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

FORM 10-K

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 2011**

OR

o **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:
001-31829

CARTER'S, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**13-3912933**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

The Proscenium
1170 Peachtree Street NE, Suite 900
Atlanta, Georgia 30309
(Address of principal executive offices, including zip code)
(404) 745-2700
(Registrant's telephone number, including area code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

TITLE OF EACH CLASS	**NAME OF EACH EXCHANGE ON WHICH REGISTERED:**
Carter's, Inc.'s common stock par value $0.01 per share	New York Stock Exchange

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
None

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

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

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 x No o

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes x No o

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

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

Large Accelerated Filer x Accelerated Filer o Non-Accelerated Filer o Smaller Reporting Company o

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

The approximate aggregate market value of the voting stock held by non-affiliates of the Registrant as of July 1, 2011 (the last business day of our most recently completed second quarter) was $1,776,721,299.

There were 58,884,166 shares of Carter's, Inc.'s common stock with a par value of $0.01 per share outstanding as of the close of business on February 29, 2012.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A relating to the Annual Meeting of Shareholders of Carter's, Inc., to be held on May 17, 2012, will be incorporated by reference in Part III of this Form 10-K. Carter's, Inc. intends to file such proxy statement with the Securities and Exchange Commission not later than 120 days after its fiscal year ended December 31, 2011.

CARTER'S, INC.

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PART I

Our market share data is based on information provided by the NPD Group, Inc. Unless otherwise indicated, references to market share in this Annual Report on Form 10-K are expressed as a percentage of total retail sales of a market. The baby and young children's apparel market includes apparel products for ages zero to seven. NPD data is based upon Consumer Panel Track SM (consumer-reported sales) calibrated with selected retailers' point of sale data. Please note that NPD revised its Fashion Consumer Tracker methodology, effective with the most recent data release for annual 2011 and restated annual 2010 data. NPD data cited in prior Annual Reports on Form 10-K are based on an alternate methodology no longer employed by NPD and are not comparable to current year presentation.

Unless the context indicates otherwise, in this filing on Form 10-K, "Carter's," the "Company," "we," "us," "its," and "our" refers to Carter's, Inc. and its wholly owned subsidiaries.

ITEM 1. BUSINESS

GENERAL

We are the largest branded marketer in the United States of apparel exclusively for babies and young children. We own two of the most highly recognized and most trusted brand names in the children's apparel industry, *Carter's* and *OshKosh*. Established in 1865, our *Carter's* brand is recognized and trusted by consumers for high-quality apparel for children sizes newborn to seven. In fiscal 2005, we acquired OshKosh B'Gosh. Established in 1895, *OshKosh* is a well-known brand, trusted by consumers for its line of apparel for children sizes newborn to 12. We have extensive experience in the young children's apparel market and focus on delivering products that satisfy our consumers' needs. We market high-quality, essential core products at prices that deliver an attractive value proposition for consumers.

We use a business model that we believe has multiple platforms for growth and is focused on high volume and productivity. Our *Carter's*, *OshKosh*, and related brands are sold domestically to national department stores, chain and specialty stores, discount retailers, internationally, and online. As of December 31, 2011, we operated 359 Carter's and 170 OshKosh outlet and brand retail stores in the United States and 65 retail stores in Canada. We believe each of our brands has its own unique positioning in the marketplace. In the U.S., our brands compete in the $22 billion children's apparel market, for children ages zero to seven, with our *Carter's* brand achieving the #1 branded position with a 14.1% market share and our *OshKosh* brand having a 2.2% market share. We offer multiple product categories, including baby, sleepwear, playclothes, and other accessories. Our distribution strategy enables us to reach a broad range of consumers across various channels, socio-economic groups, and geographic regions.

On June 30, 2011, Northstar Canadian Operations Corp. ("Northstar"), a newly formed Canadian corporation and a wholly owned subsidiary of The William Carter Company (a wholly owned subsidiary of Carter's, Inc.), purchased all of the outstanding shares of capital stock of the entities comprising Bonnie Togs (the "Acquisition"), a Canadian specialty retailer focused exclusively on the children's apparel and accessories marketplace. Prior to the Acquisition, Bonnie Togs was Carter's principal licensee in Canada since 2007 and was a significant international licensee of the Company. The operating results for the Canadian business have been consolidated in the Company's operating results commencing on July 1, 2011.

In light of the Acquisition, the Company reevaluated and realigned certain of its reportable segments. As a result, the Company's reportable segments include a new international segment reflecting our new Canadian operations, our existing international wholesale business, and royalty income from our international licensees. In addition, the Company combined its historical mass channel segments with its wholesale segments. The Company believes these changes in segment reporting better reflect how its five business segments, Carter's wholesale, Carter's retail, OshKosh retail, OshKosh wholesale, and international, are managed and how each segment's performance is evaluated. Effective October 1, 2011, the Company changed its segment presentation to reflect this new structure, and recast all prior periods presented to conform to the new presentation.

The Company is a Delaware corporation. The Company and its predecessors have been doing business since 1865. The Company's principal executive offices are located at The Proscenium, 1170 Peachtree Street NE, Suite 900, Atlanta, Georgia 30309, and our telephone number is (404) 745-2700.

OUR BRANDS, PRODUCTS, AND DISTRIBUTION CHANNELS

CARTER'S BRANDS – U.S.

Under our *Carter's* brand, we design, source, and market a broad array of products, primarily for sizes newborn to seven. Our *Carter's* brand is sold in department stores, national chains, specialty stores, off-price sales channels, through our Carter's retail stores, and online at www.carters.com. Additionally, we sell our *Just One You* and *Precious Firsts* brands at Target and our *Child of Mine* brands at Walmart. In fiscal 2011, we sold over 278 million units of *Carter's*, *Child of Mine*, *Just One You*, and *Precious Firsts* products in the United States, an increase of approximately 11% from fiscal 2010, through our Carter's retail stores, to our wholesale customers, and online. Sales growth has been driven by our focus on essential, high-volume, core apparel products for babies and young children. Such products include bodysuits, pajamas, blanket sleepers, gowns, bibs, towels, washcloths, and receiving blankets. Our top ten baby and sleepwear core products accounted for approximately 65% of our baby and sleepwear net sales in fiscal 2011 in the United States. We believe our core apparel products are essential consumer staples, less dependent on changes in fashion trends, and generally supported by a favorable birth rate and other demographic trends.

We have cross-functional product teams focused on the development of our Carter's baby, sleepwear, and playclothes products. These teams are skilled in identifying and developing high-volume, core products. Each team includes members from merchandising, design, sourcing, product development, forecasting, and supply chain logistics. These teams follow a disciplined approach to fabric usage, color rationalization, and productivity and are supported by a dedicated art department and state-of-the-art design systems. We also license our brand names to other companies to create a comprehensive collection of lifestyle products, including bedding, hosiery, shoes, room décor, furniture, gear, and toys. The licensing team directs the use of our designs, art, and selling strategies to all licensees.

We believe this disciplined approach to core product design reduces our exposure to fashion risk and supports efficient operations. We conduct consumer research as part of our product development process and engage in product testing in our own stores. We analyze quantitative measurements such as pre-season bookings, weekly over-the-counter selling results, and daily re-order rates in order to assess productivity.

CARTER'S BRAND POSITIONING – U.S.

Our strategy is to drive our brand image as the leader in baby and young children's apparel and to consistently provide high-quality products at a great value to consumers. We employ a disciplined merchandising strategy that identifies and focuses on core products. We believe that we have strengthened our brand image with the consumer by differentiating our core products through fabric improvements, new artistic applications, and new packaging and presentation strategies. We also attempt to differentiate our products through store-in-store fixturing and branding packages and advertising with our wholesale customers. We have invested in display units for our major wholesale customers that more clearly present our core products on their floors to enhance brand and product presentation. We also strive to provide our wholesale customers with a consistent, high-level of service, including delivering and replenishing products on time to fulfill customer needs.

CARTER'S PRODUCTS – U.S.

Baby

Carter's brand baby products include bodysuits, pants, undershirts, towels, washcloths, receiving blankets, layette gowns, bibs, caps, and booties. In fiscal 2011, we generated $678.3 million in net sales of these products, representing 32.2% of our consolidated net sales in the United States.

Our *Carter's* brand is the leading brand in the baby category in the United States. In fiscal 2011, in the department stores, national chains, outlet, specialty stores, and off-price sales channels, our aggregate *Carter's* brand market share in the United States was approximately 23.8% for baby ages zero to two, which represents greater than five times the market share of the next largest brand. We sell a complete range of baby products for newborns, primarily made of cotton. We attribute our leading market position to our brand strength, distinctive print designs, artistic applications, reputation for quality, and ability to manage our dedicated floor space for our retail customers. We tier our products through marketing programs targeted toward gift-givers, experienced mothers, and first-time mothers. Our *Carter's Little Layette* product line, the largest component of our baby business, provides parents with essential core products and accessories, including value-focused multi-packs. Our *Little Collections* product line consists of coordinated baby programs designed for first-time mothers and gift-givers.

Playclothes

Carter's brand playclothes products include knit and woven cotton apparel for everyday use in sizes three months to seven. In fiscal 2011, we generated $529.0 million in net sales of these products in the United States, or 25.1%, of our consolidated net sales. We continue to focus on building our *Carter's* brand in the playclothes market by developing a base of essential, high-volume, core products that utilize original print designs and innovative artistic applications. Our aggregate 2011 *Carter's* brand playclothes market share in the United States was approximately 13.1% in the $16 billion department store, national chain, outlet, specialty store, and off-price sales channels.

Sleepwear

Carter's brand sleepwear products include pajamas and blanket sleepers in sizes 12 months to seven. In fiscal 2011, we generated $310.4 million in net sales of these products in the United States, or 14.7%, of our consolidated net sales. Our *Carter's* brand is the leading brand of sleepwear for babies and young children within the department store, national chain, outlet, specialty store, and off-price sales channels in the United States. In fiscal 2011, in these channels, our *Carter's* brand market share was approximately 29.0%, which represents nearly three times the market share of the next largest brand. As in our baby product line, we differentiate our sleepwear products by offering high-volume, high quality core products with distinctive print designs and artistic applications.

Other Products

Our other product offerings include bedding, outerwear, swimwear, shoes, socks, diaper bags, gift sets, toys, and hair accessories. In fiscal 2011, we generated $93.0 million in net sales of these other products in our Carter's retail stores and online, or 4.4%, of our consolidated net sales.

Royalty Income

We currently extend our *Carter's*, *Child of Mine*, and *Just One You* product offerings by licensing these brands to 15 domestic marketers in the United States. These licensing partners develop and sell products through our multiple sales channels while leveraging our brand strength, customer relationships, and designs. Licensed products provide our customers and consumers with a range of lifestyle products that complement and expand upon our core baby and young children's apparel offerings. Our license agreements require strict adherence to our quality and compliance standards and provide for a multi-step product approval process. We work in conjunction with our licensing partners in the development of their products and ensure that they fit within our brand vision of high-quality, core products at attractive values to the consumer. In addition, we work closely with our wholesale customers and our licensees to gain dedicated floor space for licensed product categories. In fiscal 2011, our *Carter's* brand earned $18.5 million in domestic royalty income.

OSHKOSH BRANDS – U.S.

Under our *OshKosh* brand, we design, source, and market a broad array of young children's apparel, primarily for children in sizes newborn to 12. Our *OshKosh* brand is currently sold in our OshKosh retail stores, department stores, national chains, specialty stores, through off-price sales channels, and online at www.oshkoshbgosh.com. In fiscal 2011, we sold approximately 50 million units of *OshKosh* products in the United States through our retail stores, to our wholesale customers, and online, an increase of approximately 3% over fiscal 2010. We also have a licensing agreement with Target through which Target sells products under our *Genuine Kids from OshKosh* brand. Given its long history of durability, quality, and style, we believe our *OshKosh* brand represents a significant long-term growth opportunity for us, especially in the $16 billion young children's playclothes market in the United States. We continue to focus on our core product development and marketing disciplines, improving the productivity of our OshKosh retail stores, investing in new employees and talent development, leveraging our relationships with major wholesale accounts, and leveraging our infrastructure and supply chain.

OSHKOSH BRAND POSITIONING – U.S.

We believe our *OshKosh* brand stands for high-quality, authentic playclothes products for children sizes newborn to 12. Our core *OshKosh* brand products include denim, overalls, t-shirts, fleece, and other playclothes for children. Our *OshKosh* brand is generally positioned towards an older segment (sizes two to seven) and at slightly higher average prices than our *Carter's* brand. We believe our *OshKosh* brand has significant brand name recognition, which consumers associate with rugged, durable, and active playclothes for young children.

OSHKOSH PRODUCTS – U.S.

Playclothes

Our *OshKosh* brand is best known for its playclothes products. In fiscal 2011, we generated $303.9 million in net sales of *OshKosh* brand playclothes products in the United States, which accounted for approximately 14.4% of our consolidated net sales. *OshKosh* brand playclothes products include denim apparel products with multiple wash treatments and coordinating garments, overalls, woven bottoms, knit tops, and playclothes products for everyday use in sizes newborn to 12. We plan to grow this business by strengthening our product offerings, improving product value, reducing product complexity, and leveraging our strong customer relationships and global supply chain expertise. We believe our *OshKosh* brand represents a significant opportunity for us to increase our share in the playclothes category as the $16 billion young children's playclothes market in the United States is highly fragmented. In fiscal 2011, this market was more than five times the size of the baby and sleepwear markets combined.

Other Products

The remainder of our *OshKosh* brand product offerings include baby, sleepwear, outerwear, shoes, hosiery, and accessories. In fiscal 2011, we generated $58.9 million in net sales of these other products in our OshKosh retail stores and online, which accounted for 2.8% of our consolidated net sales.

Royalty Income

We partner with a number of domestic licensees to extend the reach of our *OshKosh* brand. We currently have six domestic licensees selling apparel and accessories. Our largest licensing agreement is with Target. All *Genuine Kids from OshKosh* products sold by Target are sold pursuant to this licensing agreement. Our licensed products provide our customers and consumers with a range of *OshKosh* products including outerwear, underwear, swimwear, socks, shoes, and accessories. In fiscal 2011, we earned approximately $10.3 million in domestic royalty income from our *OshKosh* brands.

INTERNATIONAL

Our international segment includes our new Canadian retail and wholesale operations, our existing international wholesale sales, and royalty income from our international licensees. Collectively, our international segment operates in approximately 50 countries. Our international sales of $136.2 million, or 6.5% of consolidated net sales, more than tripled in fiscal 2011 due to six months of incremental sales from the June 30, 2011 acquisition of Bonnie Togs and higher international wholesale sales. As of December 31, 2011, we operated 65 retail stores in Canada.

We partner with 24 licensees to sell the *Carter's* and *OshKosh* brands internationally in approximately 35 countries. In fiscal 2011, our *OshKosh* international licensees generated retail sales of approximately $124.0 million, on which we earned approximately $7.1 million in royalty income. In fiscal 2011, our international licensees generated *Carter's* brand retail sales of $26.3 million on which we earned $1.3 million in royalty income.

DISTRIBUTION CHANNELS

Business segment financial information for our five business segments: Carter's wholesale, Carter's retail, OshKosh retail, OshKosh wholesale, and international, is contained in Item 8 – "Financial Statements and Supplementary Data," Note 15 – "Segment Information" to the accompanying audited consolidated financial statements.

As described above, we sell our products through the wholesale channel, through our retail stores in the U.S. and Canada, and online.

Our *Carter's* brand wholesale customers include major retailers, such as Costco, JCPenney, Kohl's, Macy's, Sam's Club, Target, Toys "R" Us, and Walmart. Our sales professionals work with these customers to establish annual plans for our baby products, which we refer to as core basics. Once we establish an annual plan with an account, we place the majority of our accounts on our automatic replenishment reorder plan for core basics. This allows us to plan our sourcing requirements and benefits both us and our wholesale customers by maximizing our customers' in-stock positions, thereby improving sales and profitability. We intend to drive continued growth with our wholesale customers through our focus on managing our key accounts' business through product mix, fixturing, brand presentation, advertising, and frequent meetings with the senior management of our major wholesale customers.

Our *OshKosh* brand wholesale customers include major retailers, such as Belk, Bon-Ton, Fred Meyer, JCPenney, Kohl's, and Sears. We continue to work with our customers to establish seasonal plans for playclothes products. The majority of our *OshKosh* brand playclothes products will be planned and ordered seasonally as we introduce new products.

In Canada we sell our products in our Bonnie Togs retail stores, our co-branded Carter's / OshKosh stores, and through the wholesale channel.

As of December 31, 2011, we operated 359 Carter's retail stores in the United States, of which 180 were brand stores and 179 were outlet stores. These stores carry a complete assortment of first-quality baby and young children's apparel, accessories, and gift items. Our stores average approximately 4,500 square feet per location and are distinguished by an easy, consumer-friendly shopping environment. Our brand stores are generally located in high-traffic, strip centers located in or near major cities. We believe our brand strength and our assortment of core products have made our stores a destination location within many outlet and strip centers. Our outlet stores are generally located within 20 to 30 minutes of densely-populated areas.

As of December 31, 2011, we operated 170 OshKosh retail stores in the United States, of which 151 were outlet stores and 19 were brand stores. These stores carry a wide assortment of young children's apparel, accessories, and gift items and average approximately 4,700 square feet per location.

As of December 31, 2011, we operated 65 retail stores in Canada, selling products under the *Carter's* and *OshKosh* brands as well as other private label and national brands. These stores average approximately 5,500 square feet per location, slightly larger than our U.S. based stores, and offer a similar product assortment, localized for climate differences.

Store Expansion

We use a real estate selection process whereby we fully assess all new locations based on demographic factors, retail adjacencies, and population density. We believe that we are located in many of the premier outlet centers in the United States and we continue to add new brand store locations to our real estate portfolio.

GLOBAL SOURCING NETWORK AND PRODUCT COSTS

We have significant experience in sourcing products internationally, primarily from Asia, with expertise that includes the ability to evaluate vendors, familiarity with foreign supply sources, and experience with sourcing logistics particular to Asia. We also have relationships with both leading and certain specialized sourcing agents in Asia. One sourcing agent currently manages approximately 83% of our inventory purchases. Our product costs can vary depending on the underlying cost of raw materials, such as cotton and polyester, and the level of labor and transportation costs. The availability of raw materials impacts the cost of our products. Our sourcing network consists of over 90 vendors located in over 15 countries. We believe that our sourcing arrangements are sufficient to meet our current operating requirements and provide capacity for growth.

COMPETITION

The baby and young children's apparel market is highly competitive. Competition is generally based upon product quality, brand name recognition, price, selection, service, and convenience. Both branded and private label manufacturers compete in the baby and young children's apparel market. Our primary competitors in the wholesale channel include Disney, Gerber, and private label product offerings. Our primary competitors in the retail store channel include Disney, Gymboree, Old Navy, The Children's Place, and The Gap. Most retailers, including our customers, have significant private label product offerings that compete with our products. Because of the highly-fragmented nature of the industry, we also compete with many small manufacturers and retailers. We believe that the strength of our *Carter's*, *OshKosh*, and related brand names combined with our breadth of product offerings and operational expertise position us well against these competitors.

ENVIRONMENTAL MATTERS

We are subject to various federal, state, and local laws that govern activities or operations that may have adverse environmental effects. Noncompliance with these laws and regulations can result in significant liabilities, penalties, and costs. Generally, compliance with environmental laws has not had a material impact on our operations, but there can be no assurance that future compliance with such laws will not have a material adverse effect on our operations.

TRADEMARKS, COPYRIGHTS, AND LICENSES

We own many copyrights and trademarks, including *Carter's*®, *OshKosh*®, *OshKosh B'gosh*®, *Child of Mine*®, *Just One You*®, *Precious Firsts*™, *Little Collections*™, and *Little Layette*®, many of which are registered in the United States and in more than 120 foreign countries.

We license various Company trademarks, including *Carter's*, *Just One You*, *Precious Firsts*, *Child of Mine*, *OshKosh*, *OshKosh B'gosh*, *OshKosh Est. 1895*, and *Genuine Kids* to third parties to produce and distribute children's apparel and related products such as hosiery, outerwear, swimwear, shoes, boots, slippers, diaper bags, furniture, room décor, bedding, giftwrap, baby books, party goods, and toys.

EMPLOYEES

As of December 31, 2011, we had 8,684 employees, 2,619 of whom were employed on a full-time basis and 6,065 of whom were employed on a part-time basis. We have no unionized employees. We have had no labor-related work stoppages and believe that our labor relations are good.

AVAILABLE INFORMATION

Our Internet address is www.carters.com. We are not including the information contained on our website as part of, or incorporating it by reference into, this Annual Report on Form 10-K. On our website, we make available, free of charge, our Annual Reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements, director and officer reports on Forms 3, 4, and 5, and any amendments to these reports, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission ("SEC"). Our SEC reports can be accessed through the investor relations section of our website. The information found on our website is not part of this or any other report we file with or furnish to the SEC. We also make available on our website, the *Carter's Code of Business Ethics and Professional Conduct*, our Corporate Governance Principles, and the charters for the Compensation, Audit, and Nominating and Corporate Governance Committees of the Board of Directors. Our SEC filings are also available for reading and copying at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site, www.sec.gov, containing reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

ITEM 1A. RISK FACTORS:

You should carefully consider each of the following risk factors as well as the other information contained in this Annual Report on Form 10-K and other filings with the SEC in evaluating our business. The risks and uncertainties described below are not the only we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impact our business operations. If any of the following risks actually occur, our operating results may be affected.

Risks Relating to Our Business

The loss of one or more of our major customers could result in a material loss of revenues.

In fiscal 2011, we derived approximately 26% of our consolidated net sales from our top four customers. No one customer represented 10% or more of our consolidated net sales in fiscal 2011. We do not enter into long-term sales contracts with our major customers, relying instead on long-standing relationships and on our position in the marketplace. As a result, we face the risk that one or more of our major customers may significantly decrease their business with us or terminate their relationships with us. Any such decrease or termination of our major customers' business could result in a material decrease in our sales and operating results.

The acceptance of our products in the marketplace is affected by consumers' tastes and preferences, along with fashion trends.

We believe that continued success depends on our ability to provide a unique and compelling value proposition for our consumers in the Company's distribution channels. There can be no assurance that the demand for our products will not decline, or that we will be able to successfully and timely evaluate and adapt our products to changes in consumers' tastes and preferences or fashion trends. If consumers' tastes and preferences are not aligned with our product offerings, promotional pricing may be required to move seasonal merchandise. Increased use of promotional pricing would have a material adverse effect on our gross margin and results of operations.

The value of our brand, and our sales, could be diminished if we are associated with negative publicity.

Although our employees, agents, and third-party compliance auditors periodically visit and monitor the operations of our vendors, independent manufacturers, and licensees, we do not control these vendors, independent manufacturers, licensees, or their labor practices. A violation of our vendor policies, licensee agreements, labor laws, or other laws by these vendors, independent manufacturers, or licensees could interrupt or otherwise disrupt our supply chain or damage our brand image. As a result, negative publicity regarding our Company, brands or products, including licensed products, could adversely affect our reputation and sales.

In addition, the Company's brand image, which is associated with providing a consumer product with outstanding quality and name recognition, makes it valuable as a royalty source. The Company is able to generate royalty income from the sale of licensed products that bear its *Carter's*, *Just One You*, *Precious Firsts*, *Child of Mine*, *OshKosh*, *OshKosh Est. 1895*, *Genuine Kids*, and related trademarks. While the Company takes significant steps to ensure the reputation of its brand is maintained through its license agreements, there can be no guarantee that the Company's brand image will not be negatively impacted through its association with products outside of the Company's core apparel products.

We may incur substantial costs as a result of litigation, investigations or other proceedings, including those related to our previously filed restatements.

We are currently involved in litigation matters and investigations and may be subject to additional actions in the future. As disclosed in the Company's amended and restated Annual Report on Form 10-K for fiscal 2008, we announced on November 10, 2009, that our Audit Committee, with the assistance of outside counsel, had commenced a review of customer margin support provided by the Company and an investigation into undisclosed margin support commitments and related matters. The Company self-reported information concerning this investigation to the SEC in the fourth quarter of fiscal 2009 and has also been informed that the United States Attorney's Office is conducting an investigation into this matter. In December 2010, the Company and the SEC entered into a non-prosecution agreement pursuant to which the SEC agreed not to charge the Company with any violations of the federal securities laws, commence any enforcement action against the Company, or require the Company to pay any financial penalties in connection with the SEC's investigation of customer margin support provided by the Company, conditioned upon the Company's continued cooperation with the SEC's investigation and with any related enforcement proceedings. The Company has incurred, and expects to continue to incur, substantial expenses for legal and accounting services due to the SEC and United States Attorney's Office investigations and any resulting litigation. These matters have diverted in the past, and may continue to divert in the future, management's time and attention away from operations and cause the Company to continue to incur substantial costs. The Company also may bear additional costs to the extent it is required, under the terms of organizational documents or under Delaware law, to indemnify former officers of the Company in respect of costs they incur in connection with any proceedings related to these matters.

At this point, the Company is unable to predict the duration, costs, scope or result of these matters.

As described in more detail in Part II - Item 1 of this filing, the Company is also currently subject to two class action lawsuits, as well as various other claims and pending or threatened lawsuits in the normal course of our business. We have only limited amounts of insurance, which may not provide coverage to offset a negative judgment or a settlement payment, which could be substantial. We may be unable to obtain additional insurance in the future, or we may be unable to do so on favorable terms. Our insurers may also dispute our claims for coverage. Further, these lawsuits may result in diversion of management's time and attention, the expenditure of large amounts of cash on legal fees and other expenses, and injury to our reputation, all of which may adversely affect our operations and financial condition. As further described in more detail in Part II - Item 1 of this filing, on December 21, 2011, the Company reached an agreement to settle the class action lawsuits, and on January 19, 2012 the Court granted preliminary approval of the settlement and ordered that notice be provided to the proposed settlement class. The Court has scheduled a hearing for May 31, 2012 to determine whether the settlement will receive final approval.

The Company's databases containing personal information of our retail customers could be breached, which could subject us to adverse publicity, litigation, and expenses. In addition, if we are unable to comply with security standards created by the banks and payment card industry, our operations could be adversely affected.

Database privacy, network security, and identity theft are matters of growing public concern. In an attempt to prevent unauthorized access to our network and databases containing confidential, third-party information, we have installed privacy protection systems, devices, and activity monitoring on our network. Nevertheless, if unauthorized parties gain access to our networks or databases, they may be able to steal, publish, delete, or modify our private and sensitive third-party information. In such circumstances, we could be held liable to our customers or other parties or be subject to regulatory or other actions for breaching privacy rules. This could result in costly investigations and litigation, civil or criminal penalties, and adverse publicity that could adversely affect our financial condition, results of operations, and reputation. Further, if we are unable to comply with the security standards, established by banks and payment card industry, we may be subject to fines, restrictions, and expulsion from card acceptance programs, which could adversely affect our retail operations.

Increased production costs and deflationary pressures on our selling prices may adversely affect our results.

The Company's product costs, driven by inflation in significant component costs such as cotton, polyester, labor, fuel, and transportation, have increased and may remain at elevated levels or increase further. Our product costs have also been adversely impacted by the devaluation of the U.S. dollar relative to foreign currencies. These inflationary and currency risk factors have resulted in higher costs of goods sold and inventory values. Although we have raised our selling prices on many of our products, we do not expect in the near term to be able to fully absorb these cost increases, and we expect our profitability to continue to be adversely impacted. In recent years, the Company has also experienced deflationary pressure on its selling prices, in part driven by intense price competition in the young children's apparel industry.

Our business is sensitive to overall levels of consumer spending, particularly in the young children's apparel segment.

Consumers' demand for young children's apparel, specifically brand name apparel products, is impacted by the overall level of consumer spending. Discretionary consumer spending is impacted by employment levels, gasoline and utility costs, business conditions, availability of consumer credit, tax rates, interest rates, levels of consumer indebtedness, and overall levels of consumer confidence. Recent and further reductions in the level of discretionary spending may have a material adverse effect on the Company's sales and results of operations.

We source substantially all of our products through foreign production arrangements. Our dependence on foreign supply sources could result in disruptions to our operations in the event of political instability, unfavorable economic conditions, international events, or new foreign regulations and such disruptions may increase our cost of goods sold and decrease gross profit.

We source substantially all of our products through a network of vendors primarily in Asia, coordinated by our sourcing agents. The following could disrupt our foreign supply chain, increase our cost of goods sold, decrease our gross profit, or impact our ability to get products to our customers:

·financial instability of one or more of our major vendors;

·political instability or other international events resulting in the disruption of trade in foreign countries from which we source our products;

·increases in transportation costs as a result of increased fuel prices or significant changes in the relationship between carrier capacity and shipper demand;

·interruptions in the supply, or increases in the cost of raw materials, including cotton, fabric, and trim items;

·significant changes in the cost of labor in our sourcing locations;

·the imposition of new regulations relating to imports, duties, taxes, and other charges on imports;

·the occurrence of a natural disaster, unusual weather conditions, or an epidemic, the spread of which may impact our ability to obtain products on a timely basis;

·changes in the United States customs procedures concerning the importation of apparel products;

·unforeseen delays in customs clearance of any goods;

·disruption in the global transportation network such as a port strike, capacity withholding, world trade restrictions, or war;

·the application of foreign intellectual property laws;

·the ability of our vendors to secure sufficient credit to finance the manufacturing process including the acquisition of raw materials; and

·exchange rate fluctuations between the Company's and/or its subsidiaries' functional currency and the currencies paid to foreign contractors.

These and other events beyond our control could interrupt our supply chain and delay receipt of our products into the United States.

We source all of our products through a network of vendors. We have limited control over these vendors and we may experience delays, product recalls or loss of revenues if our products do not meet our quality standards or regulatory requirements.

Our vendors, independent manufacturers, and licensees may not continue to provide products that are consistent with our standards. We have occasionally received, and may in the future continue to receive, shipments of product that fail to conform to our quality control standards. A failure in our quality control program may result in diminished product quality, which may result in increased order cancellations and returns, decreased consumer demand for our products, or product recalls, any of which may have a material adverse effect on our results of operations and financial condition. In addition, notwithstanding our strict quality control procedures, because we do not control our vendors, products that fail to meet our standards, or other unauthorized products, could end up in the marketplace without our knowledge. This could materially harm our brand and our reputation in the marketplace.

Our products are subject to regulation of and regulatory standards set by various governmental authorities including the Consumer Product Safety Commission, with respect to quality and safety. Regulations and standards in this area are currently in place. These regulations and standards may change from time to time. Our inability, or that of our vendors, to comply on a timely basis with regulatory requirements could result in significant fines or penalties, which could adversely affect our reputation and sales. Issues with the quality and safety of merchandise we sell in our stores, regardless of our culpability, or customer concerns about such issues, could result in damage to our reputation, lost sales, uninsured product liability claims or losses, merchandise recalls, and increased costs.

Any significant disruption to our eCommerce business, including order acceptance and processing, order fulfillment, web-hosting, warehousing, and call center operations, could harm our brand and our reputation in the marketplace.

The operation of our eCommerce business depends on the ability to maintain the efficient and uninterrupted operation of online order-taking and fulfillment operations. We currently rely on a third party to host our eCommerce website, process and manage web orders, warehouse inventory sold through our eCommerce website, fulfill our eCommerce sales to our customers, and operate a call center supporting our eCommerce business, and we intend to transition fulfillment services in-house in the near future. Any significant disruption in the operations of our eCommerce business, could harm our brand and our reputation in the marketplace.

The loss of a sourcing agent could negatively impact our ability to timely deliver our inventory supply and disrupt our business, which may adversely affect our operating results.

One sourcing agent currently manages approximately 83% of our inventory purchases. Although we believe that other buying agents could be retained, or we could procure some of the inventory directly, the loss of this buying agent could delay our ability to timely receive inventory supply and disrupt our business, which could result in a material adverse effect on our operating results.

We operate in a highly competitive market and the size and resources of some of our competitors may allow them to compete more effectively than we can, resulting in a loss of market share and, as a result, a decrease in revenue and gross profit.

The baby and young children's apparel market is highly competitive. Both branded and private label manufacturers compete in the baby and young children's apparel market. Our primary competitors in our wholesale businesses include private label product offerings, Disney, and Gerber. Our primary competitors in the retail store channel include Disney, Gymboree, Old Navy, The Children’s Place, and The Gap. Because of the fragmented nature of the industry, we also compete with many other manufacturers and retailers. Some of our competitors have greater financial resources and larger customer bases than we have and are less financially leveraged than we are. As a result, these competitors may be able to:

·adapt to changes in customer requirements more quickly;

·take advantage of acquisition and other opportunities more readily;

·devote greater resources to the marketing and sale of their products; and

·adopt more aggressive pricing strategies than we can.

The Company’s retail success and future growth is dependent upon identifying locations and negotiating appropriate lease terms for retail stores.

The Company’s retail stores are located in leased retail locations across the United States and Canada. Successful operation of a retail store depends, in part, on the overall ability of the retail location to attract a consumer base sufficient to make store sales volume profitable. If the Company is unable to identify new retail locations with consumer traffic sufficient to support a profitable sales level, retail growth may consequently be limited. Further, if existing outlet and brand stores do not maintain a sufficient customer base that provides a reasonable sales volume or the Company is unable to negotiate appropriate lease terms for the retail stores, there could be a material adverse impact on the Company’s sales, gross margin, and results of operations.

Profitability could be negatively impacted if we do not adequately forecast the demand for our products and, as a result, create significant levels of excess inventory or insufficient levels of inventory.

If the Company does not adequately forecast demand for its products and purchases inventory to support an inaccurate forecast, the Company could experience increased costs due to the need to dispose of excess inventory or lower profitability due to insufficient levels of inventory.

We face various risks arising from our recent acquisition of Bonnie Togs, a Canadian children's apparel retailer. We may fail to realize growth opportunities and other benefits from the acquisition of Bonnie Togs, and we may fail to successfully integrate the Bonnie Togs business with our existing business, either of which could adversely affect our financial condition and results of operations.

We may fail to realize growth opportunities and other benefits from the acquisition of Bonnie Togs. We have no prior experience operating a retail business in Canada, and we may not be as successful in operating and growing this business in Canada as we have been in the United States. We may be unable to continue existing, or to develop new, vendor and customer relationships, and enhance our position in Canada. Further, our operations in Canada are subject to the various risks and uncertainties to which our United States retail operations are subject. Our ability to successfully integrate Bonnie Togs is subject to risks, including delays or difficulties in completing integration and higher than expected costs. In connection with the integration efforts, our management's attention and our resources could be diverted from other business concerns. If integration difficulties arise, the diversion of attention and resources may be increased. Any of these may adversely affect our financial condition and results of operations.

We may not achieve sales growth plans, cost savings, and other assumptions that support the carrying value of our intangible assets.

As of December 31, 2011, the Company had *Carter's* goodwill of $136.6 million, a $220.2 million *Carter's* brand tradename asset, an $85.5 million *OshKosh* brand tradename asset, *Bonnie Togs* goodwill of $52.1 million, and a $0.4 million *Bonnie Togs* tradename asset on its consolidated balance sheet. The carrying value of these assets is subject to annual impairment reviews as of the last day of each fiscal year or more frequently, if deemed necessary, due to any significant events or changes in circumstances.

Estimated future cash flows used in these impairment reviews could be negatively impacted if we do not achieve our sales plans, planned cost savings, and other assumptions that support the carrying value of these intangible assets, which could result in potential impairment of the remaining asset value.

The Company's success is dependent upon retaining key individuals within the organization to execute the Company's strategic plan.

The Company's ability to attract and retain qualified executive management, marketing, merchandising, design, sourcing, operations, and support function staffing is key to the Company's success. If the Company were unable to attract and retain qualified individuals in these areas, an adverse impact on the Company's growth and results of operations may result.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None

ITEM 2. PROPERTIES

Location	Approximate floor space in square feet	Principal use	Lease expiration date	Renewal options
Stockbridge, Georgia	505,000	Distribution/warehousing	April 2015	10 years
Hogansville, Georgia	258,000	Distribution/warehousing	Owned	--
Chino, California	413,000	Distribution/warehousing	July 2014	2 years
Griffin, Georgia	219,000	Finance/information technology/benefits administration/rework	Owned	--
Fayetteville, Georgia	30,000	Wholesale customer service/information technology	September 2020	15 years
Atlanta, Georgia	131,000	Executive offices/Carter's design and merchandising/marketing	June 2015	5 years
OshKosh, Wisconsin	6,400	Finance/consumer affairs	December 2019	5 years
Shelton, Connecticut	64,000	Finance/retail store administration	February 2019	10 years
New York, New York	16,000	Sales office/showroom	January 2015	--
New York, New York	22,000	OshKosh design center	January 2022	10 years
Atlanta, Georgia	9,842	OshKosh showroom	December 2012	1 year
Cambridge, Ontario	36,500	Bonnie Togs executive offices/distribution/warehousing	June 2021	10 years
Cambridge, Ontario	46,332	Bonnie Togs distribution/warehousing	May 2014	--

As of December 31, 2011, we operated 529 leased retail stores located primarily in outlet and strip centers across the United States, having an average size of approximately 4,600 square feet. In addition, we operated 65 leased retail stores in Canada, having an average size of approximately 5,500 square feet. Generally, the majority of our leases have an average term of ten years.

Aggregate lease commitments as of December 31, 2011 for the above leased properties are as follows: fiscal 2012—$82.0 million; fiscal 2013—$77.9 million; fiscal 2014—$69.9 million; fiscal 2015—$58.0 million; fiscal 2016—$49.7 million, and $163.6 million for the balance of these commitments beyond fiscal 2016.

ITEM 3. LEGAL PROCEEDINGS:

A shareholder class action lawsuit was filed on September 19, 2008 in the United States District Court for the Northern District of Georgia entitled Plymouth County Retirement System v. Carter's, Inc., No. 1:08-CV-02940-JOF (the "Plymouth Action"). The Amended Complaint filed on May 12, 2009 in the Plymouth Action asserted claims under Sections 10(b), 20(a), and 20A of the 1934 Securities Exchange Act, and alleged that between February 1, 2006 and July 24, 2007, the Company and certain current and former executives made material misrepresentations to investors regarding the successful integration of OshKosh into the Company's business, and that the share price of the Company's stock later fell when the market learned that the integration had not been as successful as represented. Defendants in the Plymouth Action filed a motion to dismiss the Amended Complaint for failure to state a claim under the federal securities laws on July 17, 2009, and briefing of that motion was complete on October 22, 2009.

A separate shareholder class action lawsuit was filed on November 17, 2009 in the United States District Court for the Northern District of Georgia entitled Mylroie v. Carter's, Inc., No. 1:09-CV-3196-JOF (the "Mylroie Action"). The initial Complaint in the Mylroie Action asserted claims under Sections 10(b) and 20(a) of the 1934 Securities Exchange Act, and alleged that between April 27, 2004 and November 10, 2009, the Company and certain current and former executives made material misstatements to investors regarding the Company's accounting for discounts offered to some wholesale customers. The Court consolidated the Plymouth Action and the Mylroie Action on November 24, 2009 (the "Consolidated Action"). On March 15, 2010, the plaintiffs in the Consolidated Action filed their amended and consolidated complaint. The Company filed a motion to dismiss on April 30, 2010, and briefing of the motion was complete on July 23, 2010.

On March 16, 2011, the United States District Court for the Northern District of Georgia granted without prejudice the Company's motion to dismiss all of the claims in the amended and consolidated complaint in the Consolidated Action for failure to state a claim under the federal securities laws. The plaintiffs filed a second amended and consolidated complaint on July 20, 2011. On December 21, 2011, the Company reached an agreement to settle the Consolidated Action for an amount which has been paid by the Company's insurance providers. The settlement agreement includes no admission of liability or wrongdoing by the Company or by any other defendants and provides for a full and complete release of all related claims that were or could have been brought against the Company, its subsidiaries, and any and all current and former directors, officers, and employees of the Company and its subsidiaries. On January 19, 2012, the Court granted preliminary approval of the settlement and ordered that notice be provided to the proposed settlement class (as defined in the settlement agreement). The Court has scheduled a hearing for May 31, 2012 to determine whether the settlement will receive final approval.

A shareholder derivative lawsuit was filed on May 25, 2010 in the Superior Court of Fulton County, Georgia, entitled Alvarado v. Bloom, No. 2010-cv-186118 (the "Alvarado Action"). The Complaint in the Alvarado Action alleged, among other things, that certain current and former directors and executives of the Company breached their fiduciary duties to the Company in connection with the Company's accounting for discounts offered to some wholesale customers. The Company was named solely as a nominal defendant against whom the plaintiff sought no recovery. Pursuant to an agreement among the parties, on February 22, 2012 the parties filed a joint stipulation to dismiss the Alvarado Action without prejudice, which the Court granted later that same day.

The Company is subject to various other claims and pending or threatened lawsuits in the normal course of our business. The Company is not currently party to any other legal proceedings that it believes would have a material adverse effect on its financial position, results of operations or cash flows.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable

PART II

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

Our common stock trades on the New York Stock Exchange under the symbol CRI. The last reported sale price per share of our common stock on February 21, 2011 was $42.70. On that date there were approximately 26,154 holders of record of our common stock.

The following table sets forth for the periods indicated the high and low sales prices per share of common stock as reported by the New York Stock Exchange:

2011	High	Low
First quarter	$ 30.26	$ 26.50
Second quarter	$ 32.88	$ 27.72
Third quarter	$ 34.50	$ 27.44
Fourth quarter	$ 41.70	$ 29.92

2010	High	Low
First quarter	$ 31.24	$ 25.42
Second quarter	$ 34.24	$ 25.39
Third quarter	$ 27.17	$ 22.19
Fourth quarter	$ 32.69	$ 23.53

Share Repurchases

The following table provides information about shares acquired from employees during the fourth quarter of fiscal 2011 to satisfy the required withholding of taxes in connection with the vesting of restricted stock:

Period	Total number of shares purchased (1)	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Approximate dollar value of shares that may yet be purchased under the plans or programs
October 2, 2011 through October 29, 2011	--	$ --	--	Not applicable
October 30, 2011 through November 26, 2011	355	$ 36.73	--	Not applicable
November 27, 2011 through December 31, 2011	13,410	$ 39.78	--	Not applicable
Total	13,765	$ 39.70	--	Not applicable

(1) All of the shares were surrendered by our employees to satisfy required tax withholding upon the vesting of restricted stock awards.

Share Repurchase Program

During fiscal 2007, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company was authorized to purchase up to $100 million of its outstanding common shares. During fiscal 2010, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company is authorized to purchase up to an additional $100 million of its outstanding common shares. As of August 13, 2010, the Company had repurchased outstanding shares in the amount totaling the entire $100 million authorized by the Board of Directors on February 16, 2007. The timing and amount of any future share repurchases will be determined by the Company's management, based upon its evaluation of market conditions, share price, other investment priorities, and other factors.

The Company did not repurchase any shares of its common stock during fiscal 2011 pursuant to any share repurchase authorization other than the shares of common stock from the Company's employees to satisfy tax withholding obligations upon vesting of restricted stock to such employees. During fiscal 2010, the Company repurchased and retired 2,058,830 shares, or approximately $50.0 million, of its common stock at an average price of $24.29 per share. Since inception of the repurchase program and through fiscal 2011, the Company repurchased and retired 6,658,410 shares, or approximately $141.1 million, of its common stock at an average price of $21.19 per share. The total remaining capacity under this authorization was approximately $58.9 million as of December 31, 2011. This authorization has no expiration date.

DIVIDENDS

Provisions in our revolving facility currently restrict the ability of our operating subsidiary, The William Carter Company ("TWCC"), from paying cash dividends to our parent company, Carter's, Inc., in excess of $15.0 million unless TWCC and its consolidated subsidiaries meet certain leverage ratio and minimum availability requirements under the credit facility, which materially restricts Carter's, Inc. from paying cash dividends on our common stock. We do not anticipate paying cash dividends on our common stock in the foreseeable future but intend to retain future earnings, if any, for reinvestment in the future operation and expansion of our business and related development activities. Any future decision to pay cash dividends will be at the discretion of our Board of Directors and will depend upon our financial condition, results of operations, terms of financing arrangements, capital requirements, and any other factors as our Board of Directors deems relevant.

RECENT SALES OF UNREGISTERED SECURITIES

Not applicable

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected financial and other data as of and for the five fiscal years ended December 31, 2011 (fiscal 2011).

On June 30, 2011, Northstar Canadian Operations Corp. ("Northstar"), a newly formed Canadian corporation and a wholly owned subsidiary of The William Carter Company (a wholly owned subsidiary of Carter's, Inc.), purchased all of the outstanding shares of capital stock of the entities comprising Bonnie Togs (the "Acquisition"), a Canadian specialty retailer focused exclusively on the children's apparel and accessories marketplace. Prior to the acquisition, Bonnie Togs was Carter's principal licensee in Canada since 2007 and was a significant international licensee of the Company. As of December 31, 2011, we operated 65 retail stores in Canada and sold products under the *Carter's* and *OshKosh* brands, as well as other private label and other brands.

In light of the Acquisition, the Company reevaluated and realigned certain of its reportable segments. As a result, the Company's reportable segments include a new international segment reflecting our new Canadian operations, our existing international wholesale business, and royalty income from our international licensees. In addition, the Company combined its historical mass channel segments with its wholesale segments. The Company believes these changes in segment reporting better reflect how its five business segments, Carter's wholesale, Carter's retail, OshKosh retail, OshKosh wholesale, and international, are managed and how each segment's performance is evaluated. Effective October 1, 2011, the Company changed its segment presentation to reflect this new structure, and recast all prior periods presented to conform to the new presentation.

On October 15, 2010, the Company entered into a $375 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) revolving credit facility with Bank of America as sole lead arranger and administrative agent, JP Morgan Chase Bank as syndication agent, and other financial institutions. This revolving credit facility was immediately drawn upon to pay off the Company's former term loan of $232.2 million and pay transaction fees and expenses of $3.8 million, leaving approximately $130 million available under the revolver for future borrowings (net of letters of credit of approximately $8.6 million). In connection with the repayment of the Company's former term loan, in the fourth quarter of fiscal 2010 the Company wrote off approximately $1.2 million in unamortized debt issuance costs. In addition, in connection with the revolving credit facility, the Company recorded $3.5 million of debt issuance costs to be amortized over the term of the revolving credit facility (five years). On December 22, 2011, the Company and lenders amended and restated the revolving credit facility to, among other things, provide a U.S. dollar revolving facility of $340 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) and a $35 million multicurrency revolving facility ($15 million sub-limit for letters of credit and a swing line sub-limit of $5 million), which is available for borrowings by either TWCC or our Canadian subsidiary, in U.S. dollars or Canadian dollars. The term of the revolving credit facility expires October 15, 2015.

The selected financial data for the five fiscal years ended December 31, 2011 was derived from our audited consolidated financial statements. Our fiscal year ends on the Saturday, in December or January, nearest the last day of December. Consistent with this policy, fiscal 2011 ended on December 31, 2011, fiscal 2010 ended on January 1, 2011, fiscal 2009 ended on January 2, 2010, fiscal 2008 ended on January 3, 2009, and fiscal 2007 ended on December 29, 2007. Fiscal 2011, fiscal 2010, fiscal 2009, and fiscal 2007 each contained 52 weeks of financial results. Fiscal 2008 contained 53 weeks of financial results.

The following table should be read in conjunction with Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Item 8 "Financial Statements and Supplementary Data."

(dollars in thousands, except per share data)	Fiscal Years 2011	2010	2009	2008	2007
OPERATING DATA:					
Wholesale sales – Carter's	$ 939,115	$ 827,815	$ 742,224	$ 730,043	$ 707,212
Retail sales – Carter's	671,590	546,233	489,740	422,436	366,296
Retail sales – OshKosh	280,900	264,887	257,289	249,130	233,776
Wholesale sales – OshKosh	81,888	75,484	72,448	73,014	84,172
International	136,241	34,837	27,976	19,897	12,570
Total net sales	2,109,734	1,749,256	1,589,677	1,494,520	1,404,026
Cost of goods sold	1,418,582	1,075,384	985,323	975,999	928,996
Gross profit	691,152(a)	673,872	604,354	518,521	475,030
Selling, general, and administrative expenses	540,960(a)	468,192	428,674	404,274	359,826
Investigation expenses (b)	--	--	5,717	--	--
Intangible asset impairment (c)	--	--	--	--	154,886
Executive retirement charges (d)	--	--	--	5,325	--
Workforce reduction, facility write-down, and closure costs (e)	--	--	10,771	2,609	5,285
Royalty income	(37,274)	(37,576)	(36,421)	(33,685)	(30,738)
Operating income (loss)	187,466	243,256	195,613	139,998	(14,229)
Interest income	(386)	(575)	(219)	(1,491)	(1,386)
Interest expense	7,534	10,445	12,004	19,578	24,465
Foreign exchange gain	(570)	--	--	--	--
Income (loss) before income taxes	180,888	233,386	183,828	121,911	(37,308)
Provision for income taxes	66,872	86,914	68,188	44,007	38,488
Net income (loss)	$ 114,016	$ 146,472	$ 115,640	$ 77,904	$ (75,796)
PER COMMON SHARE DATA:					
Basic net income (loss)	$ 1.96	$ 2.50	$ 2.03	$ 1.37	$ (1.30)
Diluted net income (loss)	$ 1.94	$ 2.46	$ 1.97	$ 1.33	$ (1.30)
BALANCE SHEET DATA (end of period):					
Working capital (f)	$ 629,394	$ 532,891	$ 505,051	$ 359,919	$ 311,000
Total assets	1,402,709	1,257,182	1,208,599	1,038,012	958,777
Total debt, including current maturities	236,000	236,000	334,523	338,026	341,529
Stockholders' equity	805,709	679,936	556,024	413,551	366,238
CASH FLOW DATA:					
Net cash provided by operating activities	$ 81,074	$ 85,821	$ 188,859	$ 181,041	$ 50,190
Net cash used in investing activities	(106,692)	(39,496)	(29,516)	(34,947)	(20,022)
Net cash provided by (used in) financing activities	11,505	(133,984)	13,349	(32,757)	(49,701)
OTHER DATA:					
Gross margin	32.8%	38.5%	38.0%	34.7%	33.8%
Depreciation and amortization	$ 32,548	$ 31,727	$ 32,274	$ 30,158	$ 29,919
Capital expenditures	45,495	39,782	33,600	34,947	20,079

See Notes to Selected Financial Data.

NOTES TO SELECTED FINANCIAL DATA

(a) Gross profit includes $6.7 million in additional expenses related to the amortization of the fair value step-up of inventory acquired as a result of the Acquisition. SG&A includes $5.5 million related to revaluation of the contingent consideration and acquisition-related charges associated with the Acquisition.

(b) Investigation expenses of $5.7 million in fiscal 2009 relate to professional service fees incurred in connection with the Company's customer margin support investigation (see Note 17 to the accompanying audited consolidated financial statements).

(c) Intangible asset impairment charges of $154.9 million in fiscal 2007 reflect the impairment of the OshKosh goodwill (OshKosh wholesale segment of $36.0 million and OshKosh retail segment of $106.9 million) and the impairment of the value ascribed to the *OshKosh* tradename of $12.0 million.

(d) Executive retirement charges of $5.3 million in fiscal 2008 consist of $3.1 million related to the present value of severance and benefit obligations and $2.2 million of which related to the accelerated vesting of certain stock options.

(e) The $5.3 million in closure costs in fiscal 2007 relate to the closure of our White House, Tennessee distribution facility. The $2.6 million charge in fiscal 2008 relates to the write-down of the carrying value of our White House, Tennessee distribution facility. The $10.7 million in fiscal 2009 includes closure costs of $3.3 million associated with the closure of our Barnesville, Georgia distribution facility including severance and other benefits, asset impairment charges, and other closure costs, $1.2 million of asset impairment charges net of a gain on the closure and sale of our Oshkosh, Wisconsin facility, $0.7 million related to the write-down of our White House, Tennessee distribution facility, and $5.5 million of severance and other benefits related to the corporate workforce reduction.

(f) Represents total current assets less total current liabilities.

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

The following is a discussion of our results of operations and current financial condition. You should read this discussion in conjunction with our consolidated historical financial statements and notes included elsewhere in this Annual Report on Form10-K. Our discussion of our results of operations and financial condition includes various forward-looking statements about our markets, the demand for our products and services, and our future results. We based these statements on assumptions that we consider reasonable. Actual results may differ materially from those suggested by our forward-looking statements for various reasons including those discussed in the "Risk Factors" in Item 1A of this Annual Report on Form 10-K. Those risk factors expressly qualify all subsequent oral and written forward-looking statements attributable to us or persons acting on our behalf. Except for any ongoing obligations to disclose material information as required by the federal securities laws, we do not have any intention or obligation to update forward-looking statements after we file this Annual Report on Form 10-K.

OVERVIEW

For 146 years, *Carter's* has been one of the most recognized and trusted brand names in the children's apparel industry. We also own the *OshKosh* brand, which over 110 years has earned the position of a highly trusted and well-known brand.

On June 30, 2011, we acquired Bonnie Togs, a Canadian children's apparel retailer and a former international licensee. Specifically, the Company purchased all of the outstanding shares of capital stock of Bonnie Togs for total consideration of up to CAD $95 million, of which USD $61.2 million was paid in cash at closing. Such payment is subject to post-closing adjustments, which we expect to be finalized in the first quarter of fiscal 2012. The sellers may also be paid contingent consideration ranging from zero to CAD $35 million if the Canadian business meets certain earnings targets for the period beginning July 1, 2011 and ending on June 27, 2015. Sellers may receive a portion of the contingent consideration of up to CAD $25 million if interim earnings targets are met through June 2013 and June 2014, respectively. Any such payments are not recoverable by the Company in the event of any failure to meet overall targets.

As of July 2, 2011, the Company had a discounted contingent consideration liability of approximately $24.3 million based upon the high probability that Bonnie Togs will attain its earnings targets. The fair value of the discounted contingent consideration liability as of December 31, 2011 was approximately $25.6 million and is included in other long-term liabilities on the accompanying consolidated balance sheet. The $1.2 million change in the fair value of the liability is reflected as $2.5 million in accretion expense and $1.3 million in other comprehensive income resulting from a favorable foreign currency translation adjustment. The Company determined the fair value of the contingent consideration based upon a probability-weighted discounted cash flow analysis. The Company will continue to revalue the contingent consideration at each reporting date.

In light of the Acquisition, the Company reevaluated and realigned certain of its reportable segments. As a result, the Company's reportable segments include a new international segment reflecting our new Canadian operations, our existing international wholesale business, and royalty income from our international licensees. In addition, the Company combined its historical mass channel segments with its wholesale segments. The Company believes these changes in segment reporting better reflect how its five business segments, Carter's wholesale, Carter's retail, OshKosh retail, OshKosh wholesale, and international, are managed and how each segment's performance is evaluated. Effective October 1, 2011, the Company changed its segment presentation to reflect this new structure, and recast all prior periods presented to conform to the new presentation.

We sell our products under our *Carter's*, *OshKosh*, *Child of Mine*, and *Just One You* brands in the wholesale channel, which include nearly 17,000 department, national chain, specialty, and discount retailer stores in the United States. Additionally, as of December 31, 2011, we operated 359 Carter's and 170 OshKosh retail stores located primarily in outlet and strip centers throughout the United States and 65 retail stores in Canada. In March 2010, we launched our eCommerce business. We also extend our brand reach by licensing our *Carter's*, *Child of Mine*, *Just One You*, *OshKosh*, and related brand names through domestic licensing arrangements, including licensing of our *Genuine Kids from OshKosh* brand to Target stores nationwide. Our *OshKosh* and *Carter's* brand names are also licensed through international licensing arrangements. During fiscal 2011, we earned approximately $37.3 million in royalty income from these arrangements.

We source substantially all of our products through a network of vendors primarily in Asia. Various sourcing agents coordinate this process, with one sourcing agent currently managing approximately 83% of our inventory purchases. Our product costs, driven by inflation in significant component costs such as cotton, polyester, labor, fuel, and transportation increased substantially throughout fiscal 2011 and are expected to continue to remain at elevated levels for at least the first half of fiscal 2012. These cost increases have resulted in higher cost of goods sold and inventory values. Although we have raised our selling prices on many of our products, we have been unable to fully absorb these cost increases and our profitability was negatively impacted. We do not expect in the near term to be able to fully absorb these elevated costs and our profitability may continue to be adversely impacted.

In connection with the Acquisition, we acquired certain definite-lived intangible assets comprised of a *Bonnie Togs* tradename and non-compete agreements which resulted in amortization expense of $0.2 million in fiscal 2011. In connection with the acquisition of OshKosh, we acquired certain definite-lived intangible assets comprised of licensing agreements and leasehold interests which were fully amortized in fiscal 2010 and had amortization expense of $1.8 million in fiscal 2010 and $3.7 million in fiscal 2009.

On October 15, 2010, the Company entered into a $375 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) revolving credit facility with Bank of America as sole lead arranger and administrative agent, JP Morgan Chase Bank as syndication agent, and other financial institutions. This revolving credit facility was immediately drawn upon to pay off the Company's former term loan of $232.2 million and pay transaction fees and expenses of $3.8 million, leaving approximately $130 million available under the revolver for future borrowings (net of letters of credit of approximately $8.6 million). In connection with the repayment of the Company's former term loan, in the fourth quarter of fiscal 2010 the Company wrote off approximately $1.2 million in unamortized debt issuance costs. In addition, in connection with the revolving credit facility, the Company recorded $3.5 million of debt issuance costs to be amortized over the term of the revolving credit facility (five years). On December 22, 2011, the Company and lenders amended and restated the revolving credit facility to, among other things, provide a U.S. dollar revolving facility of $340 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) and a $35 million multicurrency revolving facility ($15 million sub-limit for letters of credit and a swing line sub-limit of $5 million), which is available for borrowings by either TWCC or our Canadian subsidiary, in U.S. dollars or Canadian dollars. The term of the revolving credit facility expires October 15, 2015.

During fiscal 2007, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company was authorized to purchase up to $100 million of its outstanding common shares. During fiscal 2010, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company is authorized to purchase up to an additional $100 million of its outstanding common shares. As of August 13, 2010, the Company had repurchased outstanding shares in the amount totaling the entire $100 million authorized by the Board of Directors on February 16, 2007. The timing and amount of any future share repurchases will be determined by the Company's management, based upon its evaluation of market conditions, share price, other investment priorities, and other factors.

The Company did not repurchase any shares of its common stock during fiscal 2011 pursuant to any share repurchase authorization other than the shares of common stock from the Company's employees to satisfy tax withholding obligations upon vesting of restricted stock to such employees. During fiscal 2010, the Company repurchased and retired 2,058,830 shares, or approximately $50.0 million, of its common stock at an average price of $24.29 per share. Since inception of the repurchase program and through fiscal 2011, the Company repurchased and retired 6,658,410 shares, or approximately $141.1 million, of its common stock at an average price of $21.19 per share. The total remaining capacity under this authorization was approximately $58.9 million as of December 31, 2011. This authorization has no expiration date.

Our fiscal year ends on the Saturday, in December or January, nearest the last day of December. Consistent with this policy, fiscal 2011 ended on December 31, 2011, fiscal 2010 ended on January 1, 2011, and fiscal 2009 ended on January 2, 2010. Fiscal 2011, 2010, and 2009 each contained 52 weeks of financial results.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated (i) selected statement of operations data expressed as a percentage of net sales and (ii) the number of retail stores open at the end of each period:

	Fiscal Years		
	2011	**2010**	**2009**
Net Sales			
Carter's Wholesale	44.5%	47.3%	46.7%
Carter's Retail	31.8	31.2	30.8
Total Carter's	76.3	78.5	77.5
OshKosh Retail	13.3	15.2	16.2
OshKosh Wholesale	3.9	4.3	4.5
Total OshKosh	17.2	19.5	20.7
International	6.5	2.0	1.8
Consolidated net sales	100.0	100.0	100.0
Cost of goods sold	67.2	61.5	62.0
Gross profit	32.8	38.5	38.0
Selling, general, and administrative expenses	25.6	26.8	27.0
Investigation expenses	--	--	0.4
Workforce reduction, facility write-down, and closure costs	--	--	0.7
Royalty income	(1.7)	(2.2)	(2.4)
Operating income	8.9	13.9	12.3
Foreign exchange gain	--	--	--
Interest expense, net	0.3	0.6	0.7
Income before income taxes	8.6	13.3	11.6
Provision for income taxes	3.2	4.9	4.3
Net income	5.4%	8.4%	7.3%
Number of retail stores at end of period:			
Carter's	359	306	276
OshKosh	170	180	170
International	65	--	--
Total	594	486	446

FISCAL YEAR ENDED DECEMBER 31, 2011 COMPARED WITH FISCAL YEAR ENDED JANUARY 1, 2011

CONSOLIDATED NET SALES

Consolidated net sales for fiscal 2011 were $2.1 billion, an increase of $360.5 million, or 20.6%, compared to $1.7 billion in fiscal 2010 and reflects growth in all of our segments and the Acquisition.

	For the fiscal years ended			
(dollars in thousands)	December 31, 2011	% of Total	January 1, 2011	% of Total
Net sales:				
Carter's Wholesale	$ 939,115	44.5%	$ 827,815	47.3%
Carter's Retail	671,590	31.8%	546,233	31.2%
Total Carter's	1,610,705	76.3%	1,374,048	78.5%
OshKosh Retail	280,900	13.3%	264,887	15.2%
OshKosh Wholesale	81,888	3.9%	75,484	4.3%
Total OshKosh	362,788	17.2%	340,371	19.5%
International	136,241	6.5%	34,837	2.0%
Total net sales	$ 2,109,734	100.0%	$ 1,749,256	100.0%

CARTER'S WHOLESALE SALES

Carter's wholesale sales in the United States increased $111.3 million, or 13.4%, in fiscal 2011 to $939.1 million. This growth was driven by an 8% increase in units shipped and a 5% increase in average price per unit, as compared to fiscal 2010. The increase in units shipped was primarily driven by continued strong demand for our *Carter's* and *Child of Mine* product offerings and an increase in shipments to the off-price channel. The increase in average price per unit primarily reflects higher average selling prices on our product offerings.

CARTER'S RETAIL SALES

Carter's retail sales in the United States increased $125.4 million, or 22.9%, in fiscal 2011 to $671.6 million. The increase was driven by incremental sales of $57.0 million generated by new store openings, $40.8 million generated by eCommerce sales, and a comparable store sales increase of $29.1 million, or 5.6% (based on 296 locations), partially offset by the effect of store closures of $1.5 million. During fiscal 2011, on a comparable store basis, average prices increased 5.0% on our product offerings, units per transaction increased 1.9%, and transactions decreased 1.3%. Despite a decline in consumer traffic, we believe comparable store sales were strong.

The Company's comparable store sales calculations include sales for all stores that were open during the comparable fiscal period, including remodeled stores, and certain relocated stores. If a store relocates within the same center with no business interruption or material change in square footage, the sales of such store will continue to be included in the comparable store calculation. If a store relocates to another center, or there is a material change in square footage, such store is treated as a new store. Stores that are closed during the period are included in the comparable store sales calculation up to the last full fiscal month of operations.

There were a total of 359 Carter's retail stores open as of December 31, 2011. During fiscal 2011, we opened 56 and closed three Carter's retail stores. We plan to open approximately 60 and close four Carter's retail stores during fiscal 2012.

OSHKOSH RETAIL SALES

OshKosh retail sales in the United States increased $16.0 million, or 6.0%, in fiscal 2011 to $280.9 million. The increase reflects incremental sales of $12.9 million generated by eCommerce sales and $8.9 million generated by new store openings, partially offset by the effect of store closings of $5.0 million and a comparable store sales decrease of $0.7 million, or 0.3% (based on 163 locations). On a comparable store basis, units per transaction increased 2.4%, average prices increased 1.0%, and transactions decreased 3.6% on our product offerings. We believe this decrease was driven by the decline in consumer traffic.

There were a total of 170 OshKosh retail stores open as of December 31, 2011. During fiscal 2011, we opened three and closed 13 OshKosh retail stores. We plan to open approximately five and close 13 OshKosh retail stores during fiscal 2012.

OSHKOSH WHOLESALE SALES

OshKosh brand wholesale sales in the United States increased $6.4 million, or 8.5%, in fiscal 2011 to $81.9 million. The increase in *OshKosh* brand wholesale sales was driven by an 8% increase in average price per unit and a 1% increase in units shipped, as compared to fiscal 2010. The increase in average price per unit primarily reflects higher average selling prices. The increase in units shipped was primarily driven by an increase in shipments to our off-price customers.

INTERNATIONAL SALES

International sales increased $101.4 million, or 291.1%, in fiscal 2011 to $136.2 million. The increase reflects six months of sales from our new Canadian operations in the current year and higher international wholesale sales, primarily driven by expansion in our multi-national accounts and growth in the Middle East. We operated a total of 65 retail stores in Canada as of December 31, 2011. In fiscal 2012, the Company plans to open 18 retail stores in Canada and anticipates no store closures.

GROSS PROFIT

Our gross profit increased $17.3 million, or 2.6%, to $691.2 million in fiscal 2011. Gross margin decreased 570 basis points from 38.5% in fiscal 2010 to 32.8% in fiscal 2011.

The decrease in gross profit as a percentage of net sales reflects:

(i) higher product costs of approximately $180 million primarily related to increases in cotton prices and labor rates; and

(ii) an amortization charge of approximately $6.7 million related to a fair value step-up of inventory acquired at the Acquisition and sold during fiscal 2011.

Partially offsetting these decreases were:

(i) approximately $101 million in selective price increases; and

(ii) approximately $40 million in incremental volume related to our new Canadian operations in fiscal 2011.

The Company includes distribution costs in its selling, general, and administrative expenses. Accordingly, the Company's gross profit may not be comparable to other companies that include such distribution costs in their cost of goods sold.

SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES

Selling, general, and administrative expenses in fiscal 2011 increased $72.8 million, or 15.5%, to $541.0 million. As a percentage of net sales, selling, general, and administrative expenses was 25.6% in fiscal 2011 as compared to 26.8% in fiscal 2010.

The improvements in selling, general, and administrative expenses as a percentage of net sales reflect:

(i) a 70 basis points decrease (from 12.3% to 11.6%) in our U.S. retail store expenses as compared to fiscal 2010;

(ii) approximately $11 million in lower provisions for performance-based compensation for fiscal 2011; and

(iii) controlling growth in spending to a lower rate than growth in net sales.

Partially offsetting these reductions were:

(i) $21.4 million in Bonnie Togs selling, general and administrative expenses;

(ii) $3.1 million of Bonnie Togs acquisition-related expenses during fiscal 2011; and

(iii) $2.5 million of accretion expense associated with the revaluation of the Bonnie Togs contingent consideration.

ROYALTY INCOME

Our royalty income decreased $0.3 million, or 0.8%, to $37.3 million in fiscal 2011. The decrease was primarily due to the absence of six months of international royalty income in fiscal 2011 from our former licensee, Bonnie Togs.

We license the use of our *Carter's*, *Just One You*, and *Child of Mine* brands. Domestic royalty income from these brands was approximately $18.5 million, an increase of 0.9%, or $0.2 million, as compared to fiscal 2010 resulting from higher sales by our *Carter's* brand and *Just One You* brand licensees, partially offset by lower sales from our *Child of Mine* brand licensees. The *Carter's* brand internationally generated $1.3 million in royalty income in fiscal 2011 as compared to $1.9 million in fiscal 2010.

We also license the use of our *OshKosh B'gosh*, *OshKosh*, and *Genuine Kids from OshKosh* brands. Domestic royalty income from these brands increased approximately $0.5 million, or 5.1%, to $10.3 million in fiscal 2011. This increase was driven by increased sales by our *Genuine Kids from OshKosh* brand sold at Target. The *OshKosh* brand internationally generated $7.1 million in royalty income in fiscal 2011 as compared to $7.5 million in fiscal 2010.

OPERATING INCOME

Our operating income decreased $55.8 million, or 22.9%, to $187.5 million in fiscal 2011. This decrease in operating income is attributable to the factors described above.

INTEREST EXPENSE, NET

Interest expense, net, in fiscal 2011 decreased $2.7 million, or 27.6%, to $7.1 million. This decrease is attributable to $47.3 million in lower weighted-average borrowings. In fiscal 2011, weighted-average borrowings were $236 million at an effective interest rate of 3.25%, including amortization of debt issuance costs, as compared to weighted-average borrowings of $283.3 million at an effective interest rate of 3.67%, including amortization of debt issuance costs, in fiscal 2010. In fiscal 2010, we recorded $1.7 million in interest expense related to our interest rate swap agreements and a $1.7 million write-off of debt issuance costs related to the prepayment of a portion of our term loan debt.

FOREIGN CURRENCY GAIN

As part of the Acquisition, the Company entered into a forward foreign currency exchange contract to reduce its risk from exchange rate fluctuations on the purchase price of Bonnie Togs. The contract was settled on June 30, 2011 and a gain of $0.2 million was recognized in earnings during the second quarter of fiscal 2011. In addition, during fiscal 2011, the Company recorded $0.4 million net gain primarily related to our Canadian subsidiary's foreign currency exchange contracts and its foreign denominated payables.

INCOME TAXES

Our effective tax rate was approximately 37.0% in fiscal 2011 as compared to approximately 37.2% in fiscal 2010. The effective tax rate in both years was reduced by the reversal of reserves for uncertain tax positions.

NET INCOME

As a result of the factors described above, our net income for fiscal 2011 decreased $32.5 million, or 22.2%, to $114.0 million as compared to $146.5 million in fiscal 2010.

FISCAL YEAR ENDED JANUARY 1, 2011 COMPARED WITH FISCAL YEAR ENDED JANUARY 2, 2010

CONSOLIDATED NET SALES

Consolidated net sales for fiscal 2010 were $1.7 billion, an increase of $159.6 million, or 10.0%, compared to $1.6 billion in fiscal 2009 and reflects growth in all of our segments.

	For the fiscal years ended			
(dollars in thousands)	January 1, 2011	% of Total	January 2, 2010	% of Total
Net sales:				
Carter's Wholesale	$ 827,815	47.3%	$ 742,224	46.7%
Carter's Retail	546,233	31.2%	489,740	30.8%
Total Carter's	1,374,048	78.5%	1,231,964	77.5%
OshKosh Retail	264,887	15.2%	257,289	16.2%
OshKosh Wholesale	75,484	4.3%	72,448	4.5%
Total OshKosh	340,371	19.5%	329,737	20.7%
International	34,837	2.0%	27,976	1.8%
Total net sales	$ 1,749,256	100.0%	$ 1,589,677	100.0%

CARTER'S WHOLESALE SALES

Carter's wholesale sales in the United States increased $85.6 million, or 11.5%, in fiscal 2010 to $827.8 million. The increase in *Carter's* brand wholesale sales was driven by a 13% increase in units shipped, partially offset by a 1% decrease in average price per unit, as compared to fiscal 2009. The increase in units shipped was primarily driven by strong over-the-counter performance at our wholesale customers and the decrease in average price per unit primarily reflects lower average selling prices on our wholesale sales.

CARTER'S RETAIL SALES

Carter's retail sales in the United States increased $56.5 million, or 11.5%, in fiscal 2010 to $546.2 million. The increase was driven by incremental sales of $45.3 million generated by new store openings and eCommerce sales, and a comparable store sales increase of $11.9 million, or 2.5% (based on 271 locations), partially offset by the impact of store closures of $0.7 million. During fiscal 2010, on a comparable store basis, units per transaction increased 2.8%, average transaction value increased 2.2%, and average prices decreased 0.6% as compared to fiscal 2009. We attribute the increases in units per transaction and average transaction value to strong product performance in our playwear product category, improved in-store product presentation, and increased merchandising and marketing efforts. The decrease in average prices resulted from increased promotional activity given the competitive environment.

The Company's comparable store sales calculations include sales for all stores that were open during the comparable fiscal period, including remodeled stores and certain relocated stores. If a store relocates within the same center with no business interruption or material change in square footage, the sales for such store will continue to be included in the comparable store calculation. If a store relocates to another center or there is a material change in square footage, such store is treated as a new store. Stores that are closed during the period are included in the comparable store sales calculation up to the date of closing.

There were a total of 306 Carter's retail stores open as of January 1, 2011. During fiscal 2010, we opened 30 Carter's retail stores.

OSHKOSH RETAIL SALES

OshKosh retail sales in the United States increased $7.6 million, or 3.0%, in fiscal 2010 to $264.9 million. The increase was due to incremental sales of $13.7 million generated by new store openings and eCommerce sales, partially offset by the impact of a comparable store sales decline of $4.8 million, or 1.9% (based on 162 locations), and store closures of $1.2 million. On a comparable store basis, units per transaction increased 2.6%, transactions decreased 1.9%, and average prices decreased 2.6%. We attribute the increase in units per transaction to strong in-store product presentation and direct-to-consumer marketing efforts, partially offset by a decrease in transactions attributable to reduced traffic at our stores. The decrease in average prices resulted from increased promotional activity given the competitive environment.

There were a total of 180 OshKosh retail stores open as of January 1, 2011. During fiscal 2010, we opened 12 OshKosh retail stores and closed two.

OSHKOSH WHOLESALE SALES

OshKosh brand wholesale sales in the United States increased $3.0 million, or 4.2%, in fiscal 2010 to $75.5 million. The increase in *OshKosh* brand wholesale sales was driven by a 6% increase in units shipped, partially offset by a 1% decrease in average price per unit, as compared to fiscal 2009. The increase in units shipped was primarily driven by over-the-counter performance at our wholesale customers. The decrease in average price per unit primarily reflects lower average selling prices on wholesale sales.

INTERNATIONAL SALES

International sales increased $6.9 million, or 24.5%, in fiscal 2010 to $34.8 million. The increase reflects higher wholesale sales driven primarily by the expansion of our *Carter's* brand internationally.

GROSS PROFIT

Our gross profit increased $69.5 million, or 11.5%, to $673.9 million in fiscal 2010. Gross margin increased 50 basis points from 38.0% in fiscal 2009 to 38.5% in fiscal 2010.

The increase in gross margin as a percentage of net sales reflects:

(i) $18.6 million of higher consolidated retail and eCommerce gross margins driven by new store and comp store sales growth; and

(ii) $4.2 million related to growth in Carter's wholesale margins due to increased volume and improved product performance, partially offset by higher product costs, air freight and excess inventory charges.

Partially offsetting these increases were:

(i) $5.9 million due to higher air freight and excess inventory charges associated with the *Child of Mine* and *Just One You* brands, and the absence of a vendor recovery that occurred in fiscal 2009; and

(ii) $4.7 million related to the OshKosh wholesale segment, reflecting higher levels of customer support, air freight, and excess inventory charges.

The Company includes distribution costs in its selling, general, and administrative expenses. Accordingly, the Company's gross profit may not be comparable to other companies that include such distribution costs in their cost of goods sold.

SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES

Selling, general, and administrative expenses in fiscal 2010 increased $39.5 million, or 9.2%, to $468.2 million. As a percentage of net sales, selling, general, and administrative expenses was 26.8% in fiscal 2010 as compared to 27.0% in fiscal 2009.

The decrease in selling, general, and administrative expenses as a percentage of net sales reflects:

(i) controlling growth in spending to a lower rate than growth in net sales for fiscal 2010;

(ii) $1.9 million reduction in amortization expense; and

(iii) $1.0 million in fiscal 2009 of accelerated depreciation related to a facility closure.

Partially offsetting these decreases were:

(i) $22.9 million, or 10.2%, increase in consolidated retail expenses primarily due to new store growth; and

(ii) $8.7 million of incremental expenses associated with eCommerce.

INVESTIGATION EXPENSES

In connection with the investigation of customer margin support, the Company recorded pre-tax charges in the fourth quarter of fiscal 2009 of approximately $5.7 million related to professional service fees.

WORKFORCE REDUCTION, FACILITY WRITE-DOWN, AND CLOSURE COSTS

During fiscal 2009, as a result of the corporate workforce reduction, the Company recorded charges of $6.7 million consisting of $5.5 million in severance charges and other benefits, and approximately $1.2 million in asset impairment charges net of a gain on the closure and sale of our Oshkosh, Wisconsin office.

In conjunction with the plan to close the Barnesville, Georgia distribution facility, the Company recorded closure costs of approximately $4.3 million during fiscal 2009, consisting of severance and other benefits of $1.7 million, asset impairment charges of $1.1 million related to the write-down of the related land, building, and equipment, $1.0 million of accelerated depreciation (included in selling, general, and administrative expenses), and $0.5 million of other closure costs.

During fiscal 2009, the Company also wrote down the carrying value of its White House, Tennessee distribution facility by approximately $0.7 million to $2.8 million to reflect the decrease in the fair market value of the facility at that time. During the third quarter of fiscal 2009, the Company sold this facility for net proceeds of approximately $2.8 million.

ROYALTY INCOME

Our royalty income increased $1.2 million, or 3.2%, to $37.6 million in fiscal 2010.

We license the use of our *Carter's*, *Just One You*, and *Child of Mine* brands. Domestic royalty income from these brands was approximately $18.4 million, a decrease of 0.5%, or $0.1 million, as compared to fiscal 2009 due to increased sales by our *Carter's* brand and *Just One You* brand licensees, partially offset by decreased sales from our *Child of Mine* brand licensees. The *Carter's* brand internationally generated $1.9 million in royalty income in fiscal 2010 as compared to $0.7 million in fiscal 2009.

We also license the use of our *OshKosh B'gosh*, *OshKosh*, and *Genuine Kids from OshKosh* brands. Royalty income from these brands increased approximately $0.1 million, or 0.6%, to $17.3 million in fiscal 2010. This increase was driven by increased sales by our *OshKosh* brand domestic licensees. The *OshKosh* brand internationally generated $7.5 million in royalty income in fiscal 2010 as compared to $7.9 million in fiscal 2009.

OPERATING INCOME

Our operating income increased $47.6 million, or 24.4%, to $243.3 million in fiscal 2010. This increase in operating income is attributable to the factors described above.

INTEREST EXPENSE, NET

Interest expense, net, in fiscal 2010 decreased $1.9 million, or 16.2%, to $9.9 million. This decrease is attributable to $53.4 million in lower weighted-average borrowings. In fiscal 2010, weighted-average borrowings were $283.3 million at an effective interest rate of 3.67% as compared to weighted-average borrowings of $336.7 million at an effective interest rate of 3.57% in fiscal 2009. In fiscal 2010, we recorded $1.7 million in interest expense related to our interest rate swap agreements. In fiscal 2009, we recorded $2.5 million in interest expense related to our interest rate swap agreements and $0.5 million in interest expense related to our interest rate collar agreement.

INCOME TAXES

Our effective tax rate was approximately 37.2% in fiscal 2010 as compared to approximately 37.1% in fiscal 2009. The effective tax rate in both years was reduced by the reversal of reserves for uncertain tax positions.

NET INCOME

As a result of the factors described above, our net income for fiscal 2010 increased $30.8 million, or 26.7%, to $146.5 million as compared to $115.6 million in fiscal 2009.

LIQUIDITY AND CAPITAL RESOURCES

Our primary cash needs are working capital and capital expenditures. Our primary source of liquidity will continue to be cash and cash equivalents on hand, cash flow from operations, and borrowings under our revolving credit facility, and we expect that these sources will fund our ongoing requirements for working capital and capital expenditures. These sources of liquidity may be impacted by events described in our risk factors, as further discussed in Item 1A of this filing.

Net accounts receivable at December 31, 2011 were $157.8 million compared to $121.5 million at January 1, 2011 and reflects higher *Carter's* and *OshKosh* brand wholesale sales in the latter part of fiscal 2011 as compared to fiscal 2010 and incremental receivables associated with Bonnie Togs.

Net inventories at December 31, 2011 were $347.2 million compared to $298.5 million at January 1, 2011. This increase primarily reflects higher product costs, incremental inventory from our new Canadian operations, and growth in our eCommerce and retail businesses.

Product costs can vary depending on the underlying cost of raw materials, such as cotton and polyester, and the level of labor and transportation costs. A substantial portion of the Company's products utilize cotton based fabrics, the cost of which reached historically high levels in fiscal 2011. Additionally, labor costs have increased across Asia, particularly in China, where the Company currently sources approximately 50% of its products. Furthermore, transportation costs to bring product to the United States have risen due to higher fuel costs and limited capacity in the marketplace. The Company purchases finished goods largely from foreign suppliers and pays its suppliers in U.S. currency. Consequently, the Company's product costs have been adversely impacted by the devaluation of the U.S. dollar relative to foreign currencies. These inflationary and currency risk factors have resulted in higher costs of goods sold and inventory values, and have adversely impacted our profitability and cash flows from operations. We expect that higher product costs will continue to adversely impact our profitability and cash flow through at least the first half of fiscal 2012.

Net cash provided by operating activities for fiscal 2011 was $81.1 million compared to $85.8 million in fiscal 2010. The decrease in operating cash flow primarily reflects lower earnings, which were partially offset by lower net working capital requirements. Net cash provided by our operating activities in fiscal 2009 was approximately $188.9 million.

We invested approximately $45.5 million in capital expenditures during fiscal 2011, $39.8 million in fiscal 2010, and $33.6 million in fiscal 2009. Major investments included U.S. and Canadian retail store openings and remodelings, facility expansion, fixtures for our wholesale customers, and investments in information technology. We plan to invest approximately $90 - $100 million in capital expenditures in fiscal 2012 primarily for U.S. and international retail store openings and remodelings and expansion of our distribution capacity.

During fiscal 2007, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company was authorized to purchase up to $100 million of its outstanding common shares. During fiscal 2010, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company is authorized to purchase up to an additional $100 million of its outstanding common shares. As of August 13, 2010, the Company had repurchased outstanding shares in the amount totaling the entire $100 million authorized by the Board of Directors on February 16, 2007.

The Company did not repurchase any shares of its common stock during fiscal 2011 pursuant to any repurchase authorization other than the shares of common stock from the Company's employees to satisfy tax withholding obligations upon vesting of restricted stock to such employees. During fiscal 2010, the Company repurchased and retired 2,058,830 shares, or approximately $50.0 million, of its common stock at an average price of $24.29 per share. Since inception of the repurchase program and through fiscal 2011, the Company repurchased and retired 6,658,410 shares, or approximately $141.1 million, of its common stock at an average price of $21.19 per share. We have reduced common stock by the par value of such shares repurchased and have deducted the remaining excess repurchase price over par value from additional paid-in capital. Future repurchases may occur from time to time in the open market, in negotiated transactions, or otherwise. The timing and amount of any repurchases will be determined by the Company's management, based on its evaluation of market conditions, share price, other investment priorities, and other factors.

On October 15, 2010, the Company entered into a $375 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) revolving credit facility with Bank of America as sole lead arranger and administrative agent, JP Morgan Chase Bank as syndication agent, and other financial institutions. This revolving credit facility was immediately drawn upon to pay off the Company's former term loan of $232.2 million and pay transaction fees and expenses of $3.8 million, leaving approximately $130 million available under the revolver for future borrowings (net of letters of credit of approximately $8.6 million). In connection with the repayment of the Company's former term loan, in the fourth quarter of fiscal 2010 the Company wrote off approximately $1.2 million in unamortized debt issuance costs. In addition, in connection with the revolving credit facility, the Company recorded $3.5 million of debt issuance costs to be amortized over the term of the revolving credit facility (five years). On December 22, 2011, the Company and lenders amended and restated the revolving credit facility to, among other things, provide a U.S. dollar revolving facility of $340 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) and a $35 million multicurrency revolving facility ($15 million sub-limit for letters of credit and a swing line sub-limit of $5 million), which is available for borrowings by either TWCC or our Canadian subsidiary, in U.S. dollars or Canadian dollars. The term of the revolving credit facility expires October 15, 2015.

The revolving credit facility provides for two pricing options for U.S. dollar facility revolving loans: (i) revolving loans on which interest is payable quarterly at a base rate equal to the highest of (x) the Federal Funds Rate plus ½ of 1%, (y) the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A. as its prime rate, or (z) the Eurodollar Rate plus 1%, plus, in each case, an applicable margin initially equal to 1.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 1.00% to 1.50% and (ii) revolving loans on which interest accrues for one, two, three, six or if, generally available, nine or twelve month interest periods (but is payable not less frequently than every three months) at a rate of interest per annum equal to an adjusted British Bankers Association LIBOR rate, plus an applicable margin initially equal to 2.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 2.00% to 2.50%.

The revolving credit facility provides for two pricing options for multicurrency facility revolving loans denominated in U.S. dollars: (i) revolving loans on which interest is payable quarterly at a base rate equal to the highest of (x) the Federal Funds Rate plus ½ of 1%, (y) the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A., Canada Branch in Toronto as its reference rate for loans in U.S. dollars to its Canadian borrowers, or (z) the Eurodollar Rate plus 1%, plus, in each case, an applicable margin initially equal to 1.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 1.00% to 1.50% and (ii) revolving loans on which interest accrues for one, two, three, six or if, generally available, nine or twelve month interest periods (but is payable not less frequently than every three months) at a rate of interest per annum equal to an adjusted British Bankers Association LIBOR rate, plus an applicable margin initially equal to 2.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 2.00% to 2.50%.

The revolving credit facility provides for two pricing options for multicurrency facility revolving loans denominated in Canadian dollars: (i) revolving loans on which interest is payable quarterly at a base rate equal to the highest of (x) the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A., Canada Branch in Toronto as its prime rate for loans in Canadian Dollars to Canadian Borrowers and (y) the rate of interest in effect for such day for Canadian dollar bankers' acceptances having a term of one month that appears on the Reuters Screen CDOR Page plus ½ of 1%, plus, in each case, an applicable margin initially equal to 1.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 1.00% to 1.50%, and (iii) revolving loans on which interest accrues for one, two, three, six or if, generally available, nine or twelve month interest periods (but is payable not less frequently than every three months) at a rate of interest per annum equal to an adjusted British Bankers Association LIBOR rate, plus an applicable margin initially equal to 2.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 2.00% to 2.50%. Amounts outstanding under the revolving credit facility currently accrue interest at a LIBOR rate plus 2.25%.

The revolving credit facility contains and defines financial covenants, including a lease adjusted leverage ratio (defined as, with certain adjustments, the ratio of the Company's consolidated indebtedness plus six times rent expense to consolidated net income before interest, taxes, depreciation, amortization, and rent expense ("EBITDAR")) to exceed (x) if such period ends on or before December 31, 2014, 3.75:1.00 and (y) if such period ends after December 31, 2014, 3.50:1.00; and consolidated fixed charge coverage ratio (defined as, with certain adjustments, the ratio of consolidated EBITDAR to consolidated fixed charges (defined as interest plus rent expense)), for any such period to be less than 2.75:1.00. As of December 31, 2011, the Company believes it was in compliance with its financial debt covenants.

At December 31, 2011, we had approximately $236 million in revolver borrowings, exclusive of $14.9 million of outstanding letters of credit. At January 1, 2011, we had approximately $236.0 million in revolver borrowings, exclusive of $8.6 million of outstanding letters of credit. Weighted-average borrowings for fiscal 2011 were $236 million at an effective rate of 3.25% as compared to weighted-average borrowings of $283.3 million at an effective rate of 3.67% in fiscal 2010.

Our operating results are subject to risk from interest rate fluctuations on our revolving credit facility, which carries variable interest rates. As of December 31, 2011, our outstanding variable rate debt aggregated approximately $236 million. An increase or decrease of 1% in the applicable rate would increase or decrease our annual interest cost by approximately $2.4 million and could have an adverse effect on our earnings and cash flow.

On June 30, 2011, Northstar purchased all of the outstanding shares of capital stock of Bonnie Togs for total consideration of up to CAD $95 million, of which USD $61.2 million was paid in cash at closing. Such payment is subject to post-closing adjustments, which we expect to be finalized in the first quarter of fiscal 2012. The sellers may also be paid contingent consideration ranging from zero to CAD $35 million if the Canadian business meets certain earnings targets for the period beginning July 1, 2011 and ending on June 27, 2015. Sellers may receive a portion of the contingent consideration of up to CAD $25 million if interim earnings targets are met through June 2013 and June 2014, respectively. Any such payments are not recoverable in the event of any failure to meet overall targets.

The fair value of the discounted contingent consideration liability was approximately $24.3 million as of July 2, 2011 and approximately $25.6 million as of December 31, 2011. The $1.2 million change in the fair value of the liability is reflected as $2.5 million in accretion expense and $1.3 million in accumulated other comprehensive income reflecting a favorable foreign currency translation adjustment. The Company determined the fair value of the contingent consideration based upon a probability-weighted discounted cash flow analysis. The Company will continue to revalue the contingent consideration at each reporting date.

The following table summarizes as of December 31, 2011, the maturity or expiration dates of mandatory contractual obligations and commitments for the following fiscal years:

(dollars in thousands)	2012	2013	2014	2015	2016	Thereafter	Total
Long-term debt	$ --	$ --	$ --	$ 236,000	$ --	$ --	$ 236,000
Interest on debt:							
Variable rate (a)	6,004	6,004	6,004	6,004	--	--	24,016
Operating leases (see Note 11 to the Consolidated Financial Statements)	84,171	78,967	70,682	58,249	49,853	163,657	505,579
Total financial obligations	90,175	84,971	76,686	300,253	49,853	163,657	765,595
Letters of credit	14,889	--	--	--	--	--	14,889
Purchase obligations (b)	509,958	--	--	--	--	--	509,958
Total financial obligations and commitments	$ 615,022	$ 84,971	$ 76,686	$ 300,253	$ 49,853	$ 163,657	$ 1,290,442

(a) Reflects estimated variable rate interest on obligations outstanding on our revolving credit facility as of December 31, 2011 using an interest rate of 2.54% (rate in effect at December 31, 2011).

(b) Unconditional purchase obligations are defined as agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum, or variable price provisions; and the approximate timing of the transaction. The purchase obligations category above relates to commitments for inventory purchases. Amounts reflected on the accompanying audited consolidated balance sheets in accounts payable or other current liabilities are excluded from the table above.

In addition to the total contractual obligations and commitments in the table above, we have post-retirement benefit obligations and reserves for uncertain tax positions, included in other current and other long-term liabilities as further described in Note 8 and Note 9, respectively, to the accompanying audited consolidated financial statements.

Based on our current outlook, we believe that cash generated from operations and available cash, together with amounts available under our revolving credit facility, will be adequate to meet our working capital needs and capital expenditure requirements for the foreseeable future, although no assurance can be given in this regard. We may, however, need to refinance all or a portion of the principal amount, if any, outstanding under our revolving credit facility on or before October 15, 2015.

EFFECTS OF INFLATION AND DEFLATION; OPERATING COSTS

The Company is subject to both inflationary and deflationary risks. With respect to inflation, the Company is experiencing higher product costs, driven by increases in underlying component costs, such as cotton, polyester, labor rates, fuel, and transportation costs. The Company expects product costs will remain at elevated levels for at least the first half of fiscal 2012. The Company's product costs have also been adversely impacted by the devaluation of the U.S. dollar relative to foreign currencies. These inflationary and currency risk factors have resulted in higher costs of goods sold and inventory values. Although we raised our selling prices on many of our products, we were unable to fully absorb these cost increases and our profitability was adversely impacted. We do not expect in the near term to be able to fully absorb these inflated costs and our profitability may continue to be adversely impacted.

In recent years, the Company has also experienced deflationary pressure on its selling prices, in part driven by intense price competition in the young children's apparel industry. In this environment there is a risk that customers will not accept our price increases. If the Company is unable to effectively raise selling prices to help offset higher production costs, the adverse effect on our profitability may be even greater than anticipated.

SEASONALITY

We experience seasonal fluctuations in our sales and profitability due to the timing of certain holidays and key retail shopping periods, generally resulting in lower sales and gross profit in the first half of our fiscal year. More of our consolidated net sales over the past five fiscal years, excluding the effect of the Acquisition, have typically been generated in the second half of our fiscal year (approximately 57%). Accordingly, our results of operations during the first half of the year may not be indicative of the results we expect for the full year.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe are 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 may differ from these estimates under different assumptions or conditions.

Our significant accounting policies are described in Note 2 to the accompanying audited consolidated financial statements. The following discussion addresses our critical accounting policies and estimates, which are those policies that require management's most difficult and subjective judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

Revenue recognition: We recognize wholesale and eCommerce revenue after shipment of products to customers, when title passes, when all risks and rewards of ownership have transferred, the sales price is fixed or determinable, and collectability is reasonably assured. In certain cases, in which we retain the risk of loss during shipment, revenue recognition does not occur until the goods have reached the specified customer. In the normal course of business, we grant certain accommodations and allowances to our wholesale customers to assist these customers with inventory clearance or promotions. Such amounts are reflected as a reduction of net sales and are recorded based upon agreements with customers, historical trends, and annual forecasts. Retail store revenues are recognized at the point of sale. We reduce revenue for estimated customer returns and deductions. We also maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make payments and other actual and estimated deductions. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, an additional allowance could be required. Past due balances over 90 days are reviewed individually for collectability. Our credit and collections department reviews all other balances regularly. Account balances are charged off against the allowance when we believe it is probable the receivable will not be recovered.

We contract with a third-party service to provide us with the fair value of cooperative advertising arrangements entered into with certain of our major wholesale customers. Such fair value is determined based upon, among other factors, comparable market analysis for similar advertisements. In accordance with accounting guidance on consideration given by a vendor to a customer/reseller, we have included the fair value of these arrangements of approximately $3.6 million in fiscal 2011, $4.0 million in fiscal 2010, and $3.3 million in fiscal 2009 as a component of selling, general, and administrative expenses on the accompanying audited consolidated statement of operations rather than as a reduction of revenue. Amounts determined to be in excess of the fair value of these arrangements are recorded as a reduction of net sales.

Inventory: We provide reserves for slow-moving inventory equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than we project, additional write-downs may be required.

Goodwill and tradename: As of December 31, 2011, we had approximately $188.7 million in Carter's and Bonnie Togs goodwill and $306.2 million of aggregate value related to the *Carter's*, *OshKosh*, and *Bonnie Togs* tradename assets. The fair value of the *Carter's* tradename was estimated using a discounted cash flow analysis at the time of the acquisition of Carter's, Inc. which was consummated on August 15, 2001. The particular discounted cash flow approach utilized the hypothetical cost savings that accrue as a result of our ownership of the tradename. The fair value of the *OshKosh* tradename was estimated at its acquisition date, July 14, 2005, using an identical discounted cash flow analysis. The *Carter's* and *OshKosh* tradenames were determined to have indefinite lives. The *Bonnie Togs* tradename was also estimated using an identical discounted cash flow analysis at the time of acquisition on June 30, 2011. The *Bonnie Togs* tradename was determined to have a definite life and is being amortized over two years.

The carrying values of the goodwill and indefinite lived tradename assets are subject to annual impairment reviews in accordance with accounting guidance on goodwill and other intangible assets, as of the last day of each fiscal year. Impairment reviews may also be triggered by any significant events or changes in circumstances affecting our business. Factors affecting such impairment reviews include the continued market acceptance of our offered products and the development of new products. We use discounted cash flow models to determine the fair value of these assets, using assumptions we believe hypothetical marketplace participants would use. For indefinite-lived intangible assets, if the carrying amount exceeds the fair value, an impairment charge is recognized in the amount equal to that excess.

We perform impairment tests of our goodwill at our reporting unit level, which is consistent with our operating segments. The goodwill impairment test consists of a two-step process, if necessary. The first step is to compare the fair value of a reporting unit to its carrying value, including goodwill. We use discounted cash flow models to determine the fair value of a reporting unit. The assumptions used in these models are consistent with those we believe hypothetical marketplace participants would use. If the fair value of a reporting unit is less than its carrying value, the second step of the impairment test must be performed in order to determine the amount of impairment loss, if any. The second step compares the implied fair value of the reporting unit goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds its implied fair value, an impairment charge is recognized in an amount equal to that excess. The loss recognized cannot exceed the carrying amount of goodwill.

A deterioration of macroeconomic conditions may not only negatively impact the estimated operating cash flows used in our cash flow models, but may also negatively impact other assumptions used in our analyses, including, but not limited to, the estimated cost of capital and/or discount rates. Additionally, as discussed above, in accordance with accounting guidance, we are required to ensure that assumptions used to determine fair value in our analyses are consistent with the assumptions a hypothetical marketplace participant would use. As a result, the cost of capital and/or discount rates used in our analyses may increase or decrease based on market conditions and trends, regardless of whether our actual cost of capital has changed. Therefore, we may recognize an impairment of an intangible asset or assets even though realized actual cash flows are approximately equal to or greater than our previously forecasted amounts.

Accrued expenses: Accrued expenses for workers' compensation, incentive compensation, health insurance, and other outstanding obligations are assessed based on actual commitments, statistical trends, and estimates based on projections and current expectations, and these estimates are updated periodically as additional information becomes available.

Loss contingencies: We record accruals for various contingencies including legal exposures as they arise in the normal course of business. In accordance with accounting guidance on contingencies, we determine whether to disclose and accrue for loss contingencies based on an assessment of whether the risk of loss is remote, reasonably possible or probable. Our assessment is developed in consultation with our internal and external counsel and other advisors and is based on an analysis of possible outcomes under various strategies. Loss contingency assumptions involve judgments that are inherently subjective and can involve matters that are in litigation, which, by its nature is unpredictable. We believe that our assessment of the probability of loss contingencies is reasonable, but because of the subjectivity involved and the unpredictable nature of the subject matter at issue, our assessment may prove ultimately to be incorrect, which could materially impact our consolidated financial statements.

Accounting for income taxes: As part of the process of preparing the accompanying audited consolidated financial statements, we are required to estimate our actual current tax exposure (state, federal, and foreign). We assess our income tax positions and record tax benefits for all years subject to examination based upon management's evaluation of the facts, circumstances, and information available at the reporting dates. For those uncertain tax positions where it is "more likely than not" that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not "more likely than not" that a tax benefit will be sustained, no tax benefit has been recognized in the financial statements. Where applicable, associated interest is also recognized. We also assess permanent and temporary differences resulting from differing bases and treatment of items for tax and accounting purposes, such as the carrying value of intangibles, deductibility of expenses, depreciation of property, plant, and equipment, stock-based compensation expense, and valuation of inventories. Temporary differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheets. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income. Actual results could differ from this assessment if sufficient taxable income is not generated in future periods. To the extent we determine the need to establish a valuation allowance or increase such allowance in a period, we must include an expense within the tax provision in the accompanying audited consolidated statement of operations.

Foreign currency: The functional currency of the Company's foreign operations is the local currency. Assets and liabilities are translated into U.S. dollars using the current exchange rates in effect at the balance sheet date, while revenues and expenses are translated at the average exchange rates for the period. The resulting translation adjustments are recorded as a component of accumulated other comprehensive income within stockholders' equity.

Employee benefit plans: We sponsor a defined contribution plan, a frozen defined benefit pension plan and other unfunded post-retirement plans. The defined benefit pension and post-retirement plans require an actuarial valuation to determine plan obligations and related periodic costs. We use independent actuaries to assist with these calculations. Plan valuations require economic assumptions, including expected rates of return on plan assets, discount rates to value plan obligations, employee demographic assumptions including mortality rates, and changes in health care costs. The actuarial assumptions used may differ materially from actual results due to changing market and economic conditions. Actual results that differ from the actuarial assumptions are reflected as unrecognized gains and losses. Unrecognized gains and losses that exceed 10% of the greater of the plan's projected benefit obligations or market value of assets are amortized to earnings over the estimated service life of the remaining plan participants.

Significant assumptions used in valuing the Company's net obligation under its Oshkosh B'Gosh pension plan under which retirement benefits were frozen as of December 31, 2005 are expected long-term rates of return on plans assets and the discount rate used to determine the plan's projected benefit obligation. Expected long-term rates of return on plan assets were estimated to be 7.5% for the fiscal year ended December 31, 2011. Our strategy with regards to the investments in the pension plan is to earn a rate of return sufficient to fund all pension obligations as they arise. The long-term rate of return assumption considers current market trends, historical investment performance, and the portfolio mix of investments and has been set at 7.0% for fiscal 2012. The discount rate used to determine the plan's projected benefit obligation was 4.5% for the year ended December 31, 2011. This discount rate was used to calculate the present value of expected future cash flows for benefit payments. The rate used reflects the comparable long-term rate of return on a pool of high quality fixed income investments.

Any future obligations under our plan not funded from investment returns on plan assets will be funded from cash flows from operations. The assumptions used in computing our net pension expense and projected benefit obligations have a significant impact on the amounts recorded. A 0.25% change in the assumptions identified below would have had the following effects on the net pension expense and projected benefit obligation as of and for the year ended December 31, 2011.

	Increase		Decrease	
(dollars in millions)	Discount rate	Return on plan assets	Discount rate	Return on plan assets
Net pension expense	$ (0.1)	$ (0.1)	$ 0.1	$ 0.1
Projected benefit obligation	$ (2.1)	$ --	$ 2.3	$ --

The most significant assumption used to determine the Company's projected benefit obligation under its post-retirement life and medical plan under which retirement benefits were frozen in 1991 is the discount rate used to determine the plan's projected benefit obligation. A 0.25% change in the assumed discount rate would result in an increase or decrease, as applicable, in the plan's projected benefit obligation of approximately $0.2 million.

See Note 8, “Employee Benefits Plans,” to the accompanying audited consolidated financial statements for further details on rates and assumptions.

Stock-based compensation arrangements: The Company accounts for stock-based compensation in accordance with the fair value recognition provisions of accounting guidance on share-based payments. The Company adopted this guidance using the modified prospective application method of transition. The Company uses the Black-Scholes option pricing model, which requires the use of subjective assumptions. These assumptions include the following:

Volatility – This is a measure of the amount by which a stock price has fluctuated or is expected to fluctuate. The Company uses actual monthly historical changes in the market value of our stock covering the expected life of stock options being valued. An increase in the expected volatility will increase compensation expense.

Risk-free interest rate – This is the U.S. Treasury rate as of the grant date having a term equal to the expected term of the stock option. An increase in the risk-free interest rate will increase compensation expense.

Expected term – This is the period of time over which the stock options granted are expected to remain outstanding and is based on historical experience and estimated future exercise behavior. Separate groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. An increase in the expected term will increase compensation expense.

Dividend yield – The Company does not have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease compensation expense.

Forfeitures – The Company estimates forfeitures of stock-based awards based on historical experience and expected future activity.

Changes in the subjective assumptions can materially affect the estimate of fair value of stock-based compensation and consequently, the related amount recognized in the accompanying audited consolidated statement of operations.

The Company accounts for its performance-based awards in accordance with accounting guidance on share-based payments and records stock-based compensation expense over the vesting term of the awards that are expected to vest based on whether it is probable that the performance criteria will be achieved. The Company reassesses the probability of vesting at each reporting period for awards with performance criteria and adjusts stock-based compensation expense based on its probability assessment.

FORWARD-LOOKING STATEMENTS

Statements contained herein that relate to our future performance, including, without limitation, statements with respect to our anticipated results of operations or level of business for fiscal 2012 or any other future period, are forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such statements are based on current expectations only and are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated, or projected. These risks are described herein under the heading “Risk Factors” on page 7. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

CURRENCY AND INTEREST RATE RISKS

In the operation of our business, we have market risk exposures including those related to foreign currency risk and interest rates. These risks and our strategies to manage our exposure to them are discussed below.

We contract for production with third parties primarily in Asia. While these contracts are stated in United States dollars, there can be no assurance that the cost for the future production of our products will not be affected by exchange rate fluctuations between the United States dollar and the local currencies of these contractors. Due to the number of currencies involved, we cannot quantify the potential impact of future currency fluctuations on net income (loss) in future years. In order to manage this risk, we source products from over 90 vendors in over 15 countries, providing us with flexibility in our production should significant fluctuations occur between the United States dollar and various local currencies. To date, such exchange fluctuations have not had a material impact on our financial condition or results of operations.

Transactions by our Canadian subsidiary may be denominated in a currency other than the entity's functional currency, which is the Canadian dollar. Fluctuations in exchange rates, primarily between the United States dollar and the Canadian dollar, may affect our results of operations, financial position, and cash flows. Our Canadian subsidiary employs foreign exchange contracts to hedge foreign currency exchange rate risk associated with the procurement of U.S. dollar denominated finished goods destined for the Canadian market. These foreign exchange contracts are marked to market at the end of each reporting period, which could result in earnings volatility.

Our operating results are subject to risk from interest rate fluctuations on our revolving credit facility, which carries variable interest rates. As of December 31, 2011, our outstanding variable rate debt aggregated approximately $236.0 million. An increase or decrease of 1% in the applicable rate would increase or decrease our annual interest cost by $2.4 million and could have an adverse effect on our net income (loss) and cash flow.

OTHER RISKS

We enter into various purchase order commitments with our suppliers. We can cancel these arrangements, although in some instances, we may be subject to a termination charge reflecting a percentage of work performed prior to cancellation. As we rely exclusively on our full-package global sourcing network, we could incur more of these termination charges, which could increase our cost of goods sold and have a material impact on our business.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

CARTER'S, INC.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholder's of Carter's, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Carter's Inc. and its subsidiaries at December 31, 2011 and January 1, 2011 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2011 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011 based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

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

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

/s/ PricewaterhouseCoopers LLP

Stamford, CT
February 29, 2012

CARTER'S, INC.
CONSOLIDATED BALANCE SHEETS
(dollars in thousands, except for share data)

	December 31, 2011	January 1, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 233,494	$ 247,382
Accounts receivable, net of reserve for doubtful accounts of $5,020 in fiscal 2011 and $3,251 in fiscal 2010	157,754	121,453
Finished goods inventories, net	347,215	298,509
Prepaid expenses and other current assets	18,519	17,372
Deferred income taxes	25,165	31,547
Total current assets	782,147	716,263
Property, plant, and equipment, net	122,346	94,968
Tradenames	306,176	305,733
Goodwill	188,679	136,570
Deferred debt issuance costs, net	2,624	3,332
Other intangible assets, net	258	--
Other assets	479	316
Total assets	$ 1,402,709	$ 1,257,182
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current maturities of long-term debt	$ --	$ --
Accounts payable	102,804	116,481
Other current liabilities	49,949	66,891
Total current liabilities	152,753	183,372
Long-term debt	236,000	236,000
Deferred income taxes	114,421	113,817
Other long-term liabilities	93,826	44,057
Total liabilities	597,000	577,246
Commitments and contingencies		
Stockholders' equity:		
Preferred stock; par value $.01 per share; 100,000 shares authorized; none issued or outstanding at December 31, 2011 and January 1, 2011	--	--
Common stock, voting; par value $.01 per share; 150,000,000 shares authorized; 58,595,421 and 57,493,567 shares issued and outstanding at December 31, 2011 and January 1, 2011, respectively	586	575
Additional paid-in capital	231,738	210,600
Accumulated other comprehensive loss	(11,282)	(1,890)
Retained earnings	584,667	470,651
Total stockholders' equity	805,709	679,936
Total liabilities and stockholders' equity	$ 1,402,709	$ 1,257,182

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

CARTER'S, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(dollars in thousands, except per share data)

	For the fiscal years ended		
	December 31, 2011	**January 1, 2011**	**January 2, 2010**
Net sales	$ 2,109,734	$ 1,749,256	$ 1,589,677
Cost of goods sold	1,418,582	1,075,384	985,323
Gross profit	691,152	673,872	604,354
Selling, general, and administrative expenses	540,960	468,192	428,674
Investigation expenses	--	--	5,717
Workforce reduction, facility write-down, and closure costs	--	--	10,771
Royalty income	(37,274)	(37,576)	(36,421)
Operating income	187,466	243,256	195,613
Interest income	(386)	(575)	(219)
Interest expense	7,534	10,445	12,004
Foreign currency gain	(570)	--	--
Income before income taxes	180,888	233,386	183,828
Provision for income taxes	66,872	86,914	68,188
Net income	$ 114,016	$ 146,472	$ 115,640
Basic net income per common share (Note 2)	$ 1.96	$ 2.50	$ 2.03
Diluted net income per common share (Note 2)	$ 1.94	$ 2.46	$ 1.97

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

CARTER'S, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(dollars in thousands)

	For the fiscal years ended		
	December 31, 2011	**January 1, 2011**	**January 2, 2010**
Cash flows from operating activities:			
Net income	$ 114,016	$ 146,472	$ 115,640
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	32,548	31,727	32,274
Amortization of Bonnie Togs inventory step-up	6,672	--	--
Non-cash revaluation of contingent consideration	2,484	--	--
Amortization of *Bonnie Togs* tradename and non-compete agreements	187	--	--
Amortization of debt issuance costs	708	2,616	1,129
Non-cash stock-based compensation expense	9,644	7,303	6,775
Non-cash asset impairment and facility write-down charges	--	--	4,669
Loss (gain) on disposal/sale of property, plant, and equipment	139	(118)	(962)
Income tax benefit from stock-based compensation	(6,900)	(9,249)	(11,750)
Deferred income taxes	9,128	4,370	2,270
Effect of changes in operating assets and liabilities:			
Accounts receivable	(33,222)	(39,359)	3,358
Inventories	(20,571)	(84,509)	(10,514)
Prepaid expenses and other assets	(948)	(6,269)	(1,363)
Accounts payable	(18,745)	18,935	19,155
Other liabilities	(14,066)	13,902	28,178
Net cash provided by operating activities	81,074	85,821	188,859
Cash flows from investing activities:			
Capital expenditures	(45,495)	(39,782)	(33,600)
Acquisition of Bonnie Togs, net of cash acquired	(61,207)	--	--
Proceeds from sale of property, plant, and equipment	10	286	4,084
Net cash used in investing activities	(106,692)	(39,496)	(29,516)
Cash flows from financing activities:			
Payments on Term Loan	--	(334,523)	(3,503)
Proceeds from revolving credit facility	--	236,000	--
Payments of debt issuance costs	--	(3,479)	--
Repurchases of common stock	--	(50,000)	--
Income tax benefit from stock-based compensation	6,900	9,249	11,750
Withholdings from vesting of restricted stock	(2,181)	(927)	--
Proceeds from exercise of stock options	6,786	9,696	5,102
Net cash provided by (used in) financing activities	11,505	(133,984)	13,349
Effect of exchange rate changes on cash	225	--	--
Net (decrease) increase in cash and cash equivalents	(13,888)	(87,659)	172,692
Cash and cash equivalents at beginning of period	247,382	335,041	162,349
Cash and cash equivalents at end of period	$ 233,494	$ 247,382	$ 335,041

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

CARTER'S, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(dollars in thousands, except for share data)

	Common stock	Additional paid-in capital	Accumulated other comprehensive income (loss)	Retained earnings	Total stockholders' equity
Balance at January 3, 2009	$ 563	$ 211,767	$ (7,318)	$ 208,539	$ 413,551
Income tax benefit from stock-based compensation		11,750			11,750
Exercise of stock options (1,528,096 shares)	15	5,087			5,102
Restricted stock activity	3	(3)			--
Stock-based compensation expense		6,012			6,012
Issuance of common stock (34,404 shares)		717			717
Comprehensive income:					
Net income				115,640	115,640
Unrealized gain on OshKosh defined benefit plan, net of tax of $1,349			2,309		2,309
Unrealized gain on Carter's post-retirement benefit obligation, net of tax of $100			131		131
Unrealized gain on interest rate swap, net of tax of $238			405		405
Realized gain on interest rate collar, net of tax of $216			407		407
Total comprehensive income	--	--	3,252	115,640	118,892
Balance at January 2, 2010	581	235,330	(4,066)	324,179	556,024
Income tax benefit from stock-based compensation		9,249			9,249
Exercise of stock options (1,326,099 shares)	13	9,683			9,696
Withholdings from vesting of restricted stock (31,004 shares)		(927)			(927)
Restricted stock activity	1	(1)			--
Stock-based compensation expense		6,396			6,396
Issuance of common stock (26,147 shares)		850			850
Repurchases of common stock (2,058,830 shares)	(20)	(49,980)			(50,000)
Comprehensive income:					
Net income				146,472	146,472
Unrealized gain on OshKosh defined benefit plan, net of tax of $620			1,137		1,137
Unrealized gain on Carter's post-retirement benefit obligation, net of tax of $100			185		185
Realized gain on interest rate swap, net of tax of $97			166		166
Unrealized gain on interest rate swap, net of tax of $378			688		688
Total comprehensive income	--	--	2,176	146,472	148,648
Balance at January 1, 2011	575	210,600	(1,890)	470,651	679,936
Income tax benefit from stock-based compensation		6,900			6,900
Exercise of stock options (821,336 shares)	8	6,778			6,786
Restricted stock activity	4	(4)			--
Stock-based compensation expense		8,474			8,474
Issuance of common stock (38,520 shares)		1,170			1,170
Withholdings from vesting of restricted stock (70,827 shares)	(1)	(2,180)			(2,181)
Comprehensive income (loss):					
Net income				114,016	114,016
Unrealized loss on OshKosh defined benefit plan, net of tax of $3,660			(6,206)		(6,206)
Unrealized loss on Carter's post-retirement benefit obligation, net of tax of $36			(62)		(62)
Cumulative foreign currency translation adjustments			(3,124)		(3,124)
Total comprehensive income (loss)	--	--	(9,392)	114,016	104,624
Balance at December 31, 2011	$ 586	$ 231,738	$ (11,282)	$ 584,667	$ 805,709

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

NOTE 1 – THE COMPANY:

Carter's, Inc. and its wholly owned subsidiaries (collectively, the "Company," "we," "us," "its," and "our") design, source, and market branded childrenswear under the *Carter's*, *Child of Mine*, *Just One You*, *Precious Firsts*, *OshKosh*, and other brands. Our products are sourced through contractual arrangements with manufacturers worldwide for wholesale distribution to major domestic and international retailers and for our 359 Carter's, 170 OshKosh, and 65 international retail stores that market our brand name merchandise and other licensed products manufactured by other companies.

On June 30, 2011, Northstar Canadian Operations Corp. ("Northstar"), a newly formed Canadian corporation and a wholly owned subsidiary of The William Carter Company (a wholly owned subsidiary of Carter's, Inc.), purchased all of the outstanding shares of capital stock of the entities comprising Bonnie Togs (the "Acquisition"), a Canadian specialty retailer focused exclusively on the children's apparel and accessories marketplace. Bonnie Togs sells products under the *Carter's* and *OshKosh* brands, as well as other brands. Prior to the Acquisition, Bonnie Togs was Carter's principal licensee in Canada since 2007 and was a significant international licensee of the Company.

As a result of the Acquisition, the Company reevaluated and realigned certain of its reportable segments, please see Note 15, "Segment Information."

Our audited consolidated balance sheet as of December 31, 2011 includes Bonnie Togs. The audited consolidated statement of operations for the fiscal year ended December 31, 2011 includes Bonnie Togs effective July 1, 2011.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

PRINCIPLES OF CONSOLIDATION:

The accompanying audited consolidated financial statements include the accounts of Carter's, Inc. and its wholly owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

RECLASSIFICATIONS:

Certain prior year amounts have been reclassified for comparative purposes.

FISCAL YEAR:

Our fiscal year ends on the Saturday, in December or January, nearest the last day of December. The accompanying audited consolidated financial statements reflect our financial position as of December 31, 2011 and January 1, 2011 and results of operations for the fiscal years ended December 31, 2011, January 1, 2011, and January 2, 2010. The fiscal years ended December 31, 2011 (fiscal 2011), January 1, 2011 (fiscal 2010), and January 2, 2010 (fiscal 2009), each contain 52 weeks.

USE OF ESTIMATES IN THE PREPARATION OF THE CONSOLIDATED FINANCIAL STATEMENTS:

The preparation of these consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities, at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

FOREIGN CURRENCY TRANSLATION AND TRANSACTIONS:

The functional currency of the Company's foreign operations is the local currency. Assets and liabilities are translated into U.S. dollars using the current exchange rates in effect at the balance sheet date, while revenues and expenses are translated at the average exchange rates for the period. The resulting translation adjustments are recorded as a component of accumulated other comprehensive income (loss) within the audited consolidated statements of changes in stockholders' equity.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

The Company also recognizes gains and losses on transactions that are denominated in a currency other than the respective entity's functional currency. Foreign currency transaction gains and losses include the mark-to-market adjustment related to open foreign currency exchange contracts, amounts realized on the settlement of foreign currency exchange contracts, and intercompany loans with foreign subsidiaries that are of a short-term investment nature. Foreign currency transaction gains and losses are recognized in earnings and separately disclosed in the audited consolidated statements of operations.

CASH AND CASH EQUIVALENTS:

We consider all highly liquid investments that have original maturities of three months or less to be cash equivalents. Our cash and cash equivalents consist of deposit accounts and cash management funds invested in U.S. Treasury securities. We had cash deposits, in excess of deposit insurance limits, in two U.S. banks and one Canadian bank at December 31, 2011.

ACCOUNTS RECEIVABLE:

Approximately 79.9% of our gross accounts receivable at December 31, 2011 and 82.9% at January 1, 2011 were from our ten largest wholesale customers. Of these customers, three had individual receivable balances in excess of 10% of our gross accounts receivable (but not more than 19%) at December 31, 2011. At January 1, 2011, four customers had individual receivable balances in excess of 10% of our gross accounts receivable (but not more than 17%). Sales to these customers represent 72.9% and 78.6% of total wholesale net sales for fiscal 2011 and fiscal 2010, respectively. In fiscal 2011, no one customer accounted for 10% or more of our consolidated net sales. In fiscal 2010, one customer accounted for approximately 10% of our consolidated net sales.

Components of accounts receivable as of December 31, 2011 and January 1, 2011 are as follows:

(dollars in thousands)	December 31, 2011	January 1, 2011
Trade receivables, net	$ 138,070	$ 107,804
Royalties receivable	9,224	9,531
Tenant allowances and other receivables	10,460	4,118
Total	$ 157,754	$ 121,453

INVENTORIES:

Inventories are stated at the lower of cost (first-in, first-out basis for wholesale inventory and average cost for retail inventories) or market. We provide reserves for slow-moving inventory equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions.

PROPERTY, PLANT, AND EQUIPMENT:

Property, plant, and equipment are stated at cost, less accumulated depreciation and amortization. When fixed assets are sold or otherwise disposed of, the accounts are relieved of the original cost of the assets, and the related accumulated depreciation and any resulting profit or loss is credited or charged to income. For financial reporting purposes, depreciation and amortization are computed on the straight-line method over the estimated useful lives of the assets as follows: buildings from 15 to 26 years and retail store fixtures, equipment, and computers from 3 to 10 years. Leasehold improvements and fixed assets purchased under capital leases, if any, are amortized over the lesser of the asset life or related lease term. We capitalize the cost of our fixtures designed and purchased for use at major wholesale accounts. The cost of these fixtures is amortized over a three-year period.

GOODWILL AND OTHER INTANGIBILE ASSETS:

In connection with the Acquisition, the Company recorded estimates of goodwill and other intangible assets including a *Bonnie Togs* tradename and non-compete agreements for certain executives of Bonnie Togs, in accordance with accounting guidance on business combinations.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

Goodwill as of December 31, 2011, represents the excess of the cost of the acquisition of Carter's, Inc., which was consummated on August 15, 2001, and the acquisition of Bonnie Togs, which was consummated on June 30, 2011, over the fair value of the net assets acquired. Our goodwill is not deductible for tax purposes. The *OshKosh* tradename was recorded in connection with the acquisition of OshKosh on July 14, 2005 and adjusted in fiscal 2007 to reflect the impairment of the value. Our *Carter's* and *Bonnie Togs* goodwill and *Carter's* and *OshKosh* tradenames are deemed to have indefinite lives and are not being amortized. The *Bonnie Togs* tradename and non-compete agreements for certain executives have definite lives and are being amortized over two and four years, respectively.

The carrying values of the goodwill and tradename assets are subject to annual impairment reviews in accordance with accounting guidance on goodwill and other intangible assets, as of the last day of each fiscal year. Impairment reviews may also be triggered by any significant events or changes in circumstances affecting our business. Factors affecting such impairment reviews include the continued market acceptance of our offered products and the development of new products. Based upon our most recent assessment performed as of December 31, 2011, we determined that there is no impairment of our goodwill or tradename assets. We use discounted cash flow models to determine the fair value of these assets, using assumptions we believe hypothetical marketplace participants would use. For indefinite-lived intangible assets, if the carrying amount exceeds the fair value, an impairment charge is recognized in the amount equal to that excess.

We perform impairment tests of our goodwill at our reporting unit level. The goodwill impairment test consists of a two-step process, if necessary. The first step is to compare the fair value of a reporting unit to its carrying value, including goodwill. The assumptions used in these models are consistent with those we believe hypothetical marketplace participants would use. If the fair value of a reporting unit is less than its carrying value, the second step of the impairment test must be performed in order to determine the amount of impairment loss, if any. The second step compares the implied fair value of the reporting unit goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds its implied fair value, an impairment charge is recognized in an amount equal to that excess. The loss recognized cannot exceed the carrying amount of goodwill.

A deterioration of macroeconomic conditions may not only negatively impact the estimated operating cash flows used in our cash flow models, but may also negatively impact other assumptions used in our analyses, including, but not limited to, the estimated cost of capital and/or discount rates. Additionally, as discussed above, in accordance with accounting guidance, we are required to ensure that assumptions used to determine fair value in our analyses are consistent with the assumptions a hypothetical marketplace participant would use. As a result, the cost of capital and/or discount rates used in our analyses may increase or decrease based on market conditions and trends, regardless of whether our Company's actual cost of capital has changed. Therefore, our Company may recognize an impairment of an intangible asset or assets even though realized actual cash flows are approximately equal to or greater than our previously forecasted amounts.

The Company's intangible assets were as follows:

		Fiscal 2011			Fiscal 2010		
(dollars in thousands)	Weighted-average useful life	Gross amount	Accumulated amortization	Net amount	Gross amount	Accumulated amortization	Net amount
Carter's goodwill (1)	Indefinite	$ 136,570	$ --	$ 136,570	$ 136,570	$ --	$ 136,570
Bonnie Togs goodwill (2)	Indefinite	$ 52,109	$ --	$ 52,109	$ --	$ --	$ --
Carter's tradename	Indefinite	$ 220,233	$ --	$ 220,233	$ 220,233	$ --	$ 220,233
OshKosh tradename	Indefinite	$ 85,500	$ --	$ 85,500	$ 85,500	$ --	$ 85,500
Bonnie Togs tradename	2 years	$ 592	$ 150	$ 442	$ --	$ --	$ --
Non-compete agreements	4 years	$ 295	$ 37	$ 258	$ --	$ --	$ --

(1) $45.9 million of which relates to the Carter's wholesale segment, $82.0 million of which relates to the Carter's retail segment, and $8.6 million of which relates to the international segment. Please see Note 15, "Segment Information" for more information.
(2) Relates to the international segment.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

The following is a reconciliation of Bonnie Togs intangible assets:

(dollars in thousands)	***Bonnie Togs*** **Goodwill**	***Bonnie Togs*** **Tradename**	**Non-compete agreements**
Gross Balance at June 30, 2011	$ 54,480	$ 623	$ 311
Purchase accounting adjustments	476	--	--
Foreign currency exchange adjustments	(2,847)	(31)	(16)
Gross Balance at December 31, 2011	$ 52,109	$ 592	$ 295

Amortization expense for intangible assets subject to amortization was approximately $0.2 million for the fiscal year ended December 31, 2011, $1.8 million for the fiscal year ended January 1, 2011, and $3.7 million for the fiscal year ended January 2, 2010.

IMPAIRMENT OF OTHER LONG-LIVED ASSETS:

We review other long-lived assets, including property, plant, and equipment, and licensing agreements, for impairment whenever events or changes in circumstances indicate that the carrying amount of such an asset may not be recoverable. Management will determine whether there has been a permanent impairment on such assets held for use in the business by comparing anticipated undiscounted future cash flows from the use and eventual disposition of the asset or asset group to the carrying value of the asset. The amount of any resulting impairment will be calculated by comparing the carrying value to fair value, which may be estimated using the present value of the same cash flows. Long-lived assets that meet the definition of held for sale will be valued at the lower of carrying amount or fair value.

DEFERRED DEBT ISSUANCE COSTS:

Debt issuance costs are deferred and amortized to interest expense using the straight-line method, which approximates the effective interest method, over the life of the related debt. During the second quarter of fiscal 2010, the Company wrote off approximately $0.5 million of unamortized debt issuance costs related to the $100 million prepayment of a portion of its former term loan debt. On October 15, 2010, the Company entered into a $375 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) revolving credit facility with Bank of America as sole lead arranger and administrative agent, JP Morgan Chase Bank as syndication agent, and other financial institutions. The revolving credit facility was immediately drawn upon to pay off the Company's former term loan of $232.2 million and pay transaction fees and expenses of $3.8 million, leaving approximately $130 million available under the revolver for future borrowings (net of letters of credit of approximately $8.6 million). In connection with the repayment of the Company's former term loan, in the fourth quarter of fiscal 2010 the Company wrote off approximately $1.2 million in unamortized debt issuance costs. In addition, in connection with the revolving credit facility, the Company recorded $3.5 million of debt issuance costs to be amortized over the term of the revolving credit facility (five years). Amortization approximated $0.7 million, $0.9 million (exclusive of $1.7 million related to prepayments), and $1.1 million for the fiscal years ended December 31, 2011, January 1, 2011, and January 2, 2010, respectively.

CASH FLOW HEDGES:

Our former senior credit facility required us to hedge at least 25% of our variable rate debt under this facility. The Company entered into interest rate swap agreements in order to hedge the risk of interest rate fluctuations. These interest rate swap agreements were designated as cash flow hedges of the variable interest payments on a portion of our variable rate former term loan debt. Our interest rate swap agreements were traded in the over-the-counter market. Fair values were based on quoted market prices for similar assets or liabilities or determined using inputs that use as their basis readily observable market data that are actively quoted and can be validated through external sources, including third-party pricing services, brokers, and market transactions.

In connection with the repayment of the Company's former term loan in fiscal 2010, the Company terminated its two remaining interest rate swap agreements totaling $100.0 million originally scheduled to mature in January 2011.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

The unrealized gain related to the swap agreements, net of tax, was approximately $0.7 million for the fiscal year ended January 1, 2011 and $0.4 million for the fiscal year ended January 2, 2010. The realized gain related to the swap agreements, net of tax, was approximately $0.2 million for the fiscal year ended January 1, 2011. These unrealized gains and losses and realized gain, net of tax, are included within accumulated other comprehensive (loss) income on the accompanying audited consolidated balance sheets. In fiscal 2010 and 2009, we recorded $1.7 million and $2.5 million, respectively, in interest expense related to the swap agreements.

On May 25, 2006, we entered into an interest rate collar agreement (the "collar") with a LIBOR floor of 4.3% and a ceiling of 5.5%. The collar covered $100 million of our variable rate former term loan debt and was designated as a cash flow hedge of the variable interest payments on such debt. The collar matured on January 31, 2009. For the fiscal year ended January 2, 2010, the Company realized a gain of approximately $0.4 million, net of taxes, related to the collar and are included within accumulated other comprehensive (loss) income on the accompanying audited consolidated balance sheets. In fiscal 2009, we recorded $0.5 million in interest expense related to the collar.

ACCUMULATED OTHER COMPREHENSIVE (LOSS) INCOME:

Accumulated other comprehensive (loss) income, shown as a component of stockholders' equity on the accompanying audited consolidated balance sheets, reflects adjustments to the Company's defined benefit and post-retirement plan assets and liabilities as of the end of the year, and the gains and losses and prior service costs or credits, net of tax, that arise during the period but that are not recognized as components of net periodic benefit cost pursuant to accounting guidance on pensions and post-retirement benefits. Accumulated other comprehensive (loss) income also includes cumulative translation adjustments related to the translation of Company's foreign results. The functional currency of the Company's foreign operations is the local currency. Assets and liabilities are translated into U.S. dollars using the current exchange rates in effect at the balance sheet date, while revenues and expenses are translated at the average exchange rates for the period. Included in accumulated other comprehensive (loss) income are realized gains and unrealized gains or losses on the Company's interest rate swap and collar agreements, net of taxes, which are not included in the determination of net income. These realized gains and unrealized gains and losses are recorded directly into accumulated other comprehensive (loss) income and are referred to as comprehensive (loss) income items.

Accumulated other comprehensive (loss) income is summarized as follows:

(dollars in thousands)	Pension / post-retirement liability adjustment	Cumulative Translation Adjustment	Derivative hedging adjustment	Accumulated other comprehensive income
Balance at January 3, 2009	$ (5,652)	$ --	$ (1,666)	$ (7,318)
Current year change	2,440	--	812	3,252
Balance at January 2, 2010	(3,212)	--	(854)	(4,066)
Current year change	1,322	--	854	2,176
Balance at January 1, 2011	(1,890)	--	--	(1,890)
Current year change	(6,268)	(3,124)	--	(9,392)
Balance at December 31, 2011	$ (8,158)	$ (3,124)	$ --	$ (11,282)

As of December 31, 2011, other accumulated comprehensive (loss) income for the pension/post-retirement liability adjustment are net of tax benefit of $3.7 million.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

REVENUE RECOGNITION:

Revenues consist of sales to customers, net of returns, accommodations, allowances, deductions, and cooperative advertising. We consider revenue realized or realizable and earned when the product has been shipped, when title passes, when all risks and rewards of ownership have transferred, the sales price is fixed or determinable, and collectability is reasonably assured. In certain cases, in which we retain the risk of loss during shipment, revenue recognition does not occur until the goods have reached the specified customer. In the normal course of business, we grant certain accommodations and allowances to our wholesale domestic and international customers. We provide accommodations and allowances to our major wholesale customers in order to assist these customers with inventory clearance and promotions. Such amounts are reflected as a reduction of net sales and are recorded based on agreements with customers, historical trends, and annual forecasts. Retail store revenues are recognized at the point of sale. We reduce revenue for customer returns and deductions. We also maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make payments and other actual and estimated deductions. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, an additional allowance could be required. Past due balances over 90 days are reviewed individually for collectability. Our credit and collections department reviews all other balances regularly. Account balances are charged off against the allowance when we feel it is probable the receivable will not be recovered.

We contract with a third-party service to provide us with the fair value of cooperative advertising arrangements entered into with certain of our major wholesale customers. Such fair value is determined based upon, among other factors, comparable market analysis for similar advertisements. In accordance with accounting guidance on consideration given by a vendor to a customer/reseller, we have included the fair value of these arrangements of approximately $3.6 million in fiscal 2011, $4.0 million in fiscal 2010, and $3.3 million in fiscal 2009 as a component of selling, general, and administrative expenses on the accompanying audited consolidated statement of operations rather than as a reduction of revenue. Amounts determined to be in excess of the fair value of these arrangements are recorded as a reduction of net sales.

ACCOUNTING FOR SHIPPING AND HANDLING FEES AND COSTS:

Shipping and handling costs include related labor costs, third-party shipping costs, shipping supplies, and certain distribution overhead. Such costs are generally absorbed by us and are included in selling, general, and administrative expenses. These costs amounted to approximately $45.2 million for fiscal 2011, $33.3 million for fiscal 2010, and $31.9 million for fiscal 2009.

With respect to the freight component of our shipping and handling costs, certain customers arrange for shipping and pay the related freight costs directly to third parties. However, in the event that we arrange and pay the freight for these customers and bill them for this service, such amounts billed are included in revenue and the related cost is charged to cost of goods sold. In addition, shipping and handling costs billed to our eCommerce customers are included in revenue and the related cost is charged to cost of goods sold. For fiscal years 2011, 2010, and 2009, the Company billed customers approximately $5.3 million, $1.5 million, and $0.1 million, respectively.

ROYALTIES AND LICENSE FEES:

We license the *Carter's*, *Just One You*, *Precious Firsts*, *Child of Mine*, *OshKosh B'gosh*, *OshKosh*, and *Genuine Kids from OshKosh* trademarks to other companies for use on baby and young children's products, including bedding, outerwear, sleepwear, shoes, underwear, socks, room décor, toys, stationery, hair accessories, furniture, gear and related products. These royalties are recorded as earned, based upon the sales of licensed products by our licensees and reported as royalty income in the statement of operations.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

STOCK-BASED COMPENSATION ARRANGEMENTS:

In accordance with the fair value recognition provisions of accounting guidance on share-based payments, the Company recognizes stock-based compensation expense for its share-based payments based on the fair value of the awards at the grant date.

We determine the fair value of stock options using the Black-Scholes option pricing model, which requires the use of the following subjective assumptions:

Volatility – This is a measure of the amount by which a stock price has fluctuated or is expected to fluctuate. The Company uses actual monthly historical changes in the market value of our stock covering the expected life of options being valued. An increase in the expected volatility will increase stock-based compensation expense.

Risk-free interest rate – This is the U.S. Treasury rate as of the grant date having a term equal to the expected term of the stock option. An increase in the risk-free interest rate will increase stock-based compensation expense.

Expected term – This is the period of time over which the stock options granted are expected to remain outstanding and is based on historical experience and estimated future exercise behavior. Separate groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. An increase in the expected term will increase stock-based compensation expense.

Dividend yield – The Company does not have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease stock-based compensation expense.

Forfeitures – The Company estimates forfeitures of stock-based awards based on historical experience and expected future activity.

Changes in the subjective assumptions can materially affect the estimate of fair value of stock-based compensation and consequently, the related amount recognized in the accompanying audited consolidated statements of operations.

The Company accounts for its performance-based awards in accordance with accounting guidance on share-based payments and records stock-based compensation expense over the vesting term of the awards that are expected to vest based on whether it is probable that the performance criteria will be achieved. The Company reassesses the probability of vesting at each reporting period for awards with performance criteria and adjusts stock-based compensation expense based on its probability assessment.

The fair value of restricted stock is determined based on the quoted closing price of our common stock on the date of grant.

INCOME TAXES:

The accompanying audited consolidated financial statements reflect current and deferred tax provisions. The deferred tax provision is determined under the liability method. Deferred tax assets and liabilities are recognized based on differences between the book and tax bases of assets and liabilities using presently enacted tax rates. Valuation allowances are established when it is "more likely than not" that a deferred tax asset will not be recovered. The provision for income taxes is generally the sum of the amount of income taxes paid or payable for the year as determined by applying the provisions of enacted tax laws to the taxable income for that year, the net change during the year in our deferred tax assets and liabilities, and the net change during the year in any valuation allowances.

We assess our income tax positions and record tax benefits for all years subject to examination based upon management's evaluation of the facts, circumstances, and information available at the reporting dates. For those uncertain tax positions where it is "more likely than not" that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not "more likely than not" that a tax benefit will be sustained, no tax benefit has been recognized in the consolidated financial statements. Where applicable, associated interest is also recognized and recorded in interest expense.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

SUPPLEMENTAL CASH FLOW INFORMATION:

Interest paid in cash approximated $7.0 million for the fiscal year ended December 31, 2011, $7.8 million for the fiscal year ended January 1, 2011, and $10.5 million for the fiscal year ended January 2, 2010. Income taxes paid in cash approximated $61.6 million for the fiscal year ended December 31, 2011, $71.7 million for the fiscal year ended January 1, 2011, and $54.6 million for the fiscal year ended January 2, 2010.

EARNINGS PER SHARE:

The Company calculates basic and diluted net income per common share in accordance with accounting guidance which requires earnings per share to be calculated pursuant to the two-class method for unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid).

Basic net income per share is calculated by dividing net income for the period by the weighted-average common shares outstanding for the period. Diluted net income per share includes the effect of dilutive instruments, such as stock options and restricted stock awards, and uses the average share price for the period in determining the number of shares that are to be added to the weighted-average number of shares outstanding.

For the fiscal years ended December 31, 2011, January 1, 2011, and January 2, 2010, antidilutive shares of 935,050, 599,000, and 1,035,500 respectively, were excluded from the computations of diluted earnings per share.

The following is a reconciliation of basic common shares outstanding to diluted common and common equivalent shares outstanding:

	For the fiscal years ended		
	December 31, 2011	January 1, 2011	January 2, 2010
Weighted-average number of common and common equivalent shares outstanding:			
Basic number of common shares outstanding	57,513,748	58,135,868	56,653,460
Dilutive effect of unvested restricted stock	129,262	117,708	119,886
Dilutive effect of stock options	571,907	762,473	1,574,378
Diluted number of common and common equivalent shares outstanding	58,214,917	59,016,049	58,347,724
Basic net income per common share:			
Net income	$ 114,016,000	$ 146,472,000	$ 115,640,000
Income allocated to participating securities	(1,210,944)	(1,202,948)	(910,980)
Net income available to common shareholders	$ 112,805,056	$ 145,269,052	$ 114,729,020
Basic net income per common share	$ 1.96	$ 2.50	$ 2.03
Diluted net income per common share:			
Net income	$ 114,016,000	$ 146,472,000	$ 115,640,000
Income allocated to participating securities	(1,199,147)	(1,187,501)	(886,537)
Net income available to common shareholders	$ 112,816,853	$ 145,284,499	$ 114,753,463
Diluted net income per common share	$ 1.94	$ 2.46	$ 1.97

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (Continued)

EMPLOYEE BENEFIT PLANS:

The Company accounts for its employee benefit plans in accordance with accounting guidance on defined benefit pension and other post-retirement plans which requires an employer to recognize the over-funded or under-funded status of a defined benefit post-retirement plan (other than a multi-employer plan) as an asset or liability on its balance sheet. It also requires an employer to recognize as a component of other comprehensive income, net of tax, the gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefit cost pursuant to Financial Accounting Standards Board ("FASB") Accounting Standards Codification 715-30. These costs are then subsequently recognized as components of net periodic benefit cost in the consolidated statement of operations.

We adjusted accumulated other comprehensive (loss) income related to the Company's post-retirement benefit obligations by approximately $98,000, or $62,000, net of tax, in fiscal 2011, $0.3 million, or $0.2 million, net of tax, in fiscal 2010, and $0.2 million, or $0.1 million, net of tax, in fiscal 2009 to reflect changes in underlying assumptions including projected claims and population. In addition, the Company recorded an unrealized loss of $9.9 million, or $6.2 million, net of tax, in fiscal 2011, an unrealized gain of $1.8 million, or $1.1 million, net of tax, in fiscal 2010, and an unrealized gain of $3.7 million, or $2.3 million, net of tax, during fiscal 2009 to the OshKosh pension plan asset and accumulated other comprehensive (loss) income to reflect changes in the funded status of this plan.

RECENT ACCOUNTING PRONOUNCEMENTS:

In May 2011, the FASB issued updated accounting guidance related to fair value measurements and disclosures that result in common fair value measurements and disclosures between GAAP and International Financial Reporting Standards. This guidance includes amendments that clarify the intent about the application of existing fair value measurements and disclosures, while other amendments change a principle or requirement for fair value measurements or disclosures. This guidance is effective for interim and annual periods beginning after December 15, 2011. The Company does not believe the adoption of this guidance will have a material impact on its consolidated financial statements.

In June 2011, the FASB issued guidance to amend the presentation of comprehensive income to allow an entity the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. The guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. This guidance is effective for interim and annual periods beginning after December 15, 2011, and is to be applied retrospectively. The Company will include such disclosures in our first quarter of fiscal 2012 quarterly report.

In September 2011, the FASB issued new guidance on testing goodwill for impairment. This guidance gives companies the option to perform a qualitative assessment to first assess whether the fair value of a reporting unit is less than its carrying amount. If an entity determines it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, then performing the two-step impairment test is unnecessary. This guidance is effective for fiscal years beginning after December 15, 2011. The Company does not believe the adoption of this guidance will have a material impact on its consolidated financial statements.

NOTE 3 – ACQUISITION OF BONNIE TOGS:

As noted above, on June 30, 2011, Northstar purchased all of the outstanding shares of capital stock of Bonnie Togs for total consideration of up to CAD $95 million, of which USD $61.2 million was paid in cash at closing. Such payment is subject to post-closing adjustments, which we expect to be finalized in the first quarter of fiscal 2012. The sellers may also be paid contingent consideration ranging from zero to CAD $35 million if the Canadian business meets certain earnings targets for the period beginning July 1, 2011 and ending on June 27, 2015. Sellers may receive a portion of the contingent consideration of up to CAD $25 million if interim earnings targets are met through June 2013 and June 2014, respectively. Any such payments are not recoverable by the Company in the event of any failure to meet overall targets.

NOTE 3 – ACQUISITION OF BONNIE TOGS: (Continued)

As of July 2, 2011, the Company had a discounted contingent consideration liability of approximately $24.3 million based upon the high probability that Bonnie Togs will attain its earnings targets. The fair value of the discounted contingent consideration liability as of December 31, 2011 was approximately $25.6 million and is included in other long-term liabilities on the accompanying audited consolidated balance sheet. The $1.2 million change in the fair value of the liability is reflected as $2.5 million in accretion expense and $1.3 million in other comprehensive income resulting from a favorable foreign currency translation adjustment. The Company determined the fair value of the contingent consideration based upon a probability-weighted discounted cash flow analysis. The Company will continue to revalue the contingent consideration at each reporting date.

The following table summarizes the fair values of the assets acquired and liabilities assumed at June 30, 2011, the date of the Acquisition:

(U.S. dollars in thousands)	
Current assets	$ 40,668
Property, plant, and equipment	13,485
Bonnie Togs Goodwill	54,982
Bonnie Togs tradename	623
Non-compete agreements	311
Total assets acquired	110,069
Current liabilities	18,231
Non-current liabilities	6,693
Total liabilities assumed	24,924
Net assets acquired	$ 85,145

In connection with the Acquisition, the Company recorded total acquired intangible assets of approximately $55.9 million, including $55.0 million of Bonnie Togs goodwill, $0.6 million related to the *Bonnie Togs* tradename (life of two years), and $0.3 million related to non-compete agreements for certain executives (life of four years).

The following unaudited pro forma summary presents information as if Bonnie Togs had been acquired at the beginning of the periods presented with financing obtained as described above and assumes that there were no other changes in our operations. The pro forma information does not necessarily reflect the actual results that would have occurred had the Company been combined during the periods presented, nor is it necessarily indicative of the future results of operations of the combined companies.

	For the fiscal year ended	
(dollars in thousands, except share data)	December 31, 2011	January 1, 2011
Pro forma net sales	$ 2,156,000	$ 1,840,000
Pro forma net income	$ 121,000	$ 150,000
Pro forma basic earnings per share	$ 2.09	$ 2.55
Pro forma diluted earnings per share	$ 2.07	$ 2.51

Included in the pro forma results shown above for the fiscal year ended January 1, 2011, is a pre-tax charge of $6.7 million related to the amortization of the step-up of acquired Bonnie Togs inventory to fair value.

Included in our results for fiscal 2011, was Bonnie Togs net sales of $76.6 million and net income of $3.8 million for the period from July 1, 2011 through December 31, 2011.

NOTE 4 – PROPERTY, PLANT, AND EQUIPMENT:

Property, plant, and equipment consisted of the following:

(dollars in thousands)	December 31, 2011	January 1, 2011
Retail store fixtures, equipment, and computers	$ 166,574	$ 146,013
Land, buildings, and improvements	96,770	66,099
Marketing fixtures	15,351	19,679
Construction in progress	11,705	5,264
	290,400	237,055
Accumulated depreciation and amortization	(168,054)	(142,087)
Total	$ 122,346	$ 94,968

Depreciation and amortization expense was approximately $32.5 million for the fiscal year ended December 31, 2011, $30.0 million for the fiscal year ended January 1, 2011, and $28.6 million for the fiscal year ended January 2, 2010.

NOTE 5 – LONG-TERM DEBT:

Long-term debt consisted of the following:

(dollars in thousands)	December 31, 2011	January 1, 2011
Revolving credit facility	$ 236,000	$ 236,000
Current maturities	--	--
Total long-term debt	$ 236,000	$ 236,000

On October 15, 2010, the Company entered into a $375 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) revolving credit facility with Bank of America as sole lead arranger and administrative agent, JP Morgan Chase Bank as syndication agent, and other financial institutions. This revolving credit facility was immediately drawn upon to pay off the Company's former term loan of $232.2 million and pay transaction fees and expenses of $3.8 million, leaving approximately $130 million available under the revolver for future borrowings (net of letters of credit of approximately $8.6 million). In connection with the repayment of the Company's former term loan, in the fourth quarter of fiscal 2010 the Company wrote off approximately $1.2 million in unamortized debt issuance costs. In addition, in connection with the revolving credit facility, the Company recorded $3.5 million of debt issuance costs to be amortized over the term of the revolving credit facility (five years). On December 22, 2011, the Company and lenders amended and restated the revolving credit facility to, among other things, provide a U.S. dollar revolving facility of $340 million ($130 million sub-limit for letters of credit and a swing line sub-limit of $40 million) and a $35 million multicurrency revolving facility ($15 million sub-limit for letters of credit and a swing line sub-limit of $5 million), which is available for borrowings by either The William Carter Company ("TWCC") or our Canadian subsidiary, in U.S. dollars or Canadian dollars. The term of the revolving credit facility expires October 15, 2015. At December 31, 2011, we had approximately $236.0 million in revolver borrowings (fair value approximates book value), exclusive of $14.9 million of outstanding letters of credit, at an effective interest rate of 2.5%.

The revolving credit facility provides for two pricing options for U.S. dollar facility revolving loans: (i) revolving loans on which interest is payable quarterly at a base rate equal to the highest of (x) the Federal Funds Rate plus ½ of 1%, (y) the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A. as its prime rate, or (z) the Eurodollar Rate plus 1%, plus, in each case, an applicable margin initially equal to 1.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 1.00% to 1.50% and (ii) revolving loans on which interest accrues for one, two, three, six or if, generally available, nine or twelve month interest periods (but is payable not less frequently than every three months) at a rate of interest per annum equal to an adjusted British Bankers Association LIBOR rate, plus an applicable margin initially equal to 2.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 2.00% to 2.50%.

NOTE 5 – LONG-TERM DEBT: (Continued)

The revolving credit facility also provides for two pricing options for multicurrency facility revolving loans denominated in U.S. dollars: (i) revolving loans on which interest is payable quarterly at a base rate equal to the highest of (x) the Federal Funds Rate plus ½ of 1%, (y) the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A., Canada Branch in Toronto as its reference rate for loans in U.S. dollars to its Canadian borrowers, or (z) the Eurodollar Rate plus 1%, plus, in each case, an applicable margin initially equal to 1.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 1.00% to 1.50% and (ii) revolving loans on which interest accrues for one, two, three, six or if, generally available, nine or twelve month interest periods (but is payable not less frequently than every three months) at a rate of interest per annum equal to an adjusted British Bankers Association LIBOR rate, plus an applicable margin initially equal to 2.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 2.00% to 2.50%.

In addition, the revolving credit facility provides for two pricing options for multicurrency facility revolving loans denominated in Canadian dollars: (i) revolving loans on which interest is payable quarterly at a base rate equal to the highest of (x) the rate of interest in effect for such day as publicly announced from time to time by Bank of America, N.A., Canada Branch in Toronto as its prime rate for loans in Canadian Dollars to Canadian Borrowers and (y) the rate of interest in effect for such day for Canadian dollar bankers' acceptances having a term of one month that appears on the Reuters Screen CDOR Page plus ½ of 1%, plus, in each case, an applicable margin initially equal to 1.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 1.00% to 1.50%, and (ii) revolving loans on which interest accrues for one, two, three, six or if, generally available, nine or twelve month interest periods (but is payable not less frequently than every three months) at a rate of interest per annum equal to an adjusted British Bankers Association LIBOR rate, plus an applicable margin initially equal to 2.25%, which may be adjusted based upon a leverage-based pricing grid ranging from 2.00% to 2.50%. Amounts outstanding under the revolving credit facility currently accrue interest at a LIBOR rate plus 2.25%.

The revolving credit facility contains and defines financial covenants, including a lease adjusted leverage ratio (defined as, with certain adjustments, the ratio of the Company's consolidated indebtedness plus six times rent expense to consolidated net income before interest, taxes, depreciation, amortization, and rent expense ("EBITDAR")) to exceed (x) if such period ends on or before December 31, 2014, 3.75:1.00 and (y) if such period ends after December 31, 2014, 3.50:1.00; and consolidated fixed charge coverage ratio (defined as, with certain adjustments, the ratio of consolidated EBITDAR to consolidated fixed charges (defined as interest plus rent expense)), for any such period to be less than 2.75:1.00. As of December 31, 2011, the Company believes it was in compliance with its financial debt covenants.

Provisions in our senior credit facility currently restrict the ability of our operating subsidiary, TWCC, from paying cash dividends to our parent company, Carter's, Inc., in excess of $15.0 million unless TWCC and its consolidated subsidiaries meet certain leverage ratio and minimum availability requirements under the credit facility, which materially restricts Carter's, Inc. from paying cash dividends on our common stock. We do not anticipate paying cash dividends on our common stock in the foreseeable future but intend to retain future earnings, if any, for reinvestment in the future operation and expansion of our business and related development activities. Any future decision to pay cash dividends will be at the discretion of our Board of Directors and will depend upon our financial condition, results of operations, terms of financing arrangements, capital requirements, and any other factors as our Board of Directors deems relevant.

On November 17, 2009, the Company obtained a waiver to its former senior credit facility which waived defaults resulting from the untimely filing of the Company's third quarter of fiscal 2009 financial statements and the restatement of prior period financial statements. The waiver resulted in a fee of approximately $450,000 and required the Company to deliver to the lenders the restatement of prior period financial statements and the third quarter of fiscal 2009 financial statements by January 15, 2010. The Company complied with the terms of the waiver. The Company's third quarter of fiscal 2009 financial statements and the prior period restated financial statements were filed with the Securities and Exchange Commission on January 15, 2010. The Company complied with the terms of the waiver and was in compliance with its debt covenants as of January 15, 2010.

The former senior credit facility required us to hedge at least 25% of our variable rate debt under the former term loan. The Company historically entered into interest rate swap agreements to hedge the risk of interest rate fluctuations. These interest rate swap agreements were designated as cash flow hedges of the variable interest payments on a portion of our variable rate former term loan debt. In connection with the repayment of the Company's former term loan in October 2010, the Company terminated its two remaining interest rate swap agreements totaling $100.0 million originally scheduled to mature in January 2011. During fiscal 2010 and 2009, we recorded approximately $1.7 million and $2.5 million, respectively, in interest expense related to our swap agreements.

NOTE 5 – LONG-TERM DEBT: (Continued)

On May 25, 2006, we entered into an interest rate collar agreement with a floor of 4.3% and a ceiling of 5.5%. The collar covered $100 million of our variable rate former term loan debt and was designated as a cash flow hedge of the variable interest payments on such debt. The collar matured on January 31, 2009. In fiscal 2009, we recorded $0.5 million in interest expense related to the collar.

NOTE 6 – COMMON STOCK:

As of December 31, 2011, the total amount of Carter's, Inc.'s authorized capital stock consisted of 150,000,000 shares of common stock, $0.01 par value per share, and 100,000 shares of preferred stock, $0.01 par value per share. As of December 31, 2011, 58,595,421 shares of common stock and no shares of preferred stock were outstanding.

During fiscal 2011, the Company issued 38,520 shares of common stock at a fair market value of $30.38, to its non-management board members and recognized approximately $1.2 million in stock-based compensation expense. During fiscal 2010, the Company issued 24,032 and 2,115 shares of common stock at a fair market value of $33.29 and $23.65, respectively, to its non-management board members and recognized approximately $850,000 in stock-based compensation expense. During fiscal 2009, we issued 33,656 and 748 shares of common stock at a fair market value of $20.80 and $22.29, respectively, to its non-management board members and recognized $720,000 in stock-based compensation expense. We received no proceeds from the issuance of these shares.

During fiscal 2007, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company was authorized to purchase up to $100 million of its outstanding common shares. During fiscal 2010, the Company's Board of Directors approved a share repurchase authorization, pursuant to which the Company is authorized to purchase up to an additional $100 million of its outstanding common shares. As of August 13, 2010, the Company had repurchased outstanding shares in the amount totaling the entire $100 million authorized by the Board of Directors on February 16, 2007.

The Company did not repurchase any shares of its common stock during fiscal 2011 and fiscal 2009 pursuant to any repurchase authorization. During fiscal 2010, the Company repurchased and retired 2,058,830 shares, or approximately $50.0 million, of its common stock at an average price of $24.29 per share. Since inception of the repurchase program and through fiscal 2011, the Company repurchased and retired 6,658,410 shares, or approximately $141.1 million, of its common stock at an average price of $21.19 per share. We have reduced common stock by the par value of such shares repurchased and have deducted the remaining excess repurchase price over par value from additional paid-in capital. Future repurchases may occur from time to time in the open market, in negotiated transactions, or otherwise. The timing and amount of any repurchases will be determined by the Company's management, based on its evaluation of market conditions, share price, other investment priorities, and other factors.

The issued and outstanding shares of common stock are validly issued, fully paid, and nonassessable. Holders of our common stock are entitled to share equally, share for share, if dividends are declared on our common stock, whether payable in cash, property, or our securities. The shares of common stock are not convertible and the holders thereof have no preemptive or subscription rights to purchase any of our securities. Upon liquidation, dissolution, or winding up of our Company, the holders of common stock are entitled to share equally, share for share, in our assets which are legally available for distribution, after payment of all debts and other liabilities and subject to the prior rights of any holders of any series of preferred stock then outstanding. Each outstanding share of common stock is entitled to one vote on all matters submitted to a vote of stockholders. There is no cumulative voting. Except as otherwise required by law or the certificate of incorporation, the holders of common stock vote together as a single class on all matters submitted to a vote of stockholders.

NOTE 7 – STOCK-BASED COMPENSATION:

Our Board of Directors may issue preferred stock from time to time. Subject to the provisions of our certificate of incorporation and limitations prescribed by law, the Board of Directors is expressly authorized to adopt resolutions to issue the shares, to fix the number of shares, and to change the number of shares constituting any series and to provide for or change the voting powers, designations, preferences and relative participating, optional or other special rights, qualifications, limitations or restrictions thereof, including dividend rights (including whether dividends are cumulative), dividend rates, terms of redemption (including sinking fund provisions), redemption prices, conversion rights, and liquidation preferences of the shares constituting any series of the preferred stock, in each case without any further action or vote by the shareholders.

Under the Company's Amended and Restated Equity Incentive Plan (the "Plan"), the compensation committee of our Board of Directors may award incentive stock options (ISOs and non-ISOs), stock appreciation rights (SARs), restricted stock, unrestricted stock, stock deliverable on a deferred basis (including restricted stock units), and performance-based stock awards intended to help defray the cost of awards.

At the Company's May 13, 2011 shareholders' meeting, the shareholders approved a proposal to amend the Plan to (i) increase the maximum number of shares of stock available under the existing Plan by 3,725,000 shares from 12,053,392 shares to 15,778,392 shares and (ii) eliminating the Company's ability to grant cash awards and provide tax gross-ups under the Plan. As of December 31, 2011, there are 4,084,290 shares available for grant under the Plan. The Plan makes provision for the treatment of awards upon termination of service or in the case of a merger or similar corporate transaction. Participation in the Plan is limited to Directors and those key employees selected by the compensation committee.

The limit on shares available under the Plan, the individual limits, and other award terms are subject to adjustment to reflect stock splits or stock dividends, combinations, and certain other events. All stock options issued under the Plan expire no later than ten years from the date of grant. The Company believes that the current level of authorized shares is sufficient to satisfy future option exercises.

Stock options issued prior to May 12, 2005 vested in equal annual installments over a five-year period. Stock options granted on and subsequent to May 12, 2005 vest in equal annual installments over a three- or four-year period.

In accordance with accounting guidance on share-based payments, the Company has recorded stock-based compensation expense (as a component of selling, general, and administrative expenses) in the amount of approximately $9.6 million, $7.3 million, and $6.8 million related to stock awards for the fiscal years ended December 31, 2011, January 1, 2011, and January 2, 2010, respectively.

Stock Options

A summary of stock option activity under the Plan (in number of shares that may be purchased) is as follows for the fiscal year ended December 31, 2011:

	Stock options	Weighted-average exercise price per share	Weighted-average grant-date fair value
Outstanding, January 1, 2011	2,471,486	$ 16.75	$ 7.17
Granted	467,200	$ 29.08	$ 11.85
Exercised	(821,336)	$ 8.26	$ 3.52
Forfeited	(108,450)	$ 23.83	$ 10.01
Expired	(16,200)	$ 33.42	$ 14.69
Outstanding, December 31, 2011	1,992,700	$ 22.62	$ 9.55
Exercisable, December 31, 2011	1,045,638	$ 19.53	$ 8.46

During fiscal 2011, the Company granted 467,200 stock options. In connection with these grants of stock options, the Company recognized approximately $931,000 in stock-based compensation expense during the fiscal year ended December 31, 2011.

NOTE 7 – STOCK-BASED COMPENSATION: (Continued)

A summary of stock options outstanding and exercisable at December 31, 2011 is as follows:

Outstanding					Exercisable			
Range of exercise prices	Number	Weighted-average remaining contractual life	Weighted-average exercise price	Weighted-average grant-date fair value	Number	Weighted-average remaining contractual life	Weighted-average exercise price	Weighted-average grant-date fair value
$ 3 – $ 7	75,000	1.31	$ 6.14	$ 4.25	75,000	1.31	$ 6.14	$ 4.25
$ 13 – $19	761,200	5.38	$ 16.57	$ 6.99	539,450	4.77	$ 16.13	$ 6.84
$ 20 – $25	234,100	5.64	$ 22.67	$ 9.37	215,288	5.43	$ 22.67	$ 9.41
$ 26 – $29.5	739,400	8.28	$ 28.11	$ 11.94	140,250	6.99	$ 27.54	$ 11.92
$ 30 – $40	183,000	7.24	$ 32.26	$ 12.98	75,650	4.22	$ 33.31	$ 15.11
	1,992,700	6.51	$ 22.62	$ 9.55	1,045,638	4.91	$ 19.53	$ 8.46

At December 31, 2011, the aggregate intrinsic value of all outstanding stock options was approximately $34.3 million and the aggregate intrinsic value of currently exercisable stock options was approximately $21.2 million. The intrinsic value of stock options exercised during the fiscal year ended December 31, 2011 was approximately $18.9 million. At December 31, 2011, the total estimated compensation cost related to non-vested stock options not yet recognized was approximately $7.1 million with a weighted-average expense recognition period of 2.59 years.

The fair value of each stock option grant is estimated on the date of grant using the Black-Scholes option pricing method with the following weighted-average assumptions used for grants issued:

	For the fiscal years ended		
	December 31, 2011	January 1, 2011	January 2, 2010
Volatility	34.98%	34.57%	35.75%
Risk-free interest rate	2.62%	3.02%	2.54%
Expected term (years)	6.7	7.0	7.0
Dividend yield	--	--	--
Grant-date fair value	$ 11.85	$ 11.80	$ 7.78

Restricted Stock Awards

Restricted stock and restricted stock units (collectively, "restricted stock awards") issued under the Plan vest based upon continued service or performance targets. The fair value of restricted stock awards is determined based on the quoted closing price of our common stock on the date of grant. Restricted stock awards vest in equal annual installments or cliff vest after a three- or four-year period.

The following table summarizes our restricted stock award activity during the fiscal year ended December 31, 2011:

	Restricted stock awards	Weighted-average grant-date fair value
Outstanding, January 1, 2011	481,413	$ 22.21
Granted	391,000	$ 28.85
Vested	(200,537)	$ 20.82
Forfeited	(54,475)	$ 25.00
Outstanding, December 31, 2011	617,401	$ 26.63

NOTE 7 – STOCK-BASED COMPENSATION: (Continued)

During the fiscal year ended December 31, 2011, the Company granted 391,000 shares of restricted stock to employees. Stock-based compensation expense recorded during the fiscal year ended December 31, 2011 for all restricted stock awards totaled approximately $4.9 million. The total amount of estimated compensation expense related to unvested restricted stock awards is approximately $12.0 million as of December 31, 2011.

During the fiscal year ended January 3, 2009, the Company granted our Chief Executive Officer 75,000 shares of performance-based restricted stock at a fair market value of $17.92. As of December 31, 2011, the performance targets were met and 75% of this grant has vested. Vesting of the remaining unvested restricted shares is contingent upon continued employment through fiscal 2012.

During the fiscal year ended December 31, 2011, the Company granted our Chief Executive Officer 80,000 performance-based restricted shares at a fair market value of $28.39. Vesting of these shares is contingent upon meeting specific performance targets through fiscal 2014. Currently, the Company believes that these targets will be achieved and, accordingly, we will continue to record compensation expense until the restricted shares vest or the Company's assessment of achievement of the performance criteria changes.

Unrecognized stock-based compensation expense related to outstanding unvested stock options and unvested restricted stock awards are expected to be recorded as follows:

(dollars in thousands)	Stock options	Restricted stock awards	Total
2012	$ 3,103	$ 4,877	$ 7,980
2013	2,389	3,859	6,248
2014	1,390	2,728	4,118
2015	245	513	758
Total	$ 7,127	$ 11,977	$ 19,104

NOTE 8 – EMPLOYEE BENEFIT PLANS:

Under a defined benefit plan frozen in 1991, we offer a comprehensive post-retirement medical plan to current and certain future retirees and their spouses until they become eligible for Medicare or a Medicare Supplement Plan. We also offer life insurance to current and certain future retirees. Employee contributions are required as a condition of participation for both medical benefits and life insurance.

The following is a reconciliation of the Accumulated Post-Retirement Benefit Obligation ("APBO") under this plan:

	For the fiscal years ended	
(dollars in thousands)	December 31, 2011	January 1, 2011
Benefit Obligation (APBO) at beginning of period	$ 7,405	$ 8,045
Service cost	130	73
Interest cost	390	426
Actuarial loss (gain)	49	(607)
Plan participants' contribution	43	--
Benefits paid	(682)	(532)
APBO at end of period	$ 7,335	$ 7,405

Our contribution for these post-retirement benefit obligations was $639,000 in fiscal 2011, $532,000 in fiscal 2010, and $484,000 in fiscal 2009. We expect that our contribution and benefit payments for post-retirement benefit obligations each year from fiscal 2012 through fiscal 2016 will be approximately $600,000. We do not pre-fund this plan and as a result there are no plan assets. The measurement date used to determine the post-retirement benefit obligations is as of the end of the fiscal year.

NOTE 8 – EMPLOYEE BENEFIT PLANS: (Continued)

Post-retirement benefit obligations under the plan are measured on a discounted basis at an assumed discount rate. The discount rate used at December 31, 2011 was determined with primary consideration given to the Citigroup Pension Discount and Liability index adjusted for the timing of expected plan distributions. We believe this index reflects a risk-free rate with maturities that are comparable to the timing of the expected payments under the plan. The discount rate used at January 1, 2011 was determined with consideration given to the Citigroup Pension Discount and Liability index, as well as the Moody's Aa Corporate Bond rate, and the Barclay Capital Aggregate Bond index, adjusted for the timing of expected plan distributions. The discount rates used in determining the APBO were as follows:

	December 31, 2011	January 1, 2011
Discount rates	4.0%	5.5%

In conjunction with the closure of our Barnesville, Georgia distribution facility (as discussed in Note 16), the Company experienced a partial plan curtailment in fiscal 2009 for its post-retirement medical plan for future retirees working in the facility prior to the plan becoming frozen in 1991. In conjunction with this partial curtailment, a curtailment gain of $0.6 million has been recognized as income in the fiscal year ended January 2, 2010.

The components of post-retirement benefit expense charged to operations are as follows:

	For the fiscal years ended		
(dollars in thousands)	December 31, 2011	January 1, 2011	January 2, 2010
Service cost – benefits attributed to service during the period	$ 130	$ 73	$ 91
Interest cost on accumulated post-retirement benefit obligation	390	426	452
Amortization of net actuarial gain	(49)	(22)	(27)
Curtailment gain	--	--	(579)
Total net periodic post-retirement benefit cost (gain)	$ 471	$ 477	$ (63)

The discount rates used in determining the net periodic post-retirement benefit costs were as follows:

	For the fiscal years ended		
	December 31, 2011	January 1, 2011	January 2, 2010
Discount rates	5.5%	5.5%	5.5%

The effects on our plan of all future increases in health care costs are borne primarily by employees; accordingly, increasing medical costs are not expected to have any material effect on our future financial results.

We have an obligation under a defined benefit plan covering certain former officers and their spouses. At December 31, 2011 and January 1, 2011, the present value of the estimated remaining payments under this plan was approximately $0.6 million and is included in other current and long-term liabilities in the accompanying audited consolidated balance sheets.

The retirement benefits under the OshKosh B'Gosh pension plan were frozen as of December 31, 2005. The Company's investment strategy is to invest in a well diversified portfolio consisting of 12-14 mutual funds or group annuity contracts that minimize concentration of risks by utilizing a variety of asset types, fund strategies, and fund managers. The target allocation for plan assets is 50% equity securities, 42% intermediate term debt securities, and 8% real estate investments.

NOTE 8 – EMPLOYEE BENEFIT PLANS: (Continued)

Equity securities primarily include funds invested in large-cap and mid-cap companies, primarily located in the United States, with up to 5% of the plan assets invested in international equities. Fixed income securities include funds holding corporate bonds of companies from diverse industries, and U.S. Treasuries. Real estate funds include investments in actively managed commercial real estate projects located in the United States.

The fair value hierarchy for disclosure of fair value measurements is as follows:

Level 1 - Quoted prices in active markets for identical assets or liabilities

Level 2 - Quoted prices for similar assets and liabilities in active markets or inputs that are observable

Level 3 - Inputs that are unobservable (for example, cash flow modeling inputs based on assumptions)

The fair value of the Company's pension plan assets at December 31, 2011 and January 1, 2011 by asset category were as follows:

(dollars in thousands)	December 31, 2011			January 1, 2011		
Asset Category	**Total**	**Quoted prices in active markets for identical assets (level 1)**	**Significant observable inputs (level 2)**	**Total**	**Quoted prices in active markets for identical assets (level 1)**	**Significant observable inputs (level 2)**
Cash and cash equivalents	$ 97	$ --	$ 97	$ 90	$ --	$ 90
Equity Securities:						
U.S. Large-Cap (a)	9,752	4,889	4,863	11,217	7,485	3,732
U.S. Large-Cap growth	4,883	4,883	--	3,748	3,748	--
U.S. Mid-Cap blend	2,265	--	2,265	2,306	--	2,306
U.S. Small-Cap blend	2,247	2,247	--	2,280	2,280	--
International blend	2,114	2,114	--	2,161	2,161	--
Fixed income securities:						
Corporate bonds (b)	17,548	17,548	--	17,684	17,684	--
Real estate (c)	3,564	3,564	--	3,632	1,164	2,468
	$ 42,470	$ 35,245	$ 7,225	$ 43,118	$ 34,522	$ 8,596

(a) This category comprises low-cost equity index funds not actively managed that track the S&P 500.
(b) This category invests in both U.S. Treasuries and mid-term corporate debt from U.S. issuers from diverse industries.
(c) This category invests in active management of U.S. commercial real estate projects.

During fiscal 2011 and 2010, the Company reinvested approximately $2.6 million and $10.2 million, respectively, of Level 2 investments into Level 1 mutual funds to further diversify its investment portfolio and limit its investment in group annuity contracts.

NOTE 8 – EMPLOYEE BENEFIT PLANS: (Continued)

Pension liabilities are measured on a discounted basis at an assumed discount rate. The discount rate used at and December 31, 2011 and January 1, 2011 was determined with consideration given to Citigroup Pension Discount and Liability index, the Barclay Capital Aggregate Bond index, and the Moody's Aa Corporate Bond rate, adjusted for the timing of expected plan distributions. We believe these indexes reflect a risk-free rate with maturities that are comparable to the timing of the expected payments under the plan. The expected long-term rate of return assumption considers historic returns adjusted for changes in overall economic conditions that may affect future returns and a weighting of each investment class. The actuarial computations utilized the following assumptions, using year-end measurement dates:

Benefit obligation	**2011**	**2010**
Discount rate	4.5%	5.5%

Net periodic pension cost	**2011**	**2010**	**2009**
Discount rate	5.5%	5.5%	5.5%
Expected long-term rate of return on assets	7.5%	7.5%	8.0%

The net periodic pension (benefit) cost included in the statement of operations was comprised of:

	For the fiscal years ended		
(dollars in thousands)	**December 31, 2011**	**January 1, 2011**	**January 2, 2010**
Interest cost	$ 2,454	$ 2,392	$ 2,270
Expected return on plan assets	(3,112)	(2,875)	(2,612)
Recognized actuarial loss (gain)	1	135	411
Net periodic pension (benefit) cost	$ (657)	$ (348)	$ 69

A reconciliation of changes in the projected pension benefit obligation and plan assets is as follows:

	For the fiscal years ended	
(dollars in thousands)	**December 31, 2011**	**January 1, 2011**
Change in projected benefit obligation:		
Projected benefit obligation at beginning of year	$ 45,367	$ 44,109
Interest cost	2,454	2,392
Actuarial loss	7,656	299
Benefits paid	(1,549)	(1,433)
Projected benefit obligation at end of year	$ 53,928	$ 45,367
Change in plan assets:		
Fair value of plan assets at beginning of year	$ 43,118	$ 39,754
Actual return on plan assets	901	4,797
Benefits paid	(1,549)	(1,433)
Fair value of plan assets at end of year	$ 42,470	$ 43,118
Unfunded status:		
Accrued benefit cost	$ (11,458)	$ (2,249)

NOTE 8 – EMPLOYEE BENEFIT PLANS: (Continued)

A pension liability of approximately $11.5 million and $2.2 million is included in other long-term liabilities in the accompanying audited consolidated balance sheet for fiscal 2011 and 2010, respectively. We do not expect to make any contributions to the OshKosh defined benefit plan during fiscal 2012 as the plan's funding exceeds the minimum funding requirements.

The Company currently expects benefit payments for its defined benefit pension plans as follows for the next ten fiscal years.

(dollars in thousands) **Fiscal Year**	
2012	$ 1,740
2013	$ 1,540
2014	$ 1,450
2015	$ 1,720
2016	$ 1,910
2017-2021	$ 12,990

We also sponsor a defined contribution plan within the United States. This plan covers employees who are at least 21 years of age and have completed three months of service, during which at least 250 hours were served. The plan provides for a discretionary employer match. Prior to April 2009, the plan provided for an employer match amounting to 100% on the first 3% employee contribution and 50% on the next 2% employee contribution. The Company's expense for the defined contribution plan totaled approximately $4.6 million for the fiscal year ended December 31, 2011, $4.3 million for the fiscal year ended January 1, 2011, and $1.8 million for the fiscal year ended January 2, 2010.

NOTE 9 – INCOME TAXES:

The provision for income taxes consisted of the following:

	For the fiscal years ended		
(dollars in thousands)	**December 31, 2011**	**January 1, 2011**	**January 2, 2010**
Current tax provision:			
Federal	$ 48,141	$ 74,310	$ 57,740
State	4,550	7,332	7,453
Foreign	5,053	902	725
Total current provision	57,744	82,544	65,918
Deferred tax provision (benefit):			
Federal	10,511	3,751	1,831
State	309	619	439
Foreign	(1,692)	--	--
Total deferred provision	9,128	4,370	2,270
Total provision	$ 66,872	$ 86,914	$ 68,188

The foreign portion of the current tax position relates to Canadian income taxes on our Canadian operations, subsequent to the Acquisition, and foreign tax withholdings related to our foreign royalty income. Of the $180.9 million of consolidated income before income taxes for fiscal 2011, $6.2 million is attributable to foreign income before taxes generated from our Canadian operations subsequent to the Acquisition and $174.7 million is attributable to domestic income before income taxes. There was no income or loss before taxes attributable to foreign income for the fiscal years ended January 1, 2011 and January 2, 2010.

NOTE 9 – INCOME TAXES: (Continued)

The difference between our effective income tax rate and the federal statutory tax rate is reconciled below:

	For the fiscal years ended		
	December 31, 2011	**January 1, 2011**	**January 2, 2010**
Statutory federal income tax rate	35.0%	35.0%	35.0%
State income taxes, net of federal income tax benefit	2.6	2.6	2.9
Impact of foreign operations	(0.3)	--	--
Settlement of uncertain tax positions	(1.0)	(0.4)	(0.8)
Acquisition expenses	0.7	--	--
Total	37.0%	37.2%	37.1%

The Company and its subsidiaries file income tax returns in the United States and in various states and local jurisdictions. The Company's Canadian subsidiary, will file income tax returns in Canada and various Canadian provinces. The Internal Revenue Service completed its income tax audit for fiscal 2009 during fiscal 2011. The Company successfully reached a settlement on this audit without making a payment of additional tax. In most cases, the Company is no longer subject to state and local tax authority examinations for years prior to fiscal 2007.

In accordance with accounting guidance on uncertain tax positions, the following is a reconciliation of the beginning and ending amount of unrecognized tax benefits:

(dollars in thousands)	
Balance at January 3, 2009	$ 7,274
Additions based on tax positions related to fiscal 2009	2,002
Reductions for prior year tax positions	--
Reductions for lapse of statute of limitations	(402)
Reductions for prior year tax settlements	(1,143)
Balance at January 2, 2010	7,731
Additions based on tax positions related to fiscal 2010	2,150
Reductions for prior year tax positions	--
Reductions for lapse of statute of limitations	(1,200)
Reductions for prior year tax settlements	--
Balance at January 1, 2011	8,681
Additions based on tax positions related to fiscal 2011	2,100
Reductions for prior year tax positions	--
Reductions for lapse of statute of limitations	(1,727)
Reductions for prior year tax settlements	(709)
Balance at December 31, 2011	$ 8,345

During fiscal 2011, we recognized approximately $0.7 million in tax benefits consisting of $0.4 million related to the completion of the Internal Revenue Service audit for fiscal 2009 and approximately $0.3 million related to various state audit settlements. During fiscal 2010, we did not reach any audit settlements. During fiscal 2009, we recognized approximately $1.1 million in tax benefits due to the completion of the Internal Revenue Service audit for fiscal 2006 and 2007.

NOTE 9 – INCOME TAXES: (Continued)

During the fiscal 2011, 2010, and 2009, we recognized tax benefits of approximately $1.7 million, $1.2 million, and $0.4 million, respectively, relating to reserves for which various state statutes of limitations expired.

All of the Company's reserve for unrecognized tax benefits as of December 31, 2011, if ultimately recognized, will impact the Company's effective tax rate in the period settled. The Company has recorded tax positions for which the ultimate deductibility is certain, but for which there is uncertainty about the timing of such deductions. Because of deferred tax accounting, changes in the timing of these deductions would not impact the annual effective tax rate, but would accelerate the payment of cash to the taxing authorities.

Included in the reserves for unrecognized tax benefits are approximately $2.0 million of reserves for which the statute of limitations is expected to expire within the next fiscal year. If these tax benefits are ultimately recognized, such recognition, net of federal income taxes, may impact our annual effective tax rate for fiscal 2012 and the effective tax rate in the quarter in which the benefits are recognized.

We recognize interest related to unrecognized tax benefits as a component of interest expense and penalties related to unrecognized tax benefits as a component of income tax expense. During the fiscal year ended December 31, 2011, the Company recognized a net reduction of interest expense of approximately $0.1 million, primarily related to unrecognized tax positions offset by the expiration of various state statute of limitations and audit settlements. During the fiscal year ended January 1, 2011, the Company recognized a nominal amount of interest expense consisting of interest expense on unrecognized positions offset by the expiration of various state statutes of limitations. During the fiscal year ended January 2, 2010, the Company recognized a net reduction in interest expense of approximately $0.1 million, primarily related to the successful resolution of the Internal Revenue Service audit for fiscal 2006 and 2007 in addition to the settlement of tax positions due to the expiration of the applicable statute of limitations. The Company had approximately $0.5 million and $0.6 million of interest accrued as of December 31, 2011 and January 1, 2011, respectively.

Components of deferred tax assets and liabilities were as follows:

(dollars in thousands)	December 31, 2011	January 1, 2011
Deferred tax assets:	Assets (Liabilities)	
Accounts receivable allowance	$ 5,611	$ 8,664
Inventory	8,979	7,988
Accrued liabilities	5,834	10,024
Equity-based compensation	7,197	6,416
Deferred employee benefits	7,610	4,101
Deferred rent	11,765	6,137
Other	4,306	4,241
Total deferred tax assets	$ 51,302	$ 47,571
Deferred tax liabilities:		
Depreciation	$ (23,892)	$ (14,074)
Tradename and licensing agreements	(113,976)	(113,891)
Other	(2,690)	(1,876)
Total deferred tax liabilities	$ (140,558)	$ (129,841)

The net deferred tax liability is classified on our accompanying audited consolidated balance sheets as follows:

(dollars in thousands)	December 31, 2011	January 1, 2011
	Assets (Liabilities)	
Current net deferred tax asset	$ 25,165	$ 31,547
Non-current net deferred tax liability	(114,421)	(113,817)
Total deferred tax liability	$ (89,256)	$ (82,270)

NOTE 9 – INCOME TAXES: (Continued)

We have not provided deferred taxes on undistributed earnings from our Canadian subsidiary, as the Company anticipates that these earnings will be reinvested indefinitely. Undistributed earnings from our Canadian subsidiary at December 31, 2011, amounted to approximately $6.2 million. These earnings have been reinvested in Canadian operations and we currently do not plan to initiate any action that would result in these earnings being repatriated to the U.S. Because of the availability of foreign tax credits, it is not practicable to determine the U.S. federal income tax liability that would be payable if such earnings were not reinvested indefinitely.

NOTE 10 – FAIR VALUE MEASUREMENTS:

The Company accounts for its fair value measurements in accordance with accounting guidance which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. The fair value hierarchy for disclosure of fair value measurements is as follows:

Level 1 - Quoted prices in active markets for identical assets or liabilities

Level 2 - Quoted prices for similar assets and liabilities in active markets or inputs that are observable

Level 3 - Inputs that are unobservable (for example, cash flow modeling inputs based on assumptions)

The following table summarizes assets and liabilities measured at fair value on a recurring basis:

	December 31, 2011			January 1, 2011		
(dollars in millions)	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
Assets						
Investments	$ 50.2	$ --	$ --	$ 226.5	$ --	$ --
Foreign exchange forward contracts	0.6	--	--	--	--	--
Liabilities						
Revolving credit facility	236.0	--	--	--	--	--
Contingent consideration	--	--	25.6	--	--	--

At December 31, 2011, we had approximately $50.2 million of cash invested in money market deposit accounts.

At January 1, 2011, we had approximately $151.5 million of cash invested in money market deposit accounts and $75.0 million in U.S. Treasury bills.

On June 22, 2011, as part of the Acquisition, the Company entered into a forward foreign currency exchange contract to reduce its risk from exchange rate fluctuations on the purchase price of Bonnie Togs. The contract was settled on June 30, 2011 and a gain of $0.2 million was recognized in earnings. During fiscal 2011, the Company also recorded a $1.8 million gain on the mark-to-market of open foreign currency exchange contracts, a $0.4 million loss on settled foreign exchange contracts, and a $1.0 million loss on the remeasurement of Bonnie Togs' foreign denominated payables.

In connection with the Acquisition, the Company acquired open forward foreign exchange contracts which were undesignated hedges used to reduce its risk from cash flows associated with U.S. dollar denominated inventory purchases. As part of its overall strategy to manage the level of exposure to the risk of foreign currency exchange rate fluctuations, primarily exposure to changes in the value of the U.S. dollar in relation to the Canadian dollar, the Company hedges a portion of its foreign currency exposures anticipated over the ensuing twelve-month period. The Company uses foreign exchange contracts that generally have maturities of up to 12 months to provide continuing coverage throughout the hedging period.

As of December 31, 2011, the Company had contracts for the purchase of $24.5 million of U.S. dollars at fixed rates. The fair value of these forward contracts was an asset of $0.6 million. The Company accounts for these foreign exchange contracts as undesignated positions in accordance with accounting standards on derivatives and hedging. As such, these positions are marked to fair value through earnings at each reporting date.

NOTE 10 – FAIR VALUE MEASUREMENTS: (Continued)

As of December 31, 2011, the fair value of the Company's outstanding borrowings under the revolving credit facility of $236.0 million approximates book value.

The fair value of the discounted contingent consideration liability was approximately $25.6 million as of December 31, 2011. The $1.2 million change in fair value during fiscal 2011, reflects accretion expense of approximately $2.5 million partially offset by $1.3 million in accumulated other comprehensive income reflecting a favorable foreign currency translation adjustment. The Company determined the fair value of the contingent consideration based upon a probability-weighted discounted cash flow analysis.

The fair value of our derivative instruments in our accompanying audited consolidated balance sheets were as follows:

	Asset Derivatives		Liability Derivatives	
(dollars in millions)	Balance sheet location	Fair value	Balance sheet location	Fair value
December 31, 2011	Prepaid expenses and other current assets	$ 0.6	Other current liabilities	$ --
January 1, 2011	Prepaid expenses and other current assets	$ --	Other current liabilities	$ --

The effect of derivative instruments designated as cash flow hedges on our accompanying audited consolidated financial statements were as follows:

	For the fiscal years ended			
	December 31, 2011		January 1, 2011	
(dollars in thousands)	Amount of gain (loss) recognized in accumulated other comprehensive income (loss) on effective hedges	Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into interest expense	Amount of gain (loss) recognized in accumulated other comprehensive income (loss) on effective hedges	Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into interest expense
Interest rate hedge agreements	$ --	$ --	$ 3,042	$ (1,713)

The effect of undesignated derivative instruments on our accompanying audited consolidated financial statements was as follows:

	Gains recognized in earnings for the fiscal years ended	
(dollars in millions)	December 31, 2011	January 1, 2011
Foreign exchange forward contract	$ 1.6	$ --

NOTE 11 – LEASE COMMITMENTS:

Rent expense under operating leases was approximately $84.6 million for the fiscal year ended December 31, 2011, $70.1 million for the fiscal year ended January 1, 2011, and $65.2 million for the fiscal year ended January 2, 2010.

Minimum annual rental commitments under current noncancellable operating leases as of December 31, 2011 were as follows:

(dollars in thousands)

Fiscal Year	Buildings (primarily retail stores)	Distribution center equipment	Data processing equipment	Transportation equipment	Total noncancellable leases
2012	$ 82,003	$ 387	$ 1,719	$ 62	$ 84,171
2013	77,861	38	1,021	46	78,966
2014	69,934	15	708	25	70,682
2015	58,008	--	222	20	58,250
2016	49,715	--	118	20	49,853
Thereafter	163,631	--	--	26	163,657
Total	$ 501,152	$ 440	$ 3,788	$ 199	$ 505,579

We currently operate 529 leased retail stores located primarily in outlet and strip centers across the United States, having an average size of approximately 4,600 square feet. In addition, we operate 65 leased retail stores in Canada, having an average size of approximately 5,500 square feet. Generally, the majority of our leases have an average term of approximately ten years.

In accordance with accounting guidance on leases, we review all of our leases to determine whether they qualify as operating or capital leases. As of December 31, 2011, all of our leases are classified as operating. Leasehold improvements are amortized over the lesser of the useful life of the asset or current lease term. We account for free rent periods and scheduled rent increases on a straight-line basis over the lease term. Landlord allowances and incentives are recorded as deferred rent and are amortized as a reduction to rent expense over the lease term.

NOTE 12 – COMMITMENTS AND CONTINGENCIES:

A shareholder class action lawsuit was filed on September 19, 2008 in the United States District Court for the Northern District of Georgia entitled Plymouth County Retirement System v. Carter's, Inc., No. 1:08-CV-02940-JOF (the "Plymouth Action"). The Amended Complaint filed on May 12, 2009 in the Plymouth Action asserted claims under Sections 10(b), 20(a), and 20A of the 1934 Securities Exchange Act, and alleged that between February 1, 2006 and July 24, 2007, the Company and certain current and former executives made material misrepresentations to investors regarding the successful integration of OshKosh into the Company's business, and that the share price of the Company's stock later fell when the market learned that the integration had not been as successful as represented. Defendants in the Plymouth Action filed a motion to dismiss the Amended Complaint for failure to state a claim under the federal securities laws on July 17, 2009, and briefing of that motion was complete on October 22, 2009.

A separate shareholder class action lawsuit was filed on November 17, 2009 in the United States District Court for the Northern District of Georgia entitled Mylroie v. Carter's, Inc., No. 1:09-CV-3196-JOF (the "Mylroie Action"). The initial Complaint in the Mylroie Action asserted claims under Sections 10(b) and 20(a) of the 1934 Securities Exchange Act, and alleged that between April 27, 2004 and November 10, 2009, the Company and certain current and former executives made material misstatements to investors regarding the Company's accounting for discounts offered to some wholesale customers. The Court consolidated the Plymouth Action and the Mylroie Action on November 24, 2009 (the "Consolidated Action"). On March 15, 2010, the plaintiffs in the Consolidated Action filed their amended and consolidated complaint. The Company filed a motion to dismiss on April 30, 2010, and briefing of the motion was complete on July 23, 2010.

NOTE 12 – COMMITMENTS AND CONTINGENCIES: (Continued)

On March 16, 2011, the United States District Court for the Northern District of Georgia granted without prejudice the Company's motion to dismiss all of the claims in the amended and consolidated complaint in the Consolidated Action for failure to state a claim under the federal securities laws. The plaintiffs filed a second amended and consolidated complaint on July 20, 2011. On December 21, 2011, the Company reached an agreement to settle the Consolidated Action for an amount which has been paid by the Company's insurance providers. The settlement agreement includes no admission of liability or wrongdoing by the Company or by any other defendants and provides for a full and complete release of all related claims that were or could have been brought against the Company, its subsidiaries, and any and all current and former directors, officers, and employees of the Company and its subsidiaries. On January 19, 2012, the Court granted preliminary approval of the settlement and ordered that notice be provided to the proposed settlement class (as defined in the settlement agreement). The Court has scheduled a hearing for May 31, 2012 to determine whether the settlement will receive final approval.

A shareholder derivative lawsuit was filed on May 25, 2010 in the Superior Court of Fulton County, Georgia, entitled Alvarado v. Bloom, No. 2010-cv-186118 (the "Alvarado Action"). The Complaint in the Alvarado Action alleged, among other things, that certain current and former directors and executives of the Company breached their fiduciary duties to the Company in connection with the Company's accounting for discounts offered to some wholesale customers. The Company was named solely as a nominal defendant against whom the plaintiff sought no recovery. Pursuant to an agreement among the parties, on February 22, 2012 the parties filed a joint stipulation to dismiss the Alvarado Action without prejudice, which the Court granted later that same day.

We are subject to various federal, state, and local laws that govern activities or operations that may have adverse environmental effects. Noncompliance with these laws and regulations can result in significant liabilities, penalties, and costs. From time to time, our operations have resulted or may result in noncompliance with or liability pursuant to environmental laws. Generally, compliance with environmental laws has not had a material impact on our operations, but there can be no assurance that future compliance with such laws will not have a material adverse effect on our operations.

We also have other commitments and contingent liabilities related to legal proceedings, self-insurance programs, and matters arising out of the normal course of business. We accrue contingencies based upon a range of possible outcomes. If no amount within this range is a better estimate than any other, then we accrue the minimum amount. Management does not anticipate that in the aggregate such losses would have a material adverse effect on the Company's consolidated financial position or liquidity; however, it is possible that the final outcomes could have a significant impact on the Company's reported results of operations in any given period.

As of December 31, 2011, we have entered into various purchase order commitments with our suppliers for merchandise for resale that approximates $510.0 million. We can cancel these arrangements, although in some instances, we may be subject to a termination charge reflecting a percentage of work performed prior to cancellation.

NOTE 13 – OTHER CURRENT LIABILITIES:

Other current liabilities consisted of the following:

(dollars in thousands)	December 31, 2011	January 1, 2011
Accrued bonuses and incentive compensation	$ 9,417	$ 20,681
Accrued workers' compensation	6,059	7,515
Accrued sales and use taxes	5,232	3,896
Accrued salaries and wages	5,150	3,933
Accrued gift certificates	4,992	3,227
Accrued 401(k)	4,600	4,330
Other current liabilities	14,499	23,309
Total	$ 49,949	$ 66,891

NOTE 14 – VALUATION AND QUALIFYING ACCOUNTS:

Information regarding accounts receivable reserves is as follows:

(dollars in thousands)	Accounts receivable reserves	Sales returns reserves
Balance, January 3, 2009	$ 5,017	$ 150
Additions, charged to expense	1,492	971
Charges to reserve	(4,293)	(721)
Balance, January 2, 2010	2,216	400
Additions, charged to expense	5,163	268
Charges to reserve	(4,528)	(268)
Balance, January 1, 2011	2,851	400
Additions, charged to expense	7,227	1,121
Charges to reserve	(5,458)	(1,121)
Balance, December 31, 2011	$ 4,620	$ 400

NOTE 15 – SEGMENT INFORMATION:

We report segment information in accordance with accounting guidance on segment reporting, which requires segment information to be disclosed based upon a "management approach." The management approach refers to the internal reporting that is used by management for making operating decisions and assessing the performance of our reportable segments. We report our corporate expenses and acquisition-related expenses separately as they are not included in the internal measures of segment operating performance used by the Company in order to measure the underlying performance of our reportable segments.

Segment results include the direct costs of each segment and all other costs are allocated based upon detailed estimates and analysis of actual time and expenses incurred to support the operations of each segment or units produced or sourced to support each segment's revenue. Certain costs, including incentive compensation for certain employees, and various other general corporate costs that are not specifically allocable to our segments, are included in corporate expenses below. Intersegment sales and transfers are recorded at cost and are treated as a transfer of inventory. The accounting policies of the segments are the same as those described in Note 2 to the consolidated financial statements.

In light of the Acquisition, the Company reevaluated and realigned certain of its reportable segments. As a result, the Company's reportable segments include a new international segment reflecting our new Canadian operations, our existing international wholesale business, and royalty income from our international licensees. In addition, the Company combined its historical mass channel segments with its wholesale segments. The Company believes these changes in segment reporting better reflect how its five business segments, Carter's wholesale, Carter's retail, OshKosh retail, OshKosh wholesale, and international, are managed and how each segment's performance is evaluated. Effective October 1, 2011, the Company changed its segment presentation to reflect this new structure, and recast all prior periods presented to conform to the new presentation.

NOTE 15 – SEGMENT INFORMATION: (Continued)

The table below presents certain segment information for the periods indicated:

(dollars in thousands)	For the fiscal years end December 31, 2011	% of Total	January 1, 2011	% of Total	January 2, 2010	% of Total
Net sales:						
Carter's Wholesale	$ 939,115	44.5%	$ 827,815	47.3%	$ 742,224	46.7%
Carter's Retail (a)	671,590	31.8%	546,233	31.2%	489,740	30.8%
Total Carter's	1,610,705	76.3%	1,374,048	78.5%	1,231,964	77.5%
OshKosh Retail (a)	280,900	13.3%	264,887	15.2%	257,289	16.2%
OshKosh Wholesale	81,888	3.9%	75,484	4.3%	72,448	4.5%
Total OshKosh	362,788	17.2%	340,371	19.5%	329,737	20.7%
International (b)	136,241	6.5%	34,837	2.0%	27,976	1.8%
Total net sales	$ 2,109,734	100.0%	$ 1,749,256	100.0%	$ 1,589,677	100.0%
Operating Income (loss):		% of segment net sales		% of segment net sales		% of segment net sales
Carter's Wholesale	$ 119,682	12.7%	$ 152,281	18.4%	$ 137,119	18.5%
Carter's Retail (a)	105,818	15.8%	113,277	20.7%	96,320	19.7%
Total Carter's	225,500	14.0%	265,558	19.3%	233,439	18.9%
OshKosh Retail (a)	(9,469)	(3.4%)	19,356	7.3%	22,561	8.8%
OshKosh Wholesale	(1,490)	(1.8%)	3,863	5.1%	5,276	7.3%
Total OshKosh	(10,959)	(3.0%)	23,219	6.8%	27,837	8.4%
International (b)	27,251 (c)	20.0%	16,925	48.6%	11,393	40.7%
Segment operating income	241,792	11.5%	305,702	17.5%	272,669	17.2%
Corporate expenses (d)	(54,326) (e)	(2.6%)	(62,446)	(3.6%)	(77,056) (f)	(4.8%)
Total operating income	$ 187,466	8.9%	$ 243,256	13.9%	$ 195,613	12.3%

(a) Includes eCommerce results.
(b) Net sales include international retail and wholesale sales. Operating income includes international licensing income.
(c) Includes $6.7 million related to the amortization of the fair value step-up for Bonnie Togs inventory acquired and a $2.5 million charge associated with the revaluation of the Company's contingent consideration.
(d) Corporate expenses generally include expenses related to incentive compensation, stock-based compensation, executive management, severance and relocation, finance, building occupancy, information technology, certain legal fees, consulting, and audit fees.
(e) Includes $3.0 million of professional service fees associated with the Acquisition for the fiscal year ended December 31, 2011.
(f) Includes $11.7 million related to the closures of our Barnesville, Georgia and White House, Tennessee facilities, write-down of the White House, Tennessee facility, and severance and other benefits related to the corporate workforce reduction and $5.7 million in professional service fees related to the previously announced investigation of customer margin support.

In fiscal 2011, no one customer accounted for 10% or more of our consolidated net sales. In fiscal 2010 and 2009, one customer accounted for approximately 10% of our consolidated net sales.

The table below represents inventory, net, by segment:

(dollars in thousands)	December 31, 2011	January 1, 2011	January 2, 2010
Carter's Wholesale	$ 178,523	$ 188,299	$ 126,347
OshKosh Wholesale	38,406	34,976	32,626
Carter's Retail	65,696	44,798	34,268
OshKosh Retail	31,879	25,800	17,758
International	32,711	4,636	3,001
Total	$ 347,215	$ 298,509	$ 214,000

Wholesale inventories include inventory produced and warehoused for the retail segment.

NOTE 15 – SEGMENT INFORMATION: (Continued)

The following represents property, plant, and equipment, net, by geographic area:

(dollars in thousands)	December 31, 2011	January 1, 2011	January 2, 2010
United States	$ 108,342	$ 94,968	$ 86,077
International	14,004	--	--
Total	$ 122,346	$ 94,968	$ 86,077

In connection with the change in our reportable segments discussed above, we have reallocated the goodwill for December 31, 2011 to conform to the new reportable segments on a relative fair value basis. The following represents goodwill by segment:

(dollars in thousands)	Wholesale – Carter's	Wholesale – OshKosh	Retail – Carter's	Retail –OshKosh	Mass Channel-Carter's	International	Total
Balance at January 2, 2010							
Goodwill	$ 51,814	$ 35,995	$ 82,025	$ 106,891	$ 2,731	$ --	$ 279,456
Accumulated impairment losses	--	(35,995)	--	(106,891)	--	--	(142,886)
	$ 51,814	$ --	$ 82,025	$ --	$ 2,731	$ --	$ 136,570
Balance at January 1, 2011							
Goodwill	$ 51,814	$ 35,995	$ 82,025	$ 106,891	$ 2,731	$ --	$ 279,456
Accumulated impairment losses	--	(35,995)	--	(106,891)	--	--	(142,886)
	$ 51,814	$ --	$ 82,025	$ --	$ 2,731	$ --	$ 136,570
Balance at December 31, 2011							
Goodwill	$ 51,814	$ 35,995	$ 82,025	$ 106,891	$ 2,731	$ --	$ 279,456
Goodwill acquired during year	--	--	--	--	--	52,109	52,109
Reallocation for changes in segments	(5,898)	--	--	--	(2,731)	8,629	--
Accumulated impairment losses	--	(35,995)	--	(106,891)	--	--	(142,886)
	$ 45,916	$ --	$ 82,025	$ --	$ --	$ 60,738	$ 188,679

NOTE 16 – WORKFORCE REDUCTION, FACILITY WRITE-DOWN, AND CLOSURE COSTS:

Corporate Workforce Reduction

On April 21, 2009, the Company announced to affected employees a plan to reduce its corporate workforce (defined as excluding retail district managers, hourly retail store employees, and distribution center employees). Approximately 150 employees were affected under the plan. The plan included consolidating the majority of our operations performed in our Oshkosh, Wisconsin office into other Company locations. This consolidation has resulted in the addition of resources in our other locations.

As a result of this corporate workforce reduction, during fiscal 2009, we recorded net charges of $6.7 million consisting of $5.5 million in severance charges and other benefits ($3.3 million which related to corporate office positions in connection with our existing plan and $2.2 million of special one-time benefits provided to affected employees), and approximately $1.2 million in asset impairment charges net of a gain related to the closure and sale of our Oshkosh, Wisconsin office. As of January 1, 2011, there were no remaining liabilities related to the corporate workforce reduction.

NOTE 16 – WORKFORCE REDUCTION, FACILITY WRITE-DOWN, AND CLOSURE COSTS: (Continued)

Barnesville Distribution Facility Closure

On April 2, 2009, the Company announced to affected employees a plan to close its Barnesville, Georgia distribution facility. Approximately 210 employees were affected by this closure. Operations at the Barnesville facility ceased on June 1, 2009.

In conjunction with the plan to close the Barnesville, Georgia distribution facility, the Company recorded approximately $4.3 million during fiscal 2009, consisting of severance of $1.7 million, asset impairment charges of $1.1 million related to the write-down of the related land, building, and equipment, $1.0 million of accelerated depreciation (included in selling, general, and administrative expenses), and $0.5 million of other closure costs. On February 21, 2011, the Company sold the facility for zero net proceeds. As of December 31, 2011, there was approximately $0.1 million of restructuring reserves included in other current liabilities on the accompanying audited consolidated balance sheet related to this closure.

White House, Tennessee Distribution Facility

The Company continually evaluates opportunities to reduce its supply chain complexity and lower costs. In the first quarter of fiscal 2007, the Company determined that *OshKosh* brand products could be effectively distributed through its other distribution facilities and third-party logistics providers. On February 15, 2007, the Company's Board of Directors approved management's plan to close the Company's OshKosh distribution facility, which was utilized to distribute the Company's *OshKosh* brand products.

During fiscal 2009, the Company wrote down the carrying value of its White House, Tennessee distribution facility by approximately $0.7 million to $2.8 million to reflect the decrease in the fair market value. During the third quarter of fiscal 2009, the Company sold the facility for net proceeds of approximately $2.8 million.

NOTE 17 – INVESTIGATION EXPENSES:

In connection with the previously announced investigation of customer margin support, the Company recorded pre-tax charges in the fourth quarter of fiscal 2009 of approximately $5.7 million in professional service fees.

NOTE 18 – UNAUDITED QUARTERLY FINANCIAL DATA:

The unaudited summarized financial data by quarter for the fiscal years ended December 31, 2011 and January 1, 2011 is presented in the table below:

(dollars in thousands, except per share data)	Quarter 1	Quarter 2	Quarter 3	Quarter 4
2011:				
Net sales	$ 469,000	$ 394,488	$ 639,617	$ 606,629
Gross profit	157,806	134,738	191,873	206,735
Selling, general, and administrative expenses	113,501	120,985	145,602	160,872
Royalty income	(9,329)	(8,269)	(10,494)	(9,182)
Operating income	53,634	22,022	56,765	55,045
Net income	32,123	12,659	34,449	34,785
Basic net income per common share	0.56	0.22	0.59	0.59
Diluted net income per common share	0.55	0.22	0.58	0.59
2010:				
Net sales	$ 409,049	$ 327,009	$ 517,928	$ 495,270
Gross profit	166,810	130,251	192,803	184,008
Selling, general, and administrative expenses	105,295	104,468	123,321	135,108
Royalty income	(9,654)	(7,640)	(10,396)	(9,886)
Operating income	71,169	33,423	79,878	58,786
Net income	42,825	19,096	49,657	34,894
Basic net income per common share	0.73	0.32	0.84	0.61
Diluted net income per common share	0.71	0.32	0.83	0.60

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

Not applicable

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined under Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective as of December 31, 2011.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;

- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and

- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

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

Management, including our Chief Executive Officer and Chief Financial Officer assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2011. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework*. Based on this assessment, management has concluded that the Company's internal control over financial reporting was effective as of December 31, 2011.

The effectiveness of Carter's, Inc. and its subsidiaries' internal control over financial reporting as of December 31, 2011 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears herein.

Changes in Internal Control over Financial Reporting

There were no changes in the Company's internal controls over financial reporting during the fourth quarter of fiscal 2011 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

On February 23, 2012, on the recommendation of the Nominating and Corporate Governance Committee, the Company's Board of Directors amended the Company's Bylaws to change the voting standard for election of directors in an uncontested election from a plurality to a majority of votes properly cast. In contested elections, the voting standard continues to be a plurality of votes properly cast. In addition, in connection with the amendment to the Company's Bylaws, on the recommendation of the Nominating and Corporate Governance Committee, the Board of Directors amended the Company's Corporate Governance Principles to provide that, in an uncontested election, a director who fails to receive the required number of votes for re-election in accordance with the Company's Bylaws must tender his or her resignation, subject to acceptance by the Board of Directors.

The Amended and Restated Bylaws are attached hereto as Exhibit 3.2.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information called for by Item 10 is incorporated herein by reference to the definitive proxy statement relating to the Annual Meeting of Stockholders of Carter's, Inc. to be held on May 17, 2012. Carter's, Inc. intends to file such definitive proxy statement with the Securities and Exchange Commission pursuant to Regulation 14A within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

ITEM 11. EXECUTIVE COMPENSATION

The information called for by Item 11 is incorporated herein by reference to the definitive proxy statement referenced above in Item 10.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

EQUITY COMPENSATION PLAN INFORMATION

The following table provides information about our equity compensation plan as of our last fiscal year:

Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants, and rights	Weighted-average exercise price of outstanding options, warrants, and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in first column)
Equity compensation plans approved by security holders (1)	1,992,700	$ 22.62	4,084,290
Equity compensation plans not approved by security holders	--	--	--
Total	1,992,700	$ 22.62	4,084,290

(1) Represents stock options that are outstanding or that are available for future issuance pursuant to the Carter's, Inc.'s Amended and Restated Equity Incentive Plan.

Additional information called for by Item 12 is incorporated herein by reference to the definitive proxy statement referenced above in Item 10.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information called for by Item 13 is incorporated herein by reference to the definitive proxy statement referenced above in Item 10.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information called for by Item 14 is incorporated herein by reference to the definitive proxy statement referenced above in Item 10.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

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	2.	Financial Statement Schedules: None	
(B)		Exhibits:	

Exhibit Number	Description of Exhibits
3.1	Certificate of Incorporation of Carter's, Inc., as amended on May 12, 2006.*****
3.2	Amended and Restated By-laws of Carter's, Inc.
4.1	Specimen Certificate of Common Stock. ***
10.1	Amended and Restated Credit Agreement, dated as of December 22, 2011, among The William Carter Company, the Canadian Borrower (as defined), certain lenders party thereto, Bank of America, N.A., as Administrative Agent, U.S. Dollar Facility Swing Line Lender, U.S. Dollar Facility L/C Issuer and Collateral Agent, Bank of America, N.A., Canada Branch, as Canadian Agent, Multicurrency Facility Swing Line Lender, JPMorgan Chase Bank, N.A., as Syndication Agent, Royal Bank of Canada, Suntrust Bank and U.S. Bank National Association, as Co-Documentation Agents and Merrill Lynch Pierce, Fenner & Smith Incorporated, as Sole Lead Arranger and Sole Bookrunning Manager.
10.2	Amended and Restated Severance Agreement between The William Carter Company and Michael D. Casey, dated as of March 2, 2011.*******
10.3	Severance Agreement between The William Carter Company and Lisa A. Fitzgerald, dated as of March 2, 2011. *******
10.6	Amended and Restated Severance Agreement between The William Carter Company and Brian J. Lynch, dated as of March 2, 2011. *******
10.7	Amended and Restated Severance Agreement between Carter's Retail, Inc. and James C. Petty, dated as of March 2, 2011. *******
10.8	Amended and Restated Severance Agreement between The William Carter Company and Richard F. Westenberger, dated as of March 2, 2011. *******
10.11	Amended and Restated Equity Incentive Plan. *****

10.12	Lease Agreement dated February 16, 2001 between The William Carter Company and Proscenium, L.L.C.*
10.13	Amended and Restated Stockholders Agreement dated as of August 15, 2001 among Carter's, Inc. and the stockholders of Carter's, Inc., as amended. ***
10.14	Lease Agreement dated January 27, 2003 between The William Carter Company and Eagle Trade Center, L.L.C.**
10.15	Amended and Restated Annual Incentive Compensation Plan. *****
10.16	Fourth Amendment dated December 21, 2004 to the Lease Agreement dated February 16, 2001, as amended by that certain First Lease Amendment dated as of May 31, 2001, by that certain Second Amendment dated as of July 26, 2001, and by that certain Third Amendment dated December 3, 2001, between The William Carter Company and The Manufacturers Life Insurance Company (USA). ****
10.17	Fifth Amendment dated November 4, 2010 to the Lease Agreement dated February 16, 2001, between The William Carter Company and John Hancock Life Insurance Company (USA), as amended by that certain First Lease Amendment dated as of May 31, 2001, by that certain Second Amendment dated as of July 26, 2001, by that certain Third Amendment dated December 3, 2001, between The William Carter Company and The Manufacturers Life Insurance Company (USA), and by that certain Fourth Amendment dated December 21, 2004. *******
10.18	Sixth Amendment dated November 15, 2010 to the Lease Agreement dated February 16, 2001, as amended by that certain First Lease Amendment dated as of May 31, 2001, by that certain Second Amendment dated as of July 26, 2001, by that certain Third Amendment dated December 3, 2001, between The William Carter Company and The Manufacturers Life Insurance Company (USA), by that certain Fourth Amendment dated December 21, 2004, and by that certain Fifth Amendment dated November 4, 2010 between The William Carter Company and John Hancock Life Insurance Company (USA). *******
10.19	The William Carter Company Severance plan, dated as of March 1, 2009. *******
10.20	The William Carter Company Deferred Compensation Plan, dated as of November 10, 2010. *******
21	Subsidiaries of Carter's, Inc.
23	Consent of Independent Registered Public Accounting Firm
31.1	Rule 13a-15(e)/15d-15(e) and 13a-15(f)/15d-15(f) Certification
31.2	Rule 13a-15(e)/15d-15(e) and 13a-15(f)/15d-15(f) Certification
32	Section 1350 Certification

*Incorporated by reference to The William Carter Company's Registration Statement filed on Form S-4 (No. 333-72790) on November 5, 2001.

**Incorporated by reference to Carter's, Inc.'s Registration Statement on Form S-1 (No. 333-98679) filed on October 1, 2003.

***Incorporated by reference to Carter's, Inc.'s Registration Statement on Form S-1 (No. 333-98679) filed on October 10, 2003.

****Incorporated by reference to Carter's, Inc.'s Annual Report on Form 10-K filed on March 16, 2005.

*****Incorporated by reference to Carter's, Inc.'s Annual Report on Form 10-K filed on February 28, 2007.

******Incorporated by reference to Carter's, Inc.'s Schedule 14A filed on April 5, 2011.

*******Incorporated by reference to Carter's, Inc.'s Annual Report on Form 10-K filed on March 2, 2011.

SIGNATURES

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

CARTER'S, INC.

/s/ MICHAEL D. CASEY
Michael D. Casey
Chief Executive Officer

Date: February 29, 2012

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

Name	Title	Date
/s/ MICHAEL D. CASEY Michael D. Casey	Chairman and Chief Executive Officer (Principal Executive Officer)	February 29, 2012
/s/ RICHARD F. WESTENBERGER Richard F. Westenberger	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 29, 2012
/s/ AMY WOODS BRINKLEY Amy Woods Brinkley	Director	February 29, 2012
/s/ VANESSA J. CASTAGNA Vanessa J. Castagna	Director	February 29, 2012
/s/ A. BRUCE CLEVERLY A. Bruce Cleverly	Director	February 29, 2012
/s/ JEVIN S. EAGLE Jevin S. Eagle	Director	February 29, 2012
/s/ PAUL FULTON Paul Fulton	Director	February 29, 2012
/s/ WILLIAM J. MONTGORIS William J. Montgoris	Director	February 29, 2012
/s/ DAVID PULVER David Pulver	Director	February 29, 2012
/s/ JOHN R. WELCH John R. Welch	Director	February 29, 2012
/s/ THOMAS E. WHIDDON Thomas E. Whiddon	Director	February 29, 2012

AMENDED AND RESTATED

BY-LAWS

OF

CARTER'S, INC.

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ARTICLE 7 - AMENDMENTS

ARTICLE 1 - STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place, within or without the State of Delaware, or, if so determined by the Board of Directors in its sole discretion, at no place (but rather by means of remote communication), as may be designated from time to time by the Board of Directors, or, if not so designated, at the principal executive office of the corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held at such date and time as shall be fixed by the Board of Directors and stated in the notice of the meeting. If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these Amended and Restated By-Laws to the annual meeting of stockholders shall be deemed to refer to such special meeting.

1.3 Special Meeting. Special meetings of stockholders may be called at any time only by the Chairman of the Board of Directors, the Chief Executive Officer (or, if there is no Chief Executive Officer, the President), the holder or holders of more than 35% of the outstanding common stock of the corporation, or by vote of a majority of the Board of Directors. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notices of all meetings shall state the place, if any, the date, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the hour of the meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. Notice of any meeting of stockholders shall be given either personally or by mail, electronic mail, telecopy, telegram or other electronic or wireless means. Notices not personally delivered shall be sent charges prepaid and shall be addressed to the stockholder at the address of that stockholder appearing on the books of the corporation. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or at the time of transmission when sent by electronic mail, telecopy, telegram or other electronic or wireless means. An affidavit of the mailing or other means of giving any notice of any stockholders' meeting, executed by the secretary, assistant secretary or any transfer agent of the corporation giving the notice, shall be prima facie evidence of the giving of such notice or report.

1.5 Voting List. The officer who has charge of the stock ledger of the corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for a period of at least ten (10) days prior to the meeting, for any purpose germane to the meeting on either, at the corporation’s

sole discretion, (a) a reasonably accessible electronic network (for which such information required to access the electronic network shall be provided with the notice of the meeting) or (b) during ordinary business hours at the corporation's principal place of business. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Amended and Restated By-Laws, the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, by means of remote communication, if authorized, or represented by proxy, shall constitute a quorum for the transaction of business.

1.7 Adjournments. Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these Amended and Restated By-Laws by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than thirty (30) days if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting.

1.8 Voting. Each stockholder shall have one vote for each share of capital stock entitled to vote and held of record by such stockholder, unless otherwise provided by the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Amended and Restated By-Laws. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or by electronic means, as determined by the Board of Directors in its sole discretion.

Any stockholder entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or, except when the matter is the election of directors, may vote them against the proposal; but if the stockholder fails to specify the number of shares that the stockholder is voting affirmatively, it will be conclusively presumed that the stockholder's approving vote is with respect to all shares that the stockholder is entitled to vote.

1.9 Proxy Representation. Every stockholder may authorize another person or persons to act for him by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, objecting to or voting or participating at a meeting, or expressing consent or dissent without a meeting. The delivery of a proxy on behalf of a stockholder consistent with telephonic or electronically transmitted instructions obtained pursuant to procedures of the corporation reasonably designed to verify that such instructions have been authorized by such stockholder shall constitute execution and delivery of the proxy by

or on behalf of the stockholder. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. The authorization of a proxy may but need not be limited to specified action, provided, however, that if a proxy limits its authorization to a meeting or meetings of stockholders, unless otherwise specifically provided such proxy shall entitle the holder thereof to vote at any adjourned session but shall not be valid after the final adjournment thereof. A proxy purporting to be authorized by or on behalf of a stockholder, if accepted by the corporation in its discretion, shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

1.10 Action at Meeting. When a quorum is present at any meeting, a nominee for director shall be elected if the number of votes properly cast "for" such nominee's election exceeds the number of votes properly cast "against" such nominee's election or cast as "withhold" with respect to such nominee; provided that, if with respect to any meeting, the number of persons intended to be nominated for election to the Board of Directors of the corporation at such meeting (1) by or at the direction of the Board of Directors or a committee appointed by the Board of Directors and (2) by any stockholders of the corporation entitled to vote for the election of directors at the meeting who have complied with the notice procedures set forth in Article II exceeds the number of directors to be elected at such meeting, the directors shall be elected by the plurality of the votes properly cast at such meeting. A majority of the votes properly cast upon any question other than an election to an office shall decide the question, except when a larger vote is required by law, by the Certificate of Incorporation, by the By-Laws or by the rules or regulations of the New York Stock Exchange, the NASD or any other stock exchange applicable to the corporation. No ballot shall be required for any election unless requested by a stockholder present or represented at the meeting and entitled to vote in the election.

1.11 Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. The nomination for election to the Board of Directors of the corporation at a meeting of stockholders may be made only (a) pursuant to the notice of the meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for below in this Section 1.11 is delivered to the Secretary who is entitled to vote in the election of directors at the meeting and who complies with the notice procedures set forth in this Section 1.11. Such nominations, other than those made by or on behalf of the Board of Directors, shall be made by timely notice in writing delivered or mailed to the Secretary in accordance with the provisions of Section 1.12. Such notice shall set forth (a) as to each proposed nominee (i) the name, age, business address and, if known, residence address of each such nominee, (ii) the principal occupation or employment of each such nominee, (iii) the number of shares of stock of the corporation that are beneficially owned by each such nominee, (iv) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (iv) any other information concerning the

nominee that must be disclosed as to nominees in proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), including such person's written consent to be named as a nominee and to serve as a director if elected; and (b) as to the stockholder giving the notice, the information required to be provided pursuant to Section 1.12. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as a director of the corporation.

The chair of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not properly brought before the meeting in accordance with the provisions of this Section 1.11, and if he or she should so determine, the chair shall so declare to the meeting and the defective nomination shall be disregarded.

Notwithstanding the foregoing provisions of this Section 1.11, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Notwithstanding the foregoing provisions of this Section 1.11, a stockholder shall also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.11. Nothing in this Section 1.11 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

1.12 Notice of Business at Annual Meetings. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, (c) otherwise properly brought before an annual meeting by a stockholder who was a stockholder of record of the corporation at the time the stockholder's notice provided for below in this Section 1.12 is delivered to the Secretary who is entitled to vote and who complies with the notice procedures set forth in this Section 1.12. For business to be properly brought before an annual meeting by a stockholder, if such business relates to the election of directors of the corporation, the procedures in Section 1.11 must be complied with. If such business relates to any other matter, the stockholder must have given timely notice thereof in writing to the Secretary. To be timely, a stockholder's notice must be delivered to or mailed by first class United States mail, postage prepaid, and received by the Secretary at the principal executive offices of the corporation not less than ninety (90) calendar days nor more than one hundred twenty (120) calendar days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the annual meeting is not held within thirty (30) days before or after such anniversary date, then for the notice by the stockholder to be timely it must be so received not later than the close of business on the 10th day following the date on which the notice of the meeting was mailed or such public disclosure was made, whichever occurs first. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such

business at the annual meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation that are beneficially owned by the stockholder, and (d) any material interest of the stockholder in such business. Notwithstanding anything in these Amended and Restated By-Laws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this Section 1.12 and except that any stockholder proposal that complies with Rule 14a-8 of the proxy rules, or any successor provision, promulgated under the Securities Exchange Act of 1934, as amended, and is to be included in the corporation's proxy statement for an annual meeting of stockholders shall be deemed to comply with the requirements of this Section 1.12.

The chair of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 1.12, and if he or she should so determine, the chair shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Notwithstanding the foregoing provisions of this Section 1.12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.12. Nothing in this Section 1.12 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

1.13 Action without Meeting. Any action required or permitted to be taken at any meeting of the stockholders may be taken without a meeting if a majority of the stockholders entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meeting of stockholders. Such consents shall be treated for all purposes as a vote at a meeting.

1.14 Conduct of Meeting. The Chairman of the Board or, in his or her absence, the Vice Chairman of the Board, if any, the Chief Executive Officer, the President or any Vice President, in the order named, shall call meetings of the stockholders to order and act as chair of such meeting; provided, however, that, in the absence of the Chairman of the Board, the Board of Directors may appoint any stockholder to act as chair of any meeting. The Secretary of the corporation or, in his or her absence, any Assistant Secretary, shall act as secretary at all meetings of the stockholders; provided, however, that in the absence of the Secretary at any meeting of the stockholders, the person acting as chair at any meeting may appoint any person to act as secretary of such meeting.

The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Subject to such rules and regulations of the Board of Directors, if any, the person presiding over the meeting shall have the right and authority to convene and adjourn the meeting, to prescribe such

rules, regulations and procedures and to do all such acts as, in the judgment of the person presiding over the meeting, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the person presiding over the meeting shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters that are to be voted on by ballot. The person presiding over the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the person presiding over the meeting should so determine and declare, any such matter or business shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE 2 - DIRECTORS

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law, the Certificate of Incorporation or these Amended and Restated By-Laws. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until the vacancy is filled.

2.2 Number; Election and Qualification. The number of directors that shall constitute the whole Board of Directors shall be determined by resolution of the Board of Directors, but in no event shall be less than three. The number of directors may be decreased at any time and from time to time by a majority of the directors then in office, but only to eliminate vacancies existing by reason of the death, resignation, removal or expiration of the term of one or more directors. The directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. The directors need not be stockholders of the corporation.

2.3 Classes of Directors. The Board of Directors shall be and is divided into three classes: Class I, Class II and Class III. No one class shall have more than one director more than any other class. If a fraction is contained in the quotient arrived at by dividing the designated number of directors by three, then, if such fraction is one-third, the extra director shall be a member of Class III, and if such fraction is two-thirds, one of the extra directors shall be a member of Class III and one of the extra directors shall be a member of Class II, unless otherwise provided from time to time by resolution adopted by the Board of Directors.

2.4 Terms of Office. Except as otherwise provided in the Certificate of Incorporation or these Amended and Restated By-Laws, each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected;

provided, however, that each initial director in Class I shall serve for a term ending on the date of the annual meeting in 2004; each initial director in Class II shall serve for a term ending on the date of the annual meeting of stockholders in 2005; and each initial director in Class III shall serve for a term ending on the date of the annual meeting of stockholders in 2006; and provided, further, that the term of each director shall be subject to the election and qualification of his successor and to his earlier death, resignation or removal.

2.5 Allocation of Directors Among Classes in the Event of Increases or Decreases in the Number of Directors. In the event of any increase or decrease in the authorized number of directors, (i) each director then serving as such shall nevertheless continue as a director of the class of which he is a member and (ii) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of directors so as to ensure that no one class has more than one director more than any other class. To the extent possible, consistent with the foregoing rule, any newly created directorships shall be added to those classes whose terms of office are to expire at the latest dates following such allocation, and any newly eliminated directorships shall be subtracted from those classes whose terms of offices are to expire at the earliest dates following such allocation, unless otherwise provided from time to time by resolution adopted by the Board of Directors.

2.6 Removal. The directors of the corporation may be removed with or without cause by the affirmative vote of the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote generally in the election of directors cast at a meeting of the stockholders called for that purpose.

2.7 Vacancies. Any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement of the Board of Directors, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director chosen to fill a vacancy shall hold office for the unexpired term of his predecessor in office, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of his successor and to his earlier death, resignation or removal.

2.8 Resignation. Any director may resign by delivering his or her written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other future event.

2.9 Regular Meetings. The regular meetings of the Board of Directors may be held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided, that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.10 Special Meetings. Special meetings of the Board of Directors may be held at any time and place, within or without the State of Delaware, designated in a call by the Chairman of

the Board, the President, two or more directors, or by one director in the event that there is only a single director in office.

2.11 Notice of Special Meetings. Notice of any special meeting of the Board of Directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. The notice shall be duly given to each director (i) by giving notice to such director in person or by telephone at least twenty four (24) hours in advance of the meeting, (ii) by sending a telegram, telecopy, electronic mail or other means of electronic transmission, or delivering written notice by hand, to the director's last known business or home address at least twenty four (24) hours in advance of the meeting, or (iii) by mailing written notice to the director's last known business or home address at least seventy two (72) hours in advance of the meeting. A notice or waiver of notice of a special meeting of the Board of Directors need not specify the purposes of the meeting.

2.12 Meetings by Telephone Conference Calls. Any meeting of the Board of Directors may be held by conference telephone or similar communication equipment, so long as all persons participating in the meeting can hear one another; and all persons participating in such a meeting shall be deemed to be present in person at the meeting.

2.13 Quorum. A majority of the total number of the whole Board of Directors shall constitute a quorum at all meetings of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number of directors so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, other than announcement at the meeting, until a quorum shall be present.

2.14 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these Amended and Restated By-Laws.

2.15 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if all members of the Board consent to the action in writing or by electronic transmission and such writings or transmissions are filed with the minutes of proceedings of the Board of Directors or committee of the Board of Directors. Such filings shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.16 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of the State of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and

affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers that may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may adopt a charter and make rules for the conduct of its business, but unless otherwise provided by the directors or in such charter or rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Amended and Restated By-Laws for the Board of Directors.

2.17 Compensation of Directors. The directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

ARTICLE 3 - OFFICERS

3.1 Enumeration. The officers of the corporation shall consist of a President, a Treasurer, a Secretary and such other officers with such other titles as the Board of Directors shall determine, including one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election. The President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 Qualification. No officer need be a stockholder of the corporation. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Amended and Restated By-Laws, each officer shall hold office until his successor is elected and qualified, unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal.

3.5 Resignation and Removal. Any officer may resign by delivering his written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other future event. Any officer may be removed at any time, with or without cause, by vote of the Board of Directors at any regular or special meeting.

Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the corporation.

3.6 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any

offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of his or her predecessor and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

3.7 Chairman of the Board and Vice Chairman of the Board. The Board of Directors may appoint a Chairman of the Board and a Vice Chairman of the Board. The Chairman and Vice Chairman may, but need not be, designated as officers of the corporation by the Board of Directors. If the Board of Directors appoints a Chairman of the Board, he or she shall perform such duties and possess such powers as are assigned by the Board of Directors. If the Board of Directors appoints a Vice Chairman of the Board, he or she shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as are assigned by the Board of Directors.

3.8 President. The President shall, subject to the direction of the Board of Directors, have general charge and supervision of the business of the corporation. Unless otherwise provided by the Board of Directors, the President shall preside at all meetings of the stockholders and, if the President is a director, at all meetings of the Board of Directors. Unless the Board of Directors has designated the Chairman of the Board or another officer as Chief Executive Officer, the President shall be the Chief Executive Officer of the corporation. The President shall perform such other duties and shall have such other powers as the Board of Directors may from time to time prescribe.

3.9 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the President may from time to time assign. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and when so performing shall have all the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.10 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the Secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time assign. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories designated from time to time by the Board of Directors, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation. Unless the Board of Directors has designated another officer as Chief Financial Officer, the Treasurer shall be the Chief Financial Officer of the corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the President or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.12 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors or a committee thereof.

ARTICLE 4 - CAPITAL STOCK

4.1 Issuance of Stock. Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2 Certificates of Stock. Every holder of stock of the corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock that are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-Laws, applicable securities laws or any agreement

among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

4.3 Transfers. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Amended and Restated By-Laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the corporation in accordance with the requirements of these Amended and Restated By-Laws.

4.4 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE 5 - RECORDS AND REPORTS

5.1 Maintenance and Inspection of Records. The corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Amended and Restated By-Laws as amended to date, accounting books and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

5.2 Inspection by Director. Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

5.3 Representation of Shares of Other Corporations. The President or the Secretary, or any other officer of this corporation authorized by the Board of Directors is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall end on the Saturday in December or January nearest the last day of December in each year and the new fiscal year shall begin on the Sunday thereafter.

6.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

6.3 Waiver of Notice. Whenever any notice is required to be given by law, by the Certificate of Incorporation or by these Amended and Restated By-Laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telegraph, cable, electronic mail or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person, by means of remote communications, if authorized, or by proxy shall be deemed equivalent to such notice. Where such an appearance is made for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened, the appearance shall not be deemed equivalent to notice.

6.4 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

6.5 Corporate Contracts and Instruments; How Executed. The Board of Directors, except as otherwise provided in these Amended and Restated By-Laws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

6.6 Evidence of Authority. A certificate by the Secretary, any Assistant Secretary, or any temporary secretary, as to any action taken by the stockholders, the Board of Directors, a committee of the Board of Directors, or any officer or representative of the corporation shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action.

6.7 Certificate of Incorporation. All references in these Amended and Restated By-Laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended or restated and in effect from time to time.

6.8 Transactions with Interested Parties. No contract or transaction between the corporation and one or more of the directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors that authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:

(1) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee of the Board of Directors in good faith authorizes the

(2) contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(3) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(4) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee of the Board of Directors, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes the contract or transaction.

6.9 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Corporation Law of the State of Delaware shall govern the construction of these Amended and Restated By-Laws. Without limiting the generality of this provision, (a) the singular number includes the plural, and the plural number includes the singular; (b) the term "person" includes a corporation, a partnership, an entity and a natural person; and (c) all pronouns include the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

6.10 Provisions Additional to Provisions of Law. All restrictions, limitations, requirements and other provisions of these Amended and Restated By-Laws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.

6.11 Provisions Contrary to Provisions of Law; Severability. Any article, section, subsection, subdivision, sentence, clause or phrase of these Amended and Restated By-Laws that, upon being construed in the manner provided in Section 6.10 hereof, shall be contrary to or inconsistent with any applicable provisions of law, shall not apply so long as said provisions of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these Amended and Restated By-Laws, it being hereby declared that these Amended and Restated By-Laws and each article, section, subsection, subdivision, sentence, clause or phrase thereof, would have been adopted irrespective of the fact that any one or more articles, sections, subsections, subdivisions, sentences, clauses or phrases is or are illegal.

6.12 Notices. Any reference in these Amended and Restated By-Laws to the time a notice is given or sent means, unless otherwise expressly provided, the time a written notice by mail is deposited in the United States mails, postage prepaid; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

ARTICLE 7 - AMENDMENTS

Subject to the provisions of the Certificate of Incorporation, these Amended and Restated By-Laws may be adopted, amended or repealed at any annual or special meeting of stockholders, by the affirmative vote of the holders of a majority of the voting power of the stock issued and outstanding and entitled to vote thereat. Subject to the provisions of the Certificate of Incorporation, these Amended and Restated By-Laws may also be altered, amended or repealed, and new By-Laws adopted, by the Board of Directors, acting by majority vote of the entire Board, subject to the right of the stockholders to adopt, amend or repeal the By-Laws as provided above.

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AMENDED AND RESTATED
CREDIT AGREEMENT

Dated as of December 22, 2011

among
THE WILLIAM CARTER COMPANY,
as U.S. Borrower,

NORTHSTAR CANADIAN OPERATIONS CORP.
(to be amalgamated with and into
THE GENUINE CANADIAN CORP.
upon the effectiveness of the Canadian Amalgamation),
as Canadian Borrower

and

BANK OF AMERICA, N.A.,
as Administrative Agent, U.S. Dollar Facility Swing Line Lender,
U.S. Dollar Facility L/C Issuer and Collateral Agent,

BANK OF AMERICA, N.A., **CANADA BRANCH**
as Canadian Agent, Multicurrency Facility Swing Line Lender
and Multicurrency Facility L/C Issuer

JPMORGAN CHASE BANK, N.A.,
as Syndication Agent,

The Other Lenders Party Hereto

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Sole Lead Arranger and Sole Bookrunning Manager,

and

ROYAL BANK OF CANADA,
SUNTRUST BANK

and

U.S. BANK NATIONAL ASSOCIATION,
as Co-Documentation Agents

FIFTH THIRD BANK,
as a Lender

CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005

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AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") is entered into as of December 22, 2011, among THE WILLIAM CARTER COMPANY, a Massachusetts corporation (the "U.S. Borrower"), the Canadian Borrower (as defined), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), BANK OF AMERICA, N.A., as Administrative Agent, U.S. Dollar Facility Swing Line Lender (in such capacity, the "U.S. Dollar Facility Swing Line Lender"), U.S. Dollar Facility L/C Issuer (as defined) and Collateral Agent (in such capacity, the "Collateral Agent"), BANK OF AMERICA, N.A., CANADA BRANCH, as Canadian Agent, Multicurrency Facility Swing Line Lender (in such capacity, the "Multicurrency Facility Swing Line Lender") and as a Multicurrency Facility L/C Issuer (as defined), JPMORGAN CHASE BANK, N.A., as Syndication Agent (in such capacity, the "Syndication Agent"), ROYAL BANK OF CANADA, SUNTRUST BANK and U.S. BANK NATIONAL ASSOCIATION, as Co-Documentation Agents (in such capacities, the "Co-Documentation Agents") and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, as Sole Lead Arranger and Sole Bookrunning Manager (in such capacities, the "Arranger").

WHEREAS, pursuant to that certain credit agreement, dated as of October 15, 2010 (the "Original Credit Agreement"), by and among the U.S. Borrower, the Lenders, Bank of America, N.A., as administrative agent, collateral agent, letter of credit issuer and swingline lender, and the other parties;

WHEREAS, the Borrowers have requested that the Original Credit Agreement be amended and restated on the Restatement Date as set forth herein, which amendment and restatement shall become effective upon the Restatement Date;

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities of the parties under the Original Credit Agreement and that this Agreement amend and restate in its entirety the Original Credit Agreement and re-evidence the "Obligations" (under, and as defined in, the Original Credit Agreement) outstanding on the Restatement Date as contemplated hereby; and

WHEREAS, except as otherwise provided herein**,** all Obligations are and shall continue to be secured by all Collateral on which a Lien is granted to the Collateral Agent pursuant to any Loan Document.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree to amend and restate the Original Credit Agreement, and the Original Credit Agreement is hereby amended and restated in its entirety 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:

"Acquisition Consideration" means the purchase consideration for any Permitted Acquisition (including, without limitation, Indebtedness assumed by the U.S. Borrower or any of its Subsidiaries), whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, "earn-outs" and other similar agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any Person or business acquired in such Permitted Acquisition; provided that any such future payment that is subject to a contingency shall not be considered Acquisition Consideration except for any such payment which has become due and payable, at which point such payment shall be deemed Acquisition Consideration.

"Additional Lender" has the meaning assigned to such term in Section 2.14.

"Administrative Agent" means Bank of America, N.A., in its capacity as administrative agent hereunder, and includes any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the U.S. 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; provided, however, that, for purposes of Section 7.08, the term "Affiliate" shall also include another Person that directly or indirectly owns more than 10% of the Voting Stock of such Person.

"Affiliated Charitable Organization" means any charitable organization that is an Affiliate of the U.S. Borrower or any Subsidiary that meets the requirements of Section 501(c)(3) of the Code to the extent, and only for so long as, such organization is eligible to receive tax-deductible contributions in accordance with Section 170 of the Code.

"Agent Parties" has the meaning assigned to such term in Section 10.02(c).

"Agents" means the Administrative Agent, the Collateral Agent, the Canadian Agent and the Arranger; and "Agent" shall mean any of them.

"Aggregate Commitments" means the Commitments of all of the Lenders.

"Aggregate Multicurrency Facility Commitments" means the Multicurrency Facility Commitments of all of the Multicurrency Facility Lenders.

"Aggregate U.S. Dollar Facility Commitments" means the U.S. Dollar Facility Commitments of all of the U.S. Dollar Facility Lenders.

"Agreement" has the meaning assigned to such terms in the introductory paragraph hereto.

"Agreement Currency" has the meaning assigned to such term in Section 10.18.

"Anti-Terrorism Laws" has the meaning assigned to such term in Section 5.20.

"Applicable Commitment Fee Rate" means a rate equal to (a) from and including the Restatement Date until the delivery of financial statements for the first fiscal quarter ending after the Restatement Date, 0.40% per annum and (b) thereafter, a percentage per annum determined by reference to the Lease Adjusted Leverage Ratio in effect from time to time as set forth below:

Pricing Level	Lease Adjusted Leverage Ratio	Applicable Commitment Fee Rate
I	> 3.00:1.00	0.50%
	< 3.00:1.00	
II	> 1.75:1.00	0.40%
III	< 1.75:1.00	0.35%

Any increase or decrease in the Applicable Commitment Fee Rate resulting from a change in the Lease Adjusted Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered with respect to the financial statements for the most recently ended fiscal quarter or fiscal year, as applicable pursuant to Section 6.02(b) and be based on the Lease Adjusted Leverage Ratio set forth therein; provided that if a Compliance Certificate is not delivered when due in accordance with such Section, then the Pricing Level I set forth in the table above shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the Compliance Certificate is delivered.

If, at a time when this Agreement is in effect or any unpaid Obligations are outstanding (other than indemnities and other contingent obligations not yet due and payable) or at a time within 91 days after the date upon which all Loans and L/C Obligations have been repaid and all Commitments have been terminated, as a result of any restatement of or other adjustment to the financial statements of the U.S. Borrower or Holdings or for any other reason, the U.S. Borrower or the Required Lenders determine that (i) the Lease Adjusted Leverage Ratio as calculated by the U.S. Borrower or Holdings as of any applicable date was inaccurate and (ii) a proper calculation of the Lease Adjusted Leverage Ratio would have resulted in higher pricing for such period, each applicable Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent and/or the Canadian Agent, as applicable, for the account of the applicable Lenders promptly on demand by each applicable Facility Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the U.S. Borrower under the Bankruptcy

Code of the United States, automatically and without further action by such Facility Agent or any Lender), an amount equal to the excess of the amount of fees that should have been paid for such period over the amount of fees actually paid for such period; provided, that such inaccuracy shall not in any event be deemed retroactively to be an Event of Default pursuant to Section 8.01(a) if such amount is paid promptly on demand as set forth above. This paragraph shall not limit the rights of the Administrative Agent, the Canadian Agent or any Lender, as the case may be, under Section 2.08(b) or under Article VIII. Each Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

"Applicable Rate" means (i) from and including the Restatement Date until the delivery of financial statements for the first fiscal quarter ending after the Restatement Date, (A) 1.25% with respect to Loans that are Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans and 1.125% with respect to commercial Letters of Credit and (B) 2.25% with respect to Loans that are Eurodollar Rate Loans and standby Letters of Credit and (ii) thereafter, a percentage per annum determined by reference to the Lease Adjusted Leverage Ratio in effect from time to time as set forth below:

		Applicable Rate		
Pricing Level	**Lease Adjusted Leverage Ratio**	**Base Rate Loans, Canadian U.S. Base Rate Loans and Canadian Prime Rate Loans**	**Commercial Letters of Credit**	**Eurodollar Rate Loans and standby Letters of Credit**
I	> 3.00:1.00	1.50%	1.25%	2.50%
II	< 3.00:1.00 > 1.75:1.00	1.25%	1.125%	2.25%
III	< 1.75:1.00	1.00%	1.00%	2.00%

Any increase or decrease in the Applicable Rate resulting from a change in the Lease Adjusted Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b) with respect to the financial statements for the most recently ended fiscal quarter or fiscal year, as applicable, and be based on the Lease Adjusted Leverage Ratio set forth therein; provided that if a Compliance Certificate is not delivered when due in accordance with such Section, then the Pricing Level I set forth in the table above shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the Compliance Certificate is delivered.

If, at a time when this Agreement is in effect or any unpaid Obligations are outstanding (other than indemnities and other contingent obligations not yet due and payable) or at a time within 91 days after the date upon which all Loans and L/C Obligations have been repaid and all Commitments have been terminated, as a result of any restatement of or other adjustment to the financial statements of the U.S. Borrower or Holdings or for any other reason, the U.S. Borrower or the Required Lenders determine that (i) the Lease Adjusted Leverage Ratio as calculated by the U.S. Borrower or Holdings as of any applicable date was inaccurate and (ii) a proper calculation of the Lease Adjusted Leverage Ratio would have resulted in higher pricing for such period, the applicable Borrower shall immediately and retroactively be obligated to pay to the applicable Facility 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 the Canadian Agent, as applicable (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the U.S. Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, the Canadian 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; provided, that such inaccuracy shall not in any event be deemed retroactively to be an Event of Default pursuant to Section 8.01(a) if such amount is paid promptly on demand as set forth above. This paragraph shall not limit the rights of the Administrative Agent, the Canadian Agent, any Lender or any L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. Each Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

"Approved Fund" means any Fund that is advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that advises or manages a Lender.

"Arranger" has the meaning assigned to such term in the introductory paragraph hereto.

"Asset Sale" means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to (other than the U.S. Borrower or any Subsidiary Guarantor), or any exchange of property with, any Person (other than an exchange where the U.S. Borrower or a Subsidiary Guarantor is the only Person to which any property is provided in such exchange), in one transaction or a series of transactions, of all or any part of the U.S. Borrower's or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests of any of the U.S. Borrower's Subsidiaries, other than (i) inventory (or other assets, including Cash Equivalents and intellectual property) sold, leased or licensed in the ordinary course of business, (ii) obsolete, worn out or surplus property sold in the ordinary course of business (or in the case of leased or subleased properties, properties which are no longer useful or necessary in the U.S. Borrower's or any of its Subsidiaries' businesses and disposed of in the ordinary course of business), and (iii) to the extent not resulting in aggregate proceeds in any fiscal year in excess of $20,000,000, sales of other assets in such fiscal year for aggregate consideration of less than $10,000,000 with respect to any transaction or series of related transactions.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent and/or the Canadian Agent, as applicable, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, in respect of any Capital Lease Obligation, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Audited Financial Statements" means the audited consolidated balance sheet of Holdings and its Subsidiaries as of December 29, 2007, January 3, 2009 and January 2, 2010 and the related consolidated statements of operations, shareholders' equity and cash flows for the fiscal years ended December 29, 2007, January 3, 2009 and January 2, 2010, including the notes thereto, in each case, as restated for the fiscal years ended December 29, 2007 and January 3, 2009.

"Auto-Extension Letter of Credit" has the meaning assigned to such term in Section 2.03(b)(iii).

"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 the Administrative Agent as its "prime rate," and (c) the Eurodollar Rate plus 1.00%. The "prime rate" is a rate set by the Administrative Agent based upon various factors including the Administrative Agent'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 the Administrative Agent 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.

"Base Rate Revolving Loan" means a Revolving Loan that is a Base Rate Loan.

"BIA" shall mean *Bankruptcy and Insolvency Act* (Canada), as amended, and any successor thereto, and any regulations promulgated thereunder, as in effect from time to time.

"Borrower Materials" has the meaning assigned to such term in Section 6.02.

"Borrowers" means the U.S. Borrower and the Canadian Borrower.

"Borrowing" means a Revolving Loan Borrowing or a Swing Line Borrowing, as the context may require.

"Borrowing or Conversion Notice" means a notice of (a) a Revolving Loan 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 executed by the applicable Borrower, and substantially in the form of Exhibit A-1.

"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, New York or the jurisdiction where the Administrative Agent's Office with respect to Obligations under the U.S. Dollar Facility Revolving Loans, U.S. Dollar Facility Commitments, U.S. Dollar Facility L/C Obligations, or U.S. Dollar Facility Swing Line Loans is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market; provided that, when used in connection with any Multicurrency Facility Revolving Loan, Multicurrency Facility Commitment, Multicurrency Facility L/C Obligations, or Multicurrency Facility Swing Line Loan, the term "Business Day" shall also exclude any day on which commercial banks in Ontario or in the jurisdiction where the Canadian Agent's principal Canadian lending branch is located are authorized or required by law to remain closed.

"Canadian Agent" means Bank of America, N.A., Canada Branch in its capacity as Canadian agent hereunder, and includes any successor Canadian agent.

"Canadian Agent's Office" means the Canadian Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Canadian Agent may from time to time notify to the Canadian Borrower and the Lenders.

"Canadian Amalgamation" means the amalgamation of Northstar Canadian Operations Corp. with its wholly-owned subsidiary 1854237 Ontario Limited and with Bonnie Togs Children's Limited and The Genuine Canadian Corp., each a wholly-owned subsidiary of 1854237 Ontario Limited under subsection 177(1) of the Business Corporation Act (Ontario). Promptly following the Canadian Amalgamation, The Genuine Canadian Corp. shall execute and deliver to the Administrative Agent and the Canadian Agent the Canadian Confirmation Agreement.

"Canadian Anti-Terrorism Laws" means the anti-terrorist provisions of the *Criminal Code* (Canada), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *United Nations Suppression of Terrorism Regulations and the Anti-terrorism Act* (Canada) and all regulations and orders made thereunder.

"Canadian Benefit Plans" means all material employee benefit plans or arrangements maintained or contributed to by the Canadian Borrower that are not Canadian Pension Plans, including all profit sharing, savings, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, legal services, supplementary unemployment benefit plans or arrangements and all life, health, dental and disability plan and arrangements in which the employees or former employees of the Canadian Borrower participate or are eligible to participate but excluding all stock option or stock purchase plans.

"Canadian Borrower" means (a) prior to the Canadian Amalgamation, Northstar and (b) upon the effectiveness of the Canadian Amalgamation, The Genuine Canadian Corp., an Ontario corporation.

"Canadian Dollar" or "C$" mean lawful money of Canada.

"Canadian Dollar Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in Canadian Dollars as determined by the Administrative Agent or the applicable Multicurrency Facility L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Canadian Dollars with Dollars.

"Canadian Confirmation Agreement" means that certain Joinder Agreement among The Genuine Canadian Corp., as successor Canadian Borrower, the Administrative Agent and the Collateral Agreement to be dated on or about the effective date of the Canadian Amalgamation, in form and substance reasonably satisfactory to the Administrative Agent, which agreement shall confirm that upon the effectiveness of the Canadian Amalgamation, The Genuine Canadian Corp. assumes all Secured Obligations of Northstar.

"Canadian Pension Plans" means all plans and arrangements which are or which are intended to be registered under or subject to pension minimum standards legislation in Canada that is established, maintained or contributed to by the Canadian Borrower for its employees or former employees.

"Canadian Prime Rate" means, at any time, the greater of (i) the average of the rates of interest per annum equal to the per annum rate of interest quoted, published and commonly known in Canada as the "prime rate" or which Bank of America, N.A., Canada Branch establishes at its main office in Toronto, Ontario as the reference rate of interest in order to determine interest rates for loans in Canadian Dollars to its Canadian borrowers and (ii) the sum of (x) the average of the rates per annum for Canadian Dollar bankers' acceptances having a term of one month that appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) on the date of determination, as reported by the Administrative Agent (and if such screen is not available, any successor or similar service as may be selected by the Administrative Agent), and (y) 1/2 of 1.00%, in each case, adjusted automatically with each quoted or published change in such rate, all without the necessity of any notice to the U.S. Borrower, the Canadian Borrower or any other Person.

"Canadian Prime Rate Loans" means Multicurrency Facility Revolving Loans and Multicurrency Facility Swing Line Loans for which the applicable rate of interest is based upon the Canadian Prime Rate.

"Canadian Reorganization" means (i) the transactions contemplated by the Canadian Reorganization Documents, (ii) the Canadian Amalgamation and (iii) any transactions related to the foregoing.

"Canadian Reorganization Documents" means the Forward Subscription Agreement, the Contribution Agreement, the documentation relating to the Northstar Loan, including the

Northstar Security Agreement, and the Organization Documents of the Delaware LLC Holding Company.

"Canadian U.S. Base Rate" means, at any time, the rate of interest per annum equal to the greatest of (i) the rate which the principal office of the Canadian Agent in Toronto, Ontario announces from time to time as the reference rate of interest for loans in Dollars to its Canadian borrowers; (ii) the Federal Funds Rate (expressed as a 365/366 day rate) plus 0.50% and (iii) the Eurodollar Rate plus 1.00%, in each case adjusted automatically with each change in such rates all without the necessity of any notice to the Canadian Borrower or any other Person.

"Canadian U.S. Base Rate Loans" means Multicurrency Facility Revolving Loans and Multicurrency Facility Swing Line Loans for which the applicable rate of interest is based on the Canadian U.S. Base Rate.

"Capital Lease Obligations" means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

"Cash Equivalents" means, as to any Person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition by such Person; provided the full faith and credit of the United States is pledged in support thereof; (b) time deposits, certificates of deposit and bankers' acceptances of any Lender or any commercial bank, or which is the principal banking subsidiary of a bank holding company, in each case, organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500,000,000 with maturities of not more than one year from the date of acquisition by such Person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (d) commercial paper issued by any Person incorporated in the United States rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by such Person; (e) direct obligations issued

by any state of the United States or any political subdivision thereof having one of the two highest rating categories obtainable from either S&P or Moody's with maturities of not more than one year from the date of acquisition thereof; (f) demand deposit accounts maintained in the ordinary course of business with any Lender or any commercial bank, or which is the principal banking subsidiary of a bank holding company, in each case, organized under the laws of the United States, any state thereof or the District of Columbia having capital and surplus aggregating in excess of $500,000,000; (g) investments in money market funds substantially all of whose assets comprise securities of the types described in clauses (a) through (f) above; and (h) in the case of Foreign Subsidiaries, Investments made locally of a type comparable to those described in clauses (a) through (g) of this definition.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

"CFC" means a controlled foreign corporation within the meaning of Section 957 of the Code.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, order, policy, rule, regulation or treaty, (b) any change in any law, order, policy, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means, at any time,

(a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger, amalgamation or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the U.S. Borrower and its Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act);

(b) Holdings shall cease to own 100% of the Equity Interests of the U.S. Borrower;

(c) the adoption of a plan relating to the liquidation or dissolution of Holdings or the U.S. Borrower;

(d) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have

"beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, 35% or more of the Voting Stock of Holdings, measured by voting power rather than number of shares; or

(e) the first day on which a majority of the members of the board of directors of Holdings are not Continuing Directors.

"Closing Date" means October 15, 2010.

"Co-Documentation Agents" has the meaning assigned to such term in the introductory paragraph hereto.

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

"Collateral" means, collectively, all of the Security Agreement Collateral, the Mortgaged Property and all other property of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Security Document.

"Collateral Agent" has the meaning assigned to such term in the introductory paragraph hereto, and includes any successor collateral agent.

"Commitment" means a U.S. Dollar Facility Commitment or a Multicurrency Facility Commitment, as applicable.

"Commitment Increase" means a U.S. Dollar Facility Commitment Increase or a Multicurrency Facility Commitment Increase, as applicable.

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

"Consolidated EBITDAR" means, for any period, (a) Consolidated Net Income for such period plus (b) the following (without duplication) to the extent deducted in calculating such Consolidated Net Income (and not added back in the definition thereof):

(i) total interest expense,

(ii) provisions for taxes (including any taxes actually paid and franchise taxes) based upon income as reflected in the provision for income taxes in the U.S. Borrower's (or, if so delivered pursuant to Section 6.01, Holdings') consolidated financial statements,

(iii) depreciation and amortization expense of the U.S. Borrower and its Subsidiaries,

(iv) non-cash charges and expenses of the U.S. Borrower and its Subsidiaries (including any non-cash charges resulting from purchase accounting, but excluding any such charge or expense that constitutes an accrual of or a reserve for potential cash charges for any future period or amortization of a prepaid cash item that was paid in a prior period),

(v) expenses incurred in connection with any Investment made pursuant to Section 7.02(f), (h), (o) or (r), any issuance of Disqualified Capital Stock, any Debt Issuance or any issuance of Equity Interests of Holdings (in each case, whether or not consummated), or early extinguishment of Indebtedness,

(vi) to the extent actually reimbursed, expenses incurred to the extent covered by indemnification provisions in any agreement in connection with a Permitted Acquisition,

(vii) to the extent covered by insurance under which the insurer has been properly notified and has not denied or contested coverage, expenses with respect to liability or casualty events or business interruption,

(viii) non-recurring or unusual charges in an aggregate of $10,000,000 during any four quarter period,

(ix) fees and expenses in connection with refinancings permitted by Section 7.15;

(x) unrealized losses and minus unrealized gains in respect of Swap Contracts;

(xi) Transaction Costs; and

(xii) Rent Expense;

minus (c) non-cash items increasing Consolidated Net Income (other than with respect to cash actually received in prior periods but not recognized as income until the current period and other than with respect to the accrual of revenue or the reversal of any accrual of, or reserve for, anticipated cash charges made in any prior period) minus (d) cash interest income for such period.

Consolidated EBITDAR shall be calculated on a Pro forma Basis to give effect to Permitted Acquisitions and Asset Sales (other than any Permitted Acquisitions involving the payment of Acquisition Consideration of less than $1,000,000) consummated at any time on or after the first day of the relevant Test Period and on or prior to the calculation date as if each Permitted Acquisition had been effected on the first day of such period and as if each such Asset Sale had been consummated on the day prior to the first day of such period.

"Consolidated Fixed Charge Coverage Ratio" means, for any Test Period, the ratio of (a) Consolidated EBITDAR for such Test Period to (b) Consolidated Fixed Charges for such Test Period.

"Consolidated Fixed Charges" means, for any period, the sum, without duplication, of the amounts determined for the U.S. Borrower and its Subsidiaries on a consolidated basis equal to (i) Consolidated Interest Expense and (ii) Rent Expense for such period.

"Consolidated Indebtedness" means, as at any date of determination, the aggregate amount of all Indebtedness of the U.S. Borrower and its Subsidiaries required to be shown as a

liability on a consolidated balance sheet of the U.S. Borrower and its Subsidiaries on such date, determined on a consolidated basis in accordance with GAAP, but excluding Indebtedness of the U.S. Borrower and its Subsidiaries (i) of the type referred to in clause (c) of the definition of "Indebtedness" and (ii) of the type referred to in clause (b) of the definition of "Indebtedness" for which the reimbursement obligation is contingent or unmatured or in respect of which the reimbursement obligation has been paid or extinguished. For the avoidance of doubt, "Consolidated Indebtedness" shall also exclude Indebtedness of the U.S. Borrower and its Subsidiaries of the type referred to in clause (h) of the definition of "Indebtedness" to the extent it relates to Indebtedness described in clauses (i) or (ii) of the immediately preceding sentence.

"Consolidated Interest Expense" means, for any period, the total consolidated cash interest expense of the U.S. Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, net of cash interest income, plus, without duplication, imputed interest on Attributable Indebtedness of the U.S. Borrower and its Subsidiaries for such period; provided that (i) to the extent directly related to the Transaction, debt issuance costs, debt discount or premium and other financing fees and expenses, together with any amortization in respect thereof, shall be excluded from the calculation of Consolidated Interest Expense and (ii) Consolidated Interest Expense shall be calculated after giving effect to Swap Contracts (including associated costs), but excluding unrealized gains and losses with respect to Swap Contracts.

Consolidated Interest Expense shall be calculated on a Pro forma Basis to give effect to any Indebtedness incurred, assumed or permanently repaid or extinguished during the relevant Test Period and the period on or prior to the calculation date in connection with Permitted Acquisitions and Asset Sales (other than any Permitted Acquisitions involving the payment of Acquisition Consideration of less than $1,000,000) as if such incurrence, assumption, repayment or extinguishing had been effected on the first day of such period.

"Consolidated Net Income" means, for any period, the consolidated net income (or loss) of the U.S. Borrower and its Subsidiaries determined on a consolidated basis for such period taken as a single accounting period in conformity with GAAP, provided that there shall be excluded to the extent otherwise included therein, without duplication:

(a) the income (or loss) of any Person that is not a Subsidiary of the U.S. Borrower or that is accounted for by the equity method of accounting, except to the extent of the amount of dividends or other distributions actually paid to the U.S. Borrower or any of its Subsidiaries by such Person during such period;

(b) subject to the last paragraph of the definition of Consolidated EBITDAR, the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the U.S. Borrower or is merged into or amalgamated or consolidated with the U.S. Borrower or any of its Subsidiaries or that Person's assets are acquired by the U.S. Borrower or any of its Subsidiaries;

(c) the cumulative effect of a change in accounting principles as well as any current period impact of new accounting pronouncements including those related to purchase accounting;

(d) the income of any Subsidiary of the U.S. Borrower (other than a Loan Party) to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary;

(e) any net after-tax gains or losses attributable to the early extinguishment of Indebtedness, including any write-off of debt issuance costs incurred in the Refinancing;

(f) any net unrealized gain or loss (after any offset) resulting from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net gain or loss resulting from obligations under any Swap Contracts for currency exchange risk) and any foreign currency translation gains or losses;

(g) any adjustments resulting from the application of FASB Interpretation No. 45 (Guarantees);

(h) any impairment charge or asset write-off or write-down (other than a write down of accounts receivable or inventory), including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(i) inventory purchase accounting adjustments and amortization, impairment and other non-cash charges (including asset revaluations) resulting from purchase accounting adjustments with respect to any Permitted Acquisition;

(j) non-cash compensation charges, including any such charges arising from stock options, restricted stock grants or other equity-incentive programs;

(k) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan; and

(l) (to the extent not included in clauses (a) through (k) above) any net extraordinary gains or net extraordinary losses.

"Continuing Directors" means, as of any date of determination, any member of the board of directors of Holdings who: (a) was a member of such board of directors on the Closing Date; or (b) was nominated for election or elected to such board of directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election.

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

"Contribution Agreement" means that certain contribution agreement dated December 22, 2011 pursuant to which the U.S. Borrower shall agree to contribute capital to the Delaware LLC Holding Company.

"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.

"Covenant Transaction" has the meaning assigned to such term in Section 1.08(c).

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

"Debt Issuance" means the incurrence by the U.S. Borrower or any of its Subsidiaries of any Indebtedness pursuant to Section 7.03(d), (m), (p), (r) or (s) after the Closing Date.

"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.

"Deemed Year" has the meaning assigned to such term in Section 2.10.

"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" has the meaning assigned to such term in Section 2.08(b).

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that, as reasonably determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within three Business Days of the date required to be funded by it hereunder, unless the subject of a good faith dispute, (b) has notified the applicable Borrower, the Canadian Agent or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within one Business Day after request by the Administrative Agent or the Canadian Agent, to confirm in a manner satisfactory to the Administrative Agent or the Canadian Agent that it will comply with its funding obligations, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the owner

ship or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"Delaware LLC Holding Company" shall mean Carter's Canadian Holdings, LLC, a limited liability company organized under the laws of the State of Delaware and a Wholly-Owned Subsidiary of the U.S. Borrower.

"Delaware LLC Holding Company Pledge Agreement" shall mean a pledge agreement substantially in the form of Exhibit M between the Delaware LLC Holding Company and the Collateral Agent for the benefit of the Secured Parties.

"Disqualified Capital Stock" means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is six months following the latest Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) Indebtedness or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the date that is six months following the latest Maturity Date, or (c) contains any mandatory repurchase obligation which may come into effect prior to payment in full of all Obligations; provided that any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the date that is six months following the latest Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the repayment in full of the Obligations.

"Disregarded Domestic Subsidiary" has the meaning assigned to such term in Section 6.13(a).

"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 Canadian Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable Multicurrency Facility L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with Canadian Dollars.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia.

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person approved by (i) the Administrative Agent, (ii)(A) the applicable L/C Issuer and (B) the applicable Swing Line Lender and (iii) unless an Event of Default has oc

curred and is continuing, the U.S. Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include (x) any natural person or (y) the U.S. Borrower or any of the U.S. Borrower's Affiliates or Subsidiaries.

"Employee Benefit Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) that is maintained or contributed to by a Loan Party or any ERISA Affiliate or with respect to which a Loan Party or a Subsidiary could reasonably be expected to incur liability.

"Environment" means ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

"Environmental Claim" means any claim, notice, demand, order, action, suit, proceeding or other communication alleging liability for investigation, remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, property damage, fines, penalties or other costs resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation of Environmental Law, and shall include any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to health, safety or the Environment.

"Environmental Law" means any and all applicable present and future treaties, laws, statutes, ordinances, regulations, rules, decrees, orders, judgments, consent orders, consent decrees, code or other binding requirements, and the common law, relating to protection of the Environment or of public health as it relates to Releases of or exposure to Hazardous Materials, or to the Release or threatened Release of Hazardous Materials, or natural resource damages and any and all Environmental Permits.

"Environmental Permit" means any permit, license, approval, consent or other authorization required by or from a Governmental Authority under Environmental Law.

"Equity Interest" means, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and 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 property of, such partnership, whether outstanding on the Closing Date or issued after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with a Loan Party 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 a Loan Party 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 a Loan Party 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 Pension 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; (f) the "substantial cessation of operations" within the meaning of Section 4062(e) of ERISA with respect to a Pension Plan; (g) 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 a Loan Party or any ERISA Affiliate; (h) any failure by a Pension Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived, (unless such failure is corrected by the final due date for all contributions for the plan year for which such failure occurred) or the failure to make any required contribution to a Multiemployer Plan; (i) the making of any amendment to any Pension Plan which could result in the imposition of a lien or the posting of a bond or other security; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to a Loan Party or a Subsidiary thereof.

"Eurodollar Base Rate" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in the relevant currency or, (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits for delivery on the first day of such Interest Period in the relevant currency in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted 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 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan or a Canadian U.S. Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent, in the case of a Base Rate Loan, or the Canadian Agent, in the case of a Canadian U.S. Base Rate Loan, from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent, in the case of Base Rate Loans, or the Canadian Agent, in the case of Canadian U.S. Base Rate Loans, to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan or Canadian U.S. Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

"Eurodollar Rate" means for any Interest Period with respect to a Eurodollar Rate Loan or a Base Rate Loan determined pursuant to clause (c) of the definition thereof, a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on the Eurodollar Rate.

"Eurodollar Rate Revolving Loan" means a Revolving Loan that is a Eurodollar Rate Loan.

"Eurodollar Reserve Percentage" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurodollar funding (currently referred to as "Eurocurrency liabilities"). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Default" has the meaning assigned to such term in Section 8.01.

"Excess Amount" has the meaning assigned to such term in Section 2.05(c).

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Taxes" means, with respect to the Administrative Agent, the Canadian Agent, any Lender, any L/C Issuer, any Swing Line Lender or any other recipient of any payment to be

made by or on account of any obligation of any Loan Party under any Loan Document, (a) taxes imposed on or measured by its overall net income (however denominated), franchise taxes imposed on it in lieu of net income taxes (including, for the avoidance of doubt, any such taxes measured by overall gross receipts) and branch profits taxes imposed on it, in each case, as a result of the recipient being organized, resident or engaged in business (other than a business arising (or being deemed to arise) solely as a result of the Loan Documents or any transactions occurring pursuant thereto) in the jurisdiction imposing such tax, (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the U.S. Borrower under Section 10.13), any U.S. federal withholding tax that is imposed under any Laws in effect at the time such Foreign Lender becomes a party hereto (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts from the U.S. Borrower with respect to such withholding tax pursuant to Section 3.01(a), (c) any tax that is attributable to the failure of the Administrative Agent, the Canadian Agent or any Lender, any L/C Issuer or any Swing Line Lender to comply with Section 3.01(e), (d) any U.S. federal withholding Tax that is imposed under Sections 1471 through 1474 of the Code or any Treasury regulations or other administrative guidance promulgated thereunder or any amended or successor version thereof that is substantively comparable, (e) U.S. federal backup withholding taxes imposed under Section 3406 of the Code and (f) any interest, additions to tax or penalties in respect of the foregoing.

"Executive Order" has the meaning assigned to such term in Section 5.20(a).

"Existing Credit Agreement" means that certain Credit and Guaranty Agreement dated as of July 14, 2005 by and among The William Carter Company, as borrower, Carter's, Inc. and certain subsidiaries of The William Carter Company, as guarantors, the various lenders from time to time party thereto and Bank of America, N.A., as administrative agent and collateral agent, as amended, modified and otherwise supplemented from time to time to the Closing Date.

"Existing Letters of Credit" means each of those letters of credit previously issued under the Existing Credit Agreement for the account of Holdings, the U.S. Borrower or any of the U.S. Borrower's Subsidiaries that is (a) outstanding on the Closing Date and (b) listed on Schedule 2.03.

"Facility Agents" means the Administrative Agent and the Canadian Agent; and "Facility Agent" shall mean any of them.

"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 fee letter dated as of September 10, 2010 among Bank of America, Banc of America Securities LLC (now known as Merrill Lynch, Pierce, Fenner & Smith Incorporated) and Holdings.

"Financial Plan" has the meaning assigned to such term in Section 6.01(c).

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that such Lien is the most senior Lien to which such Collateral is subject (subject to Permitted Liens).

"Foreign Lender" means any Lender that is not a U.S. Person within the meaning of Section 7701(a)(30) of the Code.

"Foreign Plan" means any Employee Benefit Plan that is a defined benefit plan described in Section 4(b)(4) of ERISA.

"Foreign Subsidiary" means any direct or indirect Subsidiary of the U.S. Borrower which is not organized under the laws of the United States, any State thereof or the District of Columbia.

"Forward Subscription Agreement" means that certain forward subscription agreement dated as of December 22, 2011 pursuant to which the Delaware LLC Holding Company shall agree to purchase Equity Interests of Northstar.

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

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the U.S. Dollar Facility L/C Issuer, such Defaulting Lender's Pro rata Share of the outstanding U.S. Dollar Facility L/C Obligations other than U.S. Dollar Facility L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other U.S. Dollar Facility Lenders or Cash Collateralized in accordance with the terms hereof, (b) with respect to the Multicurrency Facility L/C Issuer, such Defaulting Lender's Pro rata Share of the outstanding Multicurrency Facility L/C Obligations other than Multicurrency Facility L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Multicurrency Facility Lenders or Cash Collateralized in accordance with the terms hereof, (c) with respect to the U.S. Dollar Facility Swing Line Lender, such Defaulting Lender's Pro rata Share of U.S. Dollar Facility Swing Line Loans other than U.S. Dollar Facility Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other U.S. Dollar Facility Lenders or Cash Collateralized in accordance with the terms hereof and (d) with respect to the Multicurrency Facility Swing Line Lender, such Defaulting Lender's Pro rata Share of Multicurrency Facility Swing Line Loans other than Multicurrency Facility Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Multicurrency Facility Lenders or Cash Collateralized in accordance with the terms hereof.

"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.

"GAAP" means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), including, without limitation, the FASB Accounting Standards Codification™, which are applicable to the circumstances as of the date of determination, subject to Section 1.03 hereof.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

"Governmental Real Property Disclosure Requirements" means any applicable law of any Governmental Authority requiring notification of the buyer, lessee, mortgagee, assignee or other transferee of any Real Property, facility, establishment or business, or notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including any transfer of control) of any Real Property, facility, establishment or business, of the actual or threatened presence or Release in or into the Environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property, facility, establishment or business to be sold, leased, mortgaged, assigned or transferred.

"Granting Lender" has the meaning assigned to such term in Section 10.06(h).

"Guarantee" means, collectively, the guarantee made by Holdings and the Subsidiary Guarantors in favor of the Collateral Agent on behalf of the Secured Parties, substantially in the form of Exhibit F, the Guarantee by the U.S. Borrower of the Secured Obligations of the Canadian Borrower hereunder, and each other guarantee and guarantee supplement in respect of the Secured Obligations delivered pursuant to Section 6.13(b).

"Hazardous Materials" means the following: hazardous substances; hazardous wastes; polychlorinated biphenyls ("PCBs") or any substance or compound containing PCBs; asbestos or any asbestos-containing materials in any form or condition; radon or any other radioactive materials including any source, special nuclear or by-product material; petroleum, crude oil or any fraction thereof; and any other pollutant or contaminant or chemicals, wastes, materials, compounds, constituents or substances, subject to regulation or which can give rise to liability under any Environmental Laws.

"Hedge Bank" means each counterparty to a Swap Contract permitted by Section 7.03(n) with U.S. Borrower, the Canadian Borrower or any Subsidiary Guarantor if at the date of enter

ing into such Swap Contract such Person was a Lender or Affiliate of a Lender and such Person executes and delivers to the Administrative Agent a letter agreement in the form of Exhibit J pursuant to which such Person (x) appoints the Collateral Agent as its agent under the applicable Loan Documents and (y) agrees to be bound by the provisions of Sections 10.04 and 10.14. For the avoidance of doubt, Persons that were Hedge Banks under the Original Credit Agreement immediately prior to the effectiveness of this Agreement shall not cease to be Hedge Banks solely by virtue of the effectiveness of this Agreement.

"Holdings" means Carter's, Inc., a Delaware corporation.

"Honor Date" has the meaning assigned to such term in Section 2.03(c)(i).

"Immaterial Subsidiary" means one or more Subsidiaries of the U.S. Borrower that, on a combined consolidated basis for all such Subsidiaries, did not (i) for the most recently concluded fiscal year account for more than 5.0% of consolidated revenues of the U.S. Borrower and its Subsidiaries and (ii) as of the last day of such fiscal year own more than 5.0% of the consolidated assets of the U.S. Borrower and its Subsidiaries.

"Improvements" means all on-site and off-site improvements to the Property, constructed on the Property, together with all fixtures, tenant improvements, and appurtenances now or later to be located on the Property and/or in such improvements.

"Incremental Amendment" has the meaning assigned to such term in Section 2.14.

"Incremental Facility Closing Date" has the meaning assigned to such term in Section 2.14.

"Indebtedness" means, as to any Person at a particular time, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP (without duplication):

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guarantees, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of such Person's business payable on terms customary in the trade, in each case, (x) not past due for more than ninety (90) days after the due date of such trade account payable or (y) past due for more than 90 days but not exceeding $5,000,000 in the aggregate);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under

conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided that the amount of such Indebtedness shall be limited to the value of the property subject to such Lien if such Person has not assumed or become liable for the payment of such obligation;

(f) Capital Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Capital Stock in such Person or any other Person (except any obligation to purchase, redeem, retire or otherwise acquire for value any Equity Interests of Holdings from present or former officers, directors or employees of Holdings, the U.S. Borrower or any Subsidiary upon the death, disability, retirement or termination of employment or service of such officer, director or employee, or otherwise under any stock option or employee stock ownership plan approved by the board of directors of Holdings), valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all guarantees of such Person in respect of any of the foregoing;

provided that "Indebtedness" shall not include any post-closing payment adjustments or earn-out, non-competition or consulting obligations existing on the Closing Date or incurred in connection with Permitted Acquisitions, in each case, except to the extent such adjustments or obligations are not paid when due.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, unless such Indebtedness is expressly made non-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. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"Indemnified Taxes" means all Taxes other than Excluded Taxes.

"Indemnitee" has the meaning assigned to such term in Section 10.04(b).

"Information" has the meaning assigned to such term in Section 10.07.

"Intellectual Property" has the meaning assigned to such term in Section 5.18.

"Interest Payment Date" means (a) as to any Loan other than a Base Rate Loan, Canadian U.S. Base Rate Loan or a Canadian Prime Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided 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 (including a Swing Line Loan), Canadian U.S. Base Rate Loan (including a Multicurrency Facility Swing Line Loan) or any Canadian Prime Rate Loan (including a Mul

ticurrency Facility Swing Line Loan), the last Business Day of each March, June, September and December and the applicable 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, or nine or twelve months thereafter (to the extent agreed by all applicable Lenders), as selected by the applicable Borrower, in each case, in its Borrowing or Conversion Notice; provided, further 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 applicable Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person in any other Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of obligations of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, net of cash repayments and sale proceeds in the case of Investments in the form of Indebtedness and cash equity returns received as a distribution or dividend or by redemption or sale, in each case to the extent such repayments, proceeds, distributions or dividends are received (x) if such Investment was made by U.S. Borrower or a Subsidiary Guarantor, by U.S. Borrower or a Subsidiary Guarantor and (y) if such Investment was made by a Subsidiary that was not a Guarantor, by U.S. Borrower or any Subsidiary.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, 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).

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

"ITA" means the *Income Tax Act* (Canada), as amended, and any successor thereto, and any regulations promulgated thereunder, as in effect on the Restatement Date.

"JPM Letter of Credit Fee Letter" means the fee letter dated as of December 22, 2011 among JPMorgan Chase Bank, N.A. and the U.S. Borrower, as amended, modified or restated from time to time.

"Judgment Currency" has the meaning assigned to such term in Section 10.18.

"Junior Financing" has the meaning assigned to such term in Section 7.15.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents, 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, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"L/C Advance" means a U.S. Dollar Facility L/C Advance or a Multicurrency Facility L/C Advance, as applicable.

"L/C Borrowing" means a U.S. Dollar Facility L/C Borrowing or a Multicurrency Facility L/C Borrowing, as applicable.

"L/C Credit Extension" means a U.S. Dollar Facility L/C Credit Extension or a Multicurrency Facility L/C Credit Extension, as applicable.

"L/C Issuer" means a U.S. Dollar Facility L/C Issuer or a Multicurrency Facility L/C Issuer, as applicable. Unless otherwise indicated, references to "the L/C Issuer" shall be deemed to be a reference to each applicable L/C Issuer.

"L/C Obligations" means U.S. Dollar Facility L/C Obligations or Multicurrency Facility L/C Obligations, as applicable.

"Lease Adjusted Leverage Ratio" means, at any date of determination, the ratio of (x) Consolidated Indebtedness on such date plus six times the Rent Expense for the Test Period most recently ended on or before such date to (y) Consolidated EBITDAR for the Test Period most recently ended on or before such date.

"Leases" means any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

"Lender" has the meaning assigned to such term in the introductory paragraph hereto, together with any Person that subsequently becomes a Lender by way of assignment in accordance with the terms of Section 10.06, together with their respective successors, other than any Person

that ceases to be a Lender as a result of an assignment in accordance with Section 10.06 or an amendment of this Agreement and, as the context requires, includes each L/C Issuer and each Swing Line Lender.

"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 U.S. Borrower and the Administrative Agent.

"Letter of Credit" means a U.S. Dollar Facility Letter of Credit or a Multicurrency Facility Letter of Credit, as applicable.

"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 any L/C Issuer.

"Letter of Credit Expiration Date" means (a) with respect to any U.S. Dollar Facility Letter of Credit, the day that is five days prior to the U.S. Dollar Facility Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day) and (b) with respect to any Multicurrency Facility Letter of Credit, the day that is five days prior to the Multicurrency Facility Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" means the U.S. Dollar Facility Letter of Credit Fee or the Multicurrency Facility Letter of Credit Fee, as applicable.

"Lien" means, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any arrangement to provide priority or preference, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement or any financing lease having substantially the same economic effect as any of the foregoing relating to such property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities (but not including rights of first refusal, tag, drag or similar rights in joint venture or shareholder agreements).

"LLC Distribution" means the distribution by the Delaware LLC Holding Company of C$40,000,000 in cash in Canadian Dollars to the U.S. Borrower; provided that the Northstar Loan, the Northstar Distribution and the LLC Distribution shall all occur on the same day.

"Loan" means an extension of credit by a Lender to a Borrower under Article II in the form of a Revolving Loan or a Swing Line Loan.

"Loan Documents" means this Agreement, each Note, each Issuer Document, the Security Documents, the Guarantee, the Reaffirmation Agreement, the Canadian Confirmation Agreement, the Fee Letter and the JPM Letter of Credit Fee Letter.

"Loan Parties" means, collectively, Holdings, the U.S. Borrower, the Canadian Borrower and each Subsidiary Guarantor.

"London Banking Day" means any day on which dealings in deposits of the relevant currency are conducted by and between banks in the London interbank eurodollar market.

"Material Adverse Effect" means (a) a material adverse effect upon the business, operations, assets, liabilities (actual or contingent), results of operations or condition (financial or otherwise) of the U.S. Borrower and its Subsidiaries, taken as a whole; or (b) a material adverse effect on the rights and remedies of the Lenders under the applicable Loan Documents.

"Maturity Date" means the U.S. Dollar Facility Maturity Date or the Multicurrency Facility Maturity Date, as applicable.

"Maximum Rate" has the meaning assigned to such term in Section 10.09.

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

"Mortgage" means an agreement, including, but not limited to, a mortgage, deed of trust or any other document, creating and evidencing a Lien on a Mortgaged Property, which shall be substantially in form and substance reasonably satisfactory to the Collateral Agent and the U.S. Borrower, with such schedules and including such provisions as shall be necessary to conform such document to applicable local or foreign law or as shall be customary under applicable local or foreign law.

"Mortgaged Property" means each fee owned Real Property listed on Schedule 1.01(b), the fee simple interest of which is owned on the Closing Date by any Loan Party (other than the Canadian Borrower), or acquired by any Loan Party (other than the Canadian Borrower) after the Closing Date which shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 6.13(c).

"Multicurrency Facility Availability Period" means the period from and including the Restatement Date to the earliest of (a) the fifth anniversary of the Closing Date, (b) the date of termination of the Aggregate Multicurrency Facility Commitments pursuant to Section 2.06 and (c) the date of termination of the commitment of each Multicurrency Facility Lender (including each Multicurrency Facility Swing Line Lender) to make Multicurrency Facility Revolving Loans and Multicurrency Facility Swing Line Loans and of the obligation of the Multicurrency Facility L/C Issuer to make Multicurrency Facility L/C Credit Extensions pursuant to Section 8.02.

"Multicurrency Facility Commitment" means, as to each Multicurrency Facility Lender, its obligation to (a) make Multicurrency Facility Revolving Loans in Dollars or Canadian Dollars to the Borrowers pursuant to Section 2.01(b), (b) purchase participations in Multicurrency Facility L/C Obligations, and (c) purchase participations in Multicurrency Facility Swing Line Loans, in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the heading "Multicurrency Facility Commitment" 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. The aggregate Multicurrency Facility Commitments of all Lenders shall be $35,000,000 on the Restatement Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

"Multicurrency Facility Commitment Increase" has the meaning assigned to such term in Section 2.14.

"Multicurrency Facility Commitment Increase Lender" has the meaning assigned to such term in Section 2.14.

"Multicurrency Facility L/C Advance" means, with respect to each Multicurrency Facility Lender, such Lender's funding of its participation in any Multicurrency Facility L/C Borrowing in accordance with its Pro rata Share.

"Multicurrency Facility L/C Borrowing" means an extension of credit resulting from a drawing under any Multicurrency Facility Letter of Credit which has not been reimbursed on the date when made or refinanced as a Multicurrency Facility Revolving Loan Borrowing.

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

"Multicurrency Facility L/C Issuer" means (a) Bank of America, N.A., Canada Branch, or any Subsidiary or Affiliate of Bank of America, N.A., Canada Branch designated by Bank of America, N.A., Canada Branch and its permitted successors and assigns, as an issuer of Multicurrency Facility Letters of Credit hereunder and (z) JPMorgan Chase Bank, N.A., Toronto Branch or any of its Affiliates or branches and its permitted successors and assigns, as an issuer of Multicurrency Facility Letters of Credit hereunder and (b) any other Multicurrency Facility Lender approved by the Administrative Agent and the Canadian Agent (such approval not to be unreasonably withheld) which agrees with the Borrowers to act as an issuer of Multicurrency Facility Letters of Credit hereunder, in its capacity as a Multicurrency Facility L/C Issuer.

"Multicurrency Facility L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Multicurrency Facility Letters of Credit plus the aggregate of all Multicurrency Facility Unreimbursed Amounts, including all Multicurrency Facility L/C Borrowings. For purposes of computing the amount available to be drawn under any Multicurrency Facility Letter of Credit, the amount of such Multicurrency Facility Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Multicurrency Facility Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Multicurrency Facility Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Multicurrency Facility Lender" means each financial institution listed on the signature pages hereto as a Lender that has a Multicurrency Facility Commitment or holds Multicurrency Facility Revolving Loans, together with any Person that subsequently becomes a Multicurrency

Facility Lender by way of assignment in accordance with the terms of Section 10.06, together with their respective successors, other than any Person that ceases to be a Multicurrency Facility Lender as a result of an assignment in accordance with Section 10.06 or an amendment of this Agreement and, as the context requires, includes the Multicurrency Facility L/C Issuer and the Multicurrency Facility Swing Line Lender.

"Multicurrency Facility Letter of Credit" means any letter of credit issued under the Multicurrency Facility Commitment. A Multicurrency Facility Letter of Credit may be a commercial letter of credit or a standby letter of credit and shall be denominated in Dollars or in Canadian Dollars. For the avoidance of doubt, a Multicurrency Facility Letter of Credit that is a commercial letter of credit shall not include a banker's acceptance.

"Multicurrency Facility Letter of Credit Fee" has the meaning assigned to such term in Section 2.03(i).

"Multicurrency Facility Letter of Credit Sublimit" means the lesser of (a) $15,000,000 and (b) the Aggregate Multicurrency Facility Commitments. The Multicurrency Facility Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Multicurrency Facility Commitment.

"Multicurrency Facility Maturity Date" means the earlier of (i) the fifth anniversary of the Closing Date and (ii) the date of termination in whole of the Multicurrency Facility Commitments, the Multicurrency Facility L/C Obligations, and the Multicurrency Facility Swing Line pursuant to Section 2.06 or 8.02.

"Multicurrency Facility Register" has the meaning assigned to such term in Section 10.06(c).

"Multicurrency Facility Revolving Loan" has the meaning assigned to such term in Section 2.01(b).

"Multicurrency Facility Revolving Loan Borrowing" means a borrowing consisting of Multicurrency Facility Revolving Loans of the same Type, and, in the case of Eurodollar Rate Loans, having the same Interest Period.

"Multicurrency Facility Revolving Loan Note" means a promissory note made by the U.S. Borrower or the Canadian Borrower in favor of a Lender or its registered assigns, in substantially the form of Exhibit C-2, evidencing Multicurrency Facility Revolving Loans made by such Lender to such Borrower.

"Multicurrency Facility Swing Line" means the revolving credit facility made available by the Multicurrency Facility Swing Line Lender pursuant to Section 2.04.

"Multicurrency Facility Swing Line Borrowing" means a borrowing of a Multicurrency Facility Swing Line Loan pursuant to Section 2.04.

"Multicurrency Facility Swing Line Lender" has the meaning assigned to such term in the introductory paragraph hereof, or any successor swing line lender hereunder.

"Multicurrency Facility Swing Line Loan" has the meaning assigned to such term in Section 2.04(a)(ii).

"Multicurrency Facility Swing Line Loan Note" means a promissory note made by a Borrower in favor of the Multicurrency Facility Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-4 hereto, evidencing Multicurrency Facility Swing Line Loans made by the Multicurrency Facility Swing Line Lender.

"Multicurrency Facility Swing Line Loan Notice" means a notice of a Multicurrency Facility Swing Line Borrowing pursuant to Section 2.04(b)(i), which, if in writing, shall be substantially in the form of Exhibit B-2.

"Multicurrency Facility Swing Line Sublimit" means the lesser of (a) $5,000,000 and (b) the Aggregate Multicurrency Facility Commitments. The Multicurrency Facility Swing Line Sublimit is part of, and not in addition to, the Aggregate Multicurrency Facility Commitments.

"Multicurrency Facility Unreimbursed Amount" has the meaning assigned to such term in Section 2.03(c)(i).

"Multiemployer Plan" means any employee benefit plan as defined in Section 4001(a)(3) of ERISA, to which a Loan Party or any ERISA Affiliate (i) makes or is obligated to make contributions or (ii) during the preceding six plan years, has made or been obligated to make contributions.

"Net Cash Proceeds" means, with respect to any Debt Issuance or any issuance of Disqualified Capital Stock by any Person or any of its Subsidiaries or issuance of Qualified Capital Stock, the cash proceeds thereof, net of reasonable fees, commissions, costs and other expenses incurred in connection therewith including reasonable legal fees and expenses.

"Non-Extension Notice Date" has the meaning assigned to such term in Section 2.03(b)(iii).

"Northstar" means Northstar Canadian Operations Corp., a wholly-owned Subsidiary of the U.S. Borrower and an Ontario corporation.

"Northstar Distribution" means the distribution by Northstar of C$40,000,000 in cash in Canadian Dollars to the Delaware LLC Holding Company.

"Northstar Loan" means the loan by the U.S. Borrower of C$40,000,000 in cash in Canadian Dollars to Northstar in exchange for a note payable by Northstar to the U.S. Borrower in the amount of C$40,000,000 Canadian Dollars (the "Northstar Note").

"Northstar Note" has the meaning assigned to such term in the definition of Northstar Loan.

"Northstar Security Agreement" means the security agreement between Northstar and the U.S. Borrower dated as of December 22, 2011 in connection with the Northstar Loan.

"Note" means a Revolving Loan Note or a Swing Line Loan Note.

"Obligations" means (a) obligations of the U.S. Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the U.S. Borrower and the other Loan Parties under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of L/C Advances, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise, of the U.S. Borrower and the other Loan Parties under this Agreement and the other Loan Documents and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the U.S. Borrower and the other Loan Parties under or pursuant to this Agreement and the other Loan Documents.

"on" when used with respect to the Property or any property adjacent to the Property, means "on, in, under, above or about."

"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.

"Original Credit Agreement" has the meaning assigned to such term in the recitals hereto.

"Original Letters of Credit" means each of those letters of credit previously issued under (or, in the case of Existing Letters of Credit, deemed issued under) the Original Credit Agreement for the account of Holdings, the U.S. Borrower or any of the U.S. Borrower's Subsidiaries that is outstanding on the Restatement Date.

"Other Taxes" means all present or future stamp or documentary Taxes or any other excise or property Taxes, in each case, arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, but excluding any such Taxes imposed upon a voluntary transfer of an Obligation by a Lender, L/C Issuer or Swing Line Lender if such Taxes result from such Lender, L/C Issuer or Swing Line Lender being organized, resident or engaged in business (other than a business arising (or being deemed to arise) solely as a result of the Loan

Documents or any transactions occurring pursuant thereto) in such jurisdiction. For the avoidance of doubt, "Other Taxes" shall not include "Excluded Taxes."

"Outstanding Amount" means (a) with respect to U.S. Dollar Facility Revolving Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such U.S. Dollar Facility Revolving Loans occurring on such date; (b) with respect to Multicurrency Facility Revolving 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 such Multicurrency Facility Revolving Loans occurring on such date; (c) with respect to U.S. Dollar Facility Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such U.S. Dollar Facility Swing Line Loans occurring on such date; (d) with respect to Multicurrency Facility Swing Line 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 such Multicurrency Facility Swing Line Loans occurring on such date; (e) with respect to any U.S. Dollar Facility L/C Obligations on any date, the amount of such U.S. Dollar Facility L/C Obligations on such date after giving effect to any U.S. Dollar Facility L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the U.S. Dollar Facility L/C Obligations as of such date, including as a result of any reimbursements by the U.S. Borrower of U.S. Dollar Facility Unreimbursed Amounts; and (f) with respect to any Multicurrency Facility L/C Obligations on any date, the Dollar Equivalent of the amount of such Multicurrency Facility L/C Obligations on such date after giving effect to any Multicurrency Facility L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the Multicurrency Facility L/C Obligations as of such date, including as a result of any reimbursements by a Borrower of Multicurrency Facility Unreimbursed Amounts.

"Participant" has the meaning assigned to such term in Section 10.06(d).

"Participant Register" has the meaning assigned to such term in Section 10.06(d).

"Patriot Act" means the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

"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, or at time during the immediately preceding six years was, sponsored or maintained by a Loan Party or any ERISA Affiliate or to which a Loan Party or any ERISA Affiliate does, or at any time during the immediately preceding six years did, contribute or have 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.

"Perfection Certificate" means a certificate in the form of Exhibit H.

"Permitted Acquisition" means any acquisition by the U.S. Borrower or any of its Wholly-Owned Subsidiaries, whether by purchase, merger, amalgamation or otherwise, of all or sub

stantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) in the case of the acquisition of Equity Interests, all of the Equity Interests (except for any such securities issued to foreign nationals or in the nature of directors' qualifying shares, in each case required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Wholly-Owned Subsidiary of the U.S. Borrower in connection with such acquisition shall be owned 100% by the U.S. Borrower or a Subsidiary Guarantor or a Wholly-Owned Foreign Subsidiary of the U.S. Borrower, and the U.S. Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of the U.S. Borrower, each of the actions set forth in Section 6.13, but solely to the extent required to be taken by Section 6.13;

(iii) the U.S. Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 7.12 on a Pro forma Basis after giving effect to such acquisition as of the last day of the most recently ended Test Period;

(iv) any Person or assets or division as acquired in accordance herewith shall be in the same business or lines of business in which the U.S. Borrower and/or its Subsidiaries are engaged as of the Closing Date or a similar or related business or line of business or any business reasonably related or ancillary thereto or constituting a reasonable extension thereof or such other lines of businesses as may be consented to by the Required Lenders; and

(vi) the U.S. Borrower shall have delivered to the Administrative Agent at least ten Business Days (or such later date agreed to by the Administrative Agent) prior to such proposed acquisition (and the Administrative Agent shall deliver to the Lenders upon their request), a Compliance Certificate evidencing compliance with Section 7.12 as required under clause (iii) above, together with all relevant financial information with respect to such acquired assets, including, without limitation, the aggregate Acquisition Consideration for such acquisition and any other information required to demonstrate compliance with Section 7.12;

; provided that Acquisition Consideration may only be provided by the U.S. Borrower and the Subsidiary Guarantors with respect to Permitted Acquisitions of any Persons that do not become Subsidiary Guarantors or of any assets not to be held by the U.S. Borrower or a Subsidiary Guarantor to the extent (x) such Acquisition Consideration is funded with the Net Cash Proceeds from the issuance of Equity Interests (other than Disqualified Capital Stock) of Holdings that are not used for any other purpose (the Acquisition Consideration so funded as contemplated by this clause (x), the "Equity Acquisition Consideration") or (y) the Acquisition Consideration (other than Equity Acquisition Consideration) therefor does not exceed $250,000,000 in the aggregate over the term of this Agreement, so long as, in the case of this clause (y), at the time of the consummation of any Permitted Acquisition relating to such Acquisition Consideration (A) the Lease Ad

justed Leverage Ratio (calculated on a Pro forma Basis after giving effect to such Permitted Acquisition) is less than or equal to 3.25:1.00 and (B) after giving effect to such Permitted Acquisition, the aggregate Commitments exceed the sum of the Outstanding Amount of all Revolving Loans, the Outstanding Amount of all L/C Obligations and the Outstanding Amount of all Swing Line Loans by no less than $75,000,000.

"Permitted Liens" has the meaning assigned to such term in Section 7.01.

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

"Platform" has the meaning assigned to such term in Section 6.02.

"Portfolio Interest Exemption" has the meaning assigned to such term in Section 3.01(e)(iii).

"Pro forma Basis" means, for purposes of calculating compliance with any test or financial covenant under this Agreement for any period, that such Permitted Acquisition or Asset Sale (and all other Permitted Acquisitions or Asset Sales that have been consummated during the applicable period) and the following adjustments in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Permitted Acquisition or Asset Sale, (i) in the case of an Asset Sale shall be excluded, and (ii) in the case of a Permitted Acquisition, shall be included, (b) any retirement of Indebtedness, (c) operating expense reductions relating to such Permitted Acquisition or Asset Sale, and (d) any Indebtedness incurred or assumed by the U.S. Borrower or any of its Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination; provided that the foregoing pro forma adjustments (to the extent related to operating expense reductions) may be applied to any such test or financial covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDAR and give effect to events (including operating expense reductions) that are (x) attributable to such transaction, (y) expected to have a continuing impact on the U.S. Borrower and its Subsidiaries and (z) factually supportable (provided that pro forma effect shall only be given to operating expense reductions or similar anticipated benefits from any Permitted Acquisition or Asset Sale to the extent that such adjustments and the bases therefor are set forth in reasonable detail in a certificate of the chief financial officer of the U.S. Borrower delivered to the Administrative Agent and dated the relevant date of determination and which certifies that all necessary steps for the realization thereof have been taken or the U.S. Borrower reasonably anticipates that all necessary steps for the realization thereof will be taken within six months following such date of determination).

"Pro rata Share" means,

(a) with respect to each U.S. Dollar Facility Lender 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

U.S. Dollar Facility Commitments of such Lender at such time and the denominator of which is the amount of the Aggregate U.S. Dollar Facility Commitments at such time; provided that if such U.S. Dollar Facility Commitments have been terminated, then the Pro rata Share of each U.S. Dollar Facility 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; and

(b) with respect to each Multicurrency Facility Lender 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 Multicurrency Facility Commitments of such Lender at such time and the denominator of which is the amount of the Aggregate Multicurrency Facility Commitments at such time; provided that if such Multicurrency Facility Commitments have been terminated, then the Pro rata Share of each Multicurrency Facility 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.

"Property" means the property, the Improvements and all other property constituting the "Mortgaged Property," as described in the Mortgage, or subject to a right, lien or security interest to secure the Loan pursuant to any other Loan Document.

"Public Lender" has the meaning assigned to such term in Section 6.02.

"Qualified Capital Stock" means, of any Person, any Equity Interests of such Person that are not Disqualified Capital Stock.

"Reaffirmation Agreement" has the meaning assigned to such term in Section 4.03(d).

"Real Property" means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"Refinancing" means the refinancing in full and the termination of all the then outstanding obligations under the Existing Credit Agreement simultaneously with the execution of the Original Credit Agreement on October 15, 2010.

"Register" has the meaning specified in Section 10.06(c).

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

"Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

"Rent Expense" means the consolidated rent expense of the U.S. Borrower and its Subsidiaries, as determined in accordance with GAAP, it being understood that common area maintenance charges, any other contingent rent and any other non-rent charges (including property taxes and insurance obligations) shall be excluded from the calculation of Rent Expense. For purposes of this Agreement, Rent Expense shall be calculated on a Pro forma Basis to give effect to Permitted Acquisitions and Asset Sales (other than any Permitted Acquisitions involving the payment of Acquisition Consideration of less than $1,000,000) consummated at any time on or after the first day of the relevant Test Period and on or prior to the calculation date as if each Permitted Acquisition had been effected on the first day of such period and as if each such Asset Sale had been consummated on the day prior to the first day of such period.

"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 Revolving Loans, a Borrowing or Conversion Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the sum of the (a) aggregate Outstanding Amount of all Loans and L/C Obligations (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition) and (b) aggregate unused Commitments; provided that the unused Commitment of, and the portion of the total Outstanding Amount held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Required Multicurrency Facility Lenders" means, as of any date of determination, Multicurrency Facility Lenders having more than 50% of the sum of the (a) aggregate Outstanding Amount of all Multicurrency Facility Revolving Loans and Multicurrency Facility L/C Obligations (with the aggregate amount of each Multicurrency Facility Lender's risk participation and funded participation in Multicurrency Facility L/C Obligations and Multicurrency Facility Swing Line Loans being deemed "held" by such Lender for purposes of this definition) and (b) aggregate unused Multicurrency Facility Commitments; provided that the unused Multicurrency Facility Commitment of, and the portion of the total Outstanding Amount of Multicurrency Facility Revolving Loans, Multicurrency Facility L/C Obligations and Multicurrency Facility Swing Line Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Multicurrency Facility Lenders.

"Response" means (a) "response" as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the environment; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Material; or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party.

"Restatement Date" means December 22, 2011, the date on which the conditions set forth in Section 4.03 are satisfied or waived.

"Restricted Payment" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Equity Interests of the U.S. Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Equity Interests to the holders of that class; (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 Equity Interests of the U.S. Borrower now or hereafter outstanding; and (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 Equity Interests of the U.S. Borrower now or hereafter outstanding.

"Revaluation Date" means (a) with respect to any Multicurrency Facility Revolving Loan, each of the following: (i) each date of a Borrowing of a Eurodollar Rate Revolving Loan or Canadian Prime Rate Loan denominated in Canadian Dollars, (ii) each date of a continuation or conversion of a Eurodollar Rate Revolving Loan or Canadian Prime Rate Loan denominated in Canadian Dollars pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Multicurrency Facility Lenders shall require; (b) with respect to any Multicurrency Facility Letter of Credit, each of the following: (i) each date of issuance of a Multicurrency Facility Letter of Credit denominated in Canadian Dollars, (ii) each date of an amendment of any such Multicurrency Facility 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 the applicable Multicurrency Facility L/C Issuer under any Multicurrency Facility Letter of Credit denominated in Canadian Dollars, and (iv) such additional dates as the Administrative Agent or the applicable Multicurrency Facility L/C Issuer shall determine or the Required Multicurrency Facility Lenders shall require; and (c) with respect to any Multicurrency Facility Swing Line Loan, each of the following: (i) each date of a Borrowing of a Multicurrency Facility Swing Line Loan denominated in Canadian Dollars and (ii) such additional dates as the Administrative Agent or the Multicurrency Facility Swing Line Lender shall determine.

"Revolving Loan" means a U.S. Dollar Facility Revolving Loan or a Multicurrency Facility Revolving Loan, as applicable.

"Revolving Loan Borrowing" means a U.S. Dollar Facility Revolving Loan Borrowing or a Multicurrency Facility Revolving Loan Borrowing, as applicable.

"Revolving Loan Note" means a U.S. Dollar Facility Revolving Loan Note or a Multicurrency Facility Revolving Loan Note, as applicable.

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

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

"Secured Obligations" means (a) the Obligations, (b) the due and punctual payment and performance of all obligations of the U.S. Borrower and the other Loan Parties under each Swap Contract permitted to be incurred pursuant to Section 7.03(n) entered into with any counterparty that is a Secured Party and (c) the due and punctual payment and performance of all obligations in respect of any Treasury Management Agreement between any Loan Party and any Person that is a Secured Party.

"Secured Parties" means, collectively, (a) the Administrative Agent, (b) the Collateral Agent, (c) each other Agent, (d) the Lenders, (e) each Hedge Bank and Treasury Management Bank and (f) solely with respect to Secured Obligations under Section 10.04(b), the other Indemnitees.

"Securities Act" means the Securities Act of 1933.

"Securities Collateral" has the meanings assigned to such term in the Security Agreement.

"Security Agreement" means a security agreement substantially in the form of Exhibit G among the Loan Parties (other than the Canadian Borrower) and the Collateral Agent for the benefit of the Secured Parties.

"Security Agreement Collateral" means all property pledged or granted as collateral pursuant to the Security Agreement (a) on the Closing Date or (b) thereafter pursuant to Section 6.13.

"Security Documents" means the Security Agreement, the Mortgages, the Delaware LLC Holding Company Pledge Agreement and each other security agreement, pledge agreement or other document or agreement delivered in accordance with applicable law to grant, or purport to grant, a security interest in any property as collateral for the Secured Obligations.

"Significant Subsidiary" has the meaning assigned to such term in Rule 1.02(w) of Regulation S-X under the Securities Act as in effect on the Closing Date.

"SPC" has the meaning assigned to such term in Section 10.06(h).

"Spot Rate" for a currency means the rate determined by the Administrative Agent or the applicable Multicurrency Facility 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 the applicable Multicurrency Facility L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the applicable Multicurrency Facility 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 Multicurrency Facility 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 Multicurrency Facility Letter of Credit denominated in Canadian Dollars.

"Subordinated Indebtedness" means Indebtedness of the U.S. Borrower or any other Loan Party (other than the Canadian Borrower) that is by its terms subordinated in right of payment to the Obligations of the U.S. Borrower and such other Loan Party (other than the Canadian Borrower), as applicable.

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

"Subsidiary Guarantors" means, collectively (x) each Subsidiary of U.S. Borrower that is, as of the Closing Date, a signatory to the Guarantee and (y) each Subsidiary of U.S. Borrower that executes a joinder to the Guarantee pursuant to clause (ii) of the second paragraph of Section 6.13(a), other than, in each case, any Subsidiary that is released from the Guarantee pursuant to Section 9.10(c).

"Successor Canadian Holdco" has the meaning assigned to such term in Section 6.13(a).

"Successor Company" has the meaning assigned to such term in Section 7.04(a).

"Survey" means a survey of any Mortgaged Property (and all improvements thereon) which is (a) (i) prepared by a surveyor or engineer licensed to perform surveys in the jurisdiction where such Mortgaged Property is located, (ii) dated (or redated) not earlier than one year prior to the date of delivery thereof unless there shall have occurred within one year prior to such date of delivery any exterior construction on the site of such Mortgaged Property or any easement, or right of way or other interest in the Mortgaged Property has been granted or become effective through operation of law or otherwise with respect to such Mortgaged Property which, in either case, can be depicted on a survey, in which events, as applicable, such survey shall be dated (or redated) after the completion of such construction or if such construction shall not have been completed as of such date of delivery, not earlier than 20 days prior to such date of delivery, or after the grant or effectiveness of any such easement, right of way or other interest in the Mortgaged Property, (iii) certified by the surveyor (in a manner reasonably acceptable to the Administrative Agent) to the Administrative Agent, the Collateral Agent and the Title Company, (iv) complying in all material respects with the minimum detail requirements of the American Land Title Association as such requirements are in effect on the date of preparation of such survey and (v) sufficient for the Title Company to remove all standard survey exceptions from the title insurance policy (or commitment) relating to such Mortgaged Property and issue the endorsements of the type required under the definition of "Title Policy" hereunder or (b) otherwise reasonably acceptable to the Collateral Agent.

"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. or any International Foreign Exchange 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).

"Swing Line" means U.S. Dollar Facility Swing Line or the Multicurrency Facility Swing Line.

"Swing Line Borrowing" means a U.S. Dollar Facility Swing Line Borrowing or a Multicurrency Facility Swing Line Borrowing, as applicable.

"Swing Line Lender" means the U.S. Dollar Facility Swing Line Lender or the Multicurrency Facility Swing Line Lender, as applicable. Unless otherwise indicated, references to "the Swing Line Lender" shall be deemed to be a reference to each applicable Swing Line Lender.

"Swing Line Loan" means a U.S. Dollar Facility Swing Line Loan or a Multicurrency Facility Swing Line Loan.

"Swing Line Loan Note" means a U.S. Dollar Facility Swing Line Loan Note or a Multicurrency Facility Swing Line Loan Note.

"Swing Line Loan Notice" means a U.S. Dollar Facility Swing Line Loan Notice or a Multicurrency Facility Swing Line Loan Notice.

"Syndication Agent" has the meaning assigned to such term in the introductory paragraph hereto.

"Tax Return" means all returns, statements, filings, attachments and other documents or certifications filed or required to be filed in respect of Taxes.

"Tax Status Certificate" has the meaning assigned to such term in Section 3.01(e)(iii).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Test Period" means, at any time, the four consecutive fiscal quarters of the U.S. Borrower (taken as one accounting period) (x) in the case of Section 7.12, then last ended and (y) otherwise, for which financial statements have been or are required to be delivered pursuant to Section 6.01(a) or (b).

"Threshold Amount" means $20,000,000.

"Title Company" means any title insurance company as shall be retained by the U.S. Borrower and reasonably acceptable to the Administrative Agent.

"Title Policy" means a policy of title insurance (or commitment to issue such a policy having the effect of a policy of title insurance) issued by the Title Company insuring (or committing to insure) the Lien of such Mortgage as a valid and enforceable first priority mortgage Lien on the Mortgaged Property described therein, in an amount equal to the fair market value of such Mortgaged Property as reasonably determined, in good faith, by the U.S. Borrower and reasonably acceptable to the Administrative Agent to the extent permitted by the laws of the local jurisdiction and in compliance with the Title Company's underwriting policies, which reasonably assures the Administrative Agent that the Mortgage on such Mortgaged Property is a valid and enforceable mortgage Lien on the subject Mortgaged Property, free and clear of all Liens except for Permitted Liens and such Title Policy shall otherwise be in form and substance reasonably satisfactory to the Administrative Agent and shall include, as appropriate, to the extent available at commercially reasonably rates, a "tie-in" or "cluster" endorsement, if available under applicable law (i.e., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), and have been supplemented by such endorsements as shall be reasonably requested by the Administrative Agent, including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit, doing business, non-imputation, public road access, survey, variable rate, environmental lien, subdivision, separate tax lot revolving credit, so-called comprehensive coverage over covenants and restrictions and for any and all other matters that the Administrative Agent may reasonably request, in each case, if available in the appropriate jurisdiction at commercially reasonable rates.

"Transaction" means, collectively, (a) the Refinancing, (b) the initial funding of the Loans and the effectiveness of the Loan Documents and (c) the payment of the fees and expenses incurred in connection with any of the foregoing.

"Transaction Costs" means the fees, costs and expenses payable by Holdings, the U.S. Borrower or any of their Subsidiaries in connection with the Transaction.

"Treasury Management Agreement" means any agreement governing the provision of treasury or cash management services, including netting services, deposit accounts, debit, purchase or credit cards, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services.

"Treasury Management Bank" means each counterparty to a Treasury Management Agreement with the U.S. Borrower, the Canadian Borrower or any Subsidiary Guarantor if at the date of entering into such Treasury Management Agreement such Person was a Lender or Affiliate of a Lender and such Person executes and delivers to the Administrative Agent a letter agreement in the form of Exhibit J pursuant to which such Person (x) appoints the Collateral Agent as its agent under the applicable Loan Documents and (y) agrees to be bound by the provisions of Sections 10.04 and 10.14. For the avoidance of doubt, Persons that were Treasury Management Banks under the Original Credit Agreement immediately prior to the effectiveness of this Agreement shall not cease to be Treasury Management Banks solely by virtue of the effectiveness of this Agreement.

"Type" means with respect to a Revolving Loan, its character as a Base Rate Loan, a Canadian U.S. Base Rate Loan, a Canadian Prime Rate Loan or a Eurodollar Rate Loan.

"UCC" means the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

"Uniform Customs" means the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, as the same may be amended from time to time.

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

"Unreimbursed Amount" means a U.S. Dollar Facility Unreimbursed Amount or a Multicurrency Facility Unreimbursed Amount, as applicable.

"U.S. Borrower" has the meaning assigned to such term in the introductory paragraph hereto.

"U.S. Dollar Facility Availability Period" means the period from and including the Closing Date to the earliest of (a) the fifth anniversary of the Closing Date, (b) the date of termination of the Aggregate U.S. Dollar Facility Commitments pursuant to Section 2.06 and (c) the date of termination of the commitment of each U.S. Dollar Facility Lender (including each U.S. Dollar Facility Swing Line Lender) to make U.S. Dollar Facility Revolving Loans and U.S. Dollar Facility Swing Line Loans and of the obligation of the U.S. Dollar Facility L/C Issuer to make U.S. Dollar Facility L/C Credit Extensions pursuant to Section 8.02.

"U.S. Dollar Facility Commitment" means, as to each U.S. Dollar Facility Lender, its obligation to (a) make U.S. Dollar Facility Revolving Loans to the U.S. Borrower pursuant to Section 2.01(a), (b) purchase participations in U.S. Dollar Facility L/C Obligations, and (c) purchase participations in U.S. Dollar Facility Swing Line Loans, in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the heading "U.S. Dollar Facility Commitment" 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. The aggregate U.S. Dollar Facility Commitments of all Lenders shall be $340,000,000 on the Restatement Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

"U.S. Dollar Facility Commitment Increase" has the meaning assigned to such term in Section 2.14.

"U.S. Dollar Facility Commitment Increase Lender" has the meaning assigned to such term in Section 2.14.

"U.S. Dollar Facility L/C Advance" means, with respect to each U.S. Dollar Facility Lender, such Lender's funding of its participation in any U.S. Dollar Facility L/C Borrowing in accordance with its Pro rata Share.

"U.S. Dollar Facility L/C Borrowing" means an extension of credit resulting from a drawing under any U.S. Dollar Facility Letter of Credit which has not been reimbursed on the date when made or refinanced as a U.S. Dollar Facility Revolving Loan Borrowing.

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

"U.S. Dollar Facility L/C Issuer" means (a)(x) Bank of America or any Subsidiary or Affiliate of Bank of America designated by Bank of America and its permitted successors and assigns, as an issuer of U.S. Dollar Facility Letters of Credit hereunder and (y) JPMorgan Chase Bank, N.A. and its permitted successors and assigns, as an issuer of U.S. Dollar Facility Letters of Credit hereunder and (b) any other U.S. Dollar Facility Lender approved by the Administrative Agent (such approval not to be unreasonably withheld) which agrees with the U.S. Borrower to act as an issuer of U.S. Dollar Facility Letters of Credit hereunder, in its capacity as a U.S. Dollar Facility L/C Issuer.

"U.S. Dollar Facility L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding U.S. Dollar Facility Letters of Credit plus the aggregate of all U.S. Dollar Facility Unreimbursed Amounts, including all U.S. Dollar Facility L/C Borrowings. For purposes of computing the amount available to be drawn under any U.S. Dollar Facility Letter of Credit, the amount of such U.S. Dollar Facility Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a U.S. Dollar Facility Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such U.S. Dollar Facility Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"U.S. Dollar Facility Lender" means each financial institution listed on the signature pages hereto as a Lender that has a U.S. Dollar Facility Commitment or holds U.S. Dollar Facility Revolving Loans, together with any Person that subsequently becomes a U.S. Dollar Facility Lender by way of assignment in accordance with the terms of Section 10.06, together with their respective successors, other than any Person that ceases to be a U.S. Dollar Facility Lender as a result of an assignment in accordance with Section 10.06 or an amendment of this Agreement and, as the context requires, includes the U.S. Dollar Facility L/C Issuer and the U.S. Dollar Facility Swing Line Lender.

"U.S. Dollar Facility Letter of Credit" means any letter of credit issued hereunder (other than a Multicurrency Facility Letter of Credit) and shall include the Original Letters of Credit. A U.S. Dollar Facility Letter of Credit may be a commercial letter of credit or a standby letter of credit and shall be denominated in Dollars. For the avoidance of doubt, a U.S. Dollar Facility Letter of Credit that is a commercial letter of credit shall not include a banker's acceptance.

"U.S. Dollar Facility Letter of Credit Fee" has the meaning assigned to such term in Section 2.03(i).

"U.S. Dollar Facility Letter of Credit Sublimit" means the lesser of (a) $130,000,000 and (b) the Aggregate U.S. Dollar Facility Commitments. The U.S. Dollar Facility Letter of Credit Sublimit is part of, and not in addition to, the Aggregate U.S. Dollar Facility Commitment.

"U.S. Dollar Facility Maturity Date" means the earlier of (i) the fifth anniversary of the Closing Date and (ii) the date of termination in whole of the U.S. Dollar Facility Commitments, the U.S. Dollar Facility L/C Obligations, and the U.S. Dollar Facility Swing Line pursuant to Section 2.06 or 8.02.

"U.S. Dollar Facility Register" has the meaning assigned to such term in Section 10.06(c).

"U.S. Dollar Facility Revolving Loan" has the meaning assigned to such term in Section 2.01(a).

"U.S. Dollar Facility Revolving Loan Borrowing" means a borrowing consisting of U.S. Dollar Facility Revolving Loans of the same Type, and, in the case of Eurodollar Rate Loans, having the same Interest Period.

"U.S. Dollar Facility Revolving Loan Note" means a promissory note made by the U.S. Borrower in favor of a Lender or its registered assigns, in substantially the form of Exhibit C-1, evidencing U.S. Dollar Facility Revolving Loans made by such Lender to the U.S. Borrower.

"U.S. Dollar Facility Swing Line" means the revolving credit facility made available by the U.S. Dollar Facility Swing Line Lender pursuant to Section 2.04.

"U.S. Dollar Facility Swing Line Borrowing" means a borrowing of a U.S. Dollar Facility Swing Line Loan pursuant to Section 2.04.

"U.S. Dollar Facility Swing Line Lender" has the meaning assigned to such term in the introductory paragraph hereof, or any successor swing line lender hereunder.

"U.S. Dollar Facility Swing Line Loan" has the meaning assigned to such term in Section 2.04(a)(i).

"U.S. Dollar Facility Swing Line Loan Note" means a promissory note made by the U.S. Borrower in favor of the U.S. Dollar Facility Swing Line Lender or its registered assigns, in sub

stantially the form of Exhibit C-3 hereto, evidencing U.S. Dollar Facility Swing Line Loans made by the U.S. Dollar Facility Swing Line Lender.

"U.S. Dollar Facility Swing Line Loan Notice" means a notice of a U.S. Dollar Facility Swing Line Borrowing pursuant to Section 2.04(b)(ii), which, if in writing, shall be substantially in the form of Exhibit B-1.

"U.S. Dollar Facility Swing Line Sublimit" means the lesser of (a) $40,000,000 and (b) the Aggregate U.S. Dollar Facility Commitments. The U.S. Dollar Facility Swing Line Sublimit is part of, and not in addition to, the Aggregate U.S. Dollar Facility Commitments.

"U.S. Dollar Facility Unreimbursed Amount" has the meaning assigned to such term in Section 2.03(c)(i).

"Voting Stock" means, with respect to any Person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors of such Person.

"Wholly-Owned Subsidiary" shall mean, as to any Person, (a) any corporation 100% of whose Equity Interests (other than directors' qualifying shares or, in the case of a Foreign Subsidiary, nominal shares owned by foreign nationals as required by Law) is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person have a 100% equity interest at such time. For the avoidance of doubt, a "Wholly-Owned Domestic Subsidiary" shall mean a Wholly-Owned Subsidiary that is a Domestic Subsidiary, and "Wholly-Owned Foreign Subsidiary" shall mean a Wholly-Owned Subsidiary that is a Foreign Subsidiary.

1.02 Other Interpretive Provisions

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns, (iii) the words "herein," "hereof," "hereto" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Sched

ules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) On the Restatement Date, Schedules 2.01 and 10.02 to the Original Credit Agreement shall be replaced in their entirety with Schedules 2.01 and 10.02 to this Agreement.

(e) On the Restatement Date, Exhibits A-1, A-2, B, C-1, C-2, and E to the Original Credit Agreement shall be replaced in their entirety with Exhibits A-1, A-2, B-1, B-2, C-1, C-2, C-3, C-4 and E to this Agreement.

(f) Each reference to a "Revolving Loan Note", the "Borrower", and a "Revolving Loan" set forth in each Revolving Loan Note (as defined in the Original Credit Agreement) that is outstanding as of the Restatement Date shall be deemed to be a reference to a "U.S. Dollar Facility Revolving Loan Note", the "U.S. Borrower" and a "U.S. Dollar Facility Revolving Loan", respectively, automatically and without any requirement of for any holder of such Revolving Loan Note to exchange its Revolving Loan Note for a U.S. Dollar Facility Revolving Loan Note.

(g) On the Restatement Date, each term (as in effect immediately prior to the Restatement Date) listed on the left side of the table under "Original Term" shall be reclassified into the term listed opposite such term in such table as of the Restatement Date under "New Term", and any Indebtedness, concept or other item represented by such Original Term (as in effect immediately prior to the Restatement Date) shall from and after the Restatement Date be represented by the New Term opposite such Original Term.

Original Term	**New Term**
Availability Period	U.S. Dollar Facility Availability Period
Borrower	U.S. Borrower
Commitment	**U.S. Dollar Facility Commitment**
Commitment Increase	U.S. Dollar Facility Commitment Increase
Commitment Increase Lender	U.S. Dollar Facility Commitment Increase Lender
L/C Advance	U.S. Dollar Facility L/C Advance
L/C Borrowing	U.S. Dollar Facility L/C Borrowing
L/C Credit Extension	U.S. Dollar Facility L/C Credit Extension
L/C Issuer	U.S. Dollar Facility L/C Issuer
L/C Obligations	U.S. Dollar Facility L/C Obligations
Lender	U.S. Dollar Facility Lender
Letter of Credit	U.S. Dollar Facility Letter of Credit
Letter of Credit Fee	U.S. Dollar Facility Letter of Credit Fee
Letter of Credit Sublimit	U.S. Dollar Facility Letter of Credit Sublimit
Maturity Date	U.S. Dollar Facility Maturity Date
Register	U.S. Dollar Facility Register
Revolving Loan	U.S. Dollar Facility Revolving Loan
Revolving Loan Borrowing	U.S. Dollar Facility Revolving Loan Borrowing
Revolving Loan Note	U.S. Dollar Facility Revolving Loan Note
Swing Line	U.S. Dollar Facility Swing Line
Swing Line Borrowing	U.S. Dollar Facility Swing Line Borrowing
Swing Line Lender	**U.S. Dollar Facility Swing Line Lender**
Swing Line Loan	U.S. Dollar Facility Swing Line Loan
Swing Line Loan Note	U.S. Dollar Facility Swing Line Loan Note
Swing Line Loan Notice	U.S. Dollar Facility Swing Line Loan Notice
Swing Line Sublimit	U.S. Dollar Facility Swing Line Sublimit
Unreimbursed Amount	U.S. Dollar Facility Unreimbursed Amount

1.03 Accounting Terms

.(a) Generally. Subject to Section 1.03(b), all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the U.S. Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio, covenant or requirement set forth in any Loan Document, and either the U.S. Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the U.S. Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the U.S. Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio, covenant or requirement made before and after giving effect to such change in GAAP; provided further that such reconciliation shall be required to be provided only for the four fiscal quarters following such change or such longer period as may be reasonably requested by the Administrative Agent.

1.04 Rounding

. Any financial ratios required to be maintained by the U.S. 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 ra

tio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day

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

1.06 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 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 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.

1.07 Resolution of Drafting Ambiguities

. The U.S. Borrower acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents, that it and its counsel reviewed and participated in the preparation and negotiation of the Loan Documents and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Loan Documents.

1.08 Exchange Rates; Currency Equivalents; Reduction of Commitments

.(a) The Canadian Agent or the applicable Multicurrency Facility L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Canadian Dollars. 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 (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Canadian Agent or the applicable Multicurrency Facility L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurodollar Rate Revolving Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurodollar Rate Revolving Loan or Letter of Credit is denominated in Canadian Dollars, such amount shall be the relevant Canadian Dollar Equivalent of such Dollar amount (rounded to the nearest Canadian penny, with 0.5 of a Canadian penny being rounded upward), as determined by the Canadian Agent or the applicable Multicurrency Facility L/C Issuer, as the case may be.

(c) Notwithstanding the foregoing, for purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.05, 7.06 and 7.09, with respect to any Indebtedness, Investment, Restricted Payment, Lien, Asset Sale, Attributable Indebtedness or sale leaseback (each, a "Covenant Transaction") in a currency other than Dollars, no Default or Event of Default shall be

deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Covenant Transaction is incurred or made.

(d) For purposes of determining compliance with the Lease Adjusted Leverage Ratio, the amount of any Indebtedness denominated in any currency other than Dollars will be converted into Dollars based on the relevant currency exchange rate in effect on the date of the financial statements on which the applicable Consolidated Indebtedness is calculated. For purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.05, 7.06 and 7.09, with respect to the amount of any Covenant Transaction in a currency other than Dollars, such amount will be converted into Dollars based on the relevant currency exchange rate in effect on the date such Covenant Transaction is incurred or made and such basket will be measured at the time such Covenant Transaction is incurred or made.

(e) For the avoidance of doubt, in the case of a Multicurrency Facility Revolving Loan or Multicurrency Facility Swing Line Loan denominated in Canadian Dollars, except as expressly provided herein, all interest and fees shall accrue and be payable thereon based on the actual amount outstanding in Canadian Dollars (without any translation into the Dollar Equivalent thereof).

(f) Each Lender's Commitment (as defined in the Original Credit Agreement) is reduced as of the Restatement Date by the excess of its Commitment (as defined in the Original Credit Agreement) immediately prior to the Restatement Date over its U.S. Dollar Facility Commitment as of the Restatement Date, and it is understood and agreed that any requirement under the Original Credit Agreement or this Agreement that (x) notice be provided by any Borrower of such reduction is waived and (y) any reduction of the Commitments be reduced ratably among the Lenders is waived, in each case with respect to that (and only that) specific Commitment reduction.

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans

.

(a) Subject to the terms and conditions set forth herein, each U.S. Dollar Facility Lender severally agrees to make loans (each such loan, a "U.S. Dollar Facility Revolving Loan") to the U.S. Borrower from time to time, on any Business Day during the U.S. Dollar Facility Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's U.S. Dollar Facility Commitment as set forth on Schedule 2.01; provided that after giving effect to any borrowing of U.S. Dollar Facility Revolving Loans, the Outstanding Amount of the U.S. Dollar Facility Revolving Loans of any Lender, plus such Lender's Pro rata Share of the Outstanding Amount of all U.S. Dollar Facility L/C Obligations, plus such Lender's Pro rata Share of the Outstanding Amount of all U.S. Dollar Facility Swing Line Loans shall not exceed such Lender's U.S. Dollar Facility Commitment. Within the limits of each U.S. Dollar Facility Lender's U.S. Dollar Facility Commitment, and subject to the other terms and conditions hereof, the U.S. Borrower may borrow under this Section 2.01, prepay under Section 2.05, and

reborrow under this Section 2.01. U.S. Dollar Facility Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) Subject to the terms and conditions set forth herein, each Multicurrency Facility Lender severally agrees to make loans (each such loan, a "Multicurrency Facility Revolving Loan") to each Borrower from time to time, on any Business Day during the Multicurrency Facility Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Multicurrency Facility Commitment as set forth on Schedule 2.01; provided that after giving effect to any borrowing of Multicurrency Facility Revolving Loans, the Outstanding Amount of the Multicurrency Facility Revolving Loans of any Lender, plus such Lender's Pro rata Share of the Outstanding Amount of all Multicurrency Facility L/C Obligations, plus such Lender's Pro rata Share of the Outstanding Amount of all Multicurrency Facility Swing Line Loans shall not exceed such Lender's Multicurrency Facility Commitment. Within the limits of each Multicurrency Facility Lender's Multicurrency Facility Commitment, and subject to the other terms and conditions hereof, each Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Multicurrency Facility Revolving Loans denominated in Dollars may be Canadian U.S. Base Rate Loans or Eurodollar Rate Loans, and Multicurrency Facility Revolving Loans denominated in Canadian Dollars may be Canadian Prime Rate Loans or Eurodollar Rate Loans, in each case as further provided herein.

2.02 Borrowings, Conversions and Continuations of Revolving Loans

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(a) Each borrowing of Loans, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the applicable Borrower's irrevocable notice to, in the case of U.S. Dollar Facility Revolving Loans, the Administrative Agent and, in the case of Multicurrency Facility Revolving Loans, the Canadian Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent or the Canadian Agent, as applicable, not later than (i) 12:30 p.m., three Business Days prior to the requested date of any borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans, as applicable and (ii) 11:00 a.m., on the Business Day of the requested date of any borrowing of Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans. Each telephonic notice in respect of U.S. Dollar Facility Revolving Loans by the U.S. Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing or Conversion Notice, appropriately completed and signed by a Responsible Officer of the U.S. Borrower. Each telephonic notice in respect of Multicurrency Facility Revolving Loans by the applicable Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Canadian Agent of a written Borrowing or Conversion Notice, appropriately completed and signed by a Responsible Officer of the applicable Borrower. Each borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in an amount equal to $1,000,000 or C$1,000,000, as applicable, or a whole multiple of $500,000 or C$500,000, as applicable, in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each borrowing of or conversion to Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans (other than Swing Line Loans) shall be in a principal amount of $200,000 or C$200,000, as applicable, or a whole multiple of $100,000 or C$100,000, as applicable, in excess thereof. Each Borrowing or Conversion Notice (whether

telephonic or written) shall specify (i) whether the requested borrowing is to be a U.S. Dollar Facility Revolving Loan Borrowing or a Multicurrency Facility Revolving Loan 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 Revolving Loans to be borrowed, converted, continued or rolled over, (iv) if applicable, the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto, (vi) in the case of the Multicurrency Facility Commitments, whether such requested Loans are to be denominated in Dollars or Canadian Dollars and (vii) in the case of the Multicurrency Facility Commitments, whether such Loans are to be borrowed by the U.S. Borrower or the Canadian Borrower. If the U.S. Borrower fails to specify a Type of U.S. Dollar Facility Revolving Loan in a Borrowing or Conversion Notice or if the U.S. Borrower fails to give a timely notice requesting a conversion or continuation, then the U.S. Dollar Facility Revolving Loan, shall be made as, or converted to, a Base Rate Loan. If any Borrower fails to specify a Type of Multicurrency Facility Revolving Loan in a Borrowing or Conversion Notice or if any Borrower fails to give a timely notice requesting a conversion or continuation, then the Multicurrency Revolving Loan shall be made as, or converted to, a Canadian U.S. Base Rate Loan (if such Loan is denominated in Dollars), or a Canadian Prime Rate Loan (if such Loan is denominated in Canadian Dollars). Any such automatic conversion to Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime 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 a Borrower requests a borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Borrowing or Conversion Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Borrowing or Conversion Notice of U.S. Dollar Facility Revolving Loans or Multicurrency Facility Revolving Loans, the Administrative Agent or the Canadian Agent, respectively, shall promptly notify each applicable Lender of the amount of its Pro rata Share of the Loans, and if no timely notice of a conversion or continuation is provided by a Borrower, the Administrative Agent or the Canadian Agent, as applicable, shall notify each applicable Lender of the details of any automatic conversion to Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans or continuation described in Section 2.02(a). In the case of each borrowing of U.S. Dollar Facility Revolving Loans, each U.S. Dollar Facility Lender shall make the amount of its U.S. Dollar Facility Revolving Loan available to the Administrative Agent in Dollars in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing or Conversion Notice. In the case of each borrowing of Multicurrency Facility Revolving Loans by the any Borrower, each Multicurrency Facility Lender shall make the amount of its Multicurrency Facility Revolving Loan available to the Canadian Agent in Dollars or Canadian Dollars, as applicable, in immediately available funds at the Canadian Agent's Office, as applicable, not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing or Conversion Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02, the applicable Facility Agent shall make all funds so received available to the applicable Borrower in like funds as received by such Facility Agent, either by (i) crediting the account of such Borrower on the books of Bank of America or Bank of America, N.A., Canada Branch with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and rea

sonably acceptable to) the applicable Facility Agent by such Borrower; provided that if, on the date the Borrowing or Conversion Notice with respect to such Borrowing of U.S. Dollar Facility Revolving Loans is given by the U.S. Borrower, there are U.S. Dollar Facility Swing Line Loans or U.S. Dollar Facility L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such U.S. Dollar Facility L/C Borrowings, and second, to the payment in full of any such U.S. Dollar Facility Swing Line Loans, and third, to the U.S. Borrower as provided above; provided further that if, on the date the Borrowing or Conversion Notice with respect to such Borrowing of Multicurrency Facility Revolving Loans is given by a Borrower, there are Multicurrency Facility Swing Line Loans or Multicurrency Facility L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Multicurrency Facility L/C Borrowings, and second, to the payment in full of any such Multicurrency Facility Swing Line Loans, and third, to the applicable Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no U.S. Dollar Facility Revolving Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders. During the existence of a Default, no Multicurrency Facility Revolving Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Multicurrency Facility Lenders.

(d) The Administrative Agent or Canadian Agent, as applicable, shall promptly notify the applicable Borrowers and the applicable Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change. At any time that Canadian Prime Rate Loans or Canadian U.S. Base Rate Loans are outstanding, the Canadian Agent shall notify the Borrowers and the Multicurrency Facility Lenders of any change in the Canadian Agent's prime rate used or other rate of interest used in determining the Canadian Prime Rate or Canadian U.S. 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 ten Interest Periods in effect with respect to Loans.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

2.03 Letters of Credit

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(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 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 applicable Letter of Credit Expiration Date, to issue Letters of Credit for the account of (x) the U.S. Borrower, (y) Holdings (so long as such Letter of Credit is directly related to the business of U.S. Borrower or any of its Subsidiaries) or (z) any Subsidiary of the U.S. Borrower (so long as in the case of clauses (y) and (z), (A) with respect to any Letter of Credit denominated in Dollars, the U.S. Borrower is a joint and several co-applicant and (B) with respect to any Letter of Credit denominated in Canadian Dollars, the U.S. Borrower and the Canadian Borrower are joint and several co-applicants and references under this Section 2.03 shall be deemed to include Holdings or such Subsidiary) and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of Holdings, the applicable Borrower or such Subsidiary and any drawings thereunder; provided that after giving effect to any U.S. Dollar Facility L/C Credit Extension with respect to any U.S. Dollar Facility Letter of Credit, (x) the Outstanding Amount of the U.S. Dollar Facility Revolving Loans of any U.S. Dollar Facility Lender, plus such Lender's Pro rata Share of the Outstanding Amount of all U.S. Dollar Facility L/C Obligations, plus such Lender's Pro rata Share of the Outstanding Amount of all U.S. Dollar Facility Swing Line Loans shall not exceed such Lender's U.S. Dollar Facility Commitment and (y) the Outstanding Amount of the U.S. Dollar Facility L/C Obligations shall not exceed the U.S. Dollar Facility Letter of Credit Sublimit; and, provided further that after giving effect to any Multicurrency Facility L/C Credit Extension with respect to any Multicurrency Facility Letter of Credit, (x) the Outstanding Amount of the Multicurrency Facility Revolving Loans of any Multicurrency Facility Lender, plus such Lender's Pro rata Share of the Outstanding Amount of all Multicurrency Facility L/C Obligations, plus such Lender's Pro rata Share of the Outstanding Amount of all Multicurrency Facility Swing Line Loans shall not exceed such Lender's Multicurrency Facility Commitment and (y) the Outstanding Amount of the Multicurrency Facility L/C Obligations shall not exceed the Multicurrency Facility Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, each Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly each 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. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) (I) No U.S. Dollar Facility L/C Issuer shall be under any obligation to issue any U.S. Dollar Facility Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested U.S. Dollar Facility Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested U.S. Dollar Facility Letter of Credit would occur after the Letter of Credit Expiration Date applicable to U.S. Dollar Facility Letters of Credit, unless all the Lenders have approved such expiry date;

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

(D) the issuance of such U.S. Dollar Facility Letter of Credit would violate one or more policies of the U.S. Dollar Facility L/C Issuer generally applicable to the issuance of letters of credit;

(E) such U.S. Dollar Facility Letter of Credit is to be denominated in a currency other than Dollars; or

(F) any U.S. Dollar Facility Lender is at that time a Defaulting Lender, unless the U.S. Dollar Facility L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the U.S. Dollar Facility L/C Issuer (in its sole discretion) with the U.S. Borrower or such U.S. Dollar Facility Lender to eliminate the U.S. Dollar Facility L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the U.S. Dollar Facility Letter of Credit then proposed to be issued or that U.S. Dollar Facility Letter of Credit and all other U.S. Dollar Facility L/C Obligations as to which the U.S. Dollar Facility L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(II) No Multicurrency Facility L/C Issuer shall be under any obligation to issue any Multicurrency Facility Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Multicurrency Facility Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Multicurrency Facility Lenders have approved such expiry date; or

(B) the expiry date of such requested Multicurrency Facility Letter of Credit would occur after the Letter of Credit Expiration Date applicable to Multicurrency Facility Letters of Credit, unless all the Lenders have approved such expiry date;

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

(D) the issuance of such Multicurrency Facility Letter of Credit would violate one or more policies of the Multicurrency Facility L/C Issuer generally applicable to the issuance of letters of credit;

(E) such Multicurrency Facility Letter of Credit is to be denominated in a currency other than Dollars or Canadian Dollars; or

(F) any Multicurrency Facility Lender is at that time a Defaulting Lender, unless the Multicurrency Facility L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Multicurrency Facility L/C Issuer (in its sole discretion) with the U.S. Borrower or such Multicurrency Facility Lender to eliminate the Multicurrency Facility L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Multicurrency Facility Letter of Credit then proposed to be issued or that Multicurrency Facility Letter of Credit and all other Multicurrency Facility L/C Obligations as to which the Multicurrency Facility L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) 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.

(iv) The U.S. Dollar Facility L/C Issuer shall act on behalf of the U.S. Dollar Facility Lenders with respect to any U.S. Dollar Facility Letters of Credit issued by it and the documents associated therewith, and the U.S. Dollar Facility L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the U.S. Dollar Facility L/C Issuer in connection with U.S. Dollar Facility Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such U.S. Dollar Facility Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the U.S. Dollar Facility L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the U.S. Dollar Facility L/C

Issuer. The Multicurrency Facility L/C Issuer shall act on behalf of the Multicurrency Facility Lenders with respect to any Multicurrency Facility Letters of Credit issued by it and the documents associated therewith, and the Multicurrency Facility L/C Issuer shall have all of the benefits and immunities (A) provided to the Canadian Agent in Article IX with respect to any acts taken or omissions suffered by the Multicurrency Facility L/C Issuer in connection with Multicurrency Facility Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Multicurrency Facility Letters of Credit as fully as if the term "Canadian Agent" as used in Article IX included the Multicurrency Facility L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Multicurrency Facility L/C Issuer.

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

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the U.S. Borrower (or, in the case of Multicurrency Facility Letters of Credit, the U.S. Borrower or the Canadian Borrower) delivered to the applicable L/C Issuer (with a copy to the Administrative Agent and, in the case of a Letter of Credit denominated in Canadian Dollars or issued to the Canadian Borrower, the Canadian Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the applicable Borrower. Such Letter of Credit Application must be received by the applicable L/C Issuer and the applicable Facility Agent not later than 2:00 p.m. at least three Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their 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) solely with respect to Multicurrency Facility Letters of Credit, whether such Letter of Credit is to be denominated in Dollars or Canadian Dollars and (H) such other matters as such 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 such L/C Issuer may reasonably require. Additionally, the applicable Borrower shall furnish to the applicable L/C Issuer and the applicable Facility Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable L/C Issuer or such Facility Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, each L/C Issuer will confirm with the Administrative Agent or the Canadian Agent, as applicable, (by telephone or in writing) that such Facility Agent has received a copy of such Letter of Credit Application from a Borrower and, if not, such L/C Issuer will provide such Facility Agent with a copy thereof. Un

less such L/C Issuer has received written notice from any Lender, the Administrative Agent, the Canadian 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 Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Holdings (so long as such Letter of Credit is directly related to the business of U.S. Borrower or any of its Subsidiaries), the U.S. Borrower, the Canadian Borrower or the applicable Subsidiary 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 relating generally to issuances of Letters of Credit. Immediately upon the issuance of each U.S. Dollar Facility Letter of Credit, each U.S. Dollar Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the U.S. Dollar Facility L/C Issuer a risk participation in such U.S. Dollar Facility Letter of Credit in an amount equal to the product of such U.S. Dollar Facility Lender's Pro rata Share times the amount of such U.S. Dollar Facility Letter of Credit. Immediately upon the issuance of each Multicurrency Facility Letter of Credit, each Multicurrency Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Multicurrency Facility L/C Issuer a risk participation in such Multicurrency Facility Letter of Credit in an amount equal to the product of such Multicurrency Facility Lender's Pro rata Share times the amount of such Multicurrency Facility Letter of Credit.

(iii) If the applicable 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 extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension 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 such L/C Issuer, the applicable Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit that is a U.S. Dollar Facility Letter of Credit has been issued, the U.S. Dollar Facility Lenders shall be deemed to have authorized (but may not require) the U.S. Dollar Facility L/C Issuer to permit the extension of such U.S. Dollar Facility Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date applicable to U.S. Dollar Facility Letters of Credit; provided, however, that the U.S. Dollar Facility L/C Issuer shall not permit any such extension if (A) the U.S. Dollar Facility L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such U.S. Dollar Facility Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), 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 Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the U.S. Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the U.S. Dollar Facility L/C Issuer not to permit such extension. Once an Auto-Extension Letter of Credit that is a Multicurrency Facility Letter of Credit has been issued, the Multicurrency Facility Lenders shall be deemed to have authorized (but may not require) the Multicurrency Facility L/C Issuer to permit the exten

sion of such Multicurrency Facility Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date applicable to Multicurrency Facility Letters of Credit; provided, however, that the Multicurrency Facility L/C Issuer shall not permit any such extension if (A) the Multicurrency Facility L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Multicurrency Facility Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), 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 Non-Extension Notice Date (1) from the Administrative Agent or the Canadian Agent that the Required Multicurrency Facility Lenders have elected not to permit such extension or (2) from the Administrative Agent, the Canadian Agent, any Lender or a Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the Multicurrency Facility 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 applicable Borrower and the Administrative Agent or the Canadian Agent, as applicable, a true and complete copy of such Letter of Credit or amendment.

(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 applicable Borrower and the applicable Facility Agent thereof. Not later than 2:00 p.m. on the date of any payment by any L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the applicable Borrower shall reimburse such L/C Issuer through the applicable Facility Agent in an amount equal to the amount of such drawing. In the case of a Multicurrency Facility Letter of Credit denominated in Canadian Dollars, the applicable Borrower shall reimburse the applicable Multicurrency Facility L/C Issuer in Canadian Dollars, and in the case of a Multicurrency Facility Letter of Credit denominated in Dollars, the applicable Borrower shall reimburse the applicable Multicurrency Facility L/C Issuer in Dollars. If the U.S. Borrower fails to so reimburse the U.S. Dollar Facility L/C Issuer by such time, the Administrative Agent shall promptly notify each U.S. Dollar Facility Lender of the Honor Date, the amount of the unreimbursed drawing (the "U.S. Dollar Facility Unreimbursed Amount"), and the amount of such U.S. Dollar Facility Lender's Pro rata Share thereof. In such event, the U.S. Borrower shall be deemed to have requested a U.S. Dollar Facility Revolving Loan Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the U.S. Dollar Facility 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 U.S. Dollar Facility Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Borrowing or Conversion Notice). If the U.S. Borrower or the Canadian Borrower fails to so reimburse the Multicurrency Facility L/C Issuer by such time, the Canadian Agent shall promptly notify each Multicurrency Facility Lender of the Honor Date, the amount of the unreimbursed drawing (the "Multicurrency Facility Unreimbursed Amount"), and the amount of such Multicurrency Facility Lender's Pro rata Share thereof. In such event, such Borrower shall be deemed to have requested a Multicurrency Facility Revolving Loan Borrowing of Canadian Prime Rate Loans

denominated in Canadian Dollars (if the Letter of Credit to which such Honor Date relates is denominated in Canadian Dollars) or Canadian U.S. Base Rate Loans denominated in Dollars (if the Letter of Credit to which such Honor Date relates is denominated in Dollars) to be disbursed on the Honor Date in an amount equal to the Multicurrency Facility Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Canadian U.S. Base Rate Loans and Canadian Prime Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Multicurrency Facility Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Borrowing or Conversion Notice). Any notice given by an L/C Issuer, the Administrative Agent or the Canadian 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 U.S. Dollar Facility Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the U.S. Dollar Facility L/C Issuer at the Administrative Agent's Office in an amount equal to its Pro rata Share of the U.S. Dollar Facility 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 U.S. Dollar Facility Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Loan to the U.S. Borrower in such amount. The Administrative Agent shall remit the funds so received to the U.S. Dollar Facility L/C Issuer. Each Multicurrency Facility Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Canadian Agent for the account of the Multicurrency Facility L/C Issuer at the Canadian Agent's Office in an amount equal to its Pro rata Share of the Multicurrency Facility Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Canadian Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Multicurrency Facility Lender that so makes funds available shall be deemed to have made a Canadian U.S. Base Rate Loan or a Canadian Prime Rate Loan to the applicable Borrower in such amount. The Canadian Agent shall remit the funds so received to the Multicurrency Facility L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Loan Borrowing of Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable 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 or the Canadian Agent, as applicable, 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 a U.S. Dollar Facility Lender funds its U.S. Dollar Facility Revolving Loan or U.S. Dollar Facility L/C Advance pursuant to this Section 2.03(c) to reimburse the U.S. Dollar Facility L/C Issuer for any amount drawn under any U.S. Dollar Facility Letter of Credit, interest

in respect of such U.S. Dollar Facility Lender's Pro rata Share of such amount shall be solely for the account of the U.S. Dollar Facility L/C Issuer. Until a Multicurrency Facility Lender funds its Multicurrency Facility Revolving Loan or Multicurrency Facility L/C Advance pursuant to this Section 2.03(c) to reimburse the Multicurrency Facility L/C Issuer for any amount drawn under any Multicurrency Facility Letter of Credit, interest in respect of such Multicurrency Facility Lender's Pro rata Share of such amount shall be solely for the account of the Multicurrency Facility 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 setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, any 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 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 4.02 (other than delivery by a Borrower of a Borrowing or Conversion Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of any 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 or Canadian Agent, as applicable, 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 or the Canadian Agent, as applicable), 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 (x)(A) with respect to amounts denominated in Dollars, the Federal Funds Rate and (B) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, processing or similar fees customarily charged by Bank of America, N.A., Canada Branch and (y) and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation. A certificate of such L/C Issuer submitted to any Lender (through the Administrative Agent or the Canadian Agent, as applicable) 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 U.S. Dollar Facility L/C Issuer has made a payment under any U.S. Dollar Facility Letter of Credit and has received from any U.S. Dollar Facility Lender such Lender's U.S. Dollar Facility L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the U.S. Dollar Facility L/C Issuer any payment in respect of the related U.S. Dollar Facility Unreimbursed Amount or interest thereon (whether directly from the U.S. Borrower or otherwise, including proceeds of

cash collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such U.S. Dollar Facility 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 U.S. Dollar Facility L/C Advance was outstanding) in the same funds as those received by the Administrative Agent. At any time after the Multicurrency Facility L/C Issuer has made a payment under any Multicurrency Facility Letter of Credit and has received from any Multicurrency Facility Lender such Lender's Multicurrency Facility L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Canadian Agent receives for the account of the Multicurrency Facility L/C Issuer any payment in respect of the related Multicurrency Facility Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Canadian Agent will distribute to such Multicurrency Facility 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 Multicurrency Facility L/C Advance was outstanding) in the same funds as those received by the Canadian Agent, as applicable.

(ii) If any payment received by the Administrative Agent for the account of the U.S. Dollar Facility L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the U.S. Dollar Facility L/C Issuer in its discretion), each U.S. Dollar Facility Lender shall pay to the Administrative Agent for the account of the U.S. Dollar Facility 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. If any payment received by the Canadian Agent for the account of the Multicurrency Facility L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Multicurrency Facility L/C Issuer in its discretion), each Multicurrency Facility Lender shall pay to the Canadian Agent for the account of the Multicurrency Facility L/C Issuer its Pro rata Share thereof on demand of the Canadian 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 (x) with respect to amounts denominated in Dollars, the Federal Funds Rate from time to time in effect and (y) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, processing or similar fees customarily charged by Bank of America, N.A., Canada Branch. 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 Borrowers to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall, to the fullest extent permitted under applicable law, 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, setoff, defense or other right that Holdings, the Borrowers or any Subsidiary 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), any 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;

(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;

(v) any exchange, release or nonperfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guarantee or any other guarantee, for all or any of the Obligations of the Borrowers in respect of such Letter of Credit; or

(vi) 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, Holdings, any Borrower or any Subsidiary.

The applicable 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 such Borrower's instructions or other irregularity, such Borrower will immediately notify the applicable L/C Issuer. Such Borrower shall be conclusively deemed to have waived any such claim against each L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, each 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, the Canadian Agent, any of their respective Related Parties nor any correspondent, participant or assignee 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,

any Required Lenders or any Required Multicurrency Facility 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. Each 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 that this assumption is not intended to, and shall not, preclude such 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, the Canadian Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuers shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); provided that anything in such clauses to the contrary notwithstanding, a Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such 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, the L/C Issuers 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 the L/C Issuers 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, except to the extent that any errors with respect to the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such L/C Issuer.

(g) [Reserved].

(h) Applicability of ISP and Uniform Customs. Unless otherwise expressly agreed by the L/C Issuers and the Borrowers when a Letter of Credit is issued that Uniform Customs shall apply to such Letter of Credit, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(i) Letter of Credit Fees. The U.S. Borrower shall pay to the Administrative Agent for the account of each U.S. Dollar Facility Lender in accordance with its Pro rata Share a Letter of Credit fee (the "U.S. Dollar Facility Letter of Credit Fee") (i) for each commercial U.S. Dollar Facility Letter of Credit equal to (x) the Applicable Rate for commercial Letters of Credit times (y) the daily amount available to be drawn under such U.S. Dollar Facility Letter of Credit and (ii) for each standby U.S. Dollar Facility Letter of Credit equal to the Applicable Rate for standby Letters of Credit times the daily amount available to be drawn under such U.S. Dollar Facility Letter of Credit; provided, however, any U.S. Dollar Facility Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any U.S. Dollar Facility Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the U.S. Dollar Facility L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other U.S. Dollar Facility Lenders in accordance

with the upward adjustments in their respective Pro rata Shares allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the U.S. Dollar Facility L/C Issuer for its own account. The applicable Borrower shall pay to the Canadian Agent for the account of each Multicurrency Facility Lender in accordance with its Pro rata Share a Letter of Credit fee (the "Multicurrency Facility Letter of Credit Fee") (i) for each commercial Multicurrency Facility Letter of Credit equal to (x) the Applicable Rate for commercial Letters of Credit times (y) the Dollar Equivalent of the daily amount available to be drawn under such Multicurrency Facility Letter of Credit and (ii) for each standby Multicurrency Facility Letter of Credit equal to the Applicable Rate for standby Letters of Credit times the Dollar Equivalent of the daily amount available to be drawn under such Multicurrency Facility Letter of Credit; provided, however, any Multicurrency Facility Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Multicurrency Facility Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Multicurrency Facility L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Multicurrency Facility Lenders in accordance with the upward adjustments in their respective Pro rata Shares allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the Multicurrency Facility L/C Issuer for its own account. 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 1.06. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the last Business 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 applicable thereto and thereafter on demand. If there is any change in the Applicable Rate for Eurodollar Rate Revolving Loans during any quarter, the daily amount available to be drawn under 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.

(j) 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 Swing Line Loans

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(a) (i) The U.S. Dollar Facility Swing Line. Subject to the terms and conditions set forth herein, the U.S. Dollar Facility Swing Line Lender, may, in its sole discretion, in reliance upon the agreements of the other U.S. Dollar Facility Lenders set forth in this Section 2.04, make loans (each such loan, a "U.S. Dollar Facility Swing Line Loan") to the U.S. Borrower from time to time on any Business Day after the Closing Date during the U.S. Dollar Facility Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the U.S. Dollar Facility Swing Line Sublimit, notwithstanding the fact that such U.S. Dollar Facility Swing Line Loans, when aggregated with the Pro rata Share of the Outstanding Amount of U.S. Dollar Facility Revolving Loans and U.S. Dollar Facility L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's U.S. Dollar Facility Commitment; provided that after giving effect to any U.S. Dollar Facility Swing Line Loan, (i) the Outstanding Amount of U.S. Dollar Facility Revolving Loans shall not exceed the Aggregate U.S. Dollar Facility Commitments, and (ii) the aggregate Outstanding Amount of the U.S. Dollar Facility Re

volving Loans of any U.S. Dollar Facility Lender, plus such Lender's Pro rata Share of the Outstanding Amount of all U.S. Dollar Facility L/C Obligations, plus such Lender's Pro rata Share of the Outstanding Amount of all U.S. Dollar Facility Swing Line Loans shall not exceed such Lender's U.S. Dollar Facility Commitment, and provided, further, that the U.S. Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding U.S. Dollar Facility Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the U.S. Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each U.S. Dollar Facility Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a U.S. Dollar Facility Swing Line Loan, each U.S. Dollar Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the U.S. Dollar Facility Swing Line Lender a risk participation in such U.S. Dollar Facility Swing Line Loan in an amount equal to the product of such Lender's Pro rata Share times the amount of such U.S. Dollar Facility Swing Line Loan.

(ii) The Multicurrency Facility Swing Line. Subject to the terms and conditions set forth herein, the Multicurrency Facility Swing Line Lender, may, in its sole discretion, in reliance upon the agreements of the other Multicurrency Facility Lenders set forth in this Section 2.04, make loans (each such loan, a "Multicurrency Facility Swing Line Loan") denominated in Dollars or Canadian Dollars to the Borrowers from time to time on any Business Day after the Restatement Date during the Multicurrency Facility Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Multicurrency Facility Swing Line Sublimit, notwithstanding the fact that such Multicurrency Facility Swing Line Loans, when aggregated with the Pro rata Share of the Outstanding Amount of Multicurrency Facility Revolving Loans and Multicurrency Facility L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Multicurrency Facility Commitment; provided that after giving effect to any Multicurrency Facility Swing Line Loan, (i) the Outstanding Amount of Multicurrency Facility Revolving Loans shall not exceed the Aggregate Multicurrency Facility Commitments, and (ii) the aggregate Outstanding Amount of the Multicurrency Facility Revolving Loans of any Multicurrency Facility Lender, plus such Lender's Pro rata Share of the Outstanding Amount of all Multicurrency Facility L/C Obligations, plus such Lender's Pro rata Share of the Outstanding Amount of all Multicurrency Facility Swing Line Loans shall not exceed such Lender's Multicurrency Facility Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Multicurrency Facility Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Multicurrency Facility Swing Line Loan denominated in Dollars shall be a Canadian U.S. Base Rate Loan. Each Multicurrency Facility Swing Line Loan denominated in Canadian Dollars shall be a Canadian Prime Rate Loan. Immediately upon the making of a Multicurrency Facility Swing Line Loan, each Multicurrency Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Multicurrency Facility Swing Line Lender a risk participation in such Multicurrency Facility Swing Line Loan in an amount equal to the product of such Lender's Pro rata Share times the amount of such Multicurrency Facility Swing Line Loan.

(b) Borrowing Procedures.

(i) Each U.S. Dollar Facility Swing Line Borrowing may, in the sole discretion of the U.S. Dollar Facility Swing Line Lender, be made upon the U.S. Borrower's irrevocable notice to the U.S. Dollar Facility Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the U.S. Dollar Facility Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be an amount in Dollars and a minimum of $100,000 or a whole multiple of $50,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the U.S. Dollar Facility Swing Line Lender and the Administrative Agent of a written U.S. Dollar Facility Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the U.S. Borrower. Promptly after receipt by the U.S. Dollar Facility Swing Line Lender of any telephonic U.S. Dollar Facility Swing Line Loan Notice, the U.S. Dollar Facility Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such U.S. Dollar Facility Swing Line Loan Notice and, if not, the U.S. Dollar Facility Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the U.S. Dollar Facility Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed U.S. Dollar Facility Swing Line Borrowing (A) directing the U.S. Dollar Facility Swing Line Lender not to make such U.S. Dollar Facility Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a)(i), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the U.S. Dollar Facility Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such U.S. Dollar Facility Swing Line Loan Notice, make the amount of its U.S. Dollar Facility Swing Line Loan available to the U.S. Borrower at its office by crediting the account of the U.S. Borrower on the books of the U.S. Dollar Facility Swing Line Lender in immediately available funds.

(ii) Each Multicurrency Facility Swing Line Borrowing may, in the sole discretion of the Multicurrency Facility Swing Line Lender, be made upon the U.S. Borrower's or the Canadian Borrower's irrevocable notice to the Multicurrency Facility Swing Line Lender, the Canadian Agent, which may be given by telephone. Each such notice must be received by the Multicurrency Facility Swing Line Lender, the Canadian Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be an amount in Dollars or Canadian Dollars and a minimum of $100,000 or C$100,000, as applicable, or a whole multiple of $50,000 or C$50,000, as applicable, in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Multicurrency Facility Swing Line Lender, the Canadian Agent of a written Multicurrency Facility Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the applicable Borrower. Promptly after receipt by the Multicurrency Facility Swing Line Lender of any telephonic Multicurrency Facility Swing Line Loan Notice, the Multicurrency Facility Swing Line Lender will confirm with the Canadian Agent (by telephone or in writing) that the Canadian Agent have also received such Multicurrency Facility Swing Line Loan Notice and, if not, the Multicurrency Facility Swing Line Lender will notify the Canadian Agent (by telephone or in writing) of the contents thereof. Unless the Multicurrency Facility Swing Line Lender has received notice (by telephone or in writing) from the Canadi

an Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Multicurrency Facility Swing Line Borrowing (A) directing the Multicurrency Facility Swing Line Lender not to make such Multicurrency Facility Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a)(ii), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Multicurrency Facility Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Multicurrency Facility Swing Line Loan Notice, make the amount of its Multicurrency Facility Swing Line Loan available to the applicable Borrower at its office by crediting the account of the applicable Borrower on the books of the Multicurrency Facility Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) (A) The U.S. Dollar Facility Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the U.S. Borrower (which hereby irrevocably authorizes the U.S. Dollar Facility Swing Line Lender to so request on its behalf), that each U.S. Dollar Facility Revolving Lender make a Base Rate Revolving Loan in an amount equal to such Lender's Pro rata Share of the amount of U.S. Dollar Facility Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing or Conversion Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate U.S. Dollar Facility Commitments and the conditions set forth in Section 4.02. The U.S. Dollar Facility Swing Line Lender shall furnish the U.S. Borrower with a copy of the applicable Borrowing or Conversion Notice promptly after delivering such notice to the Administrative Agent. Each U.S. Dollar Facility Revolving Lender shall make an amount equal to its Pro rata Share of the amount specified in such Borrowing or Conversion Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable U.S. Dollar Facility Swing Line Loan) for the account of the U.S. Dollar Facility Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Borrowing or Conversion Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Loan to the U.S. Borrower in such amount. The Administrative Agent shall remit the funds so received to the U.S. Dollar Facility Swing Line Lender.

(B) The Multicurrency Facility Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the applicable Borrower (which hereby irrevocably authorizes the Multicurrency Facility Swing Line Lender to so request on its behalf), that each Multicurrency Facility Lender make a Canadian Prime Rate Revolving Loan (if such Multicurrency Facility Swing Line Loan is denominated in Canadian Dollars) or Canadian U.S. Base Rate Loan (if such Multicurrency Facility Swing Line Loan is denominated in Dollars) in an amount equal to such Lender's Pro rata Share of the amount of Multicurrency Facility Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing or Conversion Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount

of Canadian Prime Rate Loans or Canadian U.S. Base Rate Loans, but subject to the unutilized portion of the Aggregate Multicurrency Facility Commitments and the conditions set forth in Section 4.02. The Multicurrency Facility Swing Line Lender shall furnish the applicable Borrower with a copy of the applicable Borrowing or Conversion Notice promptly after delivering such notice to the Canadian Agent. Each Multicurrency Facility Lender shall make an amount equal to its Pro rata Share of the amount specified in such Borrowing or Conversion Notice available to the Canadian Agent in the same currency in which such Multicurrency Facility Swing Line Loan is denominated in immediately available funds (and Canadian Agent may apply Cash Collateral available with respect to the applicable Multicurrency Facility Swing Line Loan) for the account of the Multicurrency Facility Swing Line Lender at the Canadian Agent's Office not later than 1:00 p.m. on the day specified in such Borrowing or Conversion Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Canadian Prime Rate Loan or Canadian U.S. Base Rate Loan, as applicable, to the applicable Borrower in such amount. The Canadian Agent shall remit the funds so received to the Multicurrency Facility Swing Line Lender.

(ii) If for any reason any U.S. Dollar Facility Swing Line Loan cannot be refinanced by such a U.S. Dollar Facility Revolving Loan Borrowing in accordance with Section 2.04(c)(i)(A), the request for Base Rate Revolving Loans submitted by the U.S. Dollar Facility Swing Line Lender as set forth herein shall be deemed to be a request by the U.S. Dollar Facility Swing Line Lender that each of the Lenders fund its risk participation in the relevant U.S. Dollar Facility Swing Line Loan and each U.S. Dollar Facility Lender's payment to the Administrative Agent for the account of the U.S. Dollar Facility Swing Line Lender pursuant to Section 2.04(c)(i)(A) shall be deemed payment in respect of such participation. If for any reason any Multicurrency Facility Swing Line Loan cannot be refinanced by such a Multicurrency Facility Revolving Loan Borrowing in accordance with Section 2.04(c)(i)(B), the request for Canadian Prime Rate Revolving Loans or Canadian U.S. Base Rate Loans submitted by the Multicurrency Facility Swing Line Lender as set forth herein shall be deemed to be a request by the Multicurrency Facility Swing Line Lender that each of the Lenders fund its risk participation in the relevant Multicurrency Facility Swing Line Loan and each Multicurrency Facility Lender's payment to the Canadian Agent for the account of the Multicurrency Facility Swing Line Lender pursuant to Section 2.04(c)(i)(B) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent or the Canadian Agent, as applicable, for the account of the applicable Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i)(A) or (B), as applicable, the applicable Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent or the Canadian Agent, as applicable), 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 Swing Line Lender at a rate per annum equal to the greater of (x)(A) with respect to amounts denominated in Dollars, the Federal Funds Rate and (B) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, pro

cessing or similar fees customarily charged by Bank of America, N.A., Canada Branch and (y) a rate determined by such Swing Line Lender in accordance with banking industry rules on interbank compensation. A certificate of the applicable Swing Line Lender submitted to any Lender (through the Administrative Agent or the Canadian Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the applicable Swing Line Lender, the applicable 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; unless, in any case, such Lender has given the notice specified in Section 2.04(b)(i) or (ii), as applicable. No such funding of risk participations shall relieve or otherwise impair the obligation of any Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any U.S. Dollar Facility Lender has purchased and funded a risk participation in a U.S. Dollar Facility Swing Line Loan, if the U.S. Dollar Facility Swing Line Lender receives any payment on account of such U.S. Dollar Facility Swing Line Loan, the U.S. Dollar Facility Swing Line Lender will distribute to such U.S. Dollar Facility Lender its Pro rata Share of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such U.S. Dollar Facility Lender's risk participation was funded) in the same funds as those received by the U.S. Dollar Facility Swing Line Lender. At any time after any Multicurrency Facility Lender has purchased and funded a risk participation in a Multicurrency Facility Swing Line Loan, if the Multicurrency Facility Swing Line Lender receives any payment on account of such Multicurrency Facility Swing Line Loan, the Multicurrency Facility Swing Line Lender will distribute to such Multicurrency Facility Lender its Pro rata Share of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Multicurrency Facility Lender's risk participation was funded) in the same funds as those received by the Multicurrency Facility Swing Line Lender.

(ii) If any payment received by the U.S. Dollar Facility Swing Line Lender in respect of principal or interest on any U.S. Dollar Facility Swing Line Loan is required to be returned by the U.S. Dollar Facility Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the U.S. Dollar Facility Swing Line Lender in its discretion), each U.S. Dollar Facility Lender shall pay to the U.S. Dollar Facility Swing Line Lender 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, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the U.S. Dollar Facility Swing Line Lender. The obligations of the U.S. Dollar Facility Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement. If any payment received by the Multicurrency Facility Swing Line Lender in respect of principal or interest on any Multicurrency Facility Swing Line Loan is re

quired to be returned by the Multicurrency Facility Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Multicurrency Facility Swing Line Lender in its discretion), each Multicurrency Facility Lender shall pay to the Multicurrency Facility Swing Line Lender its Pro rata Share thereof on demand of the Canadian Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to (x) with respect to amounts denominated in Dollars, the Federal Funds Rate and (y) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, processing or similar fees customarily charged by Bank of America, N.A., Canada Branch. The Administrative Agent or the Canadian Agent will make such demand upon the request of the Multicurrency Facility Swing Line Lender. The obligations of the Multicurrency Facility Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The U.S. Dollar Facility Swing Line Lender shall be responsible for invoicing the U.S. Borrower for interest on the U.S. Dollar Facility Swing Line Loans. Until a U.S. Dollar Facility Lender funds its Base Rate Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro rata Share of any U.S. Dollar Facility Swing Line Loan, interest in respect of such Pro rata Share shall be solely for the account of the U.S. Dollar Facility Swing Line Lender. The Multicurrency Facility Swing Line Lender shall be responsible for invoicing the applicable Borrower for interest on the Multicurrency Facility Swing Line Loans. Until a Multicurrency Facility Lender funds its Canadian Prime Rate Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro rata Share of any Multicurrency Facility Swing Line Loan, interest in respect of such Pro rata Share shall be solely for the account of the Multicurrency Facility Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Each Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the applicable Swing Line Lender.

2.05 Prepayments

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(a) Optional.

(i) Each Borrower may, upon notice to the Administrative Agent (or, in the case of Multicurrency Facility Revolving Loans, the Canadian Agent) at any time or from time to time voluntarily prepay Revolving Loans, in whole or in part without premium or penalty; provided that (A) such notice must be received by the applicable Facility Agent not later than 12:30 p.m. (i) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (ii) on the date of prepayment of Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $1,000,000 or C$1,000,000, as applicable, or a whole multiple of $500,000 or C$500,000, as applicable, in excess thereof or, if less, the entire principal amount thereof then outstanding; and (C) any prepayment of Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans shall be in a principal amount of $200,000 or C$200,000, as applicable, or a whole

multiple of $100,000 or C$100,000, as applicable, in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall be in the form of Exhibit A-2 and shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The Administrative Agent (or, in the case of Multicurrency Facility Revolving Loans, the Canadian Agent) will promptly notify each Lender, as applicable, 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 a Borrower, such Borrower shall be committed to 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 any additional amounts required pursuant to Section 3.05.

(ii) Each Borrower may, upon notice to the applicable Swing Line Lender (with a copy to the Administrative Agent or the Canadian Agent, as applicable), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by such Swing Line Lender and, (x) in the case of U.S. Dollar Facility Swing Line Loans, the Administrative Agent and (y) in the case of Multicurrency Facility Swing Line Loans, the Canadian Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000 or C$100,000, as applicable, or a whole multiple of $50,000 or C$50,000 in excess thereof. Each such notice shall be in the form of Exhibit A-2 and shall specify the date and amount of such prepayment. If such notice is given by a Borrower, such Borrower shall be committed to make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Revolving Loan Prepayments. If for any reason at any time the Outstanding Amount of U.S. Dollar Facility Revolving Loans, U.S. Dollar Facility Swing Line Loans and U.S. Dollar Facility L/C Obligations exceeds the Aggregate U.S. Dollar Facility Commitments then in effect, the U.S. Borrower shall immediately first, prepay U.S. Dollar Facility Swing Line Loans, second, prepay U.S. Dollar Facility Revolving Loans, and third, Cash Collateralize the U.S. Dollar Facility L/C Obligations, in an aggregate amount equal to such excess. If the Administrative Agent or the Canadian Agent notifies either Borrower at any time that the Outstanding Amount in respect of Multicurrency Facility Revolving Loans, Multicurrency Facility L/C Obligations and Multicurrency Facility Swing Line Loans at such time exceed an amount equal to 105% of the aggregate Multicurrency Facility Commitments then in effect, then, within two Business Days after receipt of such notice, the applicable Borrower shall prepay Loans and/or the applicable Borrower shall Cash Collateralize the Multicurrency Facility L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Aggregate Multicurrency Facility Commitments then in effect; provided, however, that, subject to the provisions of Section 2.15, the Borrowers shall not be required to Cash Collateralize the Multicurrency Facility L/C Obligations pursuant to this Section 2.05(b) unless after the prepayment in full of the Multicurrency Facility Revolving Loans and Multicurrency Facility Swing Line Loans, the Outstanding Amount of the Multicurrency Facility L/C Obligations exceed the Aggregate Multicurrency Facility Commitments then in effect.

(c) Application of Prepayments. Prior to any optional prepayment hereunder, the applicable Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.05(a), subject to the provisions of this Section 2.05(c).

Amounts to be applied pursuant to this Section 2.05 to the prepayment of Revolving Loans shall be applied, as applicable, first to reduce outstanding Base Rate Revolving Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans, as determined by the applicable Borrower. Any amounts remaining after each such application shall be applied to prepay Eurodollar Rate Revolving Loans. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.05 shall be in excess of the amount of the Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans at the time outstanding (an "Excess Amount"), only the portion of the amount of such prepayment as is equal to the amount of such outstanding Base Rate Loans, Canadian U.S. Base Rate Loans or Canadian Prime Rate Loans shall be immediately prepaid and, at the election of the applicable Borrower, the Excess Amount shall be either (A) deposited in an escrow account on terms reasonably satisfactory to the Collateral Agent and the U.S. Borrower and applied to the prepayment of Eurodollar Rate Loans on the last day of the then next-expiring Interest Period for Eurodollar Rate Loans; provided that (i) interest in respect of such Excess Amount shall continue to accrue thereon at the rate provided hereunder for the Loans which such Excess Amount is intended to repay until such Excess Amount (and any returns on investment relating thereto) shall have been used in full to repay such Loans and (ii) at any time while a Default has occurred and is continuing, the Administrative Agent or the Canadian Agent, as applicable, may, and upon written direction from the Required Lenders (in the case of U.S. Dollar Facility Revolving Loans) or the Required Multicurrency Facility Lenders (in the case of Multicurrency Facility Revolving Loans) shall, apply any or all proceeds then on deposit to the payment of such Loans in an amount equal to such Excess Amount or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 3.05.

(d) Notice of Mandatory Prepayment. The applicable Borrower shall notify the Administrative Agent (or, in the case of Multicurrency Facility Revolving Loans, the Canadian Agent) by written notice of any mandatory prepayment pursuant to Section 2.05(b) (i) in the case of prepayment of a Eurodollar Rate Loan, not later than 12:30 p.m., three Business Days before the date of prepayment, and (ii) in the case of prepayment of a Base Rate Loan, Canadian U.S. Base Rate Loan or a Canadian Prime Rate Loan, not later than 12:30 p.m., one Business Day before the date of prepayment. Each such notice shall be irrevocable. Each such notice shall be in the form of Exhibit A-2 and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and shall include a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent or the Canadian Agent, as applicable, shall advise the Lenders of the contents thereof. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.05. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.08.

2.06 Termination or Reduction of Commitments

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The U.S. Borrower may, upon notice to the Administrative Agent and the Canadian Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments (in each case, on a pro rata basis between the Aggregate U.S. Dollar Facility Commitments and the Aggregate Multicurrency Facility Commitments); provided that (i) any such notice shall be received by the Administrative Agent and the Canadian Agent not later than 12:30 p.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $1,000,000 or a whole multiple of $500,000 in excess thereof and (iii) the U.S. Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, (x) the Outstanding Amount of U.S. Dollar Facility Revolving Loans, U.S. Dollar Facility Swing Line Loans and U.S. Dollar Facility L/C Obligations would exceed the Aggregate U.S. Dollar Facility Commitments or (y) the Outstanding Amount of Multicurrency Facility Revolving Loans, Multicurrency Facility Swing Line Loans and Multicurrency Facility L/C Obligations would exceed the Aggregate Multicurrency Facility Commitments. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied ratably (x) to the U.S. Dollar Facility Commitment of each U.S. Dollar Facility Lender according to its Pro rata Share thereof and (y) to the Multicurrency Facility Commitment of each Multicurrency Facility Lender according to its Pro rata Share thereof. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans

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(a) Revolving Loans. The U.S. Borrower shall repay to the Administrative Agent for the ratable account of the applicable U.S. Dollar Facility Lenders on the U.S. Dollar Facility Maturity Date the aggregate principal amount of all U.S. Dollar Facility Revolving Loans outstanding on such date. Each applicable Borrower shall repay to the Canadian Agent, for the ratable account of the applicable Multicurrency Facility Lenders on the Multicurrency Facility Maturity Date the aggregate principal amount of all Multicurrency Facility Revolving Loans outstanding on such date borrowed by such Borrower.

(b) Swing Line Loans. The U.S. Borrower shall repay the U.S. Dollar Facility Swing Line Loans on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the U.S. Dollar Facility Maturity Date. Each applicable Borrower shall repay the Multicurrency Facility Swing Line Loans on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Multicurrency Facility Maturity Date.

2.08 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;

(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;

(iii) each Canadian U.S. 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 Canadian U.S. Base Rate plus the Applicable Rate;

(iv) each Canadian Prime Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Canadian Prime Rate plus the Applicable Rate;

(v) each U.S. Dollar Facility Swing Line 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;

(vi) each Multicurrency Facility Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Canadian U.S. Base Rate (if denominated in Dollars) or the Canadian Prime Rate (if denominated in Canadian Dollars) plus the Applicable Rate;

(vii) interest on each Loan shall be payable in the currency in which such Loan was made.

(b) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by any Borrower hereunder is not paid when due (without regard to any applicable grace periods), whether at stated maturity, upon acceleration or otherwise, such overdue amount shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal and premium, if any, of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in Section 2.08(a) or (ii) in the case of any other overdue amount, 2% plus the rate applicable to Base Rate Revolving Loans as provided in Section 2.08(a)(ii) (in either case, the "Default Rate").

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto; provided that (i) interest accrued pursuant to Section 2.08(b) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Revolving Loan, a Canadian U.S. Base Rate Revolving Loan, a Canadian Prime Rate Revolving Loan or a Swing Line Loan without a permanent reduction in Commitments), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. 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.

2.09 Fees

. In addition to certain fees described in subsections Section 2.03(i):

(a) Commitment Fee. The U.S. Borrower shall pay to the Administrative Agent, for the account of each U.S. Dollar Facility Lender in accordance with its Pro Rata Share, a fee in Dollars equal to the Applicable Commitment Fee Rate per annum times the actual daily amount by which the Aggregate U.S. Dollar Facility Commitments exceed the sum of (i) the Outstanding Amount of U.S. Dollar Facility Revolving Loans (which for the avoidance of doubt does not include the outstanding amount of U.S. Dollar Facility Swing Line Loans) and (ii) the Outstanding Amount of U.S. Dollar Facility L/C Obligations, subject to adjustment as provided in Section 2.16. Such commitment fee shall accrue at all times during the period commencing on the Closing Date and ending on the last day of the U.S. Dollar Facility Availability Period, including at any time during which one or more of the conditions in Article IV are not met, and shall be due and payable quarterly in arrears (A) 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 (B) on the U.S. Dollar Facility Maturity Date. The U.S. Borrower shall pay to the Canadian Agent, for the account of each Multicurrency Facility Lender in accordance with its Pro Rata Share, a fee in Dollars equal to the Applicable Commitment Fee Rate per annum times the actual daily amount by which the Aggregate Multicurrency Facility Commitments exceed the sum of (i) the Outstanding Amount of Multicurrency Facility Revolving Loans (which for the avoidance of doubt does not include the outstanding amount of Multicurrency Facility Swing Line Loans) and (ii) the Dollar Equivalent of the Outstanding Amount of Multicurrency Facility L/C Obligations, subject to adjustment as provided in Section 2.16. Such commitment fee shall accrue at all times during the period commencing on the Restatement Date and ending on the last day of the Multicurrency Facility Availability Period, including at any time during which one or more of the conditions in Article IV are not met, and shall be due and payable quarterly in arrears (A) on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Restatement Date, and (B) on the Multicurrency Facility Maturity Date. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) Other Fees.

(i) The U.S. Borrower shall pay to the Arranger, the L/C Issuers and the Administrative Agent for their own respective accounts fees in Dollars in the amounts and at the times specified in the Fee Letter and the JPM Letter of Credit Fee Letter, as applicable (it being understood and agreed that Bank of America, N.A., Canada Branch shall be entitled to the same letter of credit fees as Bank of America, N.A.). Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The U.S. 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.

2.10 Computation of Interest and Fees

. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All computa

tions of interest for Canadian U.S. Base Rate Loans when the Canadian U.S. Base Rate is determined by Bank of America, N.A., Canada Branch's "reference rate of interest" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All computations of interest for Canadian Prime Rate Loans when the Canadian Prime Rate is determined by Bank of America, N.A., Canada Branch's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year).Interest shall accrue on each Loan for the day on which the Loan is made, continued or converted from a Loan of another Type 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 2.12(a), bear interest for one day. Any change in the interest rate in a Loan resulting from a change in the Base Rate, the Canadian Prime Rate or the Eurodollar Reserve Percentage shall become effective as of the opening of business on the day on which such change becomes effective. Each determination by the Administrative Agent or Canadian Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

For the purposes of the Interest Act (Canada), (a) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "Deemed Year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the Deemed Year, (b) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder and (c) the rates of interest quoted by the Canadian Agent to any Borrower pursuant hereto are intended to be nominal rates and not effective rates or yields.

2.11 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 and the Canadian Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent, the Canadian Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers 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 Borrowers 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 and the Canadian Agent in respect of such matters, the accounts and records of the Administrative Agent and the Canadian Agent shall control in the absence of manifest error.

(b) Upon the request of any Lender made through the Administrative Agent, the applicable Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(c) In addition to the accounts and records referred to in subsections (a) and (b) above in this Section 2.11, each Lender, the Administrative Agent and the Canadian 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 and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent or the Canadian Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent and the Canadian Agent shall control in the absence of manifest error.

(d) The provisions of subsections (a) through (c) above in this Section 2.11, shall be subject to the provisions of Section 10.06 regarding the Register and the Participant Register (as such terms are defined in Section 10.06).

2.12 Payments Generally; Administrative Agent's and Canadian Agent's Clawback

.

(a) General. Except as otherwise required by applicable Law, all payments to be made by a Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent or the Canadian Agent, as applicable, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars or at the Canadian Agent's Office in Canadian Dollars or Dollars, as applicable, and in immediately available funds not later than 2:00 p.m. on the date specified herein. The applicable Facility 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 or the Canadian Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by a 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; provided that, if such extension would cause payment of interest on or principal of Eurodollar Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(b) (i) Funding by Lenders; Presumption by Administrative Agent and Canadian Agent. Unless the Administrative Agent or the Canadian Agent, as applicable, shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the applicable Facility Agent such Lender's Pro rata Share of such Borrowing, the Administrative Agent and/or the Canadian Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to a Borrower, a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the applicable Facility Agent, then each of the applicable Lender and the applicable Borrower, agrees to pay to the applicable Facility Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower, to but excluding the date of payment to the applicable Fa

cility Agent at (A) in the case of a payment to be made by such Lender, the greater of (x)(1) with respect to amounts denominated in Dollars, the Federal Funds Rate and (2) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, processing or similar fees customarily charged by Bank of America, N.A., Canada Branch and (y) a rate determined by the Administrative Agent or the Canadian Agent, as applicable, in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the applicable Borrower, the interest rate applicable to Loans of the Type comprising such Borrowing. If the applicable Borrower and such Lender shall pay such interest to the applicable Facility Agent for the same or an overlapping period, the applicable Facility Agent shall promptly remit to the applicable Borrower the amount of such interest paid by the applicable Borrower for such period. If such Lender pays its share of the applicable Borrowing to the applicable Facility Agent then the amount so paid shall constitute such Lender's Revolving Loan, included in such Borrowing. Any payment by the applicable Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the applicable Facility Agent.

(ii) Payments by the Borrowers; Presumptions by Administrative Agent and Canadian Agent. Unless the Administrative Agent or the Canadian Agent, as applicable, shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Administrative Agent or the Canadian Agent for the account of the Lenders or an L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent and/or the Canadian Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuer, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the applicable L/C Issuer, as the case may be, severally agrees to repay to the applicable Facility Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the applicable Facility Agent at the greater of (x)(A) with respect to amounts denominated in Dollars, the Federal Funds Rate and (B) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, processing or similar fees customarily charged by Bank of America, N.A., Canada Branch and (y) a rate determined by the Administrative Agent or the Canadian Agent, as applicable, in accordance with banking industry rules on interbank compensation.

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

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent or the Canadian 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 a

Borrower by the Administrative Agent or the Canadian Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent or the Canadian Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Revolving Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment under Section 10.04(c).

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

2.13 Sharing of Payments by Lenders

. If (x) any U.S. Dollar Facility Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest or fees on any of the U.S. Dollar Facility Revolving Loans made by it, or the participations in U.S. Dollar Facility L/C Obligations or in U.S. Dollar Facility Swing Line Loans held by it resulting in such U.S. Dollar Facility Lender's receiving payment of a proportion of the aggregate amount of such U.S. Dollar Facility Revolving Loans or participations and accrued interest or fees thereon greater than its Pro rata Share (or other ratable share provided under this Agreement) thereof as provided herein, then the U.S. Dollar Facility Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the U.S. Dollar Facility Revolving Loans and subparticipations in U.S. Dollar Facility L/C Obligations and U.S. Dollar Facility Swing Line Loans of the other U.S. Dollar Facility Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the U.S. Dollar Facility Lenders ratably in accordance with their respective Pro rata Shares (or other ratable share provided under this Agreement) or (y) any Multicurrency Facility Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest or fees on any of the Multicurrency Facility Revolving Loans made by it, or the participations in Multicurrency Facility L/C Obligations or in Multicurrency Facility Swing Line Loans held by it resulting in such Multicurrency Facility Lender's receiving payment of a proportion of the aggregate amount of such Multicurrency Facility Revolving Loans or participations and accrued interest or fees thereon greater than its Pro rata Share (or other ratable share provided under this Agreement) thereof as provided herein, then the Multicurrency Facility Lender receiving such greater proportion shall (a) notify the Canadian Agent of such fact, and (b) purchase (for cash at face value) participations in the Multicurrency Facility Revolving Loans and subparticipations in Multicurrency Facility L/C Obligations and Multicurrency Facility Swing Line Loans of the other Multicurrency Facility Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Multicurrency Facility Lenders ratably in

accordance with their respective Pro rata Shares (or other ratable share provided under this Agreement), provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this section shall not be construed to apply to (x) any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to such Borrower or any Subsidiary thereof (as to which the provisions of this section shall apply).

Subject to the provisions of Sections 10.06(d) and (e), each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Incremental Credit Extensions

. The U.S. Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent and the Canadian Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request one or more increases in the amount of (x) the U.S. Dollar Facility Commitments to be made available to the U.S. Borrower (each such increase, a "U.S. Dollar Facility Commitment Increase"), or (y) the Multicurrency Facility Commitments to be made available to the U.S. Borrower and the Canadian Borrower (each such increase, a "Multicurrency Facility Commitment Increase"), provided that both at the time of any such request and upon the effectiveness of any Incremental Amendment referred to below, no Default or Event of Default shall exist and at the time that any such Commitment Increase is provided (and after giving effect thereto) no Default or Event of Default shall exist and the U.S. Borrower shall be in compliance with each of the covenants set forth in Section 7.12 determined on a Pro forma Basis as of the last day of the most recently ended Test Period as if the Commitments, after giving effect to such Commitment Increase, had been fully drawn on the last day of such fiscal quarter of the U.S. Borrower for testing compliance therewith. Each Commitment Increase shall be in an aggregate principal amount that is not less than $10,000,000. Notwithstanding anything to the contrary herein, the aggregate amount of the Commitment Increases shall not exceed $75,000,000. Each U.S. Dollar Facility Commitment Increase shall be on the same terms and conditions as the U.S. Dollar Facility Commitments in effect immediately prior to such U.S. Dollar Facility Commitment Increase. Each Multicurrency Facility Commitment Increase shall be on the same terms and conditions as the Multicurrency Facility Commitments in effect immediately prior to such Multicurrency Facility Commitment Increase. Each notice from the U.S. Borrower pursuant to this Section 2.14 shall set forth the requested amount of the relevant Commitment Increase. (x) U.S. Dollar Facili

ty Commitment Increases may be provided by any existing U.S. Dollar Facility Lender (and each existing U.S. Dollar Facility Lender will have the right to provide a portion of any U.S. Dollar Facility Commitment Increase, in each case on terms permitted in this Section 2.14) and (y) Multicurrency Facility Commitment Increases may be provided by any existing Multicurrency Facility Lender (and each existing Multicurrency Facility Lender will have the right to provide a portion of any Multicurrency Facility Commitment Increase, in each case on terms permitted in this Section 2.14); provided that each of the Administrative Agent, the Canadian Agent (in the case of a Multicurrency Facility Commitment Increase), the applicable Swing Line Lender and the applicable L/C Issuers shall have consented (not to be unreasonably withheld) to such Lender's providing such Commitment Increase if such consent would be required under Section 10.06(a) for an assignment of Loans or Commitments, as applicable, to such Lender. Each applicable existing Lender shall, by notice to the U.S. Borrower and the Administrative Agent given not later than 10 days after the date of the Administrative Agent's notice delivered pursuant to the first sentence of this paragraph, either agree to make a portion of any Commitment Increase, or decline to do so (and any existing Lender that does not deliver such notice within such period of 10 days shall be deemed to have declined to do so). In the event that, on the 10th day after the Administrative Agent shall have delivered the notice pursuant to the first sentence of this paragraph, the applicable existing Lenders shall have agreed pursuant to the preceding sentence to provide any Commitment Increase, as applicable, in an aggregate amount less than the amount requested by the U.S. Borrower, any Commitment Increase may be provided by any other bank or other financial institution (any such other bank or other financial institution being called an "Additional Lender"), provided that each of the Administrative Agent, the Canadian Agent (in the case of a Multicurrency Facility Commitment Increase), the applicable Swing Line Lender and the applicable L/C Issuers shall have consented (not to be unreasonably withheld) to such Additional Lender's providing such Commitment Increase if such consent would be required under Section 10.06(a) for an assignment of Loans or Commitments, as applicable, to such Additional Lender. Commitments in respect of Commitment Increases shall become Commitments (or in the case of a Commitment Increase to be provided by an existing Lender that already has such a Commitment, an increase in such Lender's U.S. Dollar Facility Commitment or Multicurrency Facility Commitment, as the case may be) under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the U.S. Borrower, the Canadian Borrower (in the case of a Multicurrency Facility Commitment Increase), each Lender agreeing to provide such Commitment, if any, each Additional Lender, if any, the Administrative Agent, and, in the case of a Multicurrency Facility Commitment Increase, the Canadian Agent. The Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section. The effectiveness of any Incremental Amendment shall be subject to the satisfaction on the date thereof (each, an "Incremental Facility Closing Date") of each of the conditions set forth in Section 4.02 (it being understood that all references to "the date of such Credit Extension" or similar language in such Section 4.02 shall be deemed to refer to the Closing Date of such Incremental Amendment) and such other conditions as the parties thereto shall agree. Subject to the minimum principal amount requirements specified above in this Section 2.14, no more than four Incremental Facility Closing Dates may be selected by the U.S. Borrower (it being understood and agreed that a U.S. Dollar Facility Commitment Increase and Multicurrency Facility Commitment Increase consummated on the same day shall constitute

a single Incremental Facility Closing Date). The U.S. Borrower will use the proceeds of the Commitment Increases for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Commitment Increases, unless it so agrees in its sole discretion. Upon each increase in the U.S. Dollar Facility Commitments pursuant to this Section, each U.S. Dollar Facility Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the U.S. Dollar Facility Commitment Increase (each a "U.S. Dollar Facility Commitment Increase Lender"), and each such U.S. Dollar Facility Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Lender's participations hereunder in outstanding U.S. Dollar Facility Letters of Credit and U.S. Dollar Facility Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (i) participations hereunder in U.S. Dollar Facility Letters of Credit and (ii) participations hereunder in U.S. Dollar Facility Swing Line Loans held by each U.S. Dollar Facility Lender (including each such U.S. Dollar Facility Commitment Increase Lender) will equal the percentage of the aggregate U.S. Dollar Facility Commitments of all U.S. Dollar Facility Lenders represented by such U.S. Dollar Facility Lender's U.S. Dollar Facility Commitment and (b) if, on the date of such increase, there are any U.S. Dollar Facility Revolving Loans outstanding, such U.S. Dollar Facility Revolving Loans shall on or prior to the effectiveness of such U.S. Dollar Facility Commitment Increase be prepaid from the proceeds of additional U.S. Dollar Facility Revolving Loans made hereunder (reflecting such increase in U.S. Dollar Facility Commitments), which prepayment shall be accompanied by accrued interest on the U.S. Dollar Facility Revolving Loans being prepaid and any costs incurred by any U.S. Dollar Facility Lender in accordance with Section 3.05. Upon each increase in the Multicurrency Facility Commitments pursuant to this Section, each Multicurrency Facility Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the Multicurrency Facility Commitment Increase (each a "Multicurrency Facility Commitment Increase Lender"), and each such Multicurrency Facility Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Lender's participations hereunder in outstanding Multicurrency Facility Letters of Credit and Multicurrency Facility Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (i) participations hereunder in Multicurrency Facility Letters of Credit and (ii) participations hereunder in Multicurrency Facility Swing Line Loans held by each Multicurrency Facility Lender (including each such Multicurrency Facility Commitment Increase Lender) will equal the percentage of the aggregate Multicurrency Facility Commitments of all Multicurrency Facility Lenders represented by such Multicurrency Facility Lender's Multicurrency Facility Commitment and (b) if, on the date of such increase, there are any Multicurrency Facility Revolving Loans outstanding, such Multicurrency Facility Revolving Loans shall on or prior to the effectiveness of such Multicurrency Facility Commitment Increase be prepaid from the proceeds of additional Multicurrency Facility Revolving Loans made hereunder (reflecting such increase in Multicurrency Facility Commitments), which prepayment shall be accompanied by accrued interest on the Multicurrency Facility Revolving Loans being prepaid and any costs incurred by any Multicurrency Facility Lender in accordance with Section 3.05. The Administrative Agent, the Canadian Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to

the transactions effected pursuant to the two immediately preceding sentences. This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

2.15 Cash Collateral

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(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the U.S. Dollar Facility L/C Issuer (i) if such L/C Issuer has honored any full or partial drawing request under any U.S. Dollar Facility Letter of Credit and such drawing has resulted in a U.S. Dollar Facility L/C Borrowing, or (ii) if, as of the applicable Letter of Credit Expiration Date, any U.S. Dollar Facility L/C Obligation for any reason remains outstanding, the U.S. Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all U.S. Dollar Facility L/C Obligations. Upon the request of the Canadian Agent or the Multicurrency Facility L/C Issuer (i) if such L/C Issuer has honored any full or partial drawing request under any Multicurrency Facility Letter of Credit and such drawing has resulted in a Multicurrency Facility L/C Borrowing, or (ii) if, as of the applicable Letter of Credit Expiration Date, any Multicurrency Facility L/C Obligation for any reason remains outstanding, the U.S. Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all Multicurrency Facility L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the Canadian Agent, the applicable L/C Issuer or the applicable Swing Line Lender, the U.S. Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender). If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations or Swing Line Loans, the U.S. Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the applicable L/C Issuer and the applicable Swing Line Lender.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The U.S. Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, each L/C Issuer and the Lenders (including each Swing Line Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the U.S. Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or

provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.06, 2.16 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(iv))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the applicable L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 Defaulting Lenders

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

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent or the Canadian Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent or the Canadian Agent by that Defaulting Lender pursuant to the Guarantee), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent or the Canadian Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to any L/C Issuer or Swing Line Lender hereunder, on a pro rata basis; *third*, if so determined by the Administrative Agent or requested by any L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the U.S. Borrower may request (so long

as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the U.S. Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to a Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the applicable Loans of, and applicable L/C Borrowings owed to, all applicable non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and no Borrower shall be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender), and the applicable Borrower shall (A) be required to pay to each L/C Issuer and Swing Line Lender, as applicable, the amount of such fee allocable to its Fronting Exposure arising from that Defaulting Lender and (B) not be required to pay the remaining amount of such fee that otherwise would have been required to have been paid to that Defaulting Lender and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(i).

(iv) Reallocation of Pro rata Shares to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Pro rata Share" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Commitment

of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Loans of that Lender.

(b) Defaulting Lender Cure. If the applicable Borrower, the Administrative Agent, the Canadian Agent, each Swing Line Lender and each L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the applicable Loans and funded and unfunded participations in applicable Letters of Credit and Swing Line Loans to be held on a pro rata basis by the applicable Lenders in accordance with their Pro rata Shares (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of such Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes

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(a) Payments Free of Taxes. Except as required by applicable Law, any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes, provided that if any applicable withholding agent shall be required by applicable law to deduct any Indemnified Taxes or any Other Taxes from such payments, then (i) the sum payable by the applicable Loan Party shall be increased as necessary so that after all required deductions have been made (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Canadian Agent, Lender, Swing Line Lender, or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the U.S. Borrower. Without limiting the provisions of subsection (a) above, the U.S. Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Borrowers. The U.S. Borrower (and, with respect to Multicurrency Facility Revolving Loans, Multicurrency Facility Swing Line Loans and Multicurrency Facility L/C Obligations only, the Canadian Borrower) shall indemnify the Administrative Agent, the Canadian Agent, each Lender, each Swing Line Lender and each L/C Issuer, within

10 Business Days after written demand therefor (such demand setting forth in reasonable detail the basis and calculation of such amount), for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed on or attributable to amounts payable under this Section) payable by the Administrative Agent, the Canadian Agent, such Lender, such Swing Line Lender or such L/C Issuer, as the case may be, and reasonable out-of-pocket expenses arising therefrom whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth the amount of such payment or liability, the basis thereof and the calculation of such amount in reasonable detail delivered to the U.S. Borrower by a Lender, Swing Line Lender or L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, the Canadian Agent, a Swing Line Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Loan Party to a Governmental Authority, the U.S. Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Each Lender shall deliver to the U.S. Borrower and to the Administrative Agent, whenever reasonably requested by any Borrower or the Administrative Agent, such properly completed and duly executed documentation prescribed by applicable Laws and such other reasonably requested information as will permit the U.S. Borrower, the Canadian Borrower, the Administrative Agent or the Canadian Agent, as the case may be, (A) to determine whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) to determine, if applicable, the required rate of withholding or deduction and (C) to establish such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of any payments to be made to such Lender pursuant to any Loan Document or otherwise to establish such Lender's status for withholding tax purposes in an applicable jurisdiction (including, if applicable, any documentation necessary to prevent withholding under Sections 1471-1474 of the Code).

Without limiting the generality of the foregoing, (A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the U.S. Borrower and the Administrative Agent executed originals of IRS Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the U.S. Borrower or the Administrative Agent (in such number of signed originals as prescribed by applicable Laws or otherwise shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter (1) if any documentation previously delivered has expired or become obsolete or invalid or (2) upon the request of the U.S. Borrower or the Administrative Agent) as will enable the U.S. Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to U.S. federal backup withholding or information reporting requirements; and (B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of U.S. federal withholding tax with respect to any payments hereunder or under any other Loan Document shall deliver to the U.S. Borrower and the Administrative Agent (in such number of

signed originals as prescribed by applicable Laws or otherwise shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and (1) if any documentation previously delivered has expired or become obsolete or invalid or (2) upon the request of the U.S. Borrower or the Administrative Agent), whichever of the following is applicable:

(i) IRS Form W-8BEN (or any successor thereto) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) IRS Form W-8ECI (or any successor thereto),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Sections 881(c) or 871(h) of the Code (the "Portfolio Interest Exemption"), (x) a certificate, substantially in the form of Exhibit L-1, L-2, L-3 or L-4, as applicable (a "Tax Status Certificate"), to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the U.S. Borrower, within the meaning of Section 881(c)(3)(B) of the Code or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and that no interest to be received is effectively connected with a U.S. trade or business and (y) duly completed and executed original copies of IRS Form W-8BEN (or any successor thereto),

(iv) where such Lender is a partnership (for U.S. federal income tax purposes) or otherwise not a beneficial owner (e.g., where such Lender has sold a participation), IRS Form W-8IMY (or any successor thereto) and all required supporting documentation (including, where one or more of the underlying beneficial owner(s) is claiming the benefits of the Portfolio Interest Exemption, a Tax Status Certificate of such beneficial owner(s) (provided that, if the Foreign Lender is a partnership and not a participating Lender, the Tax Status Certificate from the beneficial owner(s) may be provided by the Foreign Lender on the beneficial owner(s) behalf)), and/or

(v) any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax or otherwise reasonably requested by the U.S. Borrower or the Administrative Agent together with such supplementary documentation as may be prescribed by applicable Laws or otherwise reasonably requested by the U.S. Borrower or the Administrative Agent to permit the U.S. Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

Each Lender shall promptly notify in writing the U.S. Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any documentation previously provided.

Notwithstanding anything to the contrary in this Section 3.01(e), no Lender shall be required to deliver any documentation that it is not legally eligible to deliver.

(f) Treatment of Certain Refunds. If the Administrative Agent, the Canadian Agent, any Lender, Swing Line Lender or L/C Issuer determines, in its good faith discretion, that it has received a refund (in cash or as an overpayment applied to future Tax payments) of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this section, it shall promptly pay to a Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the U.S. Borrower under this Section 3.01 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, the Canadian Agent, such Lender, Swing Line Lender or L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the U.S. Borrower, upon the request of the Administrative Agent, the Canadian Agent, such Lender, Swing Line Lender or L/C Issuer, agrees to repay the amount paid over to the U.S. Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority (other than penalties arising from the gross negligence or willful misconduct of the Administrative Agent, the Canadian Agent, the Lenders, Swing Line Lender or L/C Issuer)) to the Administrative Agent, the Canadian Agent, such Lender, Swing Line Lender or L/C Issuer in the event the Administrative Agent, the Canadian Agent, such Lender, Swing Line Lender or L/C Issuer is required to repay such refund to such Governmental Authority. Such Lender, Swing Line Lender, L/C Issuer, Canadian Agent or Administrative Agent, as the case may be, shall, at the U.S. Borrower's reasonable request, provide the U.S. Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority. If the U.S. Borrower reasonably believes that any Indemnified Taxes or Other Taxes for which additional amounts or indemnification payments were made by a Loan Party were incorrectly imposed, the U.S. Borrower may request the relevant Lender to pursue a refund of such Taxes (at U.S. Borrower's expense), and such Lender shall pursue such refund unless, in the good faith determination of such Lender, pursuing such refund would be materially disadvantageous to it. This subsection shall not be construed to interfere with the right of a Lender, Swing Line Lender, L/C Issuer, Canadian Agent or the Administrative Agent to arrange its Tax affairs in whatever manner it thinks fit nor oblige any Lender, Swing Line Lender, L/C Issuer, Canadian Agent or the Administrative Agent to disclose any information relating to its tax affairs or any computations in respect thereof or require any Lender, Swing Line Lender, L/C Issuer, Canadian Agent or the Administrative Agent to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled. Notwithstanding anything to the contrary, in no event will any Lender, Swing Line Lender or L/C Issuer be required to pay any amount to the U.S. Borrower the payment of which would place such Lender, Swing Line Lender or L/C Issuer in a less favorable net after-tax position than it would have been in if the additional amounts or indemnification payments giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

3.02 Illegality

. If any Change in Law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or Canadian Dollars in the London interbank market, then, on notice thereof by such Lender to the U.S. Borrower or

the Canadian Borrower, as applicable, through the Administrative Agent or the Canadian Agent, as applicable, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the applicable Facility Agent and the applicable Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the U.S. Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), convert all Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such conversion, the U.S. Borrower shall also pay accrued interest on the amount so converted. Upon receipt of such notice, the Canadian Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent and the Canadian Agent), (x) to the extent such Eurodollar Rate Loans are denominated in Dollars, convert such Eurodollar Rate Loans of such Lender to Canadian U.S. Base Rate Loans and (y) to the extent such Eurodollar Rate Loans are denominated in Canadian Dollars, convert such Eurodollar Rate Loans of such Lender to Canadian Prime Rate Loans, in each case either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such conversion, the Canadian Borrower shall also pay accrued interest on the amount so converted.

3.03 Inability to Determine Rates

. If (A) the Administrative Agent or the Canadian Agent determines that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (i) Dollar or Canadian Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan or (ii) 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 (B) the Required Lenders advise the Administrative Agent or the Canadian Agent in writing that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, in any such case, the Administrative Agent will promptly so notify the applicable Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans in the relevant currency shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, such Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans

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(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for

the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Lender or any L/C Issuer to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, change the basis of taxation of payments to such Lender or any L/C Issuer in respect thereof (except, in each case, for (y) Indemnified Taxes or Other Taxes indemnifiable pursuant to Section 3.01, or (z) the imposition of, or any change in the rate of, any Excluded Tax); or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Rate Loan (or, with respect to clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or any L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the applicable Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines in good faith but in its sole and absolute discretion that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time, the applicable Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a), (b) or (e) of this Section 3.04 and delivered to the applicable Borrower shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation; provided that the applicable Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the applicable Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The applicable Borrower shall pay to each applicable Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar 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), which shall be due and payable on each date on which interest is payable on such Loan; provided such Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice

3.05 Compensation for Losses

. Upon demand of any Lender (with a copy to the Administrative Agent and the Canadian Agent, as applicable) from time to time, the applicable 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 Loan other than a Base Rate Loan, Canadian U.S. Base Rate Loan or Canadian Prime Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

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

(c) any assignment of any Loan other than a Base Rate Loan, Canadian U.S. Base Rate Loan or Canadian Prime Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by such Borrower pursuant to Section 3.06(b) or Section 10.13;

including any loss or expense (excluding loss of anticipated profits or margin) 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 applicable Borrower shall

also pay any reasonable and customary administrative fees charged by such Lender in connection with the foregoing.

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

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 3.05 shall be delivered to the applicable Borrower (with a copy to the Administrative Agent and the Canadian Agent, as applicable) and shall be conclusive and binding absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within 5 days after receipt thereof.

3.06 Mitigation Obligations; Replacement of Lenders

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(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the applicable Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to the applicable Borrower shall be conclusive absent manifest error.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, if any Lender gives a notice pursuant to Section 3.02 or if a Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, such Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival

. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 [Reserved]

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4.02 Conditions to All Credit Extensions

. The obligation of each Lender to honor any Request for Credit Extension (including the initial Credit Extension but not for a Borrowing or Conversion Notice requesting only a conversion of Revolving 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 U.S. Borrower and each other Loan Party contained in Article V 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 (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material aspects as of such earlier date, (ii) to the extent that such representations and warranties are qualified as to materiality, in which case they shall be true and correct in all respects, and (iii) that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements of the U.S. Borrower and its Subsidiaries furnished pursuant to Section 6.01(a) and Section 6.01(b), respectively.

(b) No Default or Event of Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent or the Canadian Agent, as applicable, the applicable L/C Issuer or the applicable Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Borrowing or Conversion Notice requesting only a conversion of Revolving Loans to the other Type, or a continuation of Eurodollar Rate Loans) submitted by the U.S. Borrower or the Canadian Borrower, as applicable, shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

4.03 Conditions of Amendment and Restatement

. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) Loan and Corporate Documents; Certificates. The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or other electronic transmission (followed promptly by originals) unless otherwise specified, each, if applicable, properly executed by a Responsible Officer of the signing Loan Party, each dated the Restatement Date (or, in the case of certificates of governmental officials, a recent

date before the Restatement Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement (including the applicable Schedules and Exhibits);

(ii) a Multicurrency Facility Revolving Loan Note executed by each Borrower in favor of each Lender requesting a Multicurrency Facility Revolving Loan Note;

(iii) 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 reasonably 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;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, is validly existing, in good standing (or such comparable term as may be used in Ontario) and qualified to engage in business in 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 be so qualified could not reasonably be expected to have a Material Adverse Effect;

(v) a certificate signed by the chief executive officer or the chief financial officer of the U.S. Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied and (B) that there has been no event or circumstance since the date of the latest balance sheet included in the most recently delivered audited financial statements pursuant to Section 6.01(a) that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(b) Opinions of Counsel. The Administrative Agent shall have received, on behalf of itself, the other Agents, the Lenders and the L/C Issuers, an opinion of (x) Ropes & Gray LLP, counsel to the Loan Parties, and (y) Stikeman Elliott LLP, counsel to the Canadian Borrower, in each case addressed to each of the Administrative Agent, the Collateral Agent, the Canadian Agent, the Lenders and the L/C Issuers and dated the Restatement Date.

(c) Expenses. All expenses of the Administrative Agent (including the reasonable fees and expenses of Cahill Gordon & Reindel LLP, counsel for the Administrative Agent, and of any local and special counsel for the Administrative Agent) required to be paid on or before the Restatement Date shall have been paid.

(d) Reaffirmation of Guarantee and Security Documents. Each Loan Party (other than the Canadian Borrower) shall have entered into a written instrument in form

and substance reasonably satisfactory to the Administrative Agent pursuant to which it confirms that it consents to this Agreement and reaffirms that the Guarantee and Security Documents to which it is a party will continue to apply in respect of this Agreement and the Obligations of such Loan Party hereunder and thereunder (the "Reaffirmation Agreement"), which Reaffirmation Agreement shall amend the Guarantee to provide that the U.S. Borrower guarantees all obligations of the Canadian Borrower hereunder (it being understood and agreed that each party hereto hereby consents to such amendment).

(e) Canadian Reorganization. The U.S. Borrower shall have delivered to the Administrative Agent fully executed versions of the Canadian Reorganization Documents.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.03, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the funding on the Restatement Date specifying its objection thereto.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The U.S. Borrower represents and warrants to the Administrative Agent, the Canadian Agent and the Lenders that:

5.01 Existence, Qualification and Power; Compliance with Laws

. Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and in good standing (or such comparable term as may be used in Ontario) under the Laws of the jurisdiction of its incorporation or organization, (b) has the organizational 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 to which it is a party, (c) is duly qualified 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, and (d) is in compliance with all Laws, except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 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 (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Person is a party or affecting such

Person or the properties of such Person or any of its Subsidiaries 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, except with respect to any conflict, breach or contravention referred to in clause (b)(i), to the extent that such conflict, breach or contravention could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents

. No material 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 (a) the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents (including the priority thereof) or (d) the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force, (iii) those approvals, consents, exemptions, authorizations, actions, notices or filings described in the Security Agreement and (iv) those approvals, consents, exemptions, authorizations, actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

5.04 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 bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or secured parties' generally, and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 Financial Statements; No Material Adverse Effect

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(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the periods covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The financial statements delivered pursuant to Section 6.01(b) and prior to the first delivery of financial statements pursuant to Section 6.01(a), the quarters ended July 3, 2010 and April 4, 2010, (i) were prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except, other than with respect to the financial statements delivered pursuant to Section 6.01(b), as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of Holdings (or the U.S. Borrower, as applicable) and its Subsidiaries as of the date thereof and their results of operations for the periods covered thereby,

subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the latest balance sheet included in 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.

(d) The consolidated forecasted balance sheet and statements of income and cash flows of Holdings and its Subsidiaries delivered to the Lenders prior to the Closing Date pursuant to Section 6.01(c) were prepared in good faith on the basis of estimates, information and assumptions believed by management of Holdings to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

5.06 Litigation

. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the U.S. Borrower and its Subsidiaries, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the U.S. Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) as of the Closing Date, purport to affect or pertain to 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.

5.07 No Default

. Neither the U.S. Borrower nor any of its Subsidiaries 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.

5.08 Properties

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(a) Generally. Each of the U.S. Borrower and its Subsidiaries has good legal title to (in the case of fee interests in Real Property), valid leasehold interests in (in the case of leasehold interests in real or personal property) and good title to (in the case of all other personal property), all its tangible property material to its business, free and clear of all Liens except for Permitted Liens and minor irregularities or deficiencies in title that in the aggregate do not materially interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose or except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Real Property. Schedules 7(a) and 7(b) to the Perfection Certificate dated the Closing Date contain a true and complete list of each interest in Real Property (i) owned by the U.S. Borrower and its Subsidiaries as of the Closing Date and describes the type of interest therein held by the U.S. Borrower and its Subsidiaries and (ii) leased, subleased or otherwise occupied or utilized by the U.S. Borrower or its Subsidiaries, as lessee, sublessee, franchisee or licensee, as of the Closing Date and describes the type of interest therein held by such company.

(c) Flood Insurance. No Mortgage encumbers improved Real Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an

area having special flood hazards within the meaning of the National Flood Insurance Act of 1968 unless flood insurance available under such Act has been obtained to the extent required by Section 6.07(b).

(d) Collateral. The use by each of the U.S. Borrower and its Subsidiaries of the Collateral does not infringe on the rights of any Person other than such infringement which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

5.09 Environmental Matters

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(a) Except as set forth in Schedule 5.09 and except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect:

(i) the U.S. Borrower and its Subsidiaries and their businesses, operations and Real Property are in compliance with, and the U.S. Borrower and its Subsidiaries have no liability under, Environmental Law;

(ii) the U.S. Borrower and its Subsidiaries have obtained all Environmental Permits required for the conduct of their businesses and operations, and the ownership, operation and use of their property, under Environmental Law and all such Environmental Permits are valid and in good standing;

(iii) there has been no Release or threatened Release of Hazardous Material on, at, under or from any Real Property or facility presently or, to the knowledge of the U.S. Borrower and its Subsidiaries, formerly owned, leased or operated by the U.S. Borrower and its Subsidiaries or their predecessors in interest, which Release or threatened Release could reasonably be expected to result in liability by the U.S. Borrower and its Subsidiaries under Environmental Law; and

(iv) there is no Environmental Claim pending or, to the knowledge of the U.S. Borrower and its Subsidiaries, threatened in writing against the U.S. Borrower and its Subsidiaries, or which claim relates to the Real Property currently or, to the knowledge of the U.S. Borrower and its Subsidiaries, formerly owned, leased or operated by the U.S. Borrower and its Subsidiaries or which claim relates to the operations of the U.S. Borrower and its Subsidiaries, and, to the knowledge of the U.S. Borrower and its Subsidiaries, there are no actions, activities, circumstances, conditions, events or incidents that could reasonably be expected to form the basis of such an Environmental Claim.

(b) Except as set forth in Schedule 5.09 or as would not reasonably be expected to have a Material Adverse Effect:

(i) none of the U.S. Borrower or its Subsidiaries is obligated to perform any action or otherwise incur any expense under Environmental Law pursuant to any order, decree, judgment or agreement by which it is bound or has assumed by contract or agreement, and no such Person is conducting or financing any Response pursuant to any Environmental Law with respect to any Real Property or any other location, except as,

individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

(ii) no Real Property or facility owned, operated or leased by the U.S. Borrower and its Subsidiaries and, to the knowledge of the U.S. Borrower and its Subsidiaries, no Real Property or facility formerly owned, operated or leased by the U.S. Borrower and its Subsidiaries or any of their predecessors in interest is (A) listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA or (B) listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA or (C) included on any similar list maintained by any Governmental Authority including any such list relating to petroleum;

(iii) no Lien has been recorded or, to the knowledge of the U.S. Borrower and its Subsidiaries, threatened under any Environmental Law with respect to any owned real property or other assets of the U.S. Borrower and its Subsidiaries, except as individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; and

(iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any Governmental Real Property Disclosure Requirements or any other Environmental Law, except for those matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.10 Insurance

. The properties of the U.S. Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies, in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as U.S. Borrower and its Subsidiaries) with such deductibles and covering such risks as are customarily carried by prudent companies engaged in similar businesses and owning similar properties in localities where U.S. Borrower or the applicable Subsidiary operates.

5.11 Taxes

. Holdings and each of its Subsidiaries have (a) timely filed all material federal, state and other Tax Returns and reports required to be filed and (b) duly and timely paid all material federal, state and other Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable (whether or not shown on any Tax Return), except those which are not more than 30 days overdue or are being contested in good faith by appropriate actions diligently conducted and in each case for which adequate reserves have been provided in accordance with GAAP. There are no proposed tax assessments against Holdings or any of its Subsidiaries that, if made, would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect. Holdings and each Subsidiary has made adequate provision in accordance with GAAP for all material Taxes not yet due and payable. Neither Holdings nor any Subsidiary has engaged in any "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2), except as would not be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect. Except any liabilities for Taxes of any consolidated, combined or unitary Tax group of which the Holdings is the common parent, neither

Holdings nor any of its Subsidiaries has any liabilities for the Taxes of any Person under Treas. Reg. Section 1.1502-6 or any similar provision of state, local or foreign law, as a transferee or successor, by contract or otherwise, except for (i) any agreements among or between Holdings and its Subsidiaries and other than customary Tax indemnifications contained in credit or other commercial agreements the primary purpose of which does not relate to Taxes or (ii) as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

5.12 ERISA Compliance

.

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. The Loan Parties and each ERISA Affiliate are in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Employee Benefit Plan except such non-compliance as would not reasonably be expected to have a Material Adverse Effect. The present value of all accumulated benefit obligations of all underfunded Pension Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed an amount that would reasonably be expected to have a Material Adverse Effect. Using actuarial assumptions and computation methods consistent with subpart 1 of subtitle E of Title IV of ERISA, the aggregate liabilities of the Loan Parties and each ERISA Affiliate to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, would not reasonably be expected to result in a Material Adverse Effect.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable Law and has been maintained, where required, in good standing with applicable regulatory authorities, (ii) neither the U.S. Borrower or any of its Subsidiaries has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan and (iii) the present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan which is funded, determined as of the end of the most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan, and for each Foreign Plan which is not funded, the obligations of such Foreign Plan are properly accrued.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, the Canadian Pension Plans, if any, are duly registered under the ITA (if required to be so registered) and any other applicable laws which require registration, have been administered in accordance with the ITA and such other applicable laws and no event has occurred which could reasonably be expected to cause the loss of such registered status. All material obligations of the U.S. Borrower and/or its Subsidiaries, as applicable (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans and the funding agreements therefor have been performed on a timely basis, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, there are no outstanding disputes concerning the assets

of the Canadian Pension Plans or the Canadian Benefit Plans. Except as would not reasonably be expected to have a Material Adverse Effect, all contributions or premiums required to be made or paid by the U.S. Borrower and/or its Subsidiaries, as applicable, to the Canadian Pension Plans or the Canadian Benefit Plans have been made on a timely basis in accordance with the terms of such plans and all applicable laws. Except as would not reasonably be expected to have a Material Adverse Effect, there have been no improper withdrawals or applications of the assets of the Canadian Pension Plans or the Canadian Benefit Plans.

5.13 Subsidiaries; Equity Interests

. As of the Closing Date, the U.S. Borrower does not have any Subsidiaries other than those specifically disclosed in Schedule 5.13(a), and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the amounts specified on Schedule 5.13(a) free and clear of all Liens, except the security interest created by the Security Agreement and, liens permitted by Section 7.01 and Liens arising by operation of law. As of the Closing Date, neither the U.S. Borrower nor any of its Subsidiaries has any equity investments in any other corporation or entity other than those specifically disclosed in Schedule 5.13(b). All of the outstanding Equity Interests of the U.S. Borrower have been validly issued. As of the Closing Date, all Wholly-Owned Subsidiaries of the U.S. Borrower existing on the Closing Date, other than the Foreign Subsidiaries, are Subsidiary Guarantors. As of the Closing Date, Schedule 5.13(a) correctly sets forth the ownership interest of the U.S. Borrower and its Subsidiaries in their respective Subsidiaries as of the Closing Date.

5.14 Margin Regulations; Investment Company Act

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(a) Neither the U.S. Borrower nor any of its Subsidiaries is engaged nor does it intend to 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, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U.

(b) Neither the U.S. Borrower nor any of its Subsidiaries is an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure

. No report, financial statement, certificate or other information, including the Perfection Certificate, furnished in writing by or on behalf of any Loan Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, when taken as a whole, contained any material misstatement of fact or omitted 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 by them to be reasonable at the time; it being understood that such projections may vary from actual results and that such variances may be material.

5.16 Compliance with Laws

. Each of the U.S. Borrower and its Subsidiaries is in compliance 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 applicable law or or

der, writ, injunction or decree is being contested in good faith by appropriate actions 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.

5.17 Solvency

. Immediately after the consummation of the Transaction to occur on the Closing Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan (after taking into account the contribution obligations of each Loan Party pursuant to the Guarantees), (a) the fair value of the properties of each Loan Party will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Loan Party will not have unreasonably small capital with which to conduct its business in which it is engaged.

5.18 Intellectual Property Matters

. Except as set forth in Schedule 5.18: (i) each Loan Party owns, is licensed, or is otherwise free to use, all patents, patent applications, trademarks, trade names, service marks, copyrights, proprietary technology, trade secrets, proprietary information, domain names, and proprietary know-how and processes, necessary for the conduct of its business as currently conducted (the "Intellectual Property"), except for those which the failure to own, license or otherwise have the right to use, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. To the knowledge of each Loan Party, no claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor to the knowledge of each Loan Party does the use of such Intellectual Property by each Loan Party infringe the rights of any Person, except for such claims and infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.19 Perfection, Etc

. All filings and other actions necessary to perfect and protect the Lien in the Collateral created under the Security Documents, to the extent required by the Security Documents, have been duly made or taken or otherwise provided for and are in full force and effect, and the Security Documents create in favor of the Collateral Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, to the extent required by the Security Documents, perfected first priority Lien in such Collateral, securing the payment of the Secured Obligations, subject to Liens permitted by Section 7.01. The Loan Parties (other than the Canadian Borrower) are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the Liens created or permitted under the Loan Documents.

5.20 Anti-Terrorism Law

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(a) No Loan Party and, to the knowledge of the Loan Parties, none of its Affiliates is in violation of any applicable law relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Patriot Act. The Canadian Borrower is in compliance with the *Foreign Extraterritorial Measures Act* (Canada) and all other applicable legislation.

(b) No Loan Party and to the knowledge of the Loan Parties, no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Loan Parties, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Swap Contracts and Treasury Management Agreements not then due and payable), or any Letter of Credit shall remain outstanding (other than Letters of Credit as to which arrangements reasonably satisfactory to the Administrative Agent and the L/C Issuers shall have been made), the U.S. Borrower shall, and shall cause each Subsidiary (except in the case of Sections 6.01, 6.02 and 6.03) to:

6.01 Financial Statements

. Deliver to the Administrative Agent (for distribution to each Lender):

(a) as soon as available, but in any event within 90 days after the end of each

fiscal year (or, if earlier, within 15 days after the date the U.S. Borrower is required to file such financial statements with the SEC without giving effect to extensions) of the U.S. Borrower (commencing with the fiscal year ending January 1, 2011), a consolidated balance sheet of the U.S. Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal year setting forth in each case in comparative form the figures for the previous fiscal year, prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent registered public accountant of nationally recognized standing, 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, together with, if not filed with the SEC within such time frame, a management's discussion and analysis with respect to such financial statements (it being understood and agreed that so long as Holdings has no material assets or liabilities other than Holdings' Guarantee of the Loans and the other Secured Obligations and the Equity Interests of the U.S. Borrower, the U.S. Borrower may provide financial statements, audit reports and management's discussion and analysis of financial statements of Holdings and its Subsidiaries as if "Holdings" were substituted in place of "the U.S. Borrower" in this Section 6.01(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 (or, if earlier, within 10 days after the date the U.S. Borrower is required to file such financial statements with the SEC without giving effect to extensions) of the U.S. Borrower, a consolidated balance sheet of the U.S. Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income and cash flows for such fiscal quarter and for the portion of the U.S. 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, certified by a Responsible Officer of the U.S. Borrower, as fairly presenting in all material respects the financial condition, results of income and cash flows of the U.S. Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, together with, if not filed with the SEC within such time frame, a management's discussion and analysis with respect to such financial statements (it being understood and agreed that so long as Holdings has no material assets or liabilities other than Holdings's Guarantee of the Loans and the other Secured Obligations and the Equity Interests of the U.S. Borrower, the U.S. Borrower may provide financial statements and management's discussion and analysis of financial statements of Holdings and its Subsidiaries as if "Holdings" were substituted in place of "the U.S. Borrower" in this Section 6.01(b)); and

(c) as soon as available, but in any event within 90 days after the commencement of each fiscal year, a financial forecast for such fiscal year (including the fiscal year in which the Maturity Date occurs) (a "Financial Plan"), presented on a quarterly basis, including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the U.S. Borrower and its Subsidiaries for such fiscal year and any revised Financial Plan for such fiscal year promptly after it is available.

As to any information contained in materials furnished pursuant to Section 6.02(d), the U.S. Borrower shall not be separately required to furnish such information under clause (a) or (b) above, to the extent applicable, but the foregoing shall not be in derogation of the obligation of the U.S. Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

6.02 Certificates; Other Information

. Deliver to the Administrative Agent (for distribution to each Lender):

(a) no later than five days after the delivery of the financial statements referred to in Section 6.01(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 Event of Default under the financial covenants set forth herein or, if any such Event of Default shall exist, stating the nature and status of such event;

(b) no later than five days after the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended October 2, 2010), a duly completed Compliance Certificate signed by a Responsible Officer of the U.S. Borrower;

(c) promptly after any request by the Administrative Agent, copies of any detailed audit reports submitted to the board of directors (or the audit committee of the board of directors) of the U.S. Borrower or Holdings by independent accountants in connection with the accounts or books of Holdings, the U.S. Borrower or any of their respective Subsidiaries, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the U.S. Borrower or Holdings, and copies of all annual, regular, periodic and special reports and registration statements which the U.S. Borrower or Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) promptly after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(g) upon request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by a Loan Party or any Subsidiary with the IRS with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) all notices received by a Loan Party or any Subsidiary from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Pension Plan sponsored by a Loan Party or any Subsidiary as the Administrative Agent shall reasonably request;

(h) promptly, such additional information regarding the business, financial or corporate affairs of Holdings, the U.S. Borrower or any of its Subsidiaries, 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; and

(i) within 90 days after the end of each fiscal year of the U.S. Borrower, (i) a report supplementing Schedule 7(a) of the Perfection Certificate, limited to an identification of all owned real property disposed of by the U.S. Borrower or any Subsidiary thereof during such fiscal year, a list of all real property acquired during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; (ii) a report supplementing Schedules 11(a), 11(b) and 11(c) of the Perfection Certificate, setting forth all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; and (iii) a report supplementing Schedules 5.13(a) and (b) containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the U.S. Borrower and to be in a form reasonably satisfactory to the Administrative Agent.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the U.S. Borrower or Holdings posts such documents, or provides a link thereto, on the U.S. Borrower's or Holdings's website on the Internet at its website address provided to the Lenders; or (ii) on which such documents are posted on the U.S. Borrower's or Holdings's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (i) the U.S. Borrower shall not be required to deliver paper copies of such documents to the Administrative Agent unless a written request to deliver paper copies is given by the Administrative Agent and (ii) the U.S. Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and provide, if requested, to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the U.S. Borrower shall be required to provide paper copies of originally executed Compliance Certificates required by Section 6.02(b) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to moni

tor compliance by the U.S. 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 U.S. 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 U.S. Borrower and Holdings hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the U.S. Borrower or its securities) (each, a "Public Lender"). The U.S. 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 U.S. Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the U.S. Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" 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 not designated "Public Investor."

6.03 Notices

. Promptly after obtaining knowledge thereof notify the Administrative Agent in writing (for distribution to the Lenders):

(a) of the occurrence of any Default or Event of Default; and

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including to the extent the following meets the foregoing standard, (i) breach or non-performance of, or any default under, a Contractual Obligation of the U.S. Borrower or any of its Subsidiaries; (ii) any dispute, litigation, investigation, proceeding or suspension between the U.S. Borrower or any of its Subsidiaries and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting the U.S. Borrower or any of its Subsidiaries, including pursuant to any applicable Environmental Laws; or (iv) of any ERISA Event.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the U.S. Borrower setting forth details of the occurrence referred to therein and stating what action the U.S. Borrower has taken and proposes to take with respect thereto.

6.04 Payment of Obligations

. Pay and discharge as the same shall become due and payable, all their obligations and liabilities, including (a) all Taxes, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate actions diligently conducted and adequate reserves in accordance with GAAP are being maintained by the U.S. Borrower or such Subsidiary; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; except, in each of the cases of

clauses (a) and (b), where any failure to pay or discharge as would not reasonably be expected to have a Material Adverse Effect.

6.05 Preservation of Existence, Etc.

Except to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence, except as otherwise expressly permitted under Section 7.04 or Section 7.05 and except (x) that the U.S. Borrower and its Subsidiaries may consummate the Transaction and the Canadian Reorganization and (y) for the liquidation or dissolution of Subsidiaries if the assets of such Subsidiaries are acquired by the U.S. Borrower or a Wholly-Owned Subsidiary of the U.S. Borrower in such liquidation.

6.06 Maintenance of Properties

. Except to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, do or cause to be done all things reasonably necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, privileges, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business and at all times maintain, preserve and protect all tangible property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business); provided that nothing in this Section 6.06 shall prevent (i) sales of property, consolidations, amalgamations or mergers by or involving any Loan Party in accordance with Section 7.04 or Section 7.05; (ii) the withdrawal by any Loan Party of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Loan Party of any rights, franchises, licenses, trademarks, trade names, copyrights, patents or other Intellectual Property that such Person reasonably determines are not useful to its business or no longer commercially desirable.

6.07 Maintenance of Insurance

.

(a) Generally. Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the U.S. Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons.

(b) Flood Insurance. With respect to each Mortgaged Property, obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time reasonably require, if at any time the area in which any improvements located on any Mortgaged Property is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

6.08 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 applicable law or order, writ, injunction or decree is being contested in good faith by appropriate actions diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

Except as would not reasonably be expected to have a Material Adverse Effect, for each existing Canadian Pension Plan, the Canadian Borrower shall ensure that such plan retains its registered status under and is administered in a timely manner in all respects in accordance with the applicable pension plan text, funding agreement, the ITA and all other applicable laws. Except as would not reasonably be expected to have a Material Adverse Effect, for each Canadian Pension Plan hereafter adopted or contributed to by U.S. Borrower and/or its Subsidiaries, as applicable, which is required to be registered under the ITA or any other applicable laws, Canadian Borrower shall use, and shall cause its Subsidiaries to use, their commercially reasonable efforts to seek and receive confirmation in writing from the applicable regulatory authorities to the effect that such plan is unconditionally registered under the ITA and such other applicable laws. Except as would not reasonably be expected to have a Material Adverse Effect, for each Canadian Pension Plan and Canadian Benefit Plan hereafter adopted or contributed to by Canadian Borrower and/or its Subsidiaries, the Canadian Borrower shall perform, or cause its Subsidiaries to perform, in a timely fashion and in all material respects, all obligations (including fiduciary, funding, investment and administration obligations) required to be performed in connection with such plan and the funding therefor.

6.09 Books and Records

. Maintain books of record and account, in which entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the U.S. Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights

. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such independent accountants' customary procedure), all at the reasonable expense of the U.S. Borrower and in each case at such reasonable times during normal business hours as often as may be reasonably desired, upon reasonable advance notice to the U.S. Borrower; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the U.S. Borrower's expense; provided further that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the U.S. Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the U.S. Borrower the opportunity to participate in any discussions with the U.S. Borrower's independent public accountants.

6.11 Use of Proceeds

. Use the proceeds of the Credit Extensions (i) on the Closing Date to finance the Refinancing and to pay fees and expenses incurred in connection with the Transaction and (ii) after the Closing Date to provide ongoing working capital and for general

corporate purposes of the U.S. Borrower and the Subsidiaries and to pay any fees and expenses incurred in connection with the Transaction.

6.12 Compliance with Environmental Laws

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(a) Except to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) comply, and cause all lessees and other Persons occupying Real Property of any Loan Party to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and Real Property; (ii) obtain and renew all material Environmental Permits applicable to its operations and Real Property; and (iii) conduct all Responses required by, and in accordance with, Environmental Laws; provided that no Loan Party shall be required to undertake any Response or perform any compliance activity to the extent that its obligation to do so is being contested in good faith and by proper actions and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

(b) If a Default caused by reason of a breach of Section 5.09 or Section 6.12(a) shall have occurred and be continuing for more than 20 days without the Loan Parties commencing activities reasonably likely to cure such Default in accordance with Environmental Laws, at the written request of the Administrative Agent or the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the expense of the U.S. Borrower, an environmental assessment report regarding the matters which are the subject of such Default, including, where and to the extent appropriate, soil and/or groundwater sampling in relation to the subject of such Default, prepared by an environmental consulting firm and, in form reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Response to address them.

6.13 Additional Collateral; Additional Subsidiary Guarantors

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(a) Subject to the terms of this Section 6.13, with respect to any property acquired after the Closing Date by any Loan Party (other than the Canadian Borrower) that is intended to be subject to the Lien created by any of the Security Documents but is not so subject, promptly (and in any event within 30 days after the acquisition thereof or such longer period as the Administrative Agent may agree in its discretion) (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Administrative Agent or the Collateral Agent shall reasonably deem necessary to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a First Priority Lien on such property subject to no Liens other than Permitted Liens, and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Documents in accordance with all applicable law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent. The U.S. Borrower shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of the Security Documents on such after-acquired properties.

With respect to any Person that is or becomes a Wholly-Owned Subsidiary after the Closing Date, promptly (i) deliver to the Collateral Agent the certificates, if any, representing the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, provided that (x) only 65% of the outstanding Equity Interests of (A) any Foreign Subsidiary that is a direct Subsidiary of a Loan Party (other than the Canadian Borrower) or (B) any Domestic Subsidiary that is treated as a disregarded entity for U.S. federal income tax purposes and that has no material assets other than Equity Interests of one or more Foreign Subsidiaries that are CFCs (each a "Disregarded Domestic Subsidiary") shall be required to be delivered pursuant to this clause (i) and (y) the Equity Interests of any Subsidiary that is a Subsidiary of a Foreign Subsidiary shall not be required to be delivered pursuant to this clause (i), (ii) cause such new Wholly-Owned Subsidiary, if such Subsidiary is not a Foreign Subsidiary or a Domestic Subsidiary that is treated as a disregarded entity for U.S. federal income tax purposes and that has no material assets other than Equity Interests of one or more Foreign Subsidiaries that are CFCs, to execute joinder agreements to the Guarantee and the Security Agreement, substantially in the forms annexed thereto, and (iii) take all actions necessary in the reasonable opinion of the Administrative Agent or the Collateral Agent to cause the Liens created by the Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent.

Notwithstanding anything in this Section 6.13(a) or in any Loan Document to the contrary, so long as (A) the Delaware LLC Holding Company holds no assets or liabilities other than (i) the Equity Interests of Northstar (or any Wholly-Owned Subsidiary of U.S. Borrower organized under the laws of Canada that is amalgamated into Northstar and which owns, directly or through one of its Subsidiaries, all of the Equity Interests of all other Canadian Subsidiaries of U.S. Borrower existing on the Restatement Date (such Wholly-Owned Subsidiary, the "Successor Canadian Holdco")), (ii) its rights and obligations under the Forward Subscription Agreement and the Contribution Agreement and (iii) any cash it may receive pursuant to the Contribution Agreement or any distributions it may receive from Northstar or Successor Canadian Holdco, so long as such cash is either contributed to Northstar or distributed to U.S. Borrower, as applicable, within one (1) Business Day of receipt by it of such cash, (B) the Canadian Reorganization Documents are complied with in all material respects, (C) 65% of the Equity Interests of Northstar or the Successor Canadian Holdco shall be pledged as Collateral pursuant to the Delaware LLC Holding Company Pledge Agreement and such pledge shall be in full force and effect, (D) the Northstar Loan, the Northstar Distribution and the LLC Distribution are made on the same day, (E) the U.S. Borrower shall continue to hold the Northstar Note, (F) all funds made available to the Delaware LLC Holding Company or Northstar in connection with the Canadian Reorganization Documents by the U.S. Borrower or any other Subsidiary of the U.S. Borrower (to the extent originating from the U.S. Borrower or a non-Canadian Subsidiary) are returned to the U.S. Borrower within one (1) Business Day of receipt by the Delaware LLC Holding Company or Northstar and (G) no Canadian Reorganization Document is amended, modified, replaced, terminated, waived or consented to in a manner which materially adversely affects the interests of the Lenders, the requirement that any or all of the Equity Interests issued by the Delaware LLC Holding Company, the Northstar Note and any Loan Party's rights under any of the Canadian Reorganization Documents are pledged or subjected to a security interest pursuant to

any Security Document is hereby waived. The foregoing waiver is further conditioned on the Delaware LLC Holding Company not engaging in any activities other than those referred to in the previous sentence.

Notwithstanding anything to the contrary set forth in Section 3.4(b) of the Security Agreement and subject to the Reaffirmation Agreement, any Deposit Account (as defined in the Security Agreement) on which a Lien is granted pursuant to Section 7.01(w) shall not be subject to the prohibition on granting a Control Agreement (as defined in the Security Agreement) to any Person; provided that the aggregate balance of all such Deposit Accounts (when together with any other assets on which a Lien is granted pursuant to Section 7.01(w)) shall not exceed $15,000,000 at any time.

(b) Promptly grant to the Collateral Agent, within 90 Business Days of the acquisition thereof or such longer period as the Administrative Agent may agree in its discretion, a security interest in and Mortgage on each Real Property owned in fee by any Loan Party (other than the Canadian Borrower) that is acquired by such Loan Party after the Closing Date and that, together with any improvements thereon, individually has a fair market value of at least $5,000,000, as additional security for the Secured Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 7.01). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and the Collateral Agent and shall constitute valid and enforceable perfected Liens subject only to Permitted Liens or other Liens reasonably acceptable to the Collateral Agent. The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party (other than the Canadian Borrower) shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property (including a Title Policy, a Survey and local counsel opinion (in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent) in respect of such Mortgage). Such Loan Party (other than the Canadian Borrower) shall deliver to the Collateral Agent a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such Real Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the U.S. Borrower and each Loan Party (other than the Canadian Borrower) relating thereto).

(c) Notwithstanding the foregoing, (x) the Administrative Agent shall not take a security interest in those assets as to which the Administrative Agent shall determine, in its reasonable discretion, that the cost of obtaining such Lien (including any mortgage, stamp, intangibles or other tax) are excessive in relation to the benefit to the Lenders of the security afforded thereby and (y) Liens required to be granted pursuant to this Section 6.13 shall be subject to exceptions and limitations consistent with those set forth in the Security Documents as in effect on the Closing Date (to the extent appropriate in the applicable jurisdiction).

6.14 Security Interests; Further Assurances

. Promptly upon the reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof.

6.15 Information Regarding Collateral

. Not effect any change (i) in any Loan Party's (other than the Canadian Borrower's) legal name, (ii) in the location of any Loan Party's (other than the Canadian Borrower's) chief executive office, (iii) in any Loan Party's (other than the Canadian Borrower's) organizational structure or organizational identification number, if any, or (iv) in any Loan Party's (other than the Canadian Borrower's) jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Collateral Agent and the Administrative Agent not less than 10 days' prior written notice, or such lesser notice period agreed to by the Collateral Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent or the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably requested by the Collateral Agent to maintain (to the extent provided in the applicable Security Document) the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Collateral. Each Loan Party (other than the Canadian Borrower) agrees to promptly provide the Collateral Agent with certified Organization Documents reflecting any of the changes described in the preceding sentence.

ARTICLE VII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Swap Contracts and Treasury Management Agreements not then due and payable), or any Letter of Credit shall remain outstanding (other than Letters of Credit as to which arrangements reasonably satisfactory to the Administrative Agent and the L/C Issuers shall have been made), the U.S. Borrower shall not, and shall not permit any Subsidiary to:

7.01 Liens

. Create, incur, assume or suffer to exist any Lien upon any of their assets, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) Liens in favor of the Collateral Agent for the benefit of the Secured Parties granted pursuant to any Loan Document;

(b) Liens for taxes not yet due or which are being contested in good faith by appropriate actions promptly instituted and diligently conducted;

(c) inchoate statutory Liens of landlords, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401(a)(29) or 430(k) of the Code or by ERISA), in each case incurred in the ordinary course of business for amounts not yet overdue or

for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty days) are being contested in good faith by appropriate actions, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety bonds (other than bonds related to judgments or litigation) and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations of a like nature incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof and pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the U.S. Borrower or any of its Subsidiaries;

(e) easements, rights-of-way, restrictions, encroachments, other minor defects or irregularities in title, and leases or subleases, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the U.S. Borrower or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder entered into by the U.S. Borrower or any Subsidiary in the ordinary course of its business covering only the assets so leased of real estate permitted hereunder;

(g) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(h) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (x) interfere in any material respect with the business of the U.S. Borrower or any of its Subsidiaries or (y) secure any Indebtedness;

(i) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(j) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(f), (o) or (r) to be applied against the purchase price for such Investment and (ii) consisting of an agreement to dispose of any property in an Asset Sale permitted under Section 7.05, in each case, solely

to the extent such Investment or Asset Sale, as the case may be, would have been permitted on the date of the creation of such Lien;

(k) Liens on property of any Foreign Subsidiary that does not constitute Collateral, which Liens secure Indebtedness of such Foreign Subsidiary permitted under Section 7.03;

(l) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Subsidiary, in each case after the Closing Date (other than Liens on the Equity Interests of any Person that becomes a Subsidiary); provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirements shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition and (iii) the Indebtedness secured thereby is permitted under Sections 7.03(c) or (d);

(m) Liens solely on any cash earnest money deposits made by the U.S. Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(n) Liens evidenced by the filing of precautionary UCC or similar financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(o) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(p) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(q) licenses of patents, trademarks and other intellectual property rights granted by the U.S. Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of the U.S. Borrower or such Subsidiary;

(r) [reserved];

(s) Liens securing Indebtedness permitted pursuant to Section 7.03(m); provided that (i) such Liens attach concurrently with or within three hundred sixty (360) days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (ii) such Liens shall not at any time encumber more than the asset acquired (other than accessions thereto) with the proceeds of such Indebtedness and the proceeds and the products thereof and (iii) with respect to capitalized

leases, such Liens do not at any time extend to or cover any assets (except for accessions to such asset) other than the assets subject to such capitalized leases; provided that individual financings of equipment provided by one lender may be cross-collateralized to other financings of equipment provided by such lender;

(t) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the U.S. Borrower or any of its Subsidiaries in the ordinary course of business permitted by this Agreement;

(u) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.02;

(v) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(w) other Liens on assets securing obligations in an aggregate amount not to exceed $15,000,000 at any time outstanding; and

(x) Liens created under the Canadian Reorganization Documents solely to the extent resulting from the transactions consummated pursuant to and in accordance with Section 6.13(a).

provided, however, that no consensual Liens shall be permitted to exist, directly or indirectly, on any Securities Collateral which constitutes Collateral, other than (i) Liens granted pursuant to the Security Documents or (ii) restrictions on the transfer by the Delaware LLC Holding Company of the Equity Interests of the Canadian Borrower pursuant to the Canadian Reorganization Documents.

7.02 Investments

. Make any Investments, except:

(a) Investments held by the U.S. Borrower or such Subsidiary in the form of Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and, to the extent not constituting a Permitted Acquisition, Investments made after the Closing Date in Persons that are, immediately prior to such Investment, the U.S. Borrower or any Subsidiary Guarantor;

(c) Investments consisting of extensions of trade credit and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and deposits, prepayments and other credits to suppliers, in each case, made in the ordinary course of business;

(d) intercompany loans to the extent permitted under Section 7.03(b);

(e) loans and advances to employees of Holdings, the U.S. Borrower and its Subsidiaries (i) made in the ordinary course of business for business-related travel, entertainment, relocation and analogous ordinary business purposes or (ii) made in connection with such Person's purchase of Equity Interests (other than Disqualified Capital Stock) of Holdings in an aggregate principal amount not to exceed $10,000,000 at any time outstanding, so long as, in the case of clause (ii), such purchase price is immediately contributed to the U.S. Borrower;

(f) Investments pursuant to Permitted Acquisitions permitted pursuant to Section 7.13;

(g) Investments consisting of Liens, Indebtedness, fundamental changes, Asset Sales, Restricted Payments and prepayments permitted under Sections 7.01, 7.03, 7.04, 7.05, 7.06 and 7.15, respectively;

(h) Investments outstanding on the Closing Date and listed on Schedule 7.02 and any modification, replacement, renewal or extension thereof so long as the extent of such Investment is not increased thereby;

(i) Investments in Swap Contracts permitted under Section 7.03(n);

(j) [Reserved];

(k) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit and (ii) customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business and upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to Holdings in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to Holdings in accordance with Section 7.06;

(n) Investments made by the U.S. Borrower or a Subsidiary Guarantor in a Foreign Subsidiary (including guarantees of Indebtedness) in an aggregate amount outstanding at any time which shall not exceed $20,000,000 and Investments by a Foreign Subsidiary in another Foreign Subsidiary;

(o) any other Investment, so long as immediately after giving effect to such Investment, (A) no Default or Event of Default has occurred and is continuing, (B) the Lease Adjusted Leverage Ratio (calculated on a Pro forma Basis after giving effect to any such Investment) at the time of making such Investment is less than or equal to 3.25:1.00

and (C) the aggregate Commitments exceed the sum of the Outstanding Amount of all Revolving Loans, the Outstanding Amount of all L/C Obligations and the Outstanding Amount of all Swing Line Loans by no less than $75,000,000;

(p) advances of payroll payments to employees or consultants in the ordinary course of business;

(q) non-cash consideration received in any Asset Sale permitted by Section 7.05;

(r) other Investments in an aggregate amount not to exceed at any time $50,000,000;

(s) Investments consisting of the contribution of Equity Interests of any other Foreign Subsidiary or any Disregarded Domestic Subsidiary held directly by the U.S. Borrower or a Subsidiary in exchange for Indebtedness, Equity Interests or a combination thereof of the Foreign Subsidiary or Disregarded Domestic Subsidiary to which such contribution is made or the exchange of Equity Interests in any Foreign Subsidiary or Disregarded Domestic Subsidiary for Indebtedness of such Foreign Subsidiary or Disregarded Domestic Subsidiary, as applicable;

(t) Guarantees by the U.S. Borrower or a Subsidiary of leases (other than Capital Lease Obligations) or other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(u) Investments made by any Subsidiary that is not a Subsidiary Guarantor to the extent such Investments are financed with the proceeds received by such Subsidiary from an Investment made pursuant to clauses (n), (o) or (r) of this Section 7.02 promptly after such proceeds were received by such Subsidiary;

(v) Investments in Affiliated Charitable Organizations not exceeding $10,000,000 in the aggregate during the term of this Agreement;

(w) Investments in Treasury Management Agreements with Treasury Management Banks; and

(x) Investments made in connection with the Canadian Reorganization, solely to the extent resulting from the transactions consummated pursuant to and in accordance with Section 6.13(a).

An Investment shall be deemed to be outstanding to the extent not returned in the same form (or (i) in assets that may be used in those businesses in which the U.S. Borrower and its Subsidiaries are permitted to be engaged under Section 7.07 and have at least the same fair market value or (ii) in Cash Equivalents with at least the same fair market value, provided that such Cash Equivalents are otherwise permitted by this Section 7.02 or such Cash Equivalents are liquidated within 45 days) as the original Investment to (x) if such Investment was made by U.S. Borrower or a Subsidiary Guarantor, to the U.S. Borrower or a Subsidiary Guarantor and (y) if

such Investment was made by a Subsidiary that was not a Guarantor, to U.S. Borrower or any Subsidiary.

7.03 Indebtedness and Disqualified Capital Stock

. Create, incur, assume or suffer to exist any Indebtedness or Disqualified Capital Stock, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness of (x) any Subsidiary Guarantor to the U.S. Borrower or to any other Subsidiary Guarantor, (y) the U.S. Borrower to any Subsidiary Guarantor or (z) the U.S. Borrower or any Subsidiary Guarantor owed to Foreign Subsidiaries; provided (i) all such Indebtedness described in clauses (x) and (y) above shall be evidenced by promissory notes and all such notes shall be subject to a First Priority Lien pursuant to the Security Agreement, (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent, and (iii) any payment by any such Subsidiary Guarantor under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to the U.S. Borrower or to any of its Subsidiaries for whose benefit such payment is made;

(c) Indebtedness incurred by the U.S. Borrower or any of its Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price, earn-out or similar obligations, or from guarantees or letters of credit, surety bonds or performance bonds securing the performance of the U.S. Borrower or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of the U.S. Borrower or any of its Subsidiaries; provided that in the case of a disposition, the maximum aggregate liability in respect of all such obligations outstanding under this clause (c) shall at no time exceed the gross proceeds actually received by the U.S. Borrower and its Subsidiaries in connection with such disposition;

(d) Indebtedness of the U.S. Borrower and its Subsidiaries (A) assumed in connection with any Permitted Acquisition; provided that such Indebtedness is not incurred in contemplation of such Permitted Acquisition, or (B) owed to the seller of any property acquired in a Permitted Acquisition on an unsecured subordinated basis, which subordination shall be on terms reasonably satisfactory to the Administrative Agent, in each case, so long as both immediately prior and after giving effect thereto, (x) no Default or Event of Default shall exist or result therefrom, and (y) the U.S. Borrower and its Subsidiaries will be in pro forma compliance with the covenants set forth in Section 7.12 after giving effect to such Permitted Acquisition and the incurrence or issuance of such Indebtedness and any extensions, renewals or replacements (“refinancings”) of such Indebtedness except refinancings of any such Indebtedness if the terms and conditions thereof when taken as a whole are less favorable to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is not greater than or equal to that of the Indebtedness being refinanced or extended; provided such refinancing Indebtedness shall not (A) include Indebtedness of an obli

gor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in principal amount the Indebtedness being renewed, extended or refinanced along with interest and premium (if any) of such Indebtedness, together with fees and expenses related to such renewal, extension or refinancing or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(e) Indebtedness representing deferred compensation to employees of the U.S. Borrower and its Subsidiaries incurred in the ordinary course of business;

(f) Indebtedness consisting of obligations of the U.S. Borrower or its Subsidiaries under deferred employee compensation or other similar arrangements incurred by such Person in connection with Permitted Acquisitions;

(g) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(h) Indebtedness which may be deemed to exist pursuant to any guarantees, performance, surety, statutory, appeal or similar obligations (other than any guarantees of obligations for borrowed money) incurred in the ordinary course of business;

(i) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts; provided that such Indebtedness is extinguished within five (5) Business Days of the incurrence thereof;

(j) guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the U.S. Borrower and its Subsidiaries;

(k) (i) guarantees by the U.S. Borrower of Indebtedness of a Subsidiary Guarantor or guarantees by a Subsidiary Guarantor of Indebtedness of the U.S. Borrower or another Subsidiary Guarantor or (ii) guarantees by a Subsidiary of the U.S. Borrower that is not a Guarantor of Indebtedness of another Subsidiary of the U.S. Borrower that is not a Subsidiary Guarantor or (iii) guarantees by a Foreign Subsidiary of Indebtedness of another Foreign Subsidiary or (iv) guarantees by the U.S. Borrower or a Subsidiary Guarantor of Indebtedness of a Subsidiary of the U.S. Borrower that is not a Guarantor to extent permitted by Section 7.02(e), (n), (o), (r), (u), or (x) with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 7.03;

(l) Indebtedness existing on the Closing Date and listed on Schedule 7.03;

(m) purchase money Indebtedness incurred within 360 days of the acquisition or completion of construction or installation of the assets acquired in connection with the incurrence of such Indebtedness in an aggregate amount which, when added to refinancings thereof and with sales and lease-backs permitted pursuant to Section 7.09, is in an aggregate principal amount not to exceed $35,000,000 at any time outstanding;

(n) obligations (contingent or otherwise) of the U.S. Borrower or any Subsidiary existing or arising under any Swap Contract; provided that such obligations are (or were) entered into in the ordinary course of business for the purpose of fixing or hedging interest rate, currency or commodity risks and not for purposes of speculation;

(o) Indebtedness incurred by the U.S. Borrower to past, present or future members of management, employees, directors and consultants of Holdings, the U.S. Borrower or any Subsidiary in connection with stock repurchases; provided that the aggregate amount of such Indebtedness incurred during any fiscal year of the U.S. Borrower shall not exceed $5,000,000;

(p) Indebtedness of one or more Foreign Subsidiaries in an aggregate amount not to exceed at any time $15,000,000;

(q) Indebtedness of a Foreign Subsidiary to the U.S. Borrower or a Subsidiary Guarantor to the extent constituting an Investment permitted by Section 7.02(e), (n), (o), (r), (u) or (x);

(r) Indebtedness of the U.S. Borrower and its Subsidiaries in an aggregate amount not to exceed at any time $15,000,000;

(s) unsecured Indebtedness of the U.S. Borrower and the Subsidiary Guarantors, so long as, after giving effect thereto, (A) no Default or Event of Default has occurred and is continuing, (B) the Lease Adjusted Leverage Ratio (on a Pro forma Basis after giving effect to the incurrence of such Indebtedness) at the time of the incurrence of such Indebtedness is less than or equal to 3.25:1.00; and (C) the aggregate Commitments exceed the sum of the Outstanding Amount of all Revolving Loans, the Outstanding Amount of all L/C Obligations and the Outstanding Amount of all Swing Line Loans by no less than $75,000,000; provided that such Indebtedness shall not mature earlier than the Maturity Date and no portion thereof shall be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, for customary prepayment or repurchase events upon a change in control or an asset sale) prior to the Maturity Date; provided further that, for the avoidance of doubt, no Subsidiary that is not a Subsidiary Guarantor may guarantee or be an obligor with respect to such Indebtedness;

(t) Indebtedness under Treasury Management Agreements with Treasury Management Banks; and

(u) the Northstar Loan.

7.04 Fundamental Changes

. Merge, amalgamate, 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, except that, so long as no Event of Default exists or would result therefrom:

(a) any Subsidiary of the U.S. Borrower may merge or amalgamate with (i) the U.S. Borrower, provided that (x) the U.S. Borrower shall be the continuing or surviving Person or (y) the resulting, surviving or transferee Person (the "Successor Company") will be a corporation or a limited liability company organized and existing under the laws of the United States, any state thereof or the District of Columbia and the Successor Company (if not the U.S. Borrower) will expressly assume, by an assumption agreement in form and substance reasonably satisfactory to the Administrative Agent, all of the Obligations of the U.S. Borrower under any of the Loan Documents to which it is a party, or (ii) any one or more other Subsidiaries, provided that when any Subsidiary Guarantor is merging or amalgamating with another Subsidiary, the Subsidiary Guarantor shall be the continuing or surviving Person or to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Subsidiary which is not a Loan Party (assuming solely for such purpose that the Canadian Borrower is not a Loan Party) in accordance with Sections 7.02 and 7.03;

(b) any Subsidiary of the U.S. Borrower may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the U.S. Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Subsidiary Guarantor, then (i) the transferee must be the U.S. Borrower or a Subsidiary Guarantor and (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Subsidiary which is not a Loan Party (assuming solely for such purpose that the Canadian Borrower is not a Loan Party) in accordance with Sections 7.02 and 7.03;

(c) any Subsidiary may merge or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 7.02; provided that (i) the continuing or surviving Person shall have complied with the requirements of Section 6.13 and (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in accordance with Section 7.02;

(d) a merger, amalgamation dissolution, liquidation, consolidation or Asset Sale, the purpose of which is to effect an Asset Sale permitted pursuant to Section 7.05 may be effected;

(e) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary of the U.S. Borrower may liquidate or dissolve or change its legal form if the U.S. Borrower determines in good faith that such action is in the best interests of the U.S. Borrower and if not materially disadvantageous to the Lenders; and

(f) the Canadian Amalgamation may be effected.

7.05 Asset Sales

. Make any Asset Sales or enter into any agreement to make any Asset Sales, except:

(a) sales or other dispositions of assets that do not constitute Asset Sales;

(b) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) (i) are less than $5,000,000 with respect to any single Asset Sale or series of related Asset Sales and (ii) when aggregated with the proceeds of all other Asset Sales made within the same fiscal year of the U.S. Borrower, are less than $20,000,000; provided that (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of the U.S. Borrower (or similar governing body)) and (2) no less than 75% thereof shall be paid in cash or Cash Equivalents; provided further that for purposes of clause (2), the U.S. Borrower may elect to treat non-cash consideration from an Asset Sale as cash so long as the amount of such non-cash consideration being held by the U.S. Borrower and its Subsidiaries (and not previously converted to cash) does not exceed $5,000,000 in the aggregate;

(c) Investments made in accordance with Section 7.02;

(d) Dispositions permitted by Sections 7.04 and 7.06 and Liens permitted by Section 7.01;

(e) [Reserved];

(f) Dispositions of Property by the U.S. Borrower or any Subsidiary to the U.S. Borrower or to a Subsidiary; provided that if the transferor is the U.S. Borrower or a Subsidiary Guarantor of the U.S. Borrower, (i) the transferee thereof must be either the U.S. Borrower or a Subsidiary Guarantor or (ii) to the extent such transaction constitutes an Investment, such transaction is permitted by Section 7.02;

(g) Dispositions permitted by Section 7.09; and

(h) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property.

To the extent the Required Lenders waive the provisions of this Section 7.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 7.05, such Collateral (unless sold to U.S. Borrower or a Subsidiary Guarantor) shall be sold free and clear of the Liens created by the Security Documents, and the Agents shall take all actions they deem appropriate or reasonably requested by the U.S. Borrower in order to effect the foregoing.

7.06 Restricted Payments

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

(a) Each Subsidiary may make Restricted Payments to the U.S. Borrower and to Subsidiaries (and, in the case of a Restricted Payment by a non-Wholly-Owned Subsidiary, to the U.S. Borrower and any Subsidiary and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests);

(b) U.S. Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in Equity Interests (other than Disqualified Capital Stock) of such Person and, in the case of a Subsidiary, based on the proportionate ownership of such Subsidiary;

(c) [Reserved];

(d) to the extent constituting Restricted Payments, the U.S. Borrower and its Subsidiaries may enter into transactions expressly permitted by Section 7.04;

(e) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, the U.S. Borrower may make Restricted Payments to Holdings (i) in an aggregate amount not to exceed $6,000,000 in any fiscal year, to the extent necessary to permit Holdings to pay general administrative costs and expenses and operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses, (ii) for so long as Holdings and U.S. Borrower are members of the same affiliated group of corporations within the meaning of section 1504 of the Code and the Treasury Regulations promulgated thereunder (or any similar provision of state or local income tax law), to the extent necessary to permit Holdings or a Subsidiary to discharge the consolidated or similar Tax liabilities of Holdings and any of its Subsidiaries so long as Holdings or the paying Subsidiary applies the amount of any such payment for such purpose and provided that the amount of such payment for any taxable period shall not exceed the amount of income taxes that the U.S. Borrower and/or its Subsidiaries would have paid for such taxable period on a stand alone basis, (iii) in an aggregate amount required for Holdings to pay franchise taxes and other fees required to maintain its legal existence, (iv) in an aggregate amount sufficient to pay reasonable and customary costs and expenses incident to a public offering (whether or not consummated) of the Equity Interests of Holdings to the extent that the proceeds therefrom are intended to be contributed to the U.S. Borrower and (v) to finance any Investment permitted to be made pursuant to Section 7.02; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) Holdings shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the U.S. Borrower or a Subsidiary Guarantor (or a Subsidiary to the extent otherwise allowed by Section 7.02) or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the U.S. Borrower or a Subsidiary Guarantor (or a Subsidiary to the extent otherwise allowed by Section 7.02) in order to consummate such Permitted Acquisition, in each case, in accordance with the requirements of Section 6.13;

(f) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, the U.S. Borrower may make Restricted Payments with respect to the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of Holdings or any Subsidiary of Holdings held by any past, present or future employee, director, officer or consultant of Holdings (or any of its Subsidiaries) pursuant to any equity subscription agreement, stock option agreement or similar agreement or plan; provided that the aggregate price paid for all such repurchased, redeemed,

acquired or retired Equity Interests may not exceed $10,000,000 in any twelve-month period;

(g) [Reserved];

(h) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, to the extent the Lease Adjusted Leverage Ratio calculated on a Pro forma Basis at the time of, and after giving effect to, the making of such Restricted Payments, is less than or equal to 3.25:1.00 and, after giving effect to the applicable Restricted Payment(s), the aggregate Commitments exceed the sum of the Outstanding Amount of all Revolving Loans, the Outstanding Amount of all L/C Obligations and the Outstanding Amount of all Swing Line Loans by no less than $75,000,000, the U.S. Borrower may make additional Restricted Payments to Holdings; and

(i) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the U.S. Borrower may make additional Restricted Payments to Holdings in an amount not to exceed $15,000,000.

7.07 Change in Nature of Business/Partnerships/Accounting Changes

. (a) Engage in any business other than those businesses in which the U.S. Borrower and its Subsidiaries are engaged on the Closing Date (or which are reasonably related thereto or are reasonable extensions thereof) or such other lines of business as may be consented to by the Required Lenders, (b) become a general partner in any general partnership (other than any general partnership in existence on the Closing Date), or (c) make any change in accounting policies or reporting practices, except as required or permitted by GAAP.

7.08 Transactions with Affiliates

. Enter into any transaction or series of related transactions, whether or not in the ordinary course of business, with or for the benefit of any Affiliate of the U.S. Borrower or any Subsidiary, other than on terms and conditions not materially less favorable to the U.S. Borrower or such Subsidiary as would reasonably be obtained by the U.S. Borrower or such Subsidiary at that time in an arm's-length transaction with a Person other than an Affiliate, except that the following shall be permitted:

(a) Restricted Payments permitted by Section 7.06;

(b) Investments permitted by Sections 7.02(b), (e) and (n);

(c) reasonable director, officer and employee fees, compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification and severance arrangements, in each case entered into in the ordinary course of business;

(d) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods and services, in each case in the ordinary course of business and otherwise not prohibited by the Loan Documents;

(e) transactions pursuant to permitted agreements in existence on the Closing Date and set forth on Schedule 7.08(e) or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(f) Asset Sales permitted by Section 7.04(b);

(g) loans and other transactions by and between or among the U.S. Borrower or any Subsidiary to extent permitted under this Article VII; and

(h) transactions (i) between or among the U.S. Borrower and/or one or more Subsidiaries, (ii) between or among Subsidiaries and (iii) between or among U.S. Borrower, and/or one or more Subsidiaries and an Affiliated Charitable Organization to the extent otherwise permitted under this Article VII.

7.09 Sales and Leasebacks

. Become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than the U.S. Borrower or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Loan Party to any Person (other than the U.S. Borrower or any of its Subsidiaries) in connection with such lease; provided that the U.S. Borrower and its Subsidiaries may become and remain liable as lessee, guarantor or other surety with respect to any such lease if and to the extent that the U.S. Borrower and its Subsidiaries are permitted to enter into and remain liable with respect to such lease in connection with Indebtedness incurred pursuant to Section 7.03(m) in an aggregate amount which, when added to the amount of Indebtedness of the U.S. Borrower and its Subsidiaries pursuant to Section 7.03(m), shall not exceed $50,000,000.

7.10 Clauses Restricting Subsidiary Distributions

. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the U.S. Borrower to (a) make Restricted Payments in respect of any Equity Interests of such Subsidiary held by, or pay any Indebtedness owed to, the U.S. Borrower or any other Subsidiary Guarantor, (b) make loans or advances to, or other Investments in, the U.S. Borrower or any other Subsidiary Guarantor or (c) transfer any of its assets to the U.S. Borrower or any other Subsidiary Guarantor, except for such encumbrances or restrictions existing under or by reason of

(i) any restrictions existing under or permitted by the Loan Documents;

(ii) any encumbrance or restriction pursuant to applicable Law;

(iii) any encumbrance or restriction with respect to a Subsidiary or any of its Subsidiaries pursuant to an agreement relating to any Indebtedness incurred by such Subsidiary prior to the date on which such Subsidiary was acquired by the U.S. Borrower (other than Indebtedness incurred as consideration in, in contemplation of, or to provide all or any portion of the funds or credit support utilized to consummate the transaction or series of related transactions pursuant to which such Subsidiary was acquired by the U.S. Borrower) and outstanding on such date of acquisition, which encumbrance or restriction is not applicable to the U.S. Borrower or its Subsidiaries, or the properties or assets of the

U.S. Borrower or its Subsidiaries, other than the Subsidiary, or the property or assets of the Subsidiary, so acquired, or any Subsidiary thereof or the property or assets of any such Subsidiary;

(iv) any encumbrance or restriction pursuant to an agreement effecting a refinancing of Indebtedness incurred pursuant to an agreement referred to in clause (i), (ii) or (iii) of this covenant or this clause (iv) or contained in any amendment to an agreement referred to in clause (i), (ii) or (iii) of this covenant or this clause (iv); provided, however, that the encumbrances and restrictions contained in any such refinancing agreement or amendment are not materially less favorable taken as a whole, as determined by the U.S. Borrower in good faith, to the Lenders than the encumbrances and restrictions contained in such predecessor agreement;

(v) with respect to clause (c), any encumbrance or restriction (A) that restricts the subletting, assignment, sublicense or transfer of any property or asset or right and is contained in any lease, license or other contract entered into in the ordinary course of business or (B) contained in security agreements securing Indebtedness of a Subsidiary to the extent such encumbrance or restriction restricts the transfer of the property subject to such security agreements;

(vi) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the disposition of the Equity Interests or assets of such Subsidiary permitted by Section 7.05;

(vii) any encumbrances or restrictions applicable solely to a Foreign Subsidiary and contained in any credit facility extended to any Foreign Subsidiary;

(viii) restrictions in the transfers of assets pursuant to a Lien permitted by Section 7.01;

(ix) any encumbrance or restriction arising under or in connection with any agreement or instrument relating to any Indebtedness permitted by Section 7.03 if (A) either (x) the encumbrance or restriction applies only in the event of a payment default or a default with respect to a financial covenant contained in the terms of such agreement or instrument or (y) such encumbrance or restriction will not cause the U.S. Borrower not to have the funds necessary to pay the Obligations when due and (B) the encumbrance or restriction is not materially more disadvantageous to the Lenders than is customary in comparable financings;

(x) any encumbrance or restriction arising under or in connection with any agreement or instrument governing Equity Interests of any Person other than a Wholly-Owned Subsidiary that is acquired after the Closing Date;

(xi) any negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by or the subject of the Indebtedness;

(xii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted by Section 7.03(m) to the extent such restrictions apply only to the property or assets (including proceeds and products thereof and any accessions thereto) securing such Indebtedness;

(xiii) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(xiv) any encumbrance or restriction created under the Canadian Reorganization Documents, solely to the extent resulting from the transactions consummated pursuant to and in accordance with Section 6.13(a).

7.11 Use of Proceeds

. Use the proceeds of any Credit Extension, whether directly or indirectly to purchase or carry margin stock (in a manner that would violate Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.12 Financial Covenants

.

(a) Lease Adjusted Leverage Ratio. Permit the Lease Adjusted Leverage Ratio, as of the last day of any Test Period, to exceed (x) if such Test Period ends on or before December 31, 2014, 3.75:1.00 and (y) if such Test Period ends after December 31, 2014, 3.50:1.00.

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, for any Test Period, to be less than 2.75:1.00.

7.13 Acquisitions

. Purchase or otherwise acquire (in one or a series of related transactions) any assets constituting a business unit or division or line of business of, or Equity Interests representing a majority of the outstanding Equity Interests or voting power of the Voting Stock of, any Person (or agree to do any of the foregoing at any future time), except Permitted Acquisitions.

7.14 Modifications of Organization Documents and Other Documents, Etc.

Directly or indirectly:

(a) amend or modify, or permit the amendment or modification of, any provision of any documents governing any Indebtedness incurred pursuant to Section 7.03(d) or (s), in each case in any manner that is adverse in any material respect to the interests of the Lenders; or

(b) terminate, amend, modify or change any of its Organization Documents (including (x) by the filing or modification of any certificate of designation and (y) any election to treat any Pledged Interests (as defined in the Security Agreement) as a "security" under Section 8-103 of the UCC other than concurrently with the delivery of certificates representing such Pledged Interests to the Collateral Agent) or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), other than any such amendments, modifications or changes which are not adverse in any material respect to the interests of the Lenders; provided that the U.S. Borrower may issue Qualified Capital Stock, so long as such issuance is

not prohibited by any provision of this Agreement, and may amend its Organization Documents to authorize any such Qualified Capital Stock.

7.15 Prepayments, Etc. of Indebtedness

. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted, subject to the terms of the subordination provisions applicable thereto) any Subordinated Indebtedness ("Junior Financing"), except (i) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, (x) such prepayments, redemptions, purchases, defeasances or satisfactions may be made (A) if at the time thereof the Lease Adjusted Leverage Ratio calculated on a Pro forma Basis after giving effect to such prepayment, redemption, repurchase, defeasance or satisfaction is less than or equal to 3.25:1.00 and (B) if after giving effect thereto, the aggregate Commitments exceed the sum of the Outstanding Amount of all Revolving Loans, the Outstanding Amount of all L/C Obligations and the Outstanding Amount of all Swing Line Loans by no less than $75,000,000, or (y) for the refinancing thereof in exchange for, or with the Net Cash Proceeds of, any (1) Subordinated Indebtedness that (A) does not have an earlier maturity date or a shorter weighted average life to maturity than the Subordinated Indebtedness being refinanced, (B) have any interim amortization or prepayment or redemption offers or events other than change of control and asset sale events that are customary for high yield subordinated notes and (C) does not contain (I) any financial maintenance covenants or (II) covenants or events of default that are, taken as a whole, more onerous to the U.S. Borrower and its Subsidiaries than those contained herein or (2) issuance of Qualified Capital Stock of Holdings and (ii) for the conversion of any Junior Financing to Equity Interests (other than Disqualified Capital Stock) of Holdings.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default

. Any of the following shall constitute an "Event of Default":

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

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), 6.05, 6.11 or Article VII of this Agreement; 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 notice thereof by the Administrative Agent or any Lender to the U.S. Borrower; or

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

(e) Cross-Default. Any Loan Party or any of its Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise, and giving effect to any applicable grace period) in respect of any Indebtedness (other than Indebtedness hereunder or under the Guarantee) having an aggregate principal amount (including amounts owing to all creditors under any combined or syndicated credit arrangement) equal to or greater than the Threshold Amount, or (B) fails to observe or perform any other material agreement or condition relating to any such Indebtedness beyond any applicable cure period or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event in the case of this clause (B) is to cause, or to permit the holder or holders of such Indebtedness (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) prior to its stated maturity; provided that this clause (e)(B) shall not apply to secured Indebtedness that became due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of their respective Subsidiaries (other than an Immaterial Subsidiary) 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 (including, for the avoidance of doubt, any commencement by the Canadian Borrower or acquiescence by the Canadian Borrower to any proceedings for substantive relief with respect to the Canadian Borrower in any bankruptcy, insolvency, debt restructuring, reorganization, readjustment of debt or other similar proceedings (including, without limitation, proceedings under the BIA, the Winding-up and Restructuring Act (Canada), the Companies' Creditors Arrangement Act (Canada), or other similar federal or provincial legislation) including, without limitation, the filing by the Canadian Borrower of a proposal or plan of arrangement or a notice of intention to file same, or proceedings initiated by the Canadian Borrower for the appointment of a trustee, interim receiver, receiver, receiver and manager, custodian, administrator, sequestrator or other like

official with respect to the Canadian Borrower or all or any substantial part of the assets of Canadian Borrower, or any similar relief, and in the case of any such proceeding instituted against the Canadian Borrower (but not instituted by it), either the proceeding remains undismissed or unstayed for a period of 60 calendar days, or the Canadian Borrower fails to diligently and actively oppose such proceeding or any of the actions sought in such proceeding, in each case, for a period of 60 calendar days); or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any of its Subsidiaries (other than an Immaterial 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 60 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any of its Subsidiaries (other than an Immaterial Subsidiary) one or more final judgments or orders by a court or Governmental Authority for the payment of money in an amount that individually or in the aggregate is equal to or greater than the Threshold Amount (to the extent not adequately covered by insurance issued by a solvent and unaffiliated insurer that has not disclaimed coverage), and all such judgments or orders shall not have been vacated, discharged, stayed or fully bonded pending appeal within 60 days from the entry thereof; or

(i) ERISA. (i) An ERISA Event, or termination, withdrawal or noncompliance with applicable laws or plan terms with respect to Foreign Plans occurs which has resulted or could reasonably be expected to result in a Material Adverse Effect, or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability to a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document except by reason of payment in full of all Obligations, or purports to revoke, terminate or rescind any provision of any Loan Document except pursuant to the express terms thereof; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral. Any security interest and Lien purported to be created by any Security Document as to any property of the Loan Parties (and, solely in the case of the Delaware LLC Holding Company Pledge Agreement, the Delaware LLC Holding Company) (other than the Canadian Borrower) (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) shall cease to give the Collateral Agent, for the benefit of the Secured Parties a perfected First Priority security interest in and Lien on all of

the Collateral thereunder (except as otherwise expressly provided in this Agreement or such Security Document and subject to Permitted Liens) in favor of the Collateral Agent, or any security interest and Lien purported to be created by any Security Document on such property shall be asserted by any Loan Party not to be a valid, perfected, First Priority (except as otherwise expressly provided in this Agreement or such Security Document and subject to Permitted Liens) security interest in or Lien on the Collateral covered thereby, in each case other than to the extent that any such loss of perfection or priority results from the failure of the Collateral Agent to maintain possession of certificates or instruments actually delivered to it representing securities or notes pledged under the Security Documents or to file UCC continuation statements and except, as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and the Collateral Agent shall be reasonably satisfied with the credit of such insurer.

8.02 Remedies upon Event of Default

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

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

(ii) 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 Borrowers;

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

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

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the U.S. Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuers 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 U.S. 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.

8.03 Application of Funds

. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Secured Obligations shall be applied by the Administrative Agent in the following order:

(a) First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

(b) Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest, commitment fees and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause (b) payable to them;

(c) Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid commitment fees, Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause (c) payable to them;

(d) Fourth, (i) to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans and L/C Borrowings, (ii) to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, (iii) to payment of amounts due under any Treasury Management Agreement between any Loan Party and any Secured Party and (iv) to payment of breakage, termination or other amounts owing in respect of any Swap Contract between any Loan Party and any Secured Party, to the extent such Swap Contract is permitted hereunder, ratably among the Secured Parties in proportion to the respective amounts described in this clause (d) held by them; and

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

Subject to Section 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause (d) 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 and, if no Obligations remain outstanding, to the U.S. Borrower.

ARTICLE IX

ADMINISTRATIVE AGENT, CANADIAN AGENT AND COLLATERAL AGENT

9.01 Appointment and Authority

.

(a) Each of the Lenders and the L/C Issuers hereby irrevocably appoints (x) Bank of America to act on its behalf as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents and (y) Bank of America, N.A., Canada Branch to act on behalf

of the Multicurrency Facility Lenders as Canadian Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent, the Canadian Agent and Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent, the Canadian Agent and Collateral 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 Canadian Agent and Collateral 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, except for Sections 9.06 and 9.10 (but solely to the extent explicitly set forth in Sections 9.06 and 9.10).

(b) The Collateral Agent shall act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank or Treasury Management Bank) and each L/C Issuer hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of such Lender and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender

. The Persons serving as the Administrative Agent, the Canadian Agent and Collateral 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 they were not the Administrative Agent, the Canadian Agent and/or the Collateral 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, Canadian Agent and/or Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the U.S. Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent, Canadian Agent and/or Collateral Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions

. No Agent shall 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 Agents:

(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 such Agent is required to exercise as di

rected 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 such the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such 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 the U.S. Borrower or any of their Affiliates that is communicated to or obtained by the Person serving as an Agent or any of its Affiliates in any capacity.

No Agent shall 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 such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to the such Agent by the U.S. Borrower, a Lender or an L/C Issuer.

No Agent shall be responsible to the Lenders, the L/C Issuers or any of their respective Related Parties 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 (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

9.04 Reliance by Agents

. Each 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. Each 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, each Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless such 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. Each Agent may consult with legal counsel (who may be counsel for the U.S. Borrower), independent accountants and other experts selected by it, and shall not be liable to the Lenders, the L/C Issuers or any of their respective Related Parties for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties

. Each 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 or the Canadian Agent. The Administrative Agent, the Canadian 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 each 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 the Agents.

9.06 Resignation of Agent

. Each Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the U.S. Borrower, to appoint a successor, which shall be a "bank" or other "financial institution" with an office in the United States, or an Affiliate of any such bank or other financial institution 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 Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the 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 Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring 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 U.S. Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the U.S. Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring 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 Agent was acting as Agent.

Any resignation by Bank of America or Bank of America, N.A., Canada Branch, as Administrative Agent or Canadian Agent pursuant to this section shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent or Canadian Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and

(c) 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. Any resignation by Bank of America as Administrative Agent pursuant to this section shall also constitute the resignation of Bank of America, N.A., Canada Branch as Canadian Agent.

9.07 Non-Reliance on Agent and Other Lenders

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

9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Administrative Agent, Canadian Agent, Collateral Agent, Swing Line Lender, L/C Issuer, Syndication Agent, Co-Documentation Agent and Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as an Agent, a Lender, a Swing Line Lender or an L/C Issuer hereunder.

9.09 Agent May File Proofs of Claim

. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, any 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 such Agent shall have made any demand on any Loan Party) 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 Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers, the Canadian Agent and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers, the Canadian Agent and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers, the Canadian Agent and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 10.04) 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 in the manner set forth in Section 8.03;

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 or the Canadian Agent, as applicable, and, in the event that the Administrative Agent or the Canadian Agent, as applicable, shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent or the Canadian Agent, as applicable, any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and the Canadian Agent and their agents and counsel, and any other amounts due the Administrative Agent or the Canadian Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent or the Canadian 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 Secured Obligations or the rights of any Lender or to authorize the Administrative Agent or the Canadian Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guarantee Matters

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

(a) 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 Commitments and payment in full of all Secured Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Swap Contracts and Treasury Management Agreements not then due and payable) and the expiration, termination or Cash Collateralization of all Letters of Credit (other than Letters of Credit as to which other arrangements reasonably satisfactory to the Administrative Agent and the L/C Issuers shall have been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.01, 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 7.01(ş)

(c) to release the Lien on any property granted to or held by the Collateral Agent under any Loan Document to the extent a Lien is granted on such property pursuant to and in accordance with Section 7.01(w); and

(d) to release any Subsidiary Guarantor from its obligations under the Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; provided that no such release shall occur if such Subsidiary Guarantor continues to be a guarantor in respect of any other Indebtedness of any Borrower unless and until such Subsidiary Guarantor is (or is being simultaneously) released from its guaranty with respect to such other Indebtedness.

Upon request by the Administrative Agent or Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or Collateral Agent's, as the case may be, authority to release or subordinate its interest in particular types or items of property, or

to release any Subsidiary Guarantor from its obligations under the Guarantee pursuant to this Section 9.10.

9.11 Treasury Management Agreements and Swap Contracts

. No Hedge Bank or Treasury Management Bank that obtains the benefits of Section 8.03, any Guarantee or any Collateral by virtue of the provisions hereof or of any Guarantee or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Treasury Management Agreements entered into with Treasury Management Banks and Swap Contracts entered into with Hedge Banks unless the Administrative Agent has received written notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Treasury Management Bank or Hedge Bank, as the case may be.

9.12 Withholding

. To the extent required by any applicable Law, the Agent may withhold from any payment to any Lender, Swing Line Lender or L/C Issuer an amount equal to any applicable withholding Tax. If the IRS or any Governmental Authority asserts a claim that the Agent did not properly withhold Tax from any amount paid to or for the account of any Lender, Swing Line Lender or L/C Issuer for any reason (including because the appropriate form was not delivered or was not properly executed, or because such Lender, Swing Line Lender or L/C Issuer failed to notify the Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender, Swing Line Lender or L/C Issuer shall indemnify and hold harmless the Agent (to the extent that the Administrative Agent has not already been reimbursed by the applicable Borrower and without limiting or expanding the obligation of the applicable Borrower to do so) for all amounts paid, directly or indirectly, by the Agent as tax or otherwise, including any penalties, additions to Tax or interest thereon, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender, Swing Line Lender or L/C Issuer by the Agent shall be conclusive absent manifest error. Each Lender, Swing Line Lender and L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender, Swing Line Lender or L/C Issuer under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Article IX. The agreements in this Article IX shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender, Swing Line Lender or L/C Issuer, the termination of the Loans and the repayment, satisfaction or discharge of all obligations under this Agreement. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender, Swing Line Lender or L/C Issuer any refund of Taxes withheld or deducted from funds paid for the account of such Lender, Swing Line Lender or L/C Issuer.

ARTICLE X

MISCELLANEOUS

10.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the U.S. 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 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 8.02) without the written consent of such Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant or Default shall constitute an increase in the Commitment of any Lender);

(b) (A) change the scheduled final maturity of any Loan, (B) postpone the date for payment of any L/C Obligation or any interest or fees payable hereunder, (C) change the amount of, waive or excuse any such payment or (D) postpone the scheduled date of expiration of any Commitment or any Letter of Credit beyond the Maturity Date, in any case, without the written consent of each Lender directly affected thereby;

(c) [Reserved];

(d) reduce or forgive 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 or change the form or currency of payment without the written consent of each Lender directly affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (d); provided 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 Borrowers to pay interest at the Default Rate);

(e) waive, change or consent to any departure from Section 2.12(a), Section 2.13 or Section 8.03 or the definition of "Pro rata Share" in a manner that would alter the pro rata sharing of payments or the order of application of payments required thereby without the written consent of each Lender;

(f) waive, change or consent to any departure from any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, other than to increase such percentage or number or to give any additional Lender or group of Lenders such right to waive, amend or modify or make any such determination or grant any such consent;

(g) other than in a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(h) other than a transaction permitted by Section 7.04 or Section 7.05, release Holdings, the U.S. Borrower or any Significant Subsidiary that is a Subsidiary Guarantor from the Guarantee without the written consent of each Lender;

provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by an L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by a Swing Line Lender in addition to the Lenders required above, affect the rights or duties of such Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by any Agent in addition to the Lenders required above, affect the rights or duties of such Agent under this Agreement or any other Loan Document; and (iv) Section 10.06(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

If, in connection with any proposed change, waiver, discharge or termination of the provisions of this Agreement as contemplated by this Section 10.01, the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the U.S. Borrower shall have the right to replace all non-consenting Lenders required to obtain such consent with one or more Eligible Assignees in accordance with Section 10.13, so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination.

Notwithstanding anything to the contrary, without the consent of any other Person, the applicable Loan Party or Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the U.S. Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

10.02 Notices; Effectiveness; Electronic Communication

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(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 facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the U.S. Borrower, the Canadian Borrower, the Administrative Agent, the Canadian Agent, the Collateral Agent, an L/C Issuer or a Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices 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 L/C Issuer pursuant to Article II if such Lender or 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, the Canadian Agent, the Collateral Agent or the Borrowers may, in their 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" func

tion, 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, the Canadian Agent or any of their Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender or any L/C Issuer for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's, the Administrative Agent's or the Canadian 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 any Loan Party, any Lender or any L/C Issuer for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the Canadian Agent, the Collateral Agent, each L/C Issuer and each Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the U.S. Borrower, the Administrative Agent, the Canadian Agent, the Collateral Agent, each L/C Issuer and each Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent and the Canadian Agent from time to time to ensure that the Administrative Agent and the Canadian Agent haves 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 U.S. Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, the Canadian Agent, the Collateral Agent, L/C Issuer and Lenders. The Administrative Agent, the Canadian Agent, the Collateral Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing or Conversion Notices and Swing Line Loan Notices) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Borrower shall indemnify the Administrative Agent, the Canadian Agent, the Collateral 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 such Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent, the Canadian Agent or the Collateral Agent may be recorded by the Administrative Agent, the Canadian Agent or the Collateral Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies

.No failure by any Lender, any L/C Issuer, the Administrative Agent, the Canadian Agent or the Collateral 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 (and, in the sole discretion of the Administrative Agent, the Canadian Agent) in accordance with Section 8.02 for the benefit of all the Lenders and 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) the Canadian Agent, any L/C Issuer or any Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Canadian Agent, L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), 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 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Sec

tion 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver

.

(a) Costs and Expenses. The U.S. Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by each Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for any Agent), in connection with due diligence, the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuers in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by each Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for any Agent, any Lender or any L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Agent (and any sub-agent thereof), the Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses and settlement costs (but in the case of counsel to such Indemnitees, limited to the fees, charges and disbursements of a single firm of counsel for all Indemnitees and, if necessary, a single firm of local counsel to such Indemnitees in each relevant jurisdiction (and, in the case of a conflict of interest, one additional firm of counsel to each affected Indemnitee and, if reasonably necessary, one additional firm of local counsel to each affected Indemnitee in any relevant jurisdiction)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any 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 Material on, at, under or from any property owned or operated by the U.S. Borrower or any of the Subsidiaries, or any Environmental Claim related in any way to the U.S. Borrower or any of the Subsidiaries, or (iv) any actual or threatened claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party, by any Loan Party or any equity holder or creditor of a Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, ex

penses or settlement costs are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, and provided further that Article III (instead of this Section 10.04) shall govern indemnity with respect to the matters addressed in such Article (including, without limitation, Taxes), except that Taxes representing losses, claims, damages, etc., with respect to a non-Tax claim may be covered by this Section 10.04(b) (without duplication of Article III). The U.S. Borrower agrees that no Indemnitee shall have any liability (whether direct or indirect, in contract or tort or otherwise) to U.S. Borrower, its Subsidiaries or Affiliates or to U.S. Borrower's or Holdings's equity holders or creditors arising out of, related to or in connection with any aspect of the Transaction or the Loan Documents, except to the extent of direct (as opposed to special, indirect, consequential or punitive) damages determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. It is further agreed that the Lenders shall only have liability to U.S. Borrower (as opposed to any other Person). Notwithstanding any other provision of the Loan Documents, no Indemnitee shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Loan Parties shall not, without the prior written consent of an Indemnitee (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened proceeding against an Indemnitee in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such claim, litigation, investigation or proceeding and (ii) does not include any statement as to any admission of fault, culpability, wrong-doing or a failure to act by or on behalf of such Indemnitee. The Loan Parties shall not be liable for any settlement of any claim, litigation, investigation or proceeding effected without the written consent (which consent shall not be unreasonably withheld, conditioned or delayed) of the Loan Parties, but if settled with the written consent of the Loan Parties, the Loan Parties agree to indemnify and hold harmless each Indemnitee from and against any and all claims, damages, losses, liabilities and expenses by reason of such claim, litigation, investigation or proceeding in accordance with and to the extent provided in the other provisions of this Section 10.04.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section 10.04 to be paid by them to the Administrative Agent (or any sub-agent thereof), the Canadian Agent, the Collateral Agent, any L/C Issuer, any Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Canadian Agent, the Collateral Agent, (or any sub-agent thereof), the Collateral Agent, each L/C Issuer, each Swing Line Lender 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), the Canadian Agent, the Collateral Agent (or any sub-agent thereof), any Swing Line Lender 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), the Canadian Agent, the Collateral Agent (or any sub-agent thereof), or L/C Issuer or Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee 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 by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the Canadian Agent, the Collateral Agent and the L/C Issuers, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside

. To the extent that any payment by or on behalf of any Borrower is made to any Agent, any L/C Issuer or any Lender, or any Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any Agent, any L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to each Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by such Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to (x) with respect to amounts denominated in Dollars, the Federal Funds Rate from time to time in effect and (y) with respect to amounts denominated in Canadian Dollars, the rate of interest per annum at which overnight deposits in any amount approximately equal to the amount with respect to which such rate is determined, would be offered for such day by Bank of America, N.A., Canada Branch, plus any administrative, processing or similar fees customarily charged by Bank of America, N.A., Canada Branch. The obligations of the Lenders and 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.

10.06 Successors and Assigns

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(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither any Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section 10.06, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section 10.06, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section 10.06, or (iv) to an SPC in accordance with the provisions of subsection (h) of this Section 10.06 (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 Canadian 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 Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that

(i) except in the case of an assignment of the entire remaining amount of the assigning (x) U.S. Dollar Facility Lender's U.S. Dollar Facility Commitment or U.S. Dollar Facility Revolving Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the U.S. Dollar Facility Commitment (which for this purpose includes U.S. Dollar Facility Revolving Loans outstanding thereunder) of the assigning U.S. Dollar Facility 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 U.S. Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments under this clause (x) to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met and (y) Multicurrency Facility Lender's Multicurrency Facility Commitment or Multicurrency Facility Revolving Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Multicurrency Facility Commitment (which for this purpose includes Multicurrency Facility Revolving Loans outstanding thereunder) of the assigning Multicurrency Facility Lender subject to each such assign

ment, determined as of the date the Assignment and Assumption with respect to such assignment, is delivered to the Canadian Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000 or C$1,000,000, as applicable, with respect to Multicurrency Facility Commitments and Multicurrency Facility Revolving Loans unless each of the Canadian Agent and, so long as no Event of Default has occurred and is continuing, the U.S. Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments under this clause (y) to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swing Line Loans;

(iii) (x) any assignment of a U.S. Dollar Facility Commitment or a U.S. Dollar Facility Revolving Loan must be approved by the Administrative Agent, each U.S. Dollar Facility L/C Issuer and the U.S. Dollar Facility Swing Line Lender (provided that each such approval required by this clause (iii) shall not be unreasonably withheld) unless, in the case of the approval of the Administrative Agent only, the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee), and (y) any assignment of a Multicurrency Facility Commitment or a Multicurrency Facility Revolving Loan must be approved by the Canadian Agent, each Multicurrency Facility L/C Issuer and the Multicurrency Facility Swing Line Lender (provided that each such approval required by this clause (iii) shall not be unreasonably withheld) unless, in the case of the approval of the Canadian Agent only, the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee);

(iv) (x) the parties to each assignment of a U.S. Dollar Facility Commitment or a U.S. Dollar Facility Revolving Loan shall execute and deliver to the Administrative Agent, an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 10.06, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and (y) the parties to each assignment of a Multicurrency Facility Commitment or a Multicurrency Facility Revolving Loan shall execute and deliver to the Canadian Agent, an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 10.06, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Canadian Agent an Administrative Questionnaire;

(v) no such assignment shall be made to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender; and

(vi) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent or the Canadian Agent, as applicable, in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the U.S. Borrower and Administrative Agent, the applicable Pro rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Canadian Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro rata Share of all Loans and participations in Letters of Credit and Swing Line Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent or the Canadian Agent, as applicable, pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, each applicable Borrower (at its expense) shall execute and deliver the applicable 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 or subsection (c) hereof 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 10.06.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the U.S. Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it in respect of the U.S. Dollar Facility Revolving Loans and U.S. Dollar Facility Revolving Commitments and a register for the recordation of the names and addresses of the U.S. Dollar Facility Lenders, and the U.S. Dollar Facility Commitments of, and principal and interest amounts of the U.S. Dollar Facility Revolving Loans, U.S. Dollar Facility

Swing Line Loans and U.S. Dollar Facility L/C Obligations owing to, each U.S. Dollar Facility Lender pursuant to the terms hereof from time to time (the "U.S. Dollar Facility Register"). The Canadian Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Canadian Agent's Office a copy of each Assignment and Assumption delivered to it in respect of the Multicurrency Facility Revolving Loans and Multicurrency Facility Revolving Commitments and a register for the recordation of the names and addresses of the Multicurrency Facility Lenders, and the Multicurrency Facility Commitments of, and principal and interest amounts of the Multicurrency Facility Revolving Loans, Multicurrency Facility Swing Line Loans and Multicurrency Facility L/C Obligations owing to, each Multicurrency Facility Lender pursuant to the terms hereof from time to time (the "Multicurrency Facility Register" and, together with the U.S. Dollar Facility Register, the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Canadian Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the owner of its interests in the Loans and L/C Obligations as set forth in the Register and as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Administrative Agent and Canadian Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrowers and the L/C Issuers at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent and the Canadian Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower, the Canadian Agent or the Administrative Agent sell participations to any Person (other than a natural person, a Defaulting Lender or the U.S. Borrower or the U.S. 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 and/or Swing Line Loans, if applicable) 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 Borrowers, the Administrative Agent, the Canadian Agent, the 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 10.01(a), (b), (c) or (d) that affects such Participant. Subject to the foregoing provisions of this subsection (d) and to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of those sections read as if a Participant were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. Subject to the foregoing provisions of this subsection (d), to the extent permitted by law, each Participant also

shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the applicable Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive and such Lender (and the Borrowers, to the extent that the Participant requests payment from any Borrower) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from any Borrower under the Loan Documents shall be made available to such Borrower upon reasonable request.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent that any entitlement to a greater payment results from a Change in Law arising after such Participant became a Participant.

(f) Certain Pledges. Any Lender may, without the consent of the U.S. Borrower, the Canadian Borrower, the Canadian Agent or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including (i) any pledge or assignment to secure obligations to a Federal Reserve Bank and (ii) any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender as collateral security for such obligations or securities, or to any trustee for, or any other representative of, such holders; 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) Electronic Execution of Assignments. The words "execution," "signed," "signature" and words of like import in any Assignment and Assumption 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.

(h) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent, the Canadian Agent, as applicable, and the U.S. Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan

pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent or the Canadian Agent, as applicable, as is required under Section 2.12(b)(ii), and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Register. Subject to the provisions of this subsection (h), the U.S. Borrower agrees that each SPC shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of those sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the U.S. Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), except to the extent that any entitlement to a greater payment under Section 3.01, 3.04 or 3.05 results from a Change in Law arising after the grant to such SPC, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, subject to compliance with the provisions of this Section 10.06 regarding the Register and/or the Participant Register, as appropriate, any SPC may (i) with notice to, but without prior consent of the U.S. Borrower and the Administrative Agent or Canadian Agent, as applicable, and with the payment of a processing fee of $3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee or credit or liquidity enhancement to such SPC.

(i) Resignation as L/C Issuer or Swing Line Lender After Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America (together with Bank of America, N.A., Canada Branch) assigns all of its Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America and Bank of America, N.A., Canada Branch may, (i) upon 30 days' notice to the U.S. Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the U.S. Borrower and the Lenders, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Required Lenders, in consultation with the U.S. Borrower, shall be entitled to appoint from among the Lenders (with the consent of the applicable Lender) a successor L/C Issuer or Swing Line Lender hereunder; provided that if (i) the Required Lenders shall not have so appointed any such successor within the 30-day period following Bank of America's and Bank of America, N.A., Canada Branch's notice of resignation, or (ii) Bank of America shall have resigned as Administrative Agent and Bank of America, N.A., Canada Branch shall have resigned as Canadian Agent, in accordance with Section 9.06, Bank of America may appoint such successor. Any such resignation shall be effective upon the appointment (with the consent of the applicable Lender) of a successor. If

Bank of America or Bank of America, N.A., Canada Branch resign as an L/C Issuer, they shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Revolving Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as the U.S. Dollar Facility Swing Line Lender or Bank of America, N.A., Canada Branch resigns as Multicurrency Facility Swing Line Lender, they shall retain all the rights of a Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Revolving Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

10.07 Treatment of Certain Information; Confidentiality

. Each of the Administrative Agent, the Canadian Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives, (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; provided that the Administrative Agent, the Canadian Agent or such Lender, unless prohibited by any Law, shall use reasonable efforts to notify the U.S. Borrower in advance of any disclosure pursuant to this clause (c) but only to the extent reasonably practicable under the circumstances and on the understanding that neither the Administrative Agent, the Canadian Agent nor any Lender shall incur any liability for failure to give such notice, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any pledgee pursuant to Section 10.06(f), any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Contract with the U.S. Borrower or any Subsidiary, (g) with the consent of the U.S. Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, the Canadian Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the U.S. Borrower.

For purposes of this Section, at any time that the U.S. Borrower or any Subsidiary is not a reporting company, "Information" means all information received from the U.S. Borrower or any Subsidiary relating to the U.S. Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, the Canadian Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the U.S. Borrower or any Subsidiary. 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.

10.08 Right of Setoff

. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the U.S. Borrower or any other Loan Party (other than the Canadian Borrower) against any and all of the obligations of the U.S. Borrower or such Loan Party (other than the Canadian Borrower) now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the U.S. Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent or the Canadian Agent, as applicable, for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Canadian Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent and/or the Canadian Agent, as applicable, a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the U.S. Borrower and the Administrative Agent or the Canadian Agent, as applicable, promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation

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

10.10 Counterparts; Integration; Effectiveness

. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and under

standings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.03, this Agreement shall become effective when it shall have been executed by the Administrative Agent and the Canadian Agent and when the Administrative Agent and Canadian Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or pdf electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties

. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, the Canadian Agent and each Lender, regardless of any investigation made by the Administrative Agent, the Canadian Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent, the Canadian 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 Commitment shall remain in effect, any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability

. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the Canadian Agent, the applicable L/C Issuer or the applicable Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders

. If any Lender requests compensation under Section 3.04, if any Lender gives notice pursuant to Section 3.02, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and such amounts or compensation do not affect Lenders generally, or if any Lender is a Defaulting Lender or as provided in Section 10.01, then such Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent (and, if such Lender is a Multicurrency Facility Lender, the Canadian Agent), require such Lender to assign and delegate (including by executing an Assignment and Assumption relating thereto), without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations

(which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the U.S. Borrower shall have paid to the Administrative Agent or the Canadian Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of and premium (if any) on 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 applicable 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; and

(d) such assignment does not conflict with applicable Laws.

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 U.S. Borrower to require such assignment and delegation cease to apply.

10.14 Governing Law, Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMIT, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF SUCH STATE, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE CANADIAN AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY

OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN FACSIMILE, TELEPHONE OR ELECTRONIC COMMUNICATION) IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial

. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility

. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the U.S. Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Canadian Agent and the Arranger are arm's-length commercial transactions between the U.S. Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Canadian Agent and the Arranger, on the other hand, (B) the U.S. Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the U.S. Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Canadian

Agent and the Arranger each 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 U.S. Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, the Canadian Agent nor the Arranger has any obligation to the U.S. Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Canadian 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 U.S. Borrower and its Affiliates, and neither the Administrative Agent, the Canadian Agent nor the Arranger has any obligation to disclose any of such interests to the U.S. Borrower or its Affiliates. To the fullest extent permitted by law, the U.S. Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Canadian 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.

10.17 USA Patriot Act Notice

. Each Lender that is subject to the Patriot Act (or any Canadian Anti-Terrorism Laws), the Administrative Agent (for itself and not on behalf of any Lender) and the Canadian Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act and any Canadian Anti-Terrorism Laws, respectively, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender, the Administrative Agent or the Canadian Agent to identify the Borrowers in accordance with the Patriot Act and such Canadian Anti-Terrorism Laws, as the case may be.

10.18 Judgment Currency

. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under 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 applicable Facility 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 each Borrower in respect of any such sum due from it to such Facility 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 such Facility Agent of any sum adjudged to be so due in the Judgment Currency, such Facility 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 such Facility Agent from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Facility 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 such Facility Agent in such currency, such Facility Agent agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

10.19 Amendment and Restatement

. It is the intention of each of the parties hereto that the Original Credit Agreement be amended and restated in its entirety pursuant to this Agreement so as to preserve the perfection and priority of all Liens securing Indebtedness and Obligations under the Original Credit Agreement and that all Indebtedness and Obligations of the Loan Parties hereunder shall be secured by the Liens evidenced under the Security Documents and that this Agreement does not constitute a novation or termination of the Indebtedness and Obligations existing under the Original Credit Agreement (or serve to terminate Section 10.04 of the Original Credit Agreement). The parties hereto further acknowledge and agree that this Agreement constitutes an amendment of the Original Credit Agreement made under and in accordance with the terms of Section 10.01 of the Original Credit Agreement. In addition, unless specifically amended hereby, each of the Loan Documents and the Exhibits and Schedules to the Original Credit Agreement shall continue in full force and effect and that, from and after the Restatement Date, all references to the "Credit Agreement" contained therein shall be deemed to refer to this Agreement.

[Signature Pages Follow]

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

THE WILLIAM CARTER COMPANY, as U.S. Borrower

By:

Name:

Title:

NORTHSTAR CANADIAN OPERATIONS CORP., as Canadian Borrower

By:

Name:

Title:

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

By:

Name:

Title:

BANK OF AMERICA, N.A., as a Lender, L/C Issuer and U.S. Dollar Facility Swing Line Lender

By:

Name:

Title:

BANK OF AMERICA, N.A., **CANADA BRANCH** as Canadian Agent, a Lender, Multicurrency Facility L/C Issuer and Multicurrency Facility Swing Line Lender

By:

Name:

Title:

Exhibit 21

Subsidiaries of Carter's, Inc.

The William Carter Company is incorporated in Massachusetts

OshKosh B'Gosh Inc. is incorporated in Delaware

Carter's Retail, Inc. is incorporated in Delaware

TWCC Product Development and Sales, Inc. is incorporated in Delaware

Carter's Giftcard Company, Inc. is incorporated in Florida

The Genuine Canadian Corp. is incorporated in Ontario, Canada

Carter's Canadian Holdings, LLC is formed in Delaware

Exhibit 23

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-177724, 333-168446, and 333-125306) of Carter's, Inc. of our report dated February 29, 2012 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers, LLP

Stamford, Connecticut
February 29, 2012

Exhibit 31.1

CERTIFICATION

I, Michael D. Casey, certify that:

1. I have reviewed this annual report on Form 10-K of Carter's, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 29, 2012

/s/ MICHAEL D. CASEY
Michael D. Casey
Chief ExecutiveOfficer

Exhibit 31.2

CERTIFICATION

I, Richard F. Westenberger, certify that:

1. I have reviewed this annual report on Form 10-K of Carter's, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 29, 2012

/s/ RICHARD F. WESTENBERGER
Richard F. Westenberger
Chief Financial Officer

Exhibit 32

CERTIFICATION

Each of the undersigned in the capacity indicated hereby certifies that, to his knowledge, this Annual Report on Form 10-K for the fiscal year ended December 31, 2011 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in this Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Carter's, Inc.

Date: February 29, 2012

/s/ MICHAEL D. CASEY
Michael D. Casey
Chief Executive Officer

Date: February 29, 2012

/s/ RICHARD F. WESTENBERGER
Richard F. Westenberger
Chief Financial Officer

The foregoing certifications are being furnished solely pursuant to 18 U.S.C. § 1350 and are not being filed as part of the Annual Report on Form 10-K or as a separate disclosure document.