represents and warrants to the Lenders that (i) the representations and warranties set forth in Article VI of the Credit Agreement are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) no Default exists and (iii) none of the Borrower or any Guarantor has any counterclaims, offsets, credits or defenses to the Loan Documents and the performance of their respective obligations thereunder, or if the Borrower or any Guarantor has any such claims, counterclaims, offsets, credits or defenses to the Loan Documents or any transaction related to the Loan Documents, the same are hereby waived, relinquished and released in consideration of the Lenders' execution and delivery of this Amendment.

G. Counterparts. This Amendment may be executed in any number of counterparts (including facsimile or secure electronic format (.pdf) signatures), each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Amendment to produce or account for more than one such counterpart.

H. Governing Law. This Amendment and the Credit Agreement, shall be governed by and construed in accordance with, the laws of the State of New York.

I. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

J. Authorization; Enforceability. The Borrower and each Guarantor hereby represent and warrant as follows:

1. The Borrower and each Guarantor have taken all necessary action to authorize the execution, delivery and performance of this Amendment.

2. This Amendment has been duly executed and delivered by the Borrower and each Guarantor, and this Amendment and the Credit Agreement (as amended hereby) constitute the Borrower's and the Guarantors' legal, valid and binding obligations, enforceable in accordance with their terms, except as such enforceability may be subject to (a) Debtor Relief Laws and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

3. No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party (including the holders of any Senior Notes) is required in connection with the execution, delivery or performance by the Borrower or any Guarantor of this Amendment.

K. Exiting Lender.

1. The Revolving Commitment and outstanding Loans of BNP Paribas (the "Exiting Lender") under the Credit Agreement are hereby assigned and reallocated without recourse among the other Lenders in the manner provided in Schedule 2.01 to the Credit Agreement (as amended by this Amendment). After giving effect to this Amendment, the Exiting Lender shall no longer have any Revolving Commitment or outstanding Loans or any other obligations under the Credit Agreement. The Exiting Lender joins in the execution of this Amendment solely for purposes of acknowledging and consenting to the assignment and reallocation of its Revolving Commitment and Loans under the Credit Agreement. Concurrently with the effectiveness of Amendment, the Exiting Lender shall have received payment in full for all outstanding Obligations owing to it under the Credit Agreement.

2. Notwithstanding anything in the Credit Agreement or any other Loan Document to the contrary, all assignments and reallocations of Loans and Revolving Commitments pursuant to this paragraph K shall be deemed to be assignments made subject to (other than the payment of a processing and recordation fee, which shall be waived for assignments made pursuant to this paragraph K) and in compliance with Section 11.07 of the Credit Agreement (including, without limitation, the 'Standard Terms and Conditions' applicable to Assignments and Assumptions).

3. In addition, Bank of the West, by its execution and delivery of this Amendment, becomes a Lender under the Credit Agreement.

L. Entire Agreement. This Amendment together with the other Loan Documents represent the entire agreement of the parties and supersedes all prior agreements and understandings, oral or written if any, relating to the Loan Documents or the transactions contemplated herein and therein.

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Amendment to be duly executed under seal and delivered as of the date and year first above written.

BORROWER:

AMERON INTERNATIONAL CORPORATION

By: /s/ James R. McLaughlin
Name: James R. McLaughlin
Title: SVP, CFO & Treasurer

By: /s/ Gary Wagner
Name: Gary Wagner
Title: President & Chief Operating Officer

GUARANTORS:

ISLAND READY-MIX CONCRETE, INC.

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

CENTRON INTERNATIONAL INC.

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

AMERICAN PIPE AND CONSTRUCTION INTERNATIONAL

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President & Treasurer

AMERON HOLDINGS, INC. (f/k/a Contrad)

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

AMERCOAT CORPORATION

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

BONDSTRAND CORPORATION

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

PSX CORPORATION

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

AMERON COMPOSITES INC.

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

BOLENCO CORPORATION

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

TUBOS CALIFORNIA CORPORATION

By: /s/ Gary Wagner
Name: Gary Wagner
Title: Vice President

AGENT:

BANK OF AMERICA, N.A., as
Administrative Agent

By: /s/ Bridgett J. Manduk
Name: Bridgett J. Manduk
Title: Assistant Vice President

LENDERS:

BANK OF AMERICA, N.A.

By: /s/ G. Scott Lambert
Name: G. Scott Lambert
Title: Vice President

BANK OF THE WEST

By: /s/ Brock Mullins
Name: Brock Mullins
Title: Vice President

WELLS FARGO BANK, N.A.

By: /s/ Ted Wu
Name: Ted Wu
Title: Vice President

UNION BANK OF CALIFORNIA, N.A.

By: /s/ Peter Thompson
Name: Peter Thompson
Title: Vice President

COMERICA BANK

By: /s/ Elise M. Moore
Name: Elise M. Moore
Title: Vice President

BANK OF HAWAII

By: /s/ Linda R. Ho
Name: Linda R. Ho
Title: Vice President

EXITING LENDER:

BNP PARIBAS

By: /s/ Joseph Mack

Name: Joseph Mack

Title: Vice President

By: /s/ Todd Rodgers

Name: Todd Rodgers

Title: Director

**ANNEX I TO
SEVENTH AMENDMENT TO CREDIT AGREEMENT
DATED AS OF AUGUST 28, 2009**

CREDIT AGREEMENT

Dated as of January 24, 2003

among

AMERON INTERNATIONAL CORPORATION,
as the Borrower,

and

The Subsidiaries of the Borrower
from time to time party hereto,
as Guarantors,

BANK OF AMERICA, N.A.,
as Administrative Agent and L/C Issuer,

WELLS FARGO BANK, N.A.,
as Documentation Agent

and

The Other Lenders Party Hereto

BANC OF AMERICA SECURITIES LLC
as
Sole Lead Arranger and Sole Book Manager

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended, modified, restated or supplemented from time to time, the "Agreement") is entered into as of January 24, 2003 by and among AMERON INTERNATIONAL CORPORATION, a Delaware corporation (together with any permitted successors and assigns, the "Borrower"), the Subsidiary Guarantors (as defined herein), the Lenders (as defined herein), and BANK OF AMERICA, N.A., as Administrative Agent and L/C Issuer (each, as defined herein).

The Borrower has requested that the Lenders provide credit facilities in an aggregate amount of \$100,000,000 (the "Credit Facilities ") for the purposes hereinafter set forth, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"2003 Note Purchase Agreement" means that certain Note Purchase Agreement dated January 24, 2003 among the Borrower and the applicable Senior Noteholders, as the same may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"2005 Note Purchase Agreement" means that certain Note Purchase Agreement dated November 25, 2005 among Ameron (Pte) Ltd. and the applicable Senior Noteholders, as the same may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"Acquisition" by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of all of the Capital Stock or all or substantially all of the Property of another Person or a line of business of another Person, whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

"Additional Note Purchase Agreement" means a note purchase agreement to be entered into among the Borrower and the applicable Senior Noteholders after the Seventh Amendment Effective Date with respect to Indebtedness permitted by Section 8.03(f)(ii), as the same may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"Additional Senior Notes" means the notes issued by the Borrower in favor of the applicable Senior Noteholders pursuant to the Additional Note Purchase Agreement and in accordance with the terms of this Agreement, as such notes may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means, with respect to any Available Currency, the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02 with respect to such Available Currency, or such other address or account with respect to such Available Currency as the Administrative Agent may from time to time notify the Borrower and the Lenders.

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

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Aggregate Revolving Commitments" means the Revolving Commitments of all the Lenders. The initial amount of the Aggregate Revolving Commitments in effect on the Seventh Amendment Effective Date is ONE HUNDRED MILLION DOLLARS (\$100,000,000).

"Agreement" shall have the meaning assigned to such term in the heading hereof.

"Applicable Rate" means the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 7.02(b):

Applicable Rates					
Pricing Level	Consolidated Leverage Ratio	Eurodollar Rate Loans	Base Rate Loans	Letter of Credit Fees	Commitment Fee
1	< 1.00 to 1.0	2.75%	1.75%	2.75%	0.375%
2	> 1.00 to 1.0 but < 1.75 to 1.0	3.25%	2.25%	3.25%	0.500%
3	> 1.75 to 1.0	3.75%	2.75%	3.75%	0.625%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 7.02(b); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 3 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the first Business Day after such Compliance Certificate is delivered. The Applicable Rate in effect from the Seventh Amendment Effective Date through the date that the Borrower delivers the Compliance Certificate for the fiscal quarter ending August 31, 2009 shall be determined based upon Pricing Level 1.

"Applicable Time" means, with respect to any borrowings and payments in Permitted Foreign Currencies, the local times in the place of settlement for such Permitted Foreign Currencies as may be determined by the Administrative Agent to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"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.

"Arranger" means Banc of America Securities LLC, in its capacity as sole lead arranger and book manager.

"Assignment and Assumption" means an Assignment and Assumption substantially in the form of Exhibit 11.07.

"Attorney Costs" means and includes all reasonable fees, expenses and disbursements of any law firm or other external counsel and, without duplication, the reasonable allocated cost of internal legal services and all expenses and disbursements of internal counsel.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Restricted Subsidiaries as contained in the Borrower's form 10-K for the fiscal year ended November 30, 2008, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Restricted Subsidiaries, including the notes thereto.

"Availability Period" means, with respect to the Revolving Commitments, the period from the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.05 and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of each L/C Issuer to make L/C Credit Extensions pursuant to Section 9.02.

"Available Currency" means Dollars and any Permitted Foreign Currency.

"Bank of America" means Bank of America, N.A. and its successors.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) except during a Eurodollar Unavailability Period, the Eurodollar Rate plus 1.0%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"Borrower" has the meaning specified in the heading hereof.

"Borrower Materials" has the meaning specified in Section 7.02.

"Borrowing" means a borrowing consisting of simultaneous Loans of the same Type, in the same Available Currency and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office with respect to Obligations denominated in Dollars is located and: (a) if such day relates to any interest rate settings as to a Eurodollar Rate Loan denominated in Dollars or any Base Rate Loan bearing interest at a rate based on the Eurodollar Rate, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurodollar Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market; (b) if such day relates to any interest rate settings as to a Eurodollar Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurodollar Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, means a TARGET Day; (c) if such day relates to any interest rate settings as to a Eurodollar Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and (d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurodollar Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"Businesses" means, at any time, a collective reference to the businesses operated by the Consolidated Parties at such time.

"Capital Lease" means, as applied to any Person, any lease of any Property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests and (v) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Cash Collateralize" has the meaning specified in Section 2.03(g).

"Cash Equivalents" means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within twelve months from the date of the acquisition thereof and, at the time of acquisition, having a rating of at least A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's, (c) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 360 days from the date of acquisition, (d) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within twelve months of the date of acquisition, (e) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (f) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (e).

"Change of Control" means the occurrence of any of the following events: (a) a "person" or "group" (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of, or control over, 30% or more of the outstanding Voting Stock of the Borrower or (b) the occurrence of a "Change of Control" (or any comparable term) under, and as defined in, any Senior Note Agreement. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act.

"Closing Date" means January 24, 2003.

"Code" means the Internal Revenue Code of 1986.

"Collateral" means a collective reference to all real and personal Property (other than Excluded Property) with respect to which Liens in favor of the Collateral Agent are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents.

"Collateral Agent" means Bank of America in its capacity as collateral agent under any of the Loan Documents, or any successor collateral agent.

"Collateral Documents" means a collective reference to the Security Agreement, the Mortgages and such other security documents as may be executed and delivered by the Loan Parties pursuant to the terms of Section 7.13.

"Commitment" means, as to each Lender, the Revolving Commitment of such Lender.

"Compliance Certificate" means a certificate substantially in the form of Exhibit 7.02.

"Consolidated Capital Expenditures" means for any period for the Consolidated Parties on a consolidated basis, all capital expenditures, as determined in accordance with GAAP; provided, however, that Consolidated Capital Expenditures shall not include Acquisitions or expenditures to the extent made with the proceeds of any Involuntary Disposition used to purchase property that is useful in the business of the Consolidated Parties.

"Consolidated Cash Taxes" means for any period for Consolidated Parties on a consolidated basis, the aggregate of all taxes, as determined in accordance with GAAP, to the extent the same are paid in cash during such period.

"Consolidated EBITDA" means, for any period, for the Consolidated Parties on a consolidated basis, determined in accordance with GAAP, an amount equal to the sum of, without duplication, (a) Consolidated Net Income plus (b) Consolidated Interest Charges and all amounts treated as expenses for depreciation and the amortization of intangibles of any kind to the extent included in the determination of Consolidated Net Income, plus (c) all tax expense on or measured by income or capital to the extent included in the determination of Consolidated Net Income plus (d) amounts received as cash dividends or other distributions in respect of equity from Affiliates and Unconsolidated Subsidiaries to the extent not included in the determination of Consolidated Net Income minus (e) equity earnings from Affiliates and Unrestricted Subsidiaries to the extent included in the determination of Consolidated Net Income minus (f) gains on the sale or other disposition of assets to the extent included in the determination of Consolidated Net Income plus (g) losses on the sale or other disposition of assets to the extent included in the determination of Consolidated Net Income plus (h) non-cash extraordinary losses and expenses to the extent included in the determination of Consolidated Net Income (provided that to the extent such non-cash losses and expenses represent an accrual or reserve for future cash disbursements, the future cash disbursements shall be deducted in the periods in which they are made) minus (i) non-cash extraordinary gains and income to the extent included in the determination of Consolidated Net Income; provided, however, that with respect to any Acquisition made in accordance with Section 8.02(g) during such period, the Borrower may also include items (a) through (i) above for such Acquisition in Consolidated EBITDA for such period to the extent that the Borrower has provided to the Administrative Agent (i) financial statements for the target for the portion of such period occurring prior to its Acquisition and (ii) the most recent year-end audited financial statements for the target (which audited statements must be as of a date occurring within five fiscal quarters prior to the date of the Acquisition (even if such date is prior to the applicable measurement period and, therefore, such audited statements are not actually used in computing Consolidated EBITDA for such period)).

"Consolidated Fixed Charge Coverage Ratio" means, as of any date of determination, the ratio of (a) the sum of (i) Consolidated EBITDA for the period of the four fiscal quarters most recently ended plus (ii) Consolidated Rental Expenses for such period minus (iii) Consolidated Cash Taxes for such period to (b) the sum of (i) Consolidated Interest Charges for such period plus (ii) Consolidated Scheduled Funded Debt Payments for such period plus (iii) Consolidated Rental Expenses for such period plus (iv) Restricted Payments (other than of the type described in Sections 8.06(a) and (b)) made during such period.

"Consolidated Funded Indebtedness" means, as of any date of determination, for the Consolidated Parties on a consolidated basis, without duplication, the sum of (a) all Indebtedness for borrowed money or which has been incurred in connection with the acquisition of assets plus (b) all obligations of such Person issued or assumed as the deferred purchase price of Property or services purchased by such Person (other than trade debt incurred in the ordinary course of business the terms of which require payment within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person plus (c) the Attributable Indebtedness of such Person with respect to Capital Leases and Synthetic Lease Obligations plus (d) the principal portion of all obligations of such Person as an account party in respect of financial letters of credit and bankers' acceptances, including, without duplication, all unreimbursed drafts drawn thereunder plus (e) the aggregate amount of uncollected accounts receivable of such Person subject at such time to a sale of receivables (or similar transaction) to the extent such transaction is effected with recourse to such Person (whether or not such transaction would be reflected on the balance sheet of such Person in accordance with GAAP) plus (f) all Consolidated Funded Indebtedness of others secured by any Lien on, or payable out of the proceeds of production from, Property owned or acquired by a Consolidated Party, whether or not the obligations secured thereby have been assumed by such Consolidated Party plus (g) the Consolidated Funded Indebtedness of any partnership or unincorporated joint venture in which a Consolidated Party is a general partner or a joint venturer to the extent such Consolidated Funded Indebtedness is recourse to such Consolidated Party plus (h) all Guarantees with respect to Consolidated Funded Indebtedness of Persons that are not Consolidated Parties.

"Consolidated Interest Charges" means for any period for the Consolidated Parties on a consolidated basis, interest expense (including the amortization of debt discount and premium, the interest component under Capital Leases and the implied interest component of Synthetic Lease Obligations), as determined in accordance with GAAP.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters most recently ended.

"Consolidated Net Income" means for any period for the Consolidated Parties on a consolidated basis, net income or loss after interest expense, income taxes and depreciation and amortization, all as determined in accordance with GAAP.

"Consolidated Parties" means a collective reference to the Borrower and the Restricted Subsidiaries of the Borrower, and "Consolidated Party" means any one of them.

"Consolidated Rental Expense" means for any period for the Consolidated Parties on a consolidated basis, rental expense under Operating Leases, as determined in accordance with GAAP.

"Consolidated Scheduled Funded Debt Payments" means for any period for the Consolidated Parties on a consolidated basis, the sum of all scheduled payments of principal on Consolidated Funded Indebtedness, as determined in accordance with GAAP. For purposes of this definition, "scheduled payments of principal" (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (b) shall be deemed to include only the portion of Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations payable during such period and (c) shall not include any voluntary prepayments or mandatory prepayments required pursuant to Section 2.04.

"Consolidated Secured Funded Indebtedness" means, as of any date of determination, all Consolidated Funded Indebtedness the payment of which is secured by a Lien against any assets of the Consolidated Parties.

"Consolidated Tangible Assets" means, as of any date of determination, for the Borrower and its Domestic Restricted Subsidiaries, without duplication, the sum of (a) 85% of the book value of accounts receivable (net of allowances) owing to the Borrower and its Domestic Restricted Subsidiaries from account debtors that are located in the United States plus (b) 60% of the book value of inventory of Borrower and its Domestic Restricted Subsidiaries that is located in the United States plus (c) 50% of the depreciated book value of equipment of Borrower and its Domestic Restricted Subsidiaries that is located in the United States plus (d) 80% of the appraised value of owned real property of Borrower and its Domestic Restricted Subsidiaries that is pledged as Collateral plus (e) 50% of the net book value of all other owned real property of Borrower and its Domestic Restricted Subsidiaries that is located in the United States.

"Consolidated Tangible Assets Coverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Tangible Assets as of such date to (b) Consolidated Secured Funded Indebtedness as of such date.

"Consolidated Tangible Net Worth" means, as of any date of determination, the sum of (a) consolidated shareholders' equity of the Consolidated Parties as of that date determined in accordance with GAAP minus (b) all assets of the Consolidated Parties that are, in accordance with GAAP, considered to be intangible assets minus (c) minority interests. For the purpose of calculating Consolidated Tangible Net Worth, such calculation shall exclude (i.e., there will be added back to Consolidated Tangible Net Worth) any year-end non-cash adjustment (on an after-tax basis) to shareholders' equity to reflect any Additional Minimum Liability; provided, however, the aggregate incremental amount of all such charges added back to Consolidated Tangible Net Worth after the 2001 fiscal year (i.e. excluding any such charges for fiscal year 2001 and prior years) shall not exceed \$45,000,000 on an after-tax basis. For purposes hereof, "Additional Minimum Liability" means, with respect to any Plan, the sum of the absolute values of (x) the unfunded accumulated benefit obligation existing as of the end of the most recently ended fiscal year, plus (y) the Borrower's prepaid pension asset position existing as of the end of the most recently ended fiscal year.

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

"Control" has the meaning specified in the definition of "Affiliate" set forth in this Section 1.01.

"Credit Extension" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate and any Mandatory Cost) otherwise applicable to such Loan plus 2% per annum, in each case to the fullest extent permitted by applicable Laws.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Loans or participations in L/C Obligations required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"Disposition" or "Dispose" means any disposition (including pursuant to a Sale and Leaseback Transaction) of any or all of the Property (including without limitation the Capital Stock of a Subsidiary) of any Consolidated Party whether by sale, lease, licensing, transfer or otherwise, but other than pursuant to any casualty or condemnation event; provided, however, that the term "Disposition" shall be deemed to exclude any Equity Issuance.

"Dollar" and "\$" mean lawful money of the United States.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Permitted Foreign Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate for the purchase of Dollars with such Permitted Foreign Currency.

"Domestic Restricted Subsidiary" means any Restricted Subsidiary that is a Domestic Subsidiary.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Sections 11.07(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 11.07(b)(iii)).

"EMU" means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998, as amended from time to time.

"EMU Legislation" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency (whether known as the "euro" or otherwise).

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Restricted Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"Equity Issuance" means any issuance by any Consolidated Party to any Person of (a) shares of its Capital Stock, (b) any shares of its Capital Stock pursuant to the exercise of options or warrants, (c) shares of its Capital Stock pursuant to the conversion of any debt securities to equity or the conversion of any class equity securities to any other class of equity securities or (d) any options or warrants relating to its Capital Stock. The term "Equity Issuance" shall not be deemed to include any Disposition.

"Euro" and "EUR" mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"Eurodollar Rate" means:

- (a) for any Interest Period with respect to any Eurodollar Rate Loan:
 - (i) the rate per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the Available Currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, or
 - (ii) if the rate referenced in the preceding clause (i) is not available, the rate per annum determined by the Administrative Agent as the rate of interest at which deposits in the applicable Available Currency for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 4:00 p.m. (London time) two Business Days prior to the first day of such Interest Period.
 - (b) For any day with respect to an interest rate calculation for a Base Rate Loan, the rate per annum equal to (i) BBA LIBOR at approximately 11:00 a.m., London time, two Business Days prior to such date for Dollar deposits (for delivery on such day) with a term equivalent to one month or (ii) if such rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on such day in same day funds in the approximate amount of the Base Rate Loan being made, continued or converted by Bank of America and with a term equivalent to one month would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at approximately 11:00 a.m. (London time) two Business Days prior to such day.
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"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on the Eurodollar Rate. Eurodollar Rate Loans may be denominated in any Available Currency (other than a Base Rate Loan bearing interest at a rate based on the Eurodollar Rate).

"Eurodollar Unavailability Period" means any period during which the obligations of the Lenders to make or maintain Eurodollar Rate Loans has been suspended pursuant to Section 3.02 or Section 3.03.

"Event of Default" has the meaning specified in Section 9.01.

"Excluded Disposition" means, with respect to any Consolidated Party, any Disposition consisting of (i) the sale, lease, license, transfer or other disposition of inventory in the ordinary course of such Consolidated Party's business, (ii) the sale, lease, license, transfer or other disposition of machinery and equipment no longer used or useful in the conduct of such Consolidated Party's business, (iii) any sale, lease, license, transfer or other disposition of Property by such Consolidated Party to any Loan Party, provided that the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may request so as to cause the Loan Parties to be in compliance with the terms of Section 7.13 after giving effect to such transaction, (iv) any Involuntary Disposition by such Consolidated Party, (v) any Disposition by such Consolidated Party constituting a Permitted Investment, (vi) if such Consolidated Party is not a Loan Party, any sale, lease, license, transfer or other disposition of Property by such Consolidated Party to any Consolidated Party that is not a Loan Party, (vii) licenses of intellectual property in the ordinary course of business and (viii) the contribution of life insurance policies to rabbi trusts established in connection with executive compensation plans so long as the cost of the insurance policies so contributed does not exceed \$3,000,000 during any fiscal year.

"Excluded Property" means, with respect to any Loan Party, including any Person that becomes a Loan Party after the Closing Date as contemplated by Section 7.12, (a) any owned real property that is not a Mortgaged Property, (b) any leased real Property, (c) any leased personal Property, (d) any personal Property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not either (i) governed by the Uniform Commercial Code or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, (e) any Property which, subject to the terms of Section 8.09, is subject to a Lien of the type described in Section 8.01(i) pursuant to documents which prohibit such Loan Party from granting any other Liens in such Property and (f) rights in any agreement (i) the grant of a security interest in which would violate the agreement under which such right arises except to the extent provided under Sections 9-406, 9-407 and 9-408 of the Uniform Commercial Code, or (ii) to the extent that the pledge or assignment of such agreement requires the consent of any third party unless such third party has consented thereto except to the extent provided under Sections 9-406, 9-407 and 9-408 of the Uniform Commercial Code.

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

"Fee Letter" means the letter agreement, dated July 22, 2009, among the Borrower, the Administrative Agent and the Arranger.

"Foreign Currency Loan" means a Eurodollar Rate Loan denominated in a Permitted Foreign Currency.

"Foreign Lender" has the meaning specified in Section 11.15(a)(i).

"Foreign Restricted Subsidiary" means any Foreign Subsidiary that is a Restricted Subsidiary.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fully Satisfied" means, with respect to the Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Obligations shall have been paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Obligations shall have been paid in cash, (c) all outstanding Letters of Credit shall have been (i) terminated, (ii) fully Cash Collateralized or (iii) secured by one or more letters of credit on terms and conditions, and with one or more financial institutions, reasonably satisfactory to the applicable L/C Issuer and (d) the Commitments shall have expired or been terminated in full.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning set forth in Section 4.06.

"Guarantors" means a collective reference to the Subsidiary Guarantors, and "Guarantor" means any one of them.

"Guaranty" means the Guaranty made by the Guarantors pursuant to Article IV hereof.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Impacted Lender" means any Lender as to which (a) any L/C Issuer has a good faith belief that such Lender has failed to fulfill its obligations under one or more other syndicated credit facilities or (b) any Person that Controls such Lender has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"Indebtedness" means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations of such Person issued or assumed as the deferred purchase price of Property or services purchased by such Person (other than trade debt incurred in the ordinary course of business the terms of which require payment within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements, (f) the Attributable Indebtedness of such Person with respect to Capital Leases and Synthetic Lease Obligations, (g) all net obligations of such Person under Swap Contracts, (h) the principal portion of all obligations of such Person as an account party in respect of letters of credit (other than trade letters of credit) and bankers' acceptances, including, without duplication, all unreimbursed drafts drawn thereunder, (i) all obligations of such Person to repurchase any securities issued by such Person at any time prior to the Maturity Date which repurchase obligations are related to the issuance thereof, including, without limitation, obligations commonly known as residual equity appreciation potential shares, (j) the aggregate amount of uncollected accounts receivable of such Person subject at such time to a sale of receivables (or similar transaction) to the extent such transaction is effected with recourse to such Person (whether or not such transaction would be reflected on the balance sheet of such Person in accordance with GAAP), (k) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (l) all Guarantees of such Person with respect to Indebtedness of another Person and (m) the Indebtedness of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer to the extent such Indebtedness is recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Liabilities" has the meaning set forth in Section 11.05.

"Indemnitees" has the meaning set forth in Section 11.05.

"Intellectual Property" has the meaning set forth in Section 6.17.

"Intercreditor Agreement" means that certain Amended and Restated Collateral Agency and Intercreditor Agreement dated as of the Second Amendment Effective Date among the Lenders, the Senior Noteholders, the Administrative Agent and the Collateral Agent, as amended, modified, restated or supplemented from time to time.

"Interest Payment Date" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

"Investment" in any Person means (a) any Acquisition of such Person, (b) any other acquisition of Capital Stock, bonds, notes, debentures, partnership, joint ventures or other ownership interests or other securities of such other Person, (c) any deposit with, or advance, loan or other extension of credit to, such Person (other than deposits made in connection with the purchase of equipment inventory and supplies in the ordinary course of business) or (d) any other capital contribution to or investment in such Person, including, without limitation, any Guarantee (including any support for a letter of credit issued on behalf of such Person) incurred for the benefit of such Person and any Disposition to such Person for consideration less than the fair market value of the Property disposed in such transaction, but excluding any Restricted Payment to such Person. Investments which are capital contributions or purchases of Capital Stock which have a right to participate in the profits of the issuer thereof shall be valued at the amount (or, in the case of any Investment made with Property other than cash, the book value of such Property) actually contributed or paid (including cash and non-cash consideration and any assumption of Indebtedness) to purchase such Capital Stock as of the date of such contribution or payment. Investments which are loans, advances, extensions of credit or Guarantees shall be valued at the principal amount of such loan, advance or extension of credit outstanding as of the date of determination or, as applicable, the principal amount of the loan or advance outstanding as of the date of determination actually guaranteed by such Guarantees.

"Involuntary Disposition" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any Property of any Consolidated Party.

"IRS" means the United States Internal Revenue Service.

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

"Joinder Agreement" means a Joinder Agreement substantially in the form of Exhibit 7.12 hereto, executed and delivered by a new Guarantor in accordance with the provisions of Section 7.12.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share. All L/C Advances shall be denominated in Dollars.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing of Revolving Loans. All L/C Borrowings shall be denominated in Dollars.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"L/C Issuer" means with respect to a particular Letter of Credit (a) Bank of America in its capacity as issuer of such Letter of Credit or (b) such other Lender selected by the Borrower (upon notice to the Administrative Agent) from time to time to issue such Letter of Credit.

"L/C Obligations" means, as at any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings.

"Lenders" means a collective reference to the Persons identified as "Lenders" on the signature pages hereto, together with any Person that subsequently becomes a Lender by way of assignment in accordance with the terms of Section 11.7, together with their respective successors, and "Lender" means any one of them.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Letter of Credit" means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Sublimit" means an amount equal to TWENTY-FIVE MILLION DOLLARS (\$25,000,000). The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan" means any Revolving Loan.

"Loan Documents" means this Agreement, each Note, each Letter of Credit, each Issuer Document, each Joinder Agreement, the Collateral Documents, the Intercreditor Agreement and the Fee Letter.

"Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit 2.02.

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"Mandatory Cost" means, with respect to any period, the percentage rate per annum determined in accordance with Exhibit 1.01.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower or the Borrower and its Restricted Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Maturity Date" means August 28, 2012.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgaged Properties" shall have the meaning assigned such term in the definition of "Mortgages".

"Mortgages" fully executed and notarized mortgages, deeds of trust or deeds to secure debt, as the same may be amended, modified, restated or supplemented from time to time, encumbering the fee interest of any Loan Party in each of the Real Properties designated as a Mortgaged Property in Schedule 6.20(a) (each a "Mortgaged Property" and collectively the "Mortgaged Properties").

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Note" or "Notes" means the Revolving Notes, individually or collectively, as appropriate.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document, the Intercreditor Agreement or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. The foregoing shall also include obligations arising under any Swap Contract relating to the Loans between any Loan Party and a Lender or any Affiliate of such Lender.

"Operating Lease" means, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time) of any Property (whether real, personal or mixed) which is not a Capital Lease other than any such lease in which that Person is the lessor.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Outstanding Amount" means (i) with respect to Loans on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the Dollar Equivalent of the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"Overnight Rate" means, for any day, (a) with respect to any amount denominated in Dollars, the Federal Funds Rate and (b) with respect to any amount denominated in a Permitted Foreign Currency, the rate of interest per annum at which overnight deposits in the applicable Permitted Foreign Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America located in the applicable interbank market for such currency to major banks in such interbank market.

"Participant" has the meaning specified in Section 11.07(d).

"Participating Member State" means each state so described in any EMU Legislation.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Permitted Foreign Currency" means each of (i) Canadian dollars, (ii) British Pounds Sterling, (iii) the Euro, (iv) Singapore dollars and (v) each other lawful currency (other than Dollars) that is freely available and freely transferable and convertible into Dollars and which is approved by all the Lenders in accordance with Section 1.09.

"Permitted Foreign Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Permitted Foreign Currency as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Permitted Foreign Currency with Dollars.

"Permitted Investments" means, at any time, Investments by the Consolidated Parties permitted to exist at such time pursuant to the terms of Section 8.02.

"Permitted Liens" means, at any time, Liens in respect of Property of the Consolidated Parties permitted to exist at such time pursuant to the terms of Section 8.01.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412, Section 430 or Section 431 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 7.02.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Pro Rata Share" means as to each Lender with respect to such Lender's Revolving Commitment at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Commitment of such Lender at such time and the denominator of which is the amount of the Aggregate Revolving Commitments at such time; provided that if the commitment of each Lender to make Revolving Loans and the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 9.02, then the Pro Rata Share of such Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof. The initial Pro Rata Share of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Public Lender" has the meaning specified in Section 7.02.

"Real Properties" means, at any time, a collective reference to each of the facilities and real properties owned, leased or operated by the Consolidated Parties at such time.

"Register" has the meaning set forth in Section 11.07(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

"Required Lenders" means, at any time, Lenders holding in the aggregate more than 50% of (a) the unfunded Commitments (and participations therein) and the outstanding Loans, L/C Obligations and participations therein or (b) if the Commitments have been terminated, the outstanding Loans, L/C Obligations and participations therein. The unfunded Commitments of, and the outstanding Loans, L/C Obligations and participations therein held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Responsible Officer" means the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of a Loan Party and any other officer of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means (a) any dividend or other payment or distribution, direct or indirect, on account of any shares of any class of Capital Stock of any Consolidated Party, now or hereafter outstanding (including without limitation any payment in connection with any dissolution, merger, consolidation or disposition involving any Consolidated Party), or to the holders, in their capacity as such, of any shares of any class of Capital Stock of any Consolidated Party, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of any Consolidated Party, now or hereafter outstanding or (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of any Consolidated Party, now or hereafter outstanding.

"Restricted Subsidiary" means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

"Revaluation Date" means each of the following: (a) with respect to any Loan, each of the following (i) each date of a Borrowing of a Foreign Currency Loan, (ii) each date of a continuation of a Foreign Currency Loan pursuant to Section 2.02 and (iii) the last Business Day of each calendar month; and (d) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in a Permitted Foreign Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by an L/C Issuer under any Letter of Credit denominated in a Permitted Foreign Currency, and (iv) the last Business Day of each calendar month.

"Revolving Commitment" means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01 and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Loan" has the meaning specified in Section 2.01.

"Revolving Note" has the meaning specified in Section 2.10(a).

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sale and Leaseback Transaction" means any arrangement pursuant to which any Consolidated Party, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any Property (a) which such Consolidated Party has sold or transferred (or is to sell or transfer) to a Person which is not a Consolidated Party or (b) which such Consolidated Party intends to use for substantially the same purpose as any other Property which has been sold or transferred (or is to be sold or transferred) by such Consolidated Party to another Person which is not a Consolidated Party in connection with such lease.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in a Permitted Foreign Currency, same day or other funds as may be determined by the Administrative Agent to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Permitted Foreign Currency.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Amendment Effective Date" means November 25, 2005.

"Security Agreement" means the security and pledge agreement dated as of the Closing Date executed in favor of the Collateral Agent by each of the Loan Parties, as amended, modified, restated or supplemented from time to time.

"Senior Note Agreements" means (a) the 2003 Note Purchase Agreement, (b) the 2005 Note Purchase Agreement and (c) the Additional Note Purchase Agreement.

"Senior Noteholder" means any one of the holders from time to time of the Senior Notes.

"Senior Notes" means (a) the 5.36% notes due November 30, 2009 issued by the Borrower in favor of the applicable Senior Noteholders pursuant to the 2003 Note Purchase Agreement, (b) the 4.245% notes due November 25, 2012 issued by Ameron (Pte) Ltd. in favor of the applicable Senior Noteholders pursuant to the 2005 Note Purchase Agreement, in each case, as such Senior Notes may be amended, modified, restated or supplemented and in effect from time to time in accordance with the terms hereof and (c) the Additional Senior Notes.

"Seventh Amendment Effective Date" means August 28, 2009.

"Solvent" or "Solvency" means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's Property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the Property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Spot Rate" for a currency means the rate determined by the Administrative Agent or the applicable L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or such L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or such L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that such L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in a Permitted Foreign Currency.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Capital Stock having ordinary voting power for the election of directors or other governing body (other than Capital Stock having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantors" means a collective reference to the Persons identified as "Subsidiary Guarantors" on the signature pages hereto, and each other Person that subsequently becomes a Subsidiary Guarantor by executing a Joinder Agreement as contemplated by Section 7.12, and "Subsidiary Guarantor" means any one of them.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"TARGET Day" means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"Threshold Amount" means \$5,000,000.

"Total Revolving Outstandings" means the Dollar Equivalent of the aggregate Outstanding Amount of all Revolving Loans and all L/C Obligations.

"Type" means, with respect to any Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning set forth in Section 2.03(c)(i).

"Unrestricted Subsidiary" means each Subsidiary of the Borrower which is so designated by the board of directors of the Borrower; provided, however, that no such designation shall be effective unless (a) at the time of such designation, such Subsidiary does not own any Capital Stock or Indebtedness of the Borrower or any other Restricted Subsidiary which is not simultaneously being designated an Unrestricted Subsidiary, (b) immediately after giving effect to such designation, and after deducting from all covenant calculations made in respect of the immediately preceding four fiscal quarters the assets, liabilities, revenues and costs attributable to such Subsidiary (i) no Default would either occur and be continuing or would have occurred at any time during the immediately preceding four fiscal quarters; (ii) the Borrower would be permitted to make the investment in such Subsidiary resulting from such designation in compliance with Section 8.02(i); and (iii) such designation is treated at the time of designation and at all times thereafter as a Disposition for purposes of Section 8.05 and the Borrower would be permitted to make such asset sale in compliance with such Section. Any Subsidiary which has been designated as an Unrestricted Subsidiary pursuant to the preceding sentence may, at any time thereafter, be redesignated as a Restricted Subsidiary by resolution of the board of directors of the Borrower (a certified copy of which shall promptly be delivered to each holder of the Notes) if, immediately after giving effect to such redesignation and all other simultaneous designations and redesignations, if any, of other Subsidiaries pursuant to this definition, no Default shall exist. Any Subsidiary which has been redesignated as a Restricted Subsidiary as provided in the preceding sentence of this definition may not thereafter be designated or redesignated as an Unrestricted Subsidiary. No Subsidiary may be designated as an Unrestricted Subsidiary hereunder unless such Subsidiary is also designated as an "Unrestricted Subsidiary" for purposes of the (a) the 2003 Note Purchase Agreement, (b) the 2005 Note Purchase Agreement and (c) the Additional Note Purchase Agreement.

"Voting Stock" means, with respect to any Person, Capital Stock issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wholly Owned Subsidiary" means any Restricted Subsidiary 100% of whose Capital Stock is at the time owned by the Borrower directly or indirectly through other Restricted Subsidiaries 100% of whose Capital Stock is at the time owned, directly or indirectly, by the Borrower.

1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b)
 - (i) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
 - (ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
 - (iii) The term "including" is by way of example and not limitation.
 - (iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements; provided, however, that calculations of Attributable Indebtedness under any Synthetic Lease Obligations or the implied interest component of any Synthetic Lease Obligations shall be made by the Borrower in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease Obligations.

(b) Notwithstanding Section 1.03(a), if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Borrower and the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP without giving effect to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders each certificate described in Section 7.02(b) together with such supporting information and calculations as the Administrative Agent or the Required Lenders reasonably request with respect to the reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number.

1.05 References to Agreements and Laws.

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

1.06 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

1.07 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.08 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Borrowings and Obligations denominated in Permitted Foreign Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Loan, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing or Loan is denominated in a Permitted Foreign Currency, such amount shall be the relevant Permitted Foreign Currency Equivalent of such Dollar amount (rounded to the nearest 1,000 units of such Permitted Foreign Currency), as determined by the Administrative Agent.

1.09 Additional Permitted Foreign Currencies.

The Borrower may from time to time request that Eurodollar Rate Loans be made in a currency other than those specifically listed in the definition of "Permitted Foreign Currency"; provided that such requested currency otherwise meets the requirements set forth in such definition. Any such request shall be made to the Administrative Agent (which shall promptly notify each Lender thereof) not later than 11:00 a.m., fifteen (15) Business Days prior to the date of the desired Borrowing. Each Lender shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to making Eurodollar Rate Loans in such requested currency. Any failure by a Lender to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender to make Eurodollar Rate Loans in such requested currency. If all the Lenders consent to making Eurodollar Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be a Permitted Foreign Currency hereunder.

1.10 Redenomination of Certain Permitted Foreign Currencies.

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

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

**ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS**

2.01 Loans.

Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans in Available Currencies (each such loan, a "Revolving Loan") to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided, however, that after giving effect to any Borrowing of Revolving Loans, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments and (ii) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Revolving Commitment. Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.04(a), and reborrow under this Section 2.01. Revolving Loans denominated in Dollars may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. Revolving Loans denominated in Permitted Foreign Currencies shall be Eurodollar Rate Loans.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans denominated in Dollars or of any conversion of Eurodollar Rate Loans denominated in Dollars to Base Rate Loans, (ii) five Business Days prior to the requested date of any Borrowing of or continuation of Eurodollar Rate Loans denominated in a Permitted Foreign Currency, and (iii) on the requested date of any Borrowing of Base Rate Loans; provided, however, all Borrowings made on the Closing Date shall be made as Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(b) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) the Available Currency of the Loans to be borrowed and (vi) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a currency in a Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Dollars. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, in the case of a failure to give timely notice to continue a Foreign Currency Loan, such Loan shall be continued as a Foreign Currency Loan denominated in the same Permitted Foreign Currency with an Interest Period of one month. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Foreign Currency Committed Loans, in each case as described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable Available Currency not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan denominated in a Permitted Foreign Currency, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Loan Notice with respect to a Borrowing consisting of Revolving Loans is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings and second, to the Borrower as provided above.

(c) Subject to Section 3.05, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans having Interest Periods greater than one month without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. The determination of the Eurodollar Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than 10 Interest Periods in effect with respect to Revolving Loans.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Available Currencies for the account of the Borrower, and to amend or renew Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drafts under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower; provided that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, (y) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations would exceed such Lender's Revolving Commitment or (z) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) No L/C Issuer shall issue any Letter of Credit if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer;

(C) such Letter of Credit is in an initial amount less than \$100,000, in the case of a commercial Letter of Credit, or \$500,000, in the case of a standby Letter of Credit, or is to be denominated in a currency other than an Available Currency;

(D) such Letter of Credit contains any provisions for automatic reinstatements of the stated amount after any drawing thereunder; or

(E) a default of any Lender's obligations to fund under Section 2.03(c) exists or any Lender is at such time a Defaulting Lender or an Impacted Lender hereunder, unless such L/C Issuer has entered into arrangements satisfactory to such L/C Issuer with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender.

(iv) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) Each 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 such L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article X with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article X included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 12:00 noon at least two Business Days (or such later date and time as the applicable L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit and (H) such other matters as the applicable L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the applicable L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to such L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may reasonably require

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the applicable L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 5.02 shall not be satisfied, then, subject to the terms and conditions hereof, the applicable L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit such L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that such L/C Issuer shall not permit any such renewal if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Nonrenewal Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such renewal or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each case directing such L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(v) Notwithstanding anything to the contrary set forth in this Agreement, including without limitation Section 2.03(a), a Letter of Credit issued hereunder may contain a statement to the effect that such Letter of Credit is issued for the account of any Restricted Subsidiary of the Borrower, provided that notwithstanding such statement, the Borrower shall be the actual account party for all purposes of this Agreement for such Letter of Credit and such statement shall not affect the Borrower's reimbursement obligations hereunder with respect to such Letter of Credit.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the applicable L/C Issuer under a Letter of Credit (each such date, an "Honor Date") (provided that such L/C Issuer notifies the Borrower of the related drawing prior to 10:00 a.m. on such Honor Date), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing; if such notice is received by the Borrower after 10:00 a.m. on the Honor Date, the Borrower shall make such reimbursement to such L/C Issuer on or before 11:00 a.m. on the next succeeding Business Day after the Honor Date together with interest on such amount accrued from the Honor Date at the Base Rate. If the Borrower fails to so reimburse the applicable L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Pro Rata Share thereof. In the case of any Letter of Credit denominated in a Permitted Foreign Currency, the Unreimbursed Amount shall be redenominated into Dollars and equal the Dollar Equivalent amount thereof, and the Administrative Agent shall so notify the Lenders in the notice described in the preceding sentence. In such event, the Borrower shall be deemed to have requested a Borrowing of Revolving Loans that are Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 5.02 (other than the delivery of a Loan Notice) and provided that, after giving effect to such Borrowing, the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments. Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender (including any Lender acting as L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the applicable L/C Issuer at the Administrative Agent's Office in the Dollar Equivalent payments in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Revolving Loans that are Base Rate Loans because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of such L/C Issuer.

(v) Each Lender's obligation to make Revolving Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 5.02 (other than delivery by the Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid (exclusive of such aforesaid interest and fees) shall constitute such Lender's Revolving Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c) (i) is required to be returned under any of the circumstances described in Section 11.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
 - (ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), such L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
 - (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
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(iv) any payment by such L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by such L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will within five Business Days notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any of the respective correspondents, participants or assignees of the L/C Issuers shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties, nor any of the respective correspondents, participants or assignees of the L/C Issuers, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, an L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. Upon the request of the Administrative Agent, but subject to the Intercreditor Agreement, (i) if an L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be). The Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations. Sections 2.04 and 9.02(c) set forth certain additional requirements to deliver cash collateral hereunder. For purposes of this Section 2.03, Section 2.04 and Section 9.02(c), "Cash Collateralize" means, at the Borrower's option, either (i) to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and such L/C Issuer (which documents are hereby consented to by the Lenders) or (ii) to deliver a letter of credit to the Administrative Agent in the face amount of the outstanding L/C Obligations "back stopping" the outstanding Letters of Credit and the L/C Obligations represented thereby (such letter of credit shall be from an issuer acceptable to the applicable L/C Issuer and the Administrative Agent and shall be in a form acceptable to such L/C Issuer and the Administrative Agent). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(h) Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each commercial Letter of Credit.

(i) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share a Letter of Credit fee for each Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily maximum amount available to be drawn under such Letter of Credit. Such letter of credit fees shall be computed on a quarterly basis in arrears. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. Such letter of credit fees shall be due and payable on the fifteenth day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand; provided that (1) no Letter of Credit fees shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any Letter of Credit fees accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit a letter of credit fronting fee of 0.125% on the average daily maximum amount available to be drawn under each Letter of Credit issued by such L/C Issuer at a per annum rate for each day from the date of issuance to the date of expiration (such fronting fee shall be computed on a quarterly basis in arrears and shall be due and payable on the fifteenth day of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment, administration and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect (including, without limitation, transfer and reinstatement fees). Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Prepayments.

(a) Voluntary Prepayments. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding); and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Pro Rata Shares.

(b) Mandatory Prepayments.

(i) Aggregate Revolving Commitments. If for any reason the Total Revolving Outstandings at any time exceed the Aggregate Revolving Commitments then in effect, the Borrower shall immediately prepay Revolving Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess, including, but not limited to, as a result of changes in the Spot Rate on any Revaluation Date; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.04(b)(i) unless after the prepayment in full of the Revolving Loans, the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect.

(ii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.04(b) shall be applied to Revolving Loans and (after all Revolving Loans have been repaid) to Cash Collateralize L/C Obligations. Within the parameters of the applications set forth above, prepayments shall be applied first to Base Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.04(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.05 Termination or Reduction of Aggregate Revolving Commitments.

(a) Voluntary Reductions. The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit exceeds the amount of the Aggregate Revolving Commitments, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess.

(b) General. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. Any reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Pro Rata Share. All commitment fees accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

2.06 Repayment of Loans.

The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Revolving Loans outstanding on such date.

2.07 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate plus (in the case of a Eurodollar Rate Loan of any Lender which is lent from a Lending Office in the United Kingdom or a Participating Member State) the Mandatory Cost; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) If any amount payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Furthermore, upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.08 Fees.

In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) **Commitment Fee.** The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Revolving Commitments exceed the sum of (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date; provided, that (1) no commitment fee shall accrue on any Revolving Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any commitment fee accrued with respect to the Revolving Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) **Other Fees.** (i) The Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.09 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Foreign Currency Loans as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one day.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.07(b) or under Article IX. The Borrower's obligations under this paragraph shall survive until the date that is six months following the termination of the Aggregate Revolving Commitments and the repayment of all other Obligations hereunder.

2.10 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note which shall evidence such Lender's Loans in addition to such accounts or records. Each such promissory note shall in the case of Revolving Loans, be in the form of Exhibit 2.10 (a "Revolving Note"). Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.11 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Foreign Currency Loans, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Loan Parties hereunder with respect to principal and interest on Foreign Currency Loans shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Permitted Foreign Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m. in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in a Permitted Foreign Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds, at the applicable Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Sections 11.04(b) and 11.05(b) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Sections 11.04(b) and 11.05(b).

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.12 Sharing of Payments.

If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations held by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; provided, however, that (i) if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 11.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (A) the amount of such paying Lender's required repayment to (B) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon and (ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by an L/C Issuer to secure the obligations of Defaulting Lenders or Impacted Lenders to fund such risk participations or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 11.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

**ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY**

3.01 Taxes.

(a) Any and all payments by any Loan Party to or for the account of the Administrative Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of the Administrative Agent and each Lender, taxes imposed on or measured by its overall net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which the Administrative Agent or such Lender, as the case may be, is organized or maintains a lending office (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as "Taxes"). If any Loan Party shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to the Administrative Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), each of the Administrative Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions, (iii) such Loan Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within 30 days after the date of such payment, such Loan Party shall furnish to the Administrative Agent (which shall forward the same to such Lender) the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "Other Taxes").

(c) If the Borrower shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to the Administrative Agent or any Lender, the Borrower shall also pay to the Administrative Agent or to such Lender, as the case may be, at the time interest is paid, such additional amount that the Administrative Agent or such Lender specifies is necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) that the Administrative Agent or such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) The Borrower agrees to indemnify the Administrative Agent and each Lender for (i) the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) paid by the Administrative Agent and such Lender, (ii) amounts payable under Section 3.01(c) and (iii) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Payment under this subsection (d) shall be made within 30 days after the date the Lender or the Administrative Agent makes a demand therefor, accompanied by a certificate described in Section 3.06(a).

(e) If the Borrower is required to pay additional amounts to or for the account of any Lender pursuant to this Section 3.01, then such Lender will agree to take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid or mitigate any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to, or otherwise make payments under this Section 3.01 with respect to, such Lender.

3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans in any Available Currency, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, any Available Currency in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans in the affected Available Currency or, where the affected Available Currency is Dollars, to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert such Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Notwithstanding the foregoing, and despite the illegality for such Lender to make, maintain or fund Eurodollar Rate Loans or Base Rate Loans as to which the interest rate is based on the Eurodollar Rate, that Lender shall remain committed to make Base Rate Loans and shall be entitled to recover interest at the Base Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. If the obligation of any Lender to make or maintain Eurodollar Rate Loans has been so terminated or suspended, then the Borrower may elect, by giving notice to such Lender through Administrative Agent, that all Loans denominated in Dollars which would otherwise be made by such Lender as Eurodollar Rate Loans shall be instead Base Rate Loans.

3.03 Inability to Determine Rates.

If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with a Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Rate Loans.

(a) If any Lender determines that as a result of the introduction of or any change in or in the interpretation of any Law, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurodollar Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this subsection (a) any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes (as to which Section 3.01 shall govern), (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Lender is organized or has its Lending Office, (iii) reserve requirements contemplated by Section 3.04(c), and (iv) the requirements of the Bank of England and the Financial Services Authority or the European Central Bank reflected in the Mandatory Cost, other than as set forth below)) or the Mandatory Cost, as calculated hereunder, does not represent the cost to such Lender of complying with the requirements of the Bank of England and/or the Financial Services Authority or the European Central Bank in relation to its making, funding or maintaining of Eurodollar Rate Loans, then if such Lender generally is assessing such amounts to its borrowers that are similarly situated with the Borrower, from time to time upon demand of such Lender, accompanied by a certificate described in Section 3.06(a) (with a copy of such demand and certificate to the Administrative Agent), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction or, if applicable, the portion of such cost that is not represented by the Mandatory Cost. If the Borrower is required to pay additional amounts to or for the account of any Lender pursuant to this Section 3.04(a), then such Lender will agree to take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid or mitigate any requirement for compensation under this Section 3.04(a).

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand, accompanied by a certificate described in Section 3.06(a), of such Lender (with a copy of such demand to the Administrative Agent), so long as such Lender is imposing such costs generally on borrowers similarly situated with the Borrower, the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction.

(c) The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 15 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 15 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 15 days from receipt of such notice.

3.05 Funding Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any Loan (or interest due thereon) denominated in a Permitted Foreign Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.16;

excluding any loss of anticipated profits and including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the applicable offshore interbank market for such Available Currency for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 Matters Applicable to all Requests for Compensation.

(a) Any Lender claiming compensation under this Article III shall deliver to the Borrower (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder and such certificate shall be conclusive in the absence of manifest error. In determining such amount, the Administrative Agent or such Lender may use any reasonable averaging and attribution methods.

(b) Upon any Lender's making a claim for compensation under Section 3.01 or 3.04, the Borrower may replace such Lender in accordance with Section 11.16.

3.07 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

**ARTICLE IV
GUARANTY**

4.01 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to each Lender, each Affiliate of a Lender that enters into a Swap Contract, and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly 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 Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents or Swap Contracts, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

4.02 Obligations Unconditional.

The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or Swap Contracts, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Obligations have been Fully Satisfied. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents, any Swap Contract between any Consolidated Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Loan Documents or such Swap Contracts shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents, any Swap Contract between any Consolidated Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Loan Documents or such Swap Contracts shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent, the Collateral Agent or other holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected; or

(e) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents, any Swap Contract between any Consolidated Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Loan Documents or such Swap Contracts, or against any other Person under any other guarantee of, or security for, any of the Obligations.

4.03 Reinstatement.

The obligations of the Guarantors under this Article IV shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each other holder of the Obligations on demand for all reasonable costs and expenses (including fees and expenses of counsel) incurred by the Administrative Agent or such holder of the Obligations 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 Debtor Relief Law.

4.04 Certain Additional Waivers.

Without limiting the generality of the provisions of this Article IV, each Guarantor hereby specifically waives, to the extent applicable, the benefits of N.C. Gen. Stat. §§ 26-7 through 26-9, inclusive and California Civil Code Section 2847, 2848 or 2849. Each Guarantor further agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.02 and through the exercise of rights of contribution pursuant to Section 4.06.

As used in this paragraph, any reference to "the principal" includes the Borrower, and any reference to "the creditor" includes each Lender, each Affiliate of a Lender that enters into a Swap Contract, and the Administrative Agent. In accordance with Section 2856 of the California Civil Code (a) each Guarantor waives any and all rights and defenses available to it by reason of Sections 2787 to 2855, inclusive, of the California Civil Code, including without limitation any and all rights or defenses such Guarantor or any other guarantor of the Guaranteed Obligations may have because the Guaranteed Obligations are secured by real property. This means, among other things: (1) the creditor may collect from such Guarantor without first foreclosing on any real or personal property collateral pledged by the principal; and (2) if the creditor forecloses on any real property collateral pledged by the principal: (A) the amount of the Guaranteed Obligations may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) the creditor may collect from such Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right such Guarantor may have to collect from the principal. This is an unconditional and irrevocable waiver of any right and defenses such Guarantor may have because the Guaranteed Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights and defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure. Each Guarantor also waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Guaranteed Obligations, has destroyed such Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise; and even though that election of remedies by the creditor, such as nonjudicial foreclosure with respect to security for an obligation of any other guarantor of any of the Guaranteed Obligations, has destroyed such Guarantor's rights of contribution against such other guarantor. No other provision of this Guaranty shall be construed as limiting the generality of any of the covenants and waivers set forth in this paragraph. As provided below, this Guaranty shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of New York, without regard to conflicts of laws principles. This paragraph is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Guaranty or to any of the Guaranteed Obligations.

4.05 Remedies.

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Administrative Agent and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Obligations may exercise their remedies thereunder in accordance with the terms thereof.

4.06 Rights of Contribution.

The Guarantors hereby agree as among themselves that, if any Guarantor shall make an Excess Payment (as defined below), such Guarantor shall have a right of contribution from each other Guarantor in an amount equal to such other Guarantor's Contribution Share (as defined below) of such Excess Payment. The payment obligations of any Guarantor under this Section 4.06 shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been Fully Satisfied, and none of the Guarantors shall exercise any right or remedy under this Section 4.06 against any other Guarantor until such Obligations have been Fully Satisfied. For purposes of this Section 4.06, (a) "Excess Payment" shall mean the amount paid by any Guarantor in excess of its Ratable Share of any Guaranteed Obligations; (b) "Ratable Share" shall mean, for any Guarantor in respect of any payment of Obligations, the ratio (expressed as a percentage) as of the date of such payment of Guaranteed Obligations of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of all of the Loan Parties exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Loan Parties hereunder) of the Loan Parties; provided, however, that, for purposes of calculating the Ratable Shares of the Guarantors in respect of any payment of Obligations, any Guarantor that became a Guarantor subsequent to the date of any such payment shall be deemed to have been a Guarantor on the date of such payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such payment; (c) "Contribution Share" shall mean, for any Guarantor in respect of any Excess Payment made by any other Guarantor, the ratio (expressed as a percentage) as of the date of such Excess Payment of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of the Loan Parties other than the maker of such Excess Payment exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Loan Parties) of the Loan Parties other than the maker of such Excess Payment; provided, however, that, for purposes of calculating the Contribution Shares of the Guarantors in respect of any Excess Payment, any Guarantor that became a Guarantor subsequent to the date of any such Excess Payment shall be deemed to have been a Guarantor on the date of such Excess Payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such Excess Payment; and (d) "Guaranteed Obligations" shall mean the Obligations guaranteed by the Guarantors pursuant to this Article IV. This Section 4.06 shall not be deemed to affect any right of subrogation, indemnity, reimbursement or contribution that any Guarantor may have under Law against the Borrower in respect of any payment of Guaranteed Obligations. Notwithstanding the foregoing, all rights of contribution against any Guarantor shall terminate from and after such time, if ever, that such Guarantor shall be relieved of its obligations in accordance with Section 10.11.

4.07 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Article IV is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

**ARTICLE V
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

5.01 Intentionally Omitted.

5.02 Conditions to all Credit Extensions.

The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 5.02, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01.

(b) No Default shall exist, or would result from such proposed Credit Extension.

(c) There shall not have been commenced against any Consolidated Party an involuntary case under any applicable Debtor Relief Law, now or hereafter in effect, or any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or for the winding up or liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall remain undismissed.

(d) The Administrative Agent and, if applicable, the applicable L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a), (b) and (c) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

The Loan Parties represent and warrant to the Administrative Agent and the Lenders that:

6.01 Existence, Qualification and Power; Compliance with Laws.

Each Consolidated Party (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents, if any, to which it is a party and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, (i) any Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law (including, without limitation, Regulation U or Regulation X issued by the FRB); except in each case referred to in clause (b)(i), (b)(ii) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, except for (a) consents, authorizations, notices and filings described in Schedule 6.03, all of which have been obtained or made or have the status described in such Schedule 6.03 and (b) filings or recordations to perfect the Liens created by the Collateral Documents.

6.04 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms except as enforceability may be limited by applicable Debtor Relief Laws and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Consolidated Parties as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated financial statements of the Consolidated Parties contained in the Borrower's 10 Q for the period ended May 31, 2009, and the related consolidated statements of income or operations and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Consolidated Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) During the period from November 30, 2008 to and including the Seventh Amendment Effective Date, there has been no sale, transfer or other disposition by any Consolidated Party of any material part of the business or Property of the Consolidated Parties, taken as a whole, and no purchase or other acquisition by any of them of any business or property (including any Capital Stock of any other Person) material in relation to the consolidated financial condition of the Consolidated Parties, taken as a whole, in each case, which is not reflected in the foregoing financial statements or in the notes thereto and has not otherwise been disclosed in writing to the Lenders on or prior to the Seventh Amendment Effective Date.

(d) The financial statements delivered pursuant to Section 7.01(a) and (b) have been prepared in accordance with GAAP (except as may otherwise be permitted under Section 7.01(a) and (b)) and present fairly in all material respects (on the basis disclosed in the footnotes to such financial statements) the consolidated financial condition, results of operations and cash flows of the Consolidated Parties as of such date and for such periods.

(e) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

6.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Consolidated Party or against any of its properties or revenues that (a) purport to affect this Agreement or any other Loan Document, or any of the transactions contemplated hereby or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

6.07 No Default.

No Consolidated Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

6.08 Ownership of Property; Liens.

Each Consolidated Party has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Consolidated Parties is subject to no Liens, other than Permitted Liens.

6.09 Environmental Compliance.

Except for matters that could not reasonably be expected to have a Material Adverse Effect:

(a) Each of the Real Properties and all operations at the Real Properties are in compliance with all applicable Environmental Laws, there is no violation of any Environmental Law with respect to the Real Properties or the Businesses, and there are no conditions relating to the Real Properties or the Businesses that could give rise to liability under any applicable Environmental Laws.

(b) None of the Real Properties contains, or has previously contained, any Hazardous Materials at, on or under the Real Properties in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.

(c) No Consolidated Party has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Real Properties or the Businesses, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Hazardous Materials have not been transported or disposed of from the Real Properties, or generated, treated, stored or disposed of at, on or under any of the Real Properties or any other location, in each case by or on behalf of any Consolidated Party in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the best knowledge of the Responsible Officers of the Loan Parties, threatened, under any Environmental Law to which any Consolidated Party is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Consolidated Parties, the Real Properties or the Businesses.

(f) There has been no release, or threat of release, of Hazardous Materials at or from the Real Properties, or arising from or related to the operations (including, without limitation, disposal) of any Consolidated Party in connection with the Real Properties or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

6.10 Insurance.

The properties of the Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates. As of the Seventh Amendment Effective Date, the insurance coverage of the Loan Parties is outlined as to carrier, policy number, expiration date, type and amount on Schedule 6.10.

6.11 Taxes.

The Consolidated Parties have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges therein shown to be due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. To the knowledge of the Responsible Officers of the Loan Parties, there is no proposed tax assessment against the Borrower or any Restricted Subsidiary that would, if made, have a Material Adverse Effect.

6.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Responsible Officers of the Loan Parties, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Loan Party and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412, Section 430 or Section 431 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412, Section 430 or Section 431 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of the Responsible Officers of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) the minimum required contribution (as defined in Section 430(a) of the Code) has been made for each Pension Plan; (iii) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

6.13 Subsidiaries.

The corporate capital and ownership structure of the Consolidated Parties as of the Seventh Amendment Effective Date is as described in Schedule 6.13(a). Set forth on Schedule 6.13(b) is a complete and accurate list as of the Seventh Amendment Effective Date with respect to the Borrower and each of its direct and indirect Subsidiaries of (i) jurisdiction of incorporation, (ii) number of shares of each class of Capital Stock outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the Consolidated Parties and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto as of the Seventh Amendment Effective Date. The outstanding Capital Stock of all such Persons is validly issued, fully paid and non-assessable and is owned by the Consolidated Parties, directly or indirectly, in the manner set forth on Schedule 6.13(b), free and clear of all Liens (other than those arising under or contemplated in connection with the Credit Documents). Other than as set forth in Schedule 6.13(b), neither the Borrower nor any of its Restricted Subsidiaries has outstanding any securities convertible into or exchangeable for its Capital Stock nor does any such Person have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its Capital Stock.

6.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is (i) required to be registered as an "investment company" under the Investment Company Act of 1940 or (ii) subject to regulation under any other Law which limits its ability to incur Indebtedness.

6.15 Disclosure.

Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information furnished by any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 Compliance with Laws.

Each Consolidated Party is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property.

Each Consolidated Party owns, or has the legal right to use, all material trademarks, service marks, trade names, trade dress, patents, copyrights, technology, know-how and processes (the "Intellectual Property") necessary for each of them to conduct its business as currently conducted. Set forth on Schedule 6.17 is a list of all Intellectual Property registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office and owned by each Loan Party as of the Seventh Amendment Effective Date. Except as provided on Schedule 6.17, no claim has been asserted and is pending by any Person challenging or questioning the use of the Intellectual Property or the validity or effectiveness of the Intellectual Property, nor does any Responsible Officer of any Loan Party know of any such claim, and, to the knowledge of the Responsible Officers of the Loan Parties, the use of the Intellectual Property by any Consolidated Party or the granting of a right or a license in respect of the Intellectual Property from any Consolidated Party does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. As of the Seventh Amendment Effective Date, none of the Intellectual Property of the Loan Parties is subject to any licensing agreement or similar arrangement except as set forth on Schedule 6.17.

6.18 Solvency.

The Loan Parties are Solvent on a consolidated basis.

6.19 Investments.

All Investments of each Consolidated Party are Permitted Investments.

6.20 Business Locations.

Set forth on Schedule 6.20(a) is a list of all Real Properties located in the United States that are owned or leased by the Loan Parties of America as of the Seventh Amendment Effective Date. Set forth on Schedule 6.20(b) is a list of all locations where any tangible personal property of a Loan Party is located as of the Seventh Amendment Effective Date. Set forth on Schedule 6.20(c) is the chief executive office, jurisdiction of incorporation or formation and principal place of business of each Loan Party as of the Seventh Amendment Effective Date.

6.21 Brokers' Fees.

No Consolidated Party has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Loan Documents.

6.22 Labor Matters.

Except as set forth on Schedule 6.22, there are no collective bargaining agreements or Multiemployer Plans covering the employees of a Consolidated Party as of the Seventh Amendment Effective Date and none of the Consolidated Parties has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last two years.

6.23 Nature of Business.

As of the Seventh Amendment Effective Date, the Consolidated Parties are engaged in the following businesses (and other business reasonably related thereto): (a) manufacturing and marketing of filament-wound and molded fiberglass pipe and fittings, (b) supplying products and services used in the construction of water pipelines, (c) supplying ready-mix concrete, crushed and sized basaltic aggregates, dune sand, concrete pipe and box culverts, (d) manufacturing concrete and steel poles and (e) manufacturing large diameter wind towers.

6.24 Representations and Warranties from Other Loan Documents.

Each of the representations and warranties made by any of the Loan Parties in any of the other Loan Documents is true and correct in all material respects.

6.25 OFAC Matters.

(a) The Borrower represents that neither Borrower nor any of its Subsidiaries or any director, officer, employee, agent, controlled affiliate or representative of the Borrower or any of its Subsidiaries is a Person currently designated as the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), the United Nations Security Council, the European Union or Her Majesty's Treasury ("HMT") (collectively, "Sanctions"), nor is the Borrower nor any of its Subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions.

(b) The Borrower represents and covenants that it will not, and its Subsidiaries will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person under the Borrower's control, to fund any activities of or business with any Person under the Borrower's control, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person under the Borrower's control (including any Person participating in this Agreement, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(c) The officers, directors, employees and agents of the Borrower who are U.S. citizens or permanent residents or who represent an entity organized under U.S. law shall not participate in or facilitate transactions or business planning involving any Person, or any country or territory, that is the subject of sanctions administered by OFAC.

**ARTICLE VII
AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 7.01, 7.02, 7.03 and 7.11) cause each Restricted Subsidiary to:

7.01 Financial Statements.

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent or the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; the delivery by the Borrower to the Administrative Agent and each Lender of the Borrower's Form 10K for each fiscal year within the above referenced 90 day period shall satisfy Borrower's obligations under this Section 7.01(a);

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal quarter, and the related consolidated statements of income or operations and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; the delivery by the Borrower to the Administrative Agent and each Lender of the Borrower's Form 10Q for each fiscal quarter within the above referenced 45 day period shall satisfy Borrower's obligations under this Section 7.01 (b); and

(c) if any Unrestricted Subsidiaries exist on the last day of a fiscal quarter, as soon as available, but in any event within 45 days (other than the fourth fiscal quarter, in which case 90 days) after the end of such fiscal quarter of the Borrower, a consolidating balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidating statements of income or operations and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP.

7.02 Certificates; Other Information.

Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 7.01(a), a certificate of its independent certified public accountants certifying such financial statements and stating that, in making the examination necessary therefor, no knowledge was obtained of any Default or, if any such Default shall exist, stating the nature and status of such event; provided, however, that such independent certified public accountant shall not be liable by reason of any failure to obtain knowledge of any Default with respect to accounting matters that would not customarily be disclosed in the course of their audit examination or with respect to any matters that are not accounting matters;

(b) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(c) [reserved].

(d) promptly after the same are available, (i) copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 and not otherwise required to be delivered to the Administrative Agent pursuant hereto, (ii) upon the request of the Administrative Agent, all material reports and written information to and from the United States Environmental Protection Agency, or any state or local agency responsible for environmental matters, the United States Occupational Health and Safety Administration, or any state or local agency responsible for health and safety matters, or any successor agencies or authorities concerning environmental, health or safety matters and (iii) all material and non-privileged reports and filings made with the relevant Governmental Authority related to any OFAC investigation;

(e) promptly upon receipt thereof, a copy of any audit report or "management letter" submitted by independent accountants to any Consolidated Party in connection with any annual, interim or special audit of the books of such Person;

(f) promptly after the same are available, copies of each notice, financial statement or other report or communication sent to the Senior Noteholders and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender, through the Administrative Agent, may from time to time reasonably request.

Documents required to be delivered pursuant to Section 7.01(a) or (b) or Section 7.02(d) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 7.02(b) to the Administrative Agent and each of the Lenders. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not marked as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

7.03 Notices and Information.

- (a) Promptly notify the Administrative Agent and each Lender of the occurrence of any Default.
 - (b) Promptly notify the Administrative Agent and each Lender of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including any of the following events with such effect: (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws.
 - (c) Promptly notify the Administrative Agent and each Lender of the occurrence of any ERISA Event.
 - (d) Promptly notify the Administrative Agent and each Lender of any material change in accounting policies or financial reporting practices by the Borrower or any Restricted Subsidiary.
 - (e) Upon the reasonable written request of the Administrative Agent following the occurrence of any event or the discovery of any condition which the Administrative Agent or the Required Lenders reasonably believe has caused (or could be reasonably expected to cause) the representations and warranties set forth in Section 6.09 to be untrue, the Loan Parties will furnish or cause to be furnished to the Administrative Agent, at the Loan Parties' expense, a report of an environmental assessment of reasonable scope, form and depth, (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably acceptable to the Administrative Agent as to the nature and extent of the presence of any Hazardous Materials on any Mortgaged Properties and as to the compliance by any Consolidated Party with Environmental Laws at such Mortgaged Properties. If the Loan Parties fail to deliver such an environmental report within 120 days after receipt of such written request then the Administrative Agent may arrange for same, and the Loan Parties hereby grant to the Administrative Agent and its representatives access to the Mortgaged Properties to reasonably undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling). The reasonable cost of any assessment arranged for by the Administrative Agent pursuant to this provision will be payable by the Loan Parties on demand and added to the obligations secured by the Collateral Documents.
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(f) At the time of delivery of the financial statements and reports provided for in Section 7.01(a), deliver to the Administrative Agent a report signed by an Responsible Officer of the Borrower setting forth (i) a list of registration numbers for all patents, trademarks, service marks, trade names and copyrights awarded to any Loan Party since the last day of the immediately preceding fiscal year and (ii) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by any Loan Party since the last day of the immediately preceding fiscal year and the status of each such application, all in such form as shall be reasonably satisfactory to the Administrative Agent.

Each notice pursuant to this Section 7.03(a) through (e) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations.

Pay, discharge and/or otherwise perform prior to delinquency (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Restricted Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than a Permitted Lien); and (c) all Indebtedness and other Contractual Obligations which, if unpaid or unperformed, could reasonably be expected to have a Material Adverse Effect, but subject to any subordination provisions contained in any instrument or agreement evidencing any such Indebtedness.

7.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 8.04 or 8.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business except to the extent the failure to maintain any such rights, privileges, permits, licenses and franchises could not reasonably be expected to result in a Material Adverse Effect; and (c) to the extent permitted under applicable law, preserve or renew all of its material registered copyrights, patents, trademarks, trade names and service marks.

7.06 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and Involuntary Dispositions excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities, in each case, except to the extent the failure to undertake any of the actions described in the forgoing clauses (a) through (c), inclusive, could not reasonably be expected to result in a Material Adverse Effect.

7.07 Maintenance of Insurance.

Maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice. The Collateral Agent shall be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be altered or canceled.

7.08 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.09 Books and Records.

(a) Maintain in all material respects proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Restricted Subsidiary, as the case may be.

7.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Administrative Agent or the Lender, as the case may be, and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may reasonably do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice. The Loan Parties agree that the Administrative Agent, and its representatives, may conduct an annual audit of the Collateral, at the reasonable expense of the Loan Parties.

7.11 Use of Proceeds.

Use the proceeds of the Credit Extensions for general corporate purposes not in contravention of any Law or of any Loan Document.

7.12 Additional Guarantors.

Notify the Administrative Agent at the time that (a) any Person becomes a Domestic Restricted Subsidiary or (b) any Subsidiary of any Loan Party guarantees the Borrower's obligations under any Senior Note Agreement, and promptly thereafter (and in any event within 30 days), cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement, and (ii) deliver to the Administrative Agent certified copies of the Organizational Documents, certificates of resolutions or other action, incumbency certificates and/or other certificates as the Administrative Agent may require, in each case certified as true and correct by a Responsible Officer, good standing certificates and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), all in form, content and scope reasonably satisfactory to the Administrative Agent.

7.13 Pledged Assets.

Each Loan Party will (i) cause all of its owned real and personal Property other than Excluded Property to be subject at all times to first priority, perfected and, in the case of owned real Property, title insured Liens in favor of the Collateral Agent to secure the Obligations pursuant to the terms and conditions of the Collateral Documents or, with respect to any such Property acquired subsequent to the Closing Date, such other additional security documents as the Administrative Agent shall reasonably request, subject in any case to Permitted Liens and (ii) deliver such other documentation as the Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, appropriate UCC-1 financing statements, real estate title insurance policies, landlord's waivers, certified resolutions and other organizational and authorizing documents of such Person, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above and the perfection of the Collateral Agent's Liens thereunder) and any other documentation reasonably requested by the Administrative Agent, in each case in form, content and scope reasonably satisfactory to the Administrative Agent. Without limiting the generality of the above, the Loan Parties will cause (A) 100% of the issued and outstanding Capital Stock of each direct Domestic Subsidiary of a Loan Party and (B) 65% (or such greater percentage that, due to a change in an applicable Law after the Closing Date, (1) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary's United States parent and (2) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each Foreign Subsidiary directly owned by the Borrower or any Domestic Restricted Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Collateral Agent (it being recognized that perfection actions need only be taken in the foreign countries described in the next sentence) pursuant to the terms and conditions of the Collateral Documents or such other security documents as the Administrative Agent shall reasonably request. As of the Seventh Amendment Effective Date, the Borrower has only been required to provide foreign law-governed pledge documents (and legal opinions of foreign counsel) for the following Subsidiaries: Ameron B.V., a Netherlands private limited company, Ameron (UK) Limited, a company organized under the laws of England and Ameron Holdings Pte Ltd, a company organized under the laws of Singapore.

ARTICLE VIII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

8.01 **Liens.**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
 - (b) Liens existing on the Seventh Amendment Effective Date and listed on Schedule 8.01 and any renewals or extensions thereof, provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by Section 8.03(b);
 - (c) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet delinquent or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
 - (d) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business, provided that such Liens secure only amounts not yet delinquent and no other action has been taken to enforce the same or are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established;
 - (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
 - (f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;
 - (g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which do not, in the aggregate, materially detract from the value of the property subject thereto, materially interfere with the ordinary conduct of the business of the applicable Person or impair the operation of such property for the purposes for which it is or may reasonably be expected to be used;
 - (h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01(h) or securing appeal or other surety bonds related to such judgments;
 - (i) Liens securing Indebtedness permitted under Section 8.03(e); provided that (i) such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost of the Property being acquired on the date of acquisition and (iii) such Liens attach to such Property concurrently with or within 180 days after the acquisition thereof;
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- (j) leases or subleases granted to others not interfering in any material respect with the business of any Consolidated Party;
- (k) any interest of title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;
- (l) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 8.02;
- (m) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;
- (n) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;
- (o) Liens on assets of Foreign Restricted Subsidiaries securing Indebtedness permitted under Section 8.03(e);
- (p) Liens securing Indebtedness permitted under Section 8.03(h); provided that such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness;
- (q) Liens on Property not constituting Collateral securing Indebtedness permitted under Section 8.03(j); and
- (r) Liens in favor of any L/C Issuer on cash collateral securing the obligations of a Defaulting Lender or an Impacted Lender to fund risk participations hereunder.

8.02 Investments.

Make any Investments, except:

- (a) Investments held by the Borrower or such Restricted Subsidiary in the form of Cash Equivalents;
 - (b) Investments existing as of the Seventh Amendment Effective Date and set forth in Schedule 8.02;
 - (c) Investments consisting of advances or loans to directors, officers, employees, agents, customers or suppliers in an aggregate principal amount (including Investments of such type set forth in Schedule 8.02) not to exceed \$1,000,000 at any time outstanding;
 - (d) (i) Investments in any Person that is a Loan Party prior to giving effect to such Investment, (ii) Investments made in connection with the formation of (but not the Acquisition of) a new Guarantor, so long as the Loan Parties have complied with Sections 7.12 and 7.13 and (iii) Investments made by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party;
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(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) Guarantees permitted by Section 8.03;

(g) Investments consisting of an Acquisition by the Borrower or any Restricted Subsidiary of the Borrower, provided that (i) the Property acquired (or the Property of the Person acquired) in such Acquisition is used or useful in the same or a similar line of business as the Borrower and its Restricted Subsidiaries were engaged in on the Seventh Amendment Effective Date (or any reasonable extensions or expansions thereof), (ii) the Collateral Agent shall have received (to the extent then required to be delivered) all items in respect of the Capital Stock or Property acquired in such Acquisition required to be delivered by the terms of Section 7.12 and/or Section 7.13, (iii) in the case of an Acquisition of the Capital Stock of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition, (iv) immediately prior to, and after giving effect to such Acquisition, no Default or Event of Default shall exist, (v) the representations and warranties made by the Loan Parties in any Loan Document shall be true and correct in all material respects at and as if made as of the date of such Acquisition (after giving effect thereto) except to the extent such representations and warranties expressly relate to an earlier date, (vi) after giving effect to such Acquisition, there shall be at least \$25,000,000 of availability existing under the Aggregate Revolving Commitments and (vii) the aggregate consideration (including cash and non-cash consideration, any assumption of Indebtedness and any earn-out payments, but excluding consideration consisting of any Capital Stock of the Borrower issued to the seller of the Capital Stock or Property acquired in such Acquisition) paid by the Consolidated Parties for all such Acquisitions occurring during any period of twelve consecutive months shall not exceed \$50,000,000;

(h) Investments in life insurance policies maintained for the benefit of members of the executive management of the Borrower;

(i) Investments in Unrestricted Subsidiaries in an amount not to exceed \$5,000,000 in the aggregate at any time outstanding; or

(j) other Investments, other than Acquisitions, in an amount not to exceed \$20,000,000 in the aggregate at any time outstanding; provided, that immediately after giving effect to any such Investment made pursuant to this Section 8.02(j), the Borrower shall have availability under the Aggregate Revolving Commitments totaling at least \$25,000,000.

8.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness of the Borrower and its Restricted Subsidiaries set forth in Schedule 8.03 (and renewals, refinancings and extensions thereof; provided that if such Indebtedness was previously unsecured, such renewed, refinanced or extended Indebtedness shall also be unsecured unless the Liens securing such Indebtedness are otherwise permitted by Section 8.01);

- (c) intercompany Indebtedness arising from loans, advances and Guaranty Obligations permitted under Section 8.02;
- (d) obligations (contingent or otherwise) of the Borrower or any Restricted Subsidiary existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;
- (e) purchase money Indebtedness (including obligations in respect of Capital Leases or Synthetic Lease Obligations) hereafter incurred by the Borrower or any of its Restricted Subsidiaries to finance the purchase of fixed assets and any refinancings thereof, provided that (i) the sum of (A) all such Indebtedness for all such Persons taken together plus (B) all Indebtedness outstanding pursuant to Section 8.03(h) shall not exceed an aggregate principal amount of \$20,000,000 at any one time outstanding; (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed; and (iii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;
- (f) (i) Indebtedness arising under the 2003 Note Purchase Agreement, the 2005 Note Purchase Agreement and the respective Senior Notes issued thereunder and (ii) Indebtedness arising under the Additional Note Purchase Agreement and the Additional Senior Notes issued thereunder in an aggregate principal amount not to exceed \$50,000,000, provided that (A) the applicable Senior Noteholders have become a party to the Intercreditor Agreement, (B) upon giving effect to the incurrence of such Indebtedness on a pro forma basis (assuming such Indebtedness was incurred as of the first day of the most recently ended four fiscal quarter period for which the Borrower has delivered financial statements pursuant to Section 7.01), no Default exists and the Loan Parties would be in compliance with the financial covenants set forth in Section 8.11, (C) such Additional Senior Notes not mature and shall have no principal amortization payments due until after the Maturity Date and (D) the terms and conditions of the Additional Note Purchase Agreement and the Additional Senior Notes, when taken as a whole, are no more restrictive than those set forth in this Agreement;
- (g) Indebtedness of Foreign Restricted Subsidiaries not to exceed an aggregate principal amount of \$10,000,000 at any one time outstanding;
- (h) Indebtedness of the type described in Section 8.03(e) (including obligations in respect of Capital Leases or Synthetic Lease Obligations) hereafter assumed or acquired by the Borrower or any of its Restricted Subsidiaries in connection with an Acquisition permitted by Section 8.02(g) and any refinancings thereof, provided that (i) the sum of (A) all such Indebtedness for all such Persons taken together plus (B) all Indebtedness outstanding pursuant to Section 8.03(e) shall not exceed an aggregate principal amount of \$20,000,000 at any one time outstanding; and (ii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;
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- (i) unsecured Indebtedness not to exceed an aggregate principal amount of \$15,000,000 at any one time outstanding; and
- (j) other Indebtedness so long as the sum of (i) the aggregate principal amount of all such Indebtedness for all such Persons taken together plus (ii) the fair market value of all property subject to Sale and Leaseback Transactions where the underlying lease is an Operating Lease does not exceed \$10,000,000 at any one time outstanding.

8.04 Fundamental Changes.

Except in connection with a Disposition permitted by Section 8.05, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person; provided that, notwithstanding the foregoing provisions of this Section 8.04 but subject to the terms of Sections 7.12 and 7.13, (a) the Borrower may merge or consolidate with any of its Restricted Subsidiaries provided that the Borrower shall be the continuing or surviving corporation, (b) any Loan Party other than the Borrower may merge or consolidate with any other Loan Party other than the Borrower, (c) any Consolidated Party which is not a Loan Party may be merged or consolidated with or into any Loan Party provided that such Loan Party shall be the continuing or surviving corporation, (d) any Consolidated Party which is not a Loan Party may be merged or consolidated with or into any other Consolidated Party which is not a Loan Party, (e) any Restricted Subsidiary of the Borrower may merge with any Person that is not a Loan Party in connection with a Disposition permitted under Section 8.05, (f) the Borrower or any Restricted Subsidiary of the Borrower may merge with any Person other than a Consolidated Party in connection with an Acquisition by the Borrower or any Restricted Subsidiary of the Borrower permitted pursuant to the terms of Section 8.02(g) provided that, if such transaction involves the Borrower, the Borrower shall be the continuing or surviving corporation and (g) any Wholly Owned Subsidiary of the Borrower may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect.

8.05 Dispositions.

Make any Disposition other than an Excluded Disposition unless (a) subject to the second sentence of this Section 8.05, at least 80% of the consideration paid in connection therewith shall be cash or Cash Equivalents and shall be in an amount not less than the fair market value of the Property disposed of, (b) if such transaction is a Sale and Leaseback Transaction, such transaction is not prohibited by the terms of Section 8.16, (c) such transaction does not involve the sale or other disposition of a minority equity interest in any Consolidated Party, (d) such transaction does not involve a sale or other disposition of receivables other than receivables owned by or attributable to other Property concurrently being disposed of in a transaction otherwise permitted under this Section 8.05, (e) the aggregate net book value of all of the assets sold or otherwise disposed of by the Consolidated Parties in all such transactions during any period of twelve consecutive months shall not exceed \$15,000,000, and (f) no later than five (5) Business Days prior to such Disposition, the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower specifying the anticipated date of such Disposition, briefly describing the assets to be sold or otherwise disposed of and setting forth the net book value of such assets and the aggregate consideration to be received for such assets in connection with such Disposition. Notwithstanding clause (a) of the preceding sentence, the Borrower and its Restricted Subsidiaries may make Dispositions that are not subject to such clause (a) so long as (i) the consideration paid in connection with any such Disposition does not exceed \$5,000,000, (ii) the aggregate consideration that is not cash or Cash Equivalents for all such Dispositions (which consideration has not, subsequent to the date of such Disposition, been converted into cash or Cash Equivalents) does not exceed \$5,000,000 and (iii) such Disposition otherwise complies with this Section 8.05.

8.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment except that:

(a) each Restricted Subsidiary may make Restricted Payments to the Loan Parties and any other Person that owns the Capital Stock of such Restricted Subsidiary, ratably according to their respective holdings of the type of Capital Stock in respect of which such Restricted Payment is being made;

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Capital Stock of such Person; and

(c) the Borrower may make other Restricted Payments so long as immediately before and after giving effect thereto, no Default shall exist.

8.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Restricted Subsidiaries on the Seventh Amendment Effective Date or any business substantially related or incidental thereto.

8.08 Transactions with Affiliates and Insiders.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) intercompany transactions expressly permitted by Section 8.02, Section 8.03, Section 8.04 or Section 8.05, (b) transactions expressly permitted by Section 8.02(c) and (h) or Section 8.06, (c) normal compensation and reimbursement of expenses of and indemnities of officers and directors and (d) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable (or more favorable) to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

8.09 Burdensome Agreements.

Enter into any Contractual Obligation that encumbers or restricts on the ability of any such Person to (i) pay dividends or make any other distributions to any Loan Party on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Loan Party, (iii) make loans or advances to any Loan Party, (iv) sell, lease or transfer any of its Property to any Loan Party or (v) except in respect of any Consolidated Party which is not a Loan Party, (A) pledge its Property (other than Excluded Property) pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (B) act as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i)-(v)(A) above) for (1) this Agreement and the other Loan Documents, (2) the 2003 Senior Note Agreement, the 2005 Senior Note Agreement and the respective Senior Notes issued thereunder, in each case as in effect as of the Seventh Amendment Effective Date, (3) the Additional Senior Note Agreement and the Senior Notes issued thereunder, provided that the terms of the Additional Senior Note Agreement and the Senior Notes issued thereunder shall be no more restrictive than those set forth in this Agreement, as in effect on the Seventh Amendment Effective Date, (4) any document or instrument governing Indebtedness incurred pursuant to Section 8.03(e) or 8.03(h), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (5) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (6) customary restrictions and conditions contained in any agreement relating to the sale of any Property permitted under Section 8.05 pending the consummation of such sale, (7) customary restrictions on transferability set forth in real property leaseholds, or (8) customary provisions restricting assignment of any Contractual Obligations entered into by the any Consolidated Party in the ordinary course of business.

8.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB), except for Restricted Payments resulting in the retirement of Capital Stock of the Borrower, or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose or (b) to make any payment in respect of any settlement (or similar consensual agreement) in respect of investigations or similar proceedings involving the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union or Her Majesty's Treasury if the aggregate amount payable by the Borrower and its Restricted Subsidiaries with respect to such settlement (or similar consensual agreement) exceeds the Threshold Amount.

8.11 Financial Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of any fiscal quarter of the Borrower to be greater than 2.50 to 1.0.

(b) Consolidated Tangible Net Worth. Permit Consolidated Tangible Net Worth as of the end of any fiscal quarter of the Borrower to be less than the sum of \$375,547,000, increased on a cumulative basis as of the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter ending February 28, 2009 by an amount equal to the sum of (i) 50% of Consolidated Net Income (to the extent positive) for each such fiscal quarter and (ii) 75% of net cash proceeds from Equity Issuances occurring subsequent to November 30, 2008.

(c) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter of the Borrower to be less than the ratio set forth below opposite such fiscal quarter:

Calendar year/ fiscal quarter end	February 28	May 31	August 31	November 30
2009	N/A	N/A	1.30 to 1.0	1.30 to 1.0
2010	1.30 to 1.0	1.30 to 1.0	1.30 to 1.0	1.50 to 1.0
thereafter	1.50 to 1.0	1.50 to 1.0	1.50 to 1.0	1.50 to 1.0

(d) Consolidated Tangible Assets Coverage Ratio. Until such time as the Senior Note Agreements no longer contain a comparable financial covenant, permit the Consolidated Tangible Assets Coverage Ratio as of the end of any fiscal quarter of the Borrower to be less than 1.0 to 1.0.

8.12 Capital Expenditures.

Permit Consolidated Capital Expenditures for any fiscal year of the Borrower to exceed \$60,000,000, plus the unused amount available for Consolidated Capital Expenditures under this Section 8.12 for the immediately preceding fiscal year in an aggregate amount not to exceed \$40,000,000 (excluding any carry forward available from any prior fiscal year).

8.13 Prepayment of Other Indebtedness, Etc.

Permit any Consolidated Party to (a) amend or modify any of the terms of any Indebtedness of such Consolidated Party if such amendment or modification would add or change terms in a manner, when taken together with all other amendments or modifications made in connection therewith, materially adverse to such Consolidated Party or to the Lenders, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto, (b) with respect to Indebtedness other than the Senior Notes, if any Default has occurred and is continuing or would directly or indirectly result therefrom, make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any such Indebtedness of such Consolidated Party or (c) make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any of the Senior Notes unless (i) no Default has occurred and is continuing or would directly or indirectly result therefrom, (ii) the Consolidated Leverage Ratio as of the end of the most recently ended fiscal quarter of the Borrower (as reported in the Compliance Certificate delivered by the Borrower) is less than 2.0 to 1.0 and (iii) no Loans are outstanding at such time.

8.14 Organization Documents; Fiscal Year.

Permit any Consolidated Party to (a) amend, modify or change its Organization Documents in a manner adverse to the rights of the Lenders or (b) change its fiscal year.

8.15 Ownership of Subsidiaries.

Notwithstanding any other provisions of this Agreement to the contrary, permit any Consolidated Party to (i) permit any Person (other than the Borrower or any Wholly Owned Subsidiary of the Borrower) to own any Capital Stock of any Restricted Subsidiary of the Borrower, except (A) to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Capital Stock of Foreign Restricted Subsidiaries or (B) as a result of or in connection with a dissolution, merger, consolidation or disposition of a Restricted Subsidiary not prohibited by Section 8.04 or Section 8.05, (ii) permit any Restricted Subsidiary of the Borrower to issue or have outstanding any shares of preferred Capital Stock or (iii) permit, create, incur, assume or suffer to exist any Lien on any Capital Stock of any Restricted Subsidiary of the Borrower, except for Permitted Liens.

8.16 Sale Leasebacks.

Permit any Consolidated Party to enter into any Sale and Leaseback Transaction, unless (a) if the underlying lease is a Capital Lease, the Indebtedness is permitted by Section 8.03 and the Disposition is permitted by Section 8.05 or (b) if the underlying lease is an Operating Lease, the sum of (i) all Indebtedness outstanding pursuant to Section 8.03(i) plus (ii) the fair market value of all property subject to Sale and Leaseback Transactions where the underlying lease is an Operating Lease does not exceed \$10,000,000 at any one time outstanding.

ARTICLE IX
EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default.

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, any commitment or other fee due hereunder or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 7.05 (as to the existence of the Borrower), 7.11, 7.12 or 7.13 or Article VIII; or

(ii) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 7.01, 7.02 or 7.03 and such failure shall continue unremedied for a period of at least 5 days after the first to occur of (A) a Responsible Officer of the Borrower obtaining knowledge or (B) the Borrower's receipt of notice from the Administrative Agent of such failure; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the first to occur of (A) a Responsible Officer of the Borrower obtaining knowledge or (B) the Borrower's receipt of notice from the Administrative Agent of such failure; or

(d) Representations and Warranties. Any representation, warranty or certification made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Borrower or any Restricted Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, but after giving effect to any grace period provided therefor) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts or evidenced by the Senior Notes) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs (other than an event giving rise to customary mandatory prepayment provisions (such as asset sales, equity sales, cash flow sweeps or casualty recoveries)), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Restricted Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Restricted Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Restricted Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Restricted Subsidiaries that are not Loan Parties institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) The Borrower or any Restricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments; Etc. There is entered against the Borrower or any Restricted Subsidiary or the Borrower or any Restricted Subsidiary enters into or consents to (i) any one or more sanctions, civil or criminal penalties, final judgments or orders for the payment of money, in each case, in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary sanctions, penalties or final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, with respect to the matters described in the forgoing subcauses (i) and (ii), either (A) enforcement proceedings are commenced by any creditor or Governmental Authority upon such sanction, penalty, judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such sanction, penalty, judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents; Guarantees. (i) Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or (ii) except as the result of or in connection with a dissolution, merger or disposition of a Restricted Subsidiary not prohibited by Section 8.04 or Section 8.05, the Guaranty given by any Guarantor hereunder or any provision thereof shall cease to be in full force and effect, or any Guarantor hereunder or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under its Guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to its Guaranty; or

(k) Senior Note Agreements. There shall occur and be continuing any "Event of Default" (or any comparable term) under, and as defined in, any Senior Note Agreement; or

(l) Change of Control. There occurs any Change of Control.

9.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

9.03 Application of Funds.

Subject to the terms of the Intercreditor Agreement, after the acceleration of the Obligations as provided for in Section 9.02(b) (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including Attorney Costs and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Swap Contracts between any Loan Party and any Lender or Affiliate of any Lender and to Cash Collateralize the undrawn amounts of Letters of Credit, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE X ADMINISTRATIVE AGENT

10.01 Appointment and Authority.

Each of the Lenders and each of the L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and no Loan Party shall have rights as a third party beneficiary of any of such provisions.

10.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or an L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

10.06 Resignation of Administrative Agent.

The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 11.04 and 11.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

10.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 No Other Duties; Etc.

Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, syndication agents, documentation agents or co-agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

10.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations arising under the Loan Documents that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(i) and (j), 2.08, 11.04 and 11.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.08, 11.04 and 11.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer in any such proceeding.

10.10 Collateral and Guaranty Matters.

The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to instruct the Collateral Agent to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Collateral Agent and the L/C Issuer shall have been made), (ii) that is transferred or to be transferred as part of or in connection with any Disposition permitted hereunder or under any other Loan Document or any Involuntary Disposition, or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any Property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such Property that is permitted by Section 8.01(i);

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and

(d) to release any Lien on any property in which a Loan Party had no interest at the time the security interest was granted or at any time thereafter

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate the Collateral Agent's interest in particular types or items of Property, or to release any Guarantor from its obligations under the Guaranty, pursuant to this Section 10.10.

**ARTICLE XI
MISCELLANEOUS**

11.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.02 or of any Default or Event of Default or mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change Section 2.12 or Section 9.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(e) change any provision of this Section or the definition of "Required Lenders", without the written consent of each Lender;

(f) except as the result of or in connection with a Disposition not prohibited by Section 8.05, release all or substantially all of the Collateral without the written consent of each Lender;

(g) except as the result of or in connection with a dissolution, merger or disposition of a Loan Party not prohibited by Section 8.04 or Section 8.05, release the Borrower or substantially all of the other Loan Parties from its or their obligations under the Loan Documents without the written consent of each Lender; or

(h) amend the definition of "Permitted Foreign Currency";

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuers in addition to the Lenders required above, affect the rights or duties of the L/C Issuers under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by them; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary contained above in this Section 11.01 or in any other Loan Document, the Administrative Agent and/or the Collateral Agent shall be permitted to enter into such amendments and/or modifications to the Collateral Documents and the Intercreditor Agreement which may be required in the discretion of the Administrative Agent or the Collateral Agent (i) which are of a technical nature (including such amendments or modifications to allow the holders of the Additional Senior Notes to share ratably in the rights and benefits (and be subject to the duties and obligations) of the Collateral Documents and the Intercreditor Agreement in the same manner as the holders of the Obligations and the other Senior Noteholders and/or (ii) which are in the judgment of the Administrative Agent or the Collateral Agent, required by applicable Law, (iii) which are in the interest of the holders of the Obligations and/or (iv) which are necessary or desirable to maintain, perfect and/or protect the security interests purported to be granted by the Collateral Documents.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (x) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126 (c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (y) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

11.02 Notices and Other Communications; Facsimile Copies.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party, the Administrative Agent or Bank of America in its capacity as an L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender or any other L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and each L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuers. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party, except to the extent resulting from the gross negligence or willful misconduct of such party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Lenders and all the L/C Issuers; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.09 (subject to the terms of Section 2.12), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.12, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Attorney Costs, Expenses and Taxes.

(a) The Loan Parties jointly and severally agree (a) to pay or reimburse the Administrative Agent for all reasonable costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, and (b) to pay or reimburse the Administrative Agent, each L/C Issuer and each Lender for all reasonable costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any "workout" or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all Attorney Costs. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses reasonably incurred by the Administrative Agent and, if an Event of Default exists, the cost of an independent public accounting firm and other outside experts retained by the Administrative Agent on behalf of the Lenders. All amounts due under this Section 11.04 shall be payable within ten Business Days after demand therefor. The agreements in this Section shall survive the termination of the Aggregate Revolving Commitments and repayment of all other Obligations.

(b) To the extent that the Loan Parties for any reason fail to pay any amount required under subsection (a) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or any L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or any such L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (b) are subject to the provisions of Section 2.11(e).

(c) All amounts due under this Section 11.04 shall be payable within twenty Business Days after demand therefor.

11.05 Indemnification.

(a) Indemnification by the Loan Parties. Whether or not the transactions contemplated hereby are consummated, the Loan Parties jointly and severally shall indemnify and hold harmless the Administrative Agent (or any sub-agent thereof), each Lender, each L/C Issuer, and each Related Party of any of the foregoing (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the applicable L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability related in any way to the Borrower, any Subsidiary or any other Loan Party, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of such Indemnitee.

(b) To the extent that the Loan Parties for any reason fail to pay any amount required under subsection (a) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or any L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or any L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (b) are subject to the provisions of Section 2.11(e).

(c) To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee.

(d) All amounts due under this Section 11.05 shall be payable within twenty Business Days after demand therefor.

(e) The agreements in this Section shall survive the resignation of the Administrative Agent, any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.06 Payments Set Aside.

To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof (or the Dollar Equivalent amount thereof) is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.07 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) 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 related Loans 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 (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's Loans and Commitments, and rights and obligations with respect thereto, assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

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

(C) the consent of the L/C Issuers (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).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower or any of the Borrower's 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 subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and the Intercreditor Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the Intercreditor Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement and the Intercreditor Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 11.04 and 11.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the 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.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the other Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 11.01 that directly affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 11.09 as though it were a Lender, provided such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(e) Limitation on Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 11.15 as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty days' notice to the Borrower and the Lenders, resign as an L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as an L/C Issuer. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03 (c)). Upon the appointment of a successor L/C Issuer, (1) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and (2) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.08 Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, trustees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; provided, however, that, unless prohibited by applicable law, statute, regulation, or court order, the Administrative Agent or applicable Lender shall notify Borrower of any request by any court, governmental or administrative agency, or pursuant to any subpoena or other legal process for disclosure of any Information concurrent with, or where practicable, prior to the disclosure thereof; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Loan Parties; (g) with the consent of the Borrower; (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower; or (i) to the National Association of Insurance Commissioners or any other similar organization. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions. For the purposes of this Section, "Information" means all information received from any Loan Party relating to any Loan Party or its business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

11.09 Set-off.

In addition to any rights and remedies of the Lenders provided by law and subject to the terms of the Intercreditor Agreement, after the acceleration of the Obligations as provided for in Section 9.02(b) (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), each Lender is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party) to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Lender hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or indebtedness. Each Lender agrees that it shall not exercise any right of setoff or banker's Lien if such action or exercise could reasonably be expected to result in the loss of the Collateral Agent's Lien on the Collateral pursuant to the California "one action" rule (Section 726 of the California Code of Civil Procedure).

11.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.11 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.12 Integration.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document (other than the Intercreditor Agreement), the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

11.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.15 Tax Forms.

(a) (i) Each Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "Foreign Lender") shall deliver to the Borrower and the Administrative Agent, prior to the date of its execution and delivery of this Agreement in the case of each Lender listed on the signature pages hereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to a complete exemption from withholding tax on all payments to be made to such Foreign Lender by the Borrower pursuant to this Agreement or the other Loan Documents) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by the Borrower pursuant to this Agreement and the other Loan Documents and certifying that such Lender is entitled to a complete exemption from withholding tax on all such payments) or such other evidence satisfactory to the Borrower and the Administrative Agent that such Foreign Lender is entitled to a complete exemption from U.S. withholding tax, including any exemption pursuant to Section 881(c) of the Code (which shall include for purposes of any exemption pursuant to Section 881(c) of the Code, a certificate to the effect that such Foreign Lender is not (x) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (y) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code or (z) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code). Thereafter and from time to time, each such Foreign Lender shall (A) promptly submit to the Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to the Borrower and the Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by the Borrower pursuant to this Agreement and the other Loan Documents, (B) promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid or mitigate any requirement of applicable Laws that the Borrower make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to the Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of the Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of IRS Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(iii) The Borrower shall not be required to pay any additional amount to any Foreign Lender under Section 3.01 (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with an IRS Form W-8IMY pursuant to this Section 11.15(a) or (B) if such Lender shall have failed to satisfy the foregoing provisions of this Section 11.15(a); provided that if such Lender shall have satisfied the requirement of this Section 11.15(a) on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents (and if such Lender thereafter provides forms, certificates and evidence establishing an exemption or reduction of withholding tax to the extent such Lender remains legally able to do so), nothing in this Section 11.15(a) shall relieve the Borrower of its obligation to pay any amounts pursuant to Section 3.01 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other Person for the account of which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate.

(iv) The Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents with respect to which the Borrower is not required to pay additional amounts under this Section 11.15(a).

(b) Upon the request of the Administrative Agent, each Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Administrative Agent two duly signed completed copies of IRS Form W-9. If such Lender fails to deliver such forms, then the Administrative Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable back-up withholding tax imposed by the Code, without reduction. Borrower shall not be required to pay any additional amount to any Lender under Section 3.01 with respect to any withholding under this Section 11.15(b).

(c) If any Governmental Authority asserts that the Administrative Agent did not properly withhold or backup withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify the Administrative Agent therefor, including all penalties and interest, any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section, and costs and expenses (including Attorney Costs) of the Administrative Agent. The obligation of the Lenders under this Section shall survive the termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder and the resignation of the Administrative Agent.

11.16 Replacement of Lenders.

If (i) any Lender requests compensation under Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (iii) a Lender (a "Non-Consenting Lender") does not consent to a proposed change, waiver, discharge or termination with respect to any Loan Document that has been approved by the Required Lenders as provided in Section 11.01 but requires unanimous consent of all Lenders or all Lenders directly affected thereby (as applicable) or (iv) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.07(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws; and
- (e) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed change, waiver, discharge or termination with respect to any Loan Document, the applicable replacement bank, financial institution or Fund consents to the proposed change, waiver, discharge or termination; provided that the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans and participations in L/C Obligations pursuant to this Section 11.16 shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.17 Governing Law.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

11.18 Waiver of Right to Trial by Jury.

EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

11.19 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Loan Parties in respect of any such sum due from them to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Loan Parties in the Agreement Currency, the Loan Parties agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Loan Parties (or to any other Person who may be entitled thereto under applicable law).

11.20 USA PATRIOT Act Notice.

Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

11.21 Electronic Execution of Assignments and Certain Other Documents.

The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.22 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger, are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent and the Arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arranger has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Loan Parties and their respective Affiliates. To the fullest extent permitted by Law, each of the Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

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AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

EXHIBIT 31.1

SECTION 302 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, James S. Marlen, certify that:

1. I have reviewed this report on Form 10-Q of Ameron International Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the Registrant's disclosure controls and procedures; and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation, and;
 - d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of Registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

September 25, 2009

/s/ James S. Marlen

James S. Marlen
Chairman & Chief Executive Officer

AMERON INTERNATIONAL CORPORATION AND SUBSIDIARIES

EXHIBIT 31.2

SECTION 302 CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, James R. McLaughlin, certify that:

1. I have reviewed this report on Form 10-Q of Ameron International Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the Registrant's disclosure controls and procedures; and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation, and;
 - d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of Registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

September 25, 2009

/s/ James R. McLaughlin

James R. McLaughlin
Senior Vice President-Chief Financial Officer
& Treasurer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. ss.1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002*

In connection with the report of Ameron International Corporation (the "Company") on Form 10-Q for the quarter ended August 30, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James S. Marlen, Chairman and Chief Executive Officer of the Company and I, James R. McLaughlin, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ James S. Marlen

James S. Marlen
Chairman & Chief Executive Officer
September 25, 2009

/s/ James R. McLaughlin

James R. McLaughlin
Senior Vice President-Chief Financial Officer
& Treasurer
September 25, 2009

* A signed original of this written statement required by Section 906 has been provided to Ameron International Corporation and will be retained by Ameron International Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

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