
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2005

OR

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

Commission file number: 1-32381

HERBALIFE LTD.

(Exact name of registrant as specified in its charter)

Cayman Islands

(State or other jurisdiction of incorporation or organization)

98-0377871

(I.R.S. Employer Identification No.)

P.O. Box 309GT

**Ugland House, South Church Street
Grand Cayman, Cayman Islands**

(Address of principal executive offices) (Zip code)

(310) 410-9600*

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).
Yes No

Number of shares of registrant's common shares outstanding as of May 4, 2005 was 68,658,804.

* C/O Chief Financial Officer of Herbalife International, Inc.

HERBALIFE LTD.

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Filed with the Quarterly Report of the Company on Form 10-Q

For the Three Months ended March 31, 2005

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PART I. FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

HERBALIFE LTD. CONSOLIDATED BALANCE SHEETS

	<u>December 31, 2004</u>	<u>March 31, 2005</u> (unaudited)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 201,577,000	\$ 103,744,000
Receivables, net of allowance for doubtful accounts of \$4,815,000 (2004) and \$5,204,000 (2005)	29,546,000	40,353,000
Inventories	71,092,000	69,100,000
Prepaid expenses and other current assets	45,914,000	54,477,000
Deferred income taxes	21,784,000	15,505,000
Total current assets	<u>369,913,000</u>	<u>283,179,000</u>
Property, at cost, net of accumulated depreciation and amortization of \$20,463,000 (2004) and \$23,644,000 (2005)	55,390,000	54,777,000
Deferred compensation plan assets	12,052,000	12,630,000
Other assets	7,957,000	8,206,000
Deferred financing costs, net of accumulated amortization of \$231,000 (2004) and \$470,000 (2005)	6,860,000	5,906,000
Marketing franchise	310,000,000	310,000,000
Distributor network, net of accumulated amortization of \$45,272,000 (2004) and \$49,956,000 (2005)	10,928,000	6,244,000
Product certification, product formulae and other intangible assets, net of accumulated amortization of \$14,692,000 (2004) and \$15,467,000 (2005)	8,084,000	7,345,000
Goodwill	167,517,000	167,517,000
TOTAL	<u>\$ 948,701,000</u>	<u>\$ 855,804,000</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 24,457,000	\$ 28,837,000
Royalty overrides	85,304,000	84,175,000
Accrued compensation	27,016,000	19,704,000
Accrued expenses	87,227,000	86,258,000
Current portion of long term debt	120,291,000	11,402,000
Advance sales deposits	9,490,000	14,984,000
Income taxes payable	17,684,000	21,300,000
Total current liabilities	<u>371,469,000</u>	<u>266,660,000</u>
NON-CURRENT LIABILITIES:		
Long term debt, net of current portion	365,926,000	364,553,000
Deferred compensation	13,882,000	13,183,000
Deferred income taxes	130,346,000	128,990,000
Other non-current liabilities	2,736,000	2,589,000
Total liabilities	<u>884,359,000</u>	<u>775,975,000</u>
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Preference shares, \$0.002 par value, 7,500,000 (2004 and 2005) shares authorized and unissued	—	—
Common shares, \$0.002 par value, 175,000,000 shares authorized, 68,630,834 (2004) and 68,666,913 (2005) shares issued and outstanding	137,000	137,000
Paid-in-capital in excess of par value	74,593,000	76,198,000
Accumulated other comprehensive income	3,923,000	4,529,000
Accumulated deficit	<u>(14,311,000)</u>	<u>(1,035,000)</u>

Total shareholders' equity	64,342,000	79,829,000
TOTAL	\$ 948,701,000	\$ 855,804,000

See the accompanying notes to consolidated financial statements

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**HERBALIFE LTD.
CONSOLIDATED STATEMENTS OF OPERATIONS**

(Unaudited)

	Three Months Ended	
	March 31, 2004	March 31, 2005
	(unaudited)	
Product sales	\$ 278,138,000	\$ 320,224,000
Handling & freight income	45,914,000	51,836,000
Net sales	324,052,000	372,060,000
Cost of sales	63,618,000	75,737,000
Gross profit	260,434,000	296,323,000
Royalty overrides	115,856,000	135,168,000
Selling, general & administrative expenses (including \$1,800,000 of related party expenses for the three months ended March 31, 2004)	107,840,000	110,029,000
Operating income	36,738,000	51,126,000
Interest expense, net	27,373,000	22,202,000
Income before income taxes	9,365,000	28,924,000
Income taxes	9,849,000	15,648,000
NET (LOSS) INCOME	\$ (484,000)	\$ 13,276,000
(Loss) Earnings per share:		
Basic	\$ (0.01)	\$ 0.19
Diluted	\$ (0.01)	\$ 0.19
Weighted average shares outstanding:		
Basic	52,035,000	68,643,000
Diluted	52,035,000	71,714,000

See the accompanying notes to consolidated financial statements

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**HERBALIFE, LTD.
CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Three Months Ended	
	March 31, 2004	March 31, 2005
	(unaudited)	
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net (loss) income	(484,000)	13,276,000
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	11,406,000	10,077,000
Amortization of discount and deferred financing costs	2,152,000	388,000
Deferred income taxes	(2,651,000)	6,401,000
Unrealized foreign exchange loss (gain)	(124,000)	2,062,000
Write-off of deferred financing costs and unamortized discounts	4,077,000	3,779,000
Other	406,000	1,910,000
Changes in operating assets and liabilities:		
Receivables	(1,874,000)	(11,400,000)
Inventories	(5,315,000)	358,000
Prepaid expenses and other current assets	(2,795,000)	(9,265,000)
Accounts payable	780,000	5,165,000
Royalty overrides	(7,796,000)	822,000
Accrued expenses and accrued compensation	3,303,000	(7,303,000)
Advance sales deposits	6,041,000	5,675,000
Income taxes payable	7,352,000	3,773,000
Deferred compensation liability	(115,000)	(698,000)
NET CASH PROVIDED BY OPERATING ACTIVITIES	14,363,000	25,020,000
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property	(4,575,000)	(4,377,000)
Proceeds from sale of property	1,000	57,000
Net change in restricted cash	5,701,000	—
Changes in other assets	(2,591,000)	(643,000)
Deferred compensation plan assets	(85,000)	(579,000)
NET CASH USED IN INVESTING ACTIVITIES	(1,549,000)	(5,542,000)
CASH FLOWS FROM FINANCING ACTIVITIES:		

Dividends paid on Preferred Shares	(38,500,000)	—
Issuance of 9½% Notes	267,437,000	—
Borrowings from long-term debt	369,000	22,000
Principal payments on long-term debt	(45,387,000)	(113,232,000)
Conversion of Preferred Shares	(183,115,000)	—
Repurchase of 15½% Senior Notes	(39,644,000)	—
Exercise of Stock Options	—	203,000
Other	—	(371,000)
NET CASH USED IN FINANCING ACTIVITIES	(38,840,000)	(113,377,000)
EFFECT OF EXCHANGE RATE CHANGES ON CASH	(1,651,000)	(3,933,000)
NET CHANGE IN CASH AND CASH EQUIVALENTS	(27,677,000)	(97,833,000)
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	150,679,000	201,577,000
CASH AND CASH EQUIVALENTS, END OF PERIOD	\$ 123,002,000	\$ 103,744,000
CASH PAID FOR:		
Interest	\$ 27,372,000	\$ 14,900,000
Income taxes	\$ 4,774,000	\$ 5,390,000
NON-CASH ACTIVITIES:		
Acquisitions of property through capital leases	\$ 847,000	\$ 62,000

See the accompanying notes to consolidated financial statements

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HERBALIFE LTD. NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization

Herbalife Ltd., a Cayman Islands exempted limited liability company (“Herbalife”), incorporated on April 4, 2002, and its direct and indirect wholly-owned subsidiaries, WH Intermediate Holdings Ltd., a Cayman Islands company (“WH Intermediate”), WH Luxembourg Holdings S.à.R.L., a Luxembourg unipersonal limited liability company (“Lux Holdings”), WH Luxembourg CM S.à.R.L., a Luxembourg unipersonal limited liability company, and WH Acquisition Corp., a Nevada corporation (“WH Acquisition”), were formed on behalf of Whitney & Co., LLC (“Whitney”) and Golden Gate Private Equity, Inc. (“Golden Gate”), in order to acquire Herbalife International, Inc., a Nevada corporation, and its subsidiaries (“Herbalife International”) on July 31, 2002 (the “Acquisition”). Herbalife and its subsidiaries are referred to collectively herein as the Company.

IPO Recapitalization

On December 16, 2004, Herbalife completed an initial public offering (the “IPO”), whereby it offered its common shares as part of a series of recapitalization transactions as follows:

- a tender offer for \$159.8 million of the outstanding 11¼% senior subordinated notes due 2010, issued by Herbalife International, which are referred to as the 11¼% Notes;
- the replacement of Herbalife International’s existing \$205.0 million senior credit facility with a new \$225.0 million senior credit facility;
- the payment of a \$139.8 million special cash dividend to the then current shareholders of Herbalife, in which the new purchasers of Herbalife common shares in the IPO were not entitled to participate; and
- the amendment of Herbalife’s Memorandum and Articles of Association to: (1) effect a 1:2 reverse stock split of Herbalife’s common shares; (2) increase Herbalife’s authorized common shares to 500 million shares; and (3) increase Herbalife’s authorized preference shares to 7.5 million shares, all of which took effect on December 1, 2004.

As a planned continuation of the IPO recapitalization, Herbalife exercised a contract provision in December 2004 to redeem 40%, or \$110.0 million principal value (excluding a premium of \$10.5 million), of the 9½% notes due 2011, which are referred to as the 9½% Notes. After the required notice period, this redemption was completed on February 4, 2005. The redemption premium of \$10.5 million and the write-off of deferred financing fees of \$3.7 million associated with this redemption are included in interest expense in the first quarter of 2005.

In connection with the IPO and the recapitalization, the Company incurred \$24.3 million in fees and expenses of which \$19.7 million were associated with the IPO (included in equity) and \$4.6 million were associated with the establishment of the new credit facility (included in deferred financing costs).

2. Basis of Presentation

The unaudited interim financial information of the Company has been prepared in accordance with Article 10 of the Securities and Exchange Commission’s Regulation S-X. Accordingly, it does not include all of the information required by generally accepted accounting principles for complete financial statements. The Company’s financial statements as of and for the three months ended March 31, 2005 include Herbalife and all of its direct and indirect subsidiaries. In the opinion of management, the accompanying financial information contains all adjustments, consisting of normal recurring adjustments, necessary to present fairly the Company’s financial statements as of March 31, 2005 and for the three months ended March 31, 2004 and March 31, 2005. Operating results for the three months ended March 31, 2005 are not necessarily indicative of the results that may be expected for the year ending December 31, 2005.

New Accounting Pronouncements

In December 2004, the Financial Accounting Standards Board (“FASB”) enacted Statement of Financial Accounting Standards 123—revised 2004 (“SFAS 123R”), “Share-Based Payment” which replaces Statement of Financial Accounting Standards No. 123 (“SFAS 123”), “Accounting for Stock-Based Compensation” and supersedes Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees.” SFAS 123R requires the measurement of all employee

share-based payments to employees, including grants of employee stock options, using a fair-value-based method and the recording of such expense in our consolidated statements of operations. The accounting provisions of SFAS 123R are effective for reporting periods beginning after December 15, 2005.

We are required to adopt SFAS 123R in the first quarter of fiscal 2006. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition. See Note 2 in our Notes to Consolidated Financial Statements for the pro forma net income and net income per share amounts, for fiscal 2002 through fiscal 2004, as if we had used a fair-value-based method similar to the methods required under SFAS 123R to measure compensation expense for employee stock incentive awards. Although we have not yet determined whether the adoption of SFAS 123R will result in amounts that are similar to the current pro forma disclosures under SFAS 123, we are evaluating the requirements under SFAS 123R and on a preliminary basis we expect the adoption will not have a material impact on our consolidated statements of operations, relative to currently existing options.

In December 2004, the FASB issued FASB Staff Position No. FAS 109-2 (“FAS 109-2”), “Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creations Act of 2004” (“AJCA”). The AJCA introduces a limited time 85% dividends received deduction on the repatriation of certain foreign earnings to a U.S. taxpayer (repatriation provision), provided certain criteria are met. FAS 109-2 provides accounting and disclosure guidance for the repatriation provision. Although FAS 109-2 is effective immediately, we do not expect to be able to complete our evaluation of the repatriation provision until after Congress or the Treasury Department provides additional clarifying language on key elements of the provision. In January 2005, the Treasury Department began to issue the first of a series of clarifying guidance documents related to this provision. We expect to complete our evaluation of the effects of the repatriation provision within the second quarter of 2005.

Reclassifications

Certain reclassifications were made to the prior period financial statements to conform to current period presentation.

3. Transactions with related parties

The Company entered into agreements with Whitney and Golden Gate to pay monitoring fees for their services and other fees and expenses. Under the monitoring fee agreements, the Company was obligated to pay an annual amount of up to \$5.0 million, but not less than \$2.5 million for an initial period of ten years subject to the provisions in Herbalife International’s credit agreement. On December 1, 2004, the Company agreed with Whitney and Golden Gate to terminate the monitoring fee agreements in consideration for 0.7 million warrants, which were valued at approximately \$2.9 million using the Black-Scholes option pricing model and the entire impact of which was included in Selling, General & Administrative expenses in 2004. For the three months ended March 31, 2004, the Company expensed monitoring fees in the amount of \$1.3 million and other expenses of \$0.5 million.

In 2004, Whitney acquired a 50 percent indirect ownership interest in Shuster Laboratories, Inc. (“Shuster”), a provider of product testing and formula development for Herbalife. Herbalife’s total purchases from Shuster for the three months ended March 31, 2004 and 2005 were \$0 and \$17,000, respectively.

In 2004, Whitney acquired a 50 percent indirect ownership interest in TBA Entertainment (“TBA”), a provider of creative services to Herbalife. While there were no services performed in 2004 by TBA for Herbalife, for the three months ended March 31, 2005 a payment of \$4,577,000 was made to TBA for services relating to the 25th Anniversary Extravaganza, of which the majority were reimbursements of Extravaganza expenses paid to third parties.

In 2004, Golden Gate acquired a 47 percent ownership interest in Leiner Health Products Inc. (“Leiner”), a nutritional manufacturer and supplier of certain Herbalife products. Total purchases by Herbalife from Leiner during the three months ended March 31, 2004 and 2005 were \$324,000 and \$111,000, respectively.

In January 2005, Whitney, together with its affiliates, acquired a 77 percent ownership interest in Stauber Performance Ingredients (“Stauber”), a value-added distributor of bulk specialty nutraceutical ingredients. Total purchases by Herbalife from Stauber for the three months ended March 31, 2005 were \$100,000.

The Company believes that the transactions with the above entities were done on an “arms length” basis with “fair market pricing”.

4. Long-Term Debt

Long-term debt consists of the following:

	As of	
	December 31, 2004	March 31, 2005
	(dollars in millions)	
11¾% Notes	\$ 0.2	\$ 0.1
Borrowings under senior credit facility	200.0	199.5
9½% Notes	268.1	161.0
Capital leases	9.2	8.3
Other debt	8.7	7.1
	486.2	376.0
Less: current portion	120.3	11.4
	<u>\$ 365.9</u>	<u>\$ 364.6</u>

In February 2005, the Company redeemed \$110.0 million principal value or 40% of the outstanding principal amount of the 9½% Notes for a cash payment of \$124.1 million, which included a redemption premium of \$10.5 million and accrued interest of \$3.6 million. In addition, the Company expensed \$3.7 million of related unamortized deferred financing costs and discount.

5. Contingencies

The Company is from time to time engaged in routine litigation. The Company regularly reviews all pending litigation matters in which it is involved and establishes reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of certain Herbalife International distributors violate the Telephone Consumer Protection Act, or TCPA, and seeks to hold Herbalife International vicariously liable for the practices of its distributors. More specifically, the plaintiffs’ complaint alleges that several of Herbalife International’s distributors used pre-recorded telephone messages and autodialers to contact prospective customers in violation of the TCPA’s prohibition of such practices. Herbalife International’s distributors are independent contractors and, if any such distributors in fact violated the TCPA, they also violated Herbalife’s policies, which require its distributors to comply with all applicable federal, state and local laws. The

Company believes that it has meritorious defenses to the suit.

Herbalife International and certain of its independent distributors have been named as defendants in a purported class action lawsuit filed February 17, 2005 in the Superior Court of California, County of San Francisco, and served on Herbalife International on March 14, 2005 (*Minton v. Herbalife International, et al*). Herbalife International filed a motion on April 8, 2005, which the plaintiff is not opposing, to transfer the case to the Los Angeles County Superior Court. The plaintiff is challenging the marketing practices of certain Herbalife International independent distributors and Herbalife International under various state laws prohibiting “endless chain schemes,” insufficient disclosure in assisted marketing plans, unfair and deceptive business practices, and fraud and deceit. The plaintiff alleges that the Freedom Group system operated by certain independent distributors of Herbalife International products places too much emphasis on recruiting and encourages excessively large purchases of product and promotional materials by distributors. The plaintiff also alleges that Freedom Group pressured distributors to disseminate misleading promotional materials. The plaintiff seeks to hold Herbalife International vicariously liable for the actions of its independent distributors and is seeking damages and injunctive relief. The Company believes that it has meritorious defenses to the suit.

In February 2005 Herbalife voluntarily elected to temporarily withdraw its Sesame & Herb tablet product from the Israeli market. This product, which has been on the market since 1989, is sold only in Israel. Herbalife’s voluntary decision to temporarily withdraw this product accompanied the initiation of a review by the Israeli Ministry of Health (the “Israel MOH”) of a small number of anecdotal case reports of individuals having liver dysfunction who had also consumed Herbalife products. Herbalife scientists and medical doctors are closely cooperating with the Ministry of Health to facilitate this ongoing review. In May, 2005, the Israel MOH issued a press release stating that although their investigation was continuing, no causal link has been shown between the consumption of Herbalife products and liver function abnormalities. In addition, the Israel MOH requested that individuals consuming or intending to consume Herbalife products obtain liver function tests before and one month after beginning their use, and that persons with liver function disorders refrain from consuming dietary supplements. Independent analysis of Herbalife’s Israeli products has confirmed that Herbalife products do not contain any substances indicated by the Israel MOH as being of concern in relation to this small number of reported cases of liver dysfunction. Herbalife believes that Herbalife products are not the cause of these few reported anecdotal cases of liver dysfunction.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, the Company has been and is currently subjected to various product liability claims. The effects of these claims to date have not been material to us, and the reasonably possible range of exposure on currently existing claims is not material to the Company. The Company believes that it has meritorious defenses to the allegations contained in the lawsuits. The Company currently maintains product liability insurance with a self insured retention of \$10 million.

Certain of the Company’s subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due.

The Company and its tax advisors believe that there are substantial defenses to the allegations that additional taxes are owing, and the Company is vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and the Company cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material effect on the Company’s financial condition and operating results. This opinion is based on the belief that any losses suffered in excess of amount reserved would not be material and that the Company has meritorious defenses. Although the Company has reserved an amount that it believes represents the likely outcome of the resolution of these disputes, if the Company is incorrect in the assessment the Company may have to record additional expenses.

6. Comprehensive Income

	Three Months Ended	
	March 31, 2004	March 31, 2005
Net income (loss)	\$ (0.5)	\$ 13.3
Unrealized gain on derivative instruments	1.9	0.5
Reclassification adjustments for loss on derivative instruments	(1.1)	—
Foreign currency translation adjustment	(0.1)	0.1
Comprehensive income	<u>\$ 0.2</u>	<u>\$ 13.9</u>

7. Segment Information

The Company is a network marketing company that sells a wide range of weight management products, nutritional supplements and personal care products within one industry segment as defined under SFAS 131, “Disclosures about Segments of an Enterprise and Related Information.” The Company’s products are manufactured by third party providers and then sold to independent distributors who sell Herbalife products to retail consumers or other distributors.

The Company sells products in 59 countries throughout the world and is organized and managed by geographic region. In the first quarter of 2003, the Company elected to aggregate its operating segments into one reporting segment, as management believes that the Company’s operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar with regard to the nature of the products sold, the product acquisition process, the types of customers products are sold to, the methods used to distribute the products, and the nature of the regulatory environment.

Revenues reflect sales of products to distributors based on the distributors’ geographic location. Sales attributed to the United States is the same as reported in the geographic operating information.

The Company’s geographic operating information and sales by product line are as follows:

	Three Months Ended	
	March 31, 2004	March 31, 2005
	(in millions)	
Net sales:		
United States	\$ 64.2	\$ 67.0
Japan	30.0	26.9
Mexico	21.8	37.4
Others	208.1	240.8
Total Net sales	<u>\$ 324.1</u>	<u>\$ 372.1</u>
Operating margin:		

United States (1)	\$	26.4	\$	25.1
Japan		15.4		13.7
Mexico		8.6		16.1
Others		94.2		106.2
Total Operating margin	\$	<u>144.6</u>	\$	<u>161.1</u>
Selling, general and administrative expense		107.8		110.0
Interest expense, net		27.4		22.2
Income before income taxes and minority interest		9.4		28.9
Income taxes		9.9		15.6
Net Income (loss)	\$	<u>(0.5)</u>	\$	<u>13.3</u>
Net sales by product line:				
Weight management	\$	142.1	\$	160.0
Inner nutrition		139.3		151.8
Outer Nutrition®		29.6		42.6
Literature, promotional and other		13.1		17.7
Total Net Sales	\$	<u>324.1</u>	\$	<u>372.1</u>
Net sales by geographic region:				
Americas	\$	111.3	\$	140.6
Europe		136.7		144.6
Asia/Pacific Rim (excluding Japan)		46.1		60.0
Japan		30.0		26.9
Total Net Sales	\$	<u>324.1</u>	\$	<u>372.1</u>

(1) The operating margin for the United States decreased for the three months ended March 31, 2005 as compared to the same period in 2004 primarily due to a \$1.1 million provision made for obsolete and slow moving inventories.

	As of			
	December 31, 2004	March 31, 2005		
	(in millions)			
Total Assets:				
United States	\$	587.8	\$	464.0
Japan		60.3		56.7
Mexico		27.5		32.1
Others		273.1		297.0
Total Assets	\$	<u>948.7</u>	\$	<u>849.8</u>

8. Stock Based Compensation

The Company has three stock based compensation plans which are the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan (“The Management Plan”), the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Incentive Plan (“The Independent Directors Plan”) and the Herbalife Ltd. 2004 Incentive Plan (“2004 Incentive Plan”). The Management Plan provides for the grant of options to purchase common shares of Herbalife to members of the Company’s management. The Independent Directors Plan provides for the grant of options to purchase common shares of Herbalife to the Company’s independent directors. The 2004 Stock Incentive Plan is intended to replace the Management Plan and the Independent Directors Plan. No additional awards will be made under either the Management Plan or the Independent Directors Plan, however, the shares remaining available for issuance under these plans will be absorbed by and become available for issuance under the 2004 Stock Incentive Plan.

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The Company applies the intrinsic-value-based method of accounting prescribed by Accounting Principles Board (“APB”) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations including the Financial Accounting Standards Board (“FASB”) Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation, an interpretation of APB Opinion No. 25*, issued in March 2000, to account for its stock option plans. Under this method, compensation expense is recorded on the date of grant to the extent the then current market price of the underlying stock exceeds the exercise price. SFAS 123, *Accounting for Stock Based Compensation*, established accounting and disclosure requirements using a fair-value-based method of accounting for stock based employee compensation plans. As allowed by SFAS 123, the Company has elected to continue to apply the intrinsic-value-based method of accounting described above, and has adopted only the disclosure requirements of SFAS 123.

The following table illustrates the effect on net income (loss) if the fair-value-based method had been applied to all outstanding and vested awards in each period:

	Three Months Ended		
	March 31, 2004	March 31, 2005	
	(in millions)		
Net income (loss) as reported	\$	(0.5)	13.3
Add: Stock-based employee compensation expense included in reported net income, net of tax		0.3	1.1
less: Stock-based employee compensation expense determined under fair value based methods for all awards, net of tax		(0.4)	(2.4)
Pro forma net income (loss)	\$	<u>(0.6)</u>	<u>12.0</u>

9. Derivative Instruments and Hedging Activities

The Company designates certain derivatives as cash flow hedges. The Company engages in a foreign exchange hedging strategy for which the hedged transactions are forecasted foreign currency denominated intercompany transactions. The hedged risk is the variability of the foreign currency where the hedging strategy involves the purchase and sale of average rate options. The Company also engages in an interest rate hedging strategy for which the hedged transactions are forecasted interest payments on the Company’s variable rate term loan. The hedged risk is the variability of interest rate where the hedging strategy involves the purchase of interest rate swaps. For the outstanding cash flow hedges on foreign exchange exposures at March 31, 2004 and March 31, 2005, the maximum length of time over which the Company is hedging these exposures is 12 months. For all qualifying and highly effective cash flow hedges, the changes in the effective portion of the fair value of the derivative are recorded in other comprehensive income (“OCI”). The ineffective portion of the hedges, was not material for any periods presented. At March 31, 2005, the pre-tax OCI balance related to the cash flow hedges was \$0.5 million.

The Company designates certain derivatives as free standing derivatives for which hedge accounting does not apply. The changes in the fair market value of the derivatives are recorded in the Company's statement of income. The Company purchases average rate put options, which give the Company the right, but not the obligation, to sell foreign currency at a specified exchange rate ("strike rate"). These contracts provide protection in the event the foreign currency weakens beyond the option strike rate. The fair value of option contracts is based on third-party bank quotes.

10. Restructuring Reserve

As of the date of the Acquisition, the Company began to assess and formulate a plan to reduce costs of the business and recorded a severance and restructuring accrual as part of the cost of the Acquisition. The accrued severance is for employees including executives, corporate functions, and administrative support that were identified at the time of the Acquisition. Actions required by the plan of termination began immediately after consummation of the transaction. The remaining balance of the restructuring reserve at March 31, 2005 of \$0.6 million represents scheduled severance payments for employees.

The following table summarizes the activity in the Company's restructuring accrual:

	January 1, 2004 to December 31, 2004	January 1, 2005 to March 31, 2005
	(in millions)	
Beginning balance	\$ 2.5	\$ 0.7
Additional accrual	—	—
Payments made	(1.8)	(0.1)
Ending Balance	<u>\$ 0.7</u>	<u>\$ 0.6</u>

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Item 2. Management's Discussion And Analysis Of Financial Condition And Results Of Operations

Overview

We are a global network marketing company that sells weight management, nutritional supplement and personal care products. We pursue our mission of "changing people's lives" by providing a financially rewarding business opportunity to distributors and quality products to distributors and customers who seek a healthy lifestyle. We are one of the largest network marketing companies in the world with net sales of approximately \$1.3 billion for the year ended December 31, 2004. We sell our products in 59 countries through a network of over one million independent distributors. We believe the quality of our products and the effectiveness of our distribution network, coupled with geographic expansion, have been the primary reasons for our success throughout our 25-year operating history.

We offer products in three principal categories: weight management products, nutritional supplements which we refer to as "inner nutrition" and personal care products which we refer to as "Outer Nutrition[®]". Our products are often sold in programs, which are comprised of a series of related products designed to simplify weight management and nutrition for our consumers and maximize our distributors' cross-selling opportunities.

Industry-wide factors that affect us and our competitors include the increasing prevalence of obesity and the aging of the worldwide population, which are driving demand for nutrition and wellness-related products and the recruitment and retention of distributors.

The opportunities and challenges upon which we are most focused are driving retailing of our product, recruitment and retention of distributors and improving distributor productivity, entering new markets, further penetrating existing markets, pursuing local distributor initiatives, introducing new products, developing niche market segments and further investing in our infrastructure.

A key non-financial measure we focus on is Volume Points on a Royalty Basis (hereafter "Volume Points"), which is essentially our weighted unit measure of product sales volume. It is a useful measure for us, as it excludes the impact of foreign currency fluctuations and ignores the differences generated by varying retail pricing across geographic markets. In general, an increase in Volume Points in a particular region or country directionally indicates an increase in local currency net sales.

Volume Points by Geographic Region

	For the Three Months Ended March 31,		
	2004	2005	% change
	(volume points in millions)		
The Americas	182.6	224.5	23.0%
Europe	153.1	144.9	(5.4)%
Asia/Pacific Rim	58.1	72.4	24.7%
Japan	22.4	18.8	(15.7)%
Worldwide	<u>416.2</u>	<u>460.7</u>	10.7%

Another key non-financial measure on which we focus on is the number of distributors qualified as supervisors under our compensation system. Distributors qualify for supervisor status based on their Volume Points.

The growth in the number of supervisors is a general indicator of the level of distributor recruitment, which generally drives net sales in a particular country or region. Our compensation system requires each supervisor to re-qualify for such status each year, prior to February. There is significant variation in the number of supervisors from the fourth quarter to the first quarter of any given year due to the timing of the re-qualification process. This fluctuation is normal and consistent, does not reflect a dramatic underlying change in the business in comparing these two sequential quarters, and will become more meaningful period to period throughout the year.

The following tables show trends in the number of supervisors over the reporting period by region, and fluctuations within each notable country are discussed in the appropriate net sales section below where pertinent.

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Number of Supervisors by Geographic Region as of Reporting Period

	As of March 31,		
	2004	2005	% change
The Americas	79,956	94,270	17.9%
Europe	73,864	68,810	(6.8)%

Asia/Pacific Rim	33,712	40,588	20.4%
Japan	14,463	10,165	(29.7)%
Worldwide	<u>201,995</u>	<u>213,833</u>	5.9%

Number of Supervisors by Geographic Region as of Requalification Period

	As of February,		
	2004	2005	% change
The Americas	75,359	87,925	16.7 %
Europe	70,239	65,104	(7.3)%
Asia/Pacific Rim	31,790	38,524	21.2 %
Japan	13,946	9,547	(31.5)%
Worldwide	<u>191,334</u>	<u>201,100</u>	5.1 %

Supervisors must re-qualify annually. The requalification period covers the twelve months starting in February and ending the following January. The number of supervisors by geographic region as of the reporting dates will normally be higher than the number of supervisors by geographic region as of the requalification period because supervisors who do not re-qualify during the relevant twelve-month period will be dropped from the rank of supervisor in February. Since supervisors purchase most of our products for resale to other distributors and consumers, comparisons of supervisor totals on a year-to-year, same period basis are good indicators of our recruitment and retention efforts in different geographic regions.

The value of the average monthly purchase of Herbalife products by our supervisors has remained relatively constant over time. Consequently, increases in our sales are driven primarily by our retention of supervisors and by our recruitment and retention of distributors, rather than through increases in the productivity of our overall supervisor base.

In 2004 we made a modification to the supervisor re-qualification criteria as a limited test. This modification allowed distributors who otherwise would have failed to requalify as supervisors to continue to purchase products from the Company and to receive the benefit of product discounts, while forfeiting their down-line royalties. We believe this test was successful because we retained approximately 10,000 distributors, and generated approximately 12 million additional Volume Points, annualized, which would represent approximately \$9.4 million in net sales, \$5.2 million in operating margin and an immaterial impact to Selling, General & Administrative Expenses. As a result of the test, the Company has modified the supervisor re-qualification criteria for all distributors in 2005. While the Company cannot predict the effect of this modification with certainty, we believe that this modification will likely lead to a higher level of supervisor retention and increased product sales.

We provide distributors with products, support material, training, special events and a competitive compensation program. If a distributor wants to pursue the Herbalife business opportunity, the distributor is responsible for growing his or her business and personally pays for the sales activities related to attracting new customers and recruiting distributors by hosting events such as Herbalife Opportunity Meetings or Success Training Seminars; by advertising Herbalife's products, by purchasing and using promotional materials such as t-shirts, buttons and caps; by utilizing and paying for direct mail and print material such as brochures, flyers, catalogs, business cards, posters and banners and telephone book listings; by purchasing inventory for sale or use as samples; and by training, mentoring and following up (in person or via the phone or internet) with customers and recruits on how to use Herbalife products and/or pursue the Herbalife business opportunity.

Presentation

"Retail Sales" represent the gross sales amounts on our invoices to distributors before distributor allowances (as defined below), and "net sales", which reflects distribution allowances and handling and freight income, is what the Company collects and recognizes as net sales in its financial statements. We discuss Retail Sales because of its fundamental role in our compensation systems, internal controls and operations, including its role as the basis upon which distributor discounts, royalties and bonuses are awarded. In addition, information in daily and monthly reports reviewed by our management relies on Retail Sales data. However, such a measure is not in accordance with Generally Accepted Accounting Principles in the U.S. ("GAAP"). You should not consider Retail Sales in isolation from, nor is it a substitute for, net sales and other consolidated income or cash flow statement data prepared in accordance with GAAP, or as a measure of profitability or liquidity. A reconciliation of net sales to Retail Sales is presented below. "Product sales" represent the actual product purchase price paid to us by our distributors, after giving effect to distributor discounts referred to as "distributor allowances," which approximate 50% of retail sales prices. Distributor allowances as a percentage of sales may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances.

Our "gross profit" consists of net sales less "cost of sales," which represents the prices we pay to our raw material suppliers and manufacturers of our products as well as costs related to product shipments, duties and tariffs, freight expenses relating to shipment of products to distributors and importers and similar expenses.

"Royalty Overrides" are our most significant expense and consist of:

- royalty overrides, or commissions, and bonuses, which total approximately 15% and 7%, respectively, of the Retail Sales of weight management, inner nutrition, Outer Nutrition[®] and promotional products;
- the Mark Hughes Bonus payable to some of our most senior distributors in the aggregate amount of approximately 1% of Retail Sales of weight management, inner nutrition, Outer Nutrition[®] and promotional products; and
- other discretionary incentive cash bonuses to qualifying distributors.

Royalty Overrides are generally earned based on Retail Sales, and approximate in the aggregate about 23% of Retail Sales or approximately 35% of our net sales. Royalty Overrides together with distributor allowances represent the potential earnings to distributors of up to approximately 73% of Retail Sales. The compensation to distributors is generally for the development, retention and improved productivity of their distributor sales organizations and is paid to several levels of distributors on each sale. Because of local country regulatory constraints, we may be required to modify our typical distributor incentive plans as described above. Consequently, the total distributor discount percentage may vary over time. We also offer reduced distributor allowances and pay reduced royalty overrides with respect to certain products worldwide. Non-U.S. royalty checks that have aged, for a variety of reasons, beyond a certainty of being paid, are taken back into income. Management has calculated this period of certainty to be three years worldwide, whereas previously this period varied by country, ranging from 12 months to 30 years. In order to achieve consistency among all countries, the Company adjusted the period over which such amounts would be taken into income to three years on a Company-wide basis beginning with the third quarter of 2004.

"Selling, General and Administrative Expenses" represent our operating expenses, components of which include labor and benefits, sales events, professional fees, travel and entertainment, distributor marketing, occupancy costs, communication costs, bank fees, depreciation and amortization, foreign exchange gains and losses and other miscellaneous operating expenses.

"11¾% Notes" refers to Herbalife International's 11¾% senior subordinated notes due 2010. "9½% Notes" refers to our 9½% notes due 2011.

Most of our sales to distributors outside the United States are made in the respective local currencies. In preparing our financial statements, we translate revenues into U.S. dollars using average exchange rates. Additionally, the majority of our purchases from our suppliers generally are made in U.S. dollars. Consequently, a strengthening of the U.S. dollar versus a foreign currency can have a negative impact on our reported sales and operating margins and can generate transaction losses on intercompany transactions. Throughout the last five years, foreign currency exchange rates have fluctuated significantly. From time to time, we enter into foreign exchange forward contracts and option contracts to mitigate our foreign currency exchange risk.

Summary Financial Results

For the three months ended March 31, 2005, net sales increased by 14.8% as compared to the same period in 2004, driven by increases in all regions except for Japan. These increases resulted from a combination of an increase in the number of our supervisors, generally favorable foreign currency exchange rates, a comprehensive promotional program in Europe and Asia/Pacific

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Rim and the launch of new products. The decrease in Japan sales continued, although at a lower rate of decline, primarily due to strong competition, lack of new product introductions and less effective distributor leadership.

Net results for the three months ended March 31, 2005 was income of \$13.3 million, or \$0.19 per diluted share, which was \$13.8 million higher than the net loss of \$0.5 million, or \$0.01 per diluted share for the same period last year. The net results included \$14.2 million and \$15.4 million of pre-tax recapitalization expense for the three months ended March 31, 2005 and 2004, respectively. The recapitalization expenses resulted from the repurchase of our 9½% Notes in 2005, and the repurchase of our 15½% Senior Notes in 2004. Net results were also impacted by the 14.8% increase in net sales, the favorable impact of the appreciation of foreign currencies, lower interest and income tax expense, partially offset by higher labor, promotional and professional fee expenses. Overall, the appreciation of foreign currencies had a \$1.8 million favorable impact on net results for the three months ended March 31, 2005.

Results of Operations

Our results of operations for the periods described below are not necessarily indicative of results of operations for future periods, which depend upon numerous factors, including our ability to recruit and retain new distributors, open new markets and further penetrate existing markets and introduce new products and develop niche market segments.

The following table sets forth selected results of our operations expressed as a percentage of net sales for the periods indicated.

	Three Months Ended	
	March 31, 2004	March 31, 2005
Operations:		
Net sales	100.0%	100.0%
Cost of sales	19.6	20.4
Gross profit	80.4	79.6
Royalty overrides	35.8	36.3
Selling, general & admin expenses	33.3	29.6
Operating income	11.3	13.7
Interest expense	8.4	6.0
Income before income taxes and minority interest	2.9	7.8
Income taxes	3.0	4.2
Net income (loss)	(0.1)	3.6

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Three months ended March 31, 2005 compared to three months ended March 31, 2004

Net Sales

The following chart reconciles Retail Sales to net sales:

Sales by Geographic Region

	Three Months Ended March 31,										
	2004					2005					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change in Net Sales
	(dollars in millions)										
The Americas	\$ 181.0	\$ (86.6)	\$ 94.4	\$ 16.9	\$ 111.3	\$ 231.2	\$ (111.3)	\$ 119.9	\$ 20.7	\$ 140.6	26.4%
Europe	223.6	(106.8)	116.8	19.9	136.7	236.5	(112.8)	123.7	20.9	144.6	5.8%
Asia/Pacific Rim	75.5	(34.8)	40.7	5.4	46.1	99.0	(46.1)	52.9	7.1	60.0	30.0%
Japan	51.2	(24.9)	26.3	3.7	30.0	46.3	(22.6)	23.7	3.2	26.9	(10.1)%
Total	\$ 531.3	\$ (253.1)	\$ 278.2	\$ 45.9	\$ 324.1	\$ 613.0	\$ (292.8)	\$ 320.2	\$ 51.9	\$ 372.1	14.8%

Changes in net sales are directly associated with the recruiting, retention and retailing of our distributor force, the quality and completeness of the product offerings that the distributor force has to sell and the number of countries in which we operate. Management's role, both in-country and at the corporate level is to provide distributors with a competitive and broad product line, encourage strong teamwork and leadership among the Chairman's Club and President's Team distributors and offer leading edge business tools to make doing business with Herbalife simple. Management uses the marketing program coupled with educational and motivational tools to incent distributors to drive recruiting, retention and retailing which in turn affect net sales. Such tools include corporate sales events—Extravaganzas and World Team Schools—where large groups of distributors gather, thus allowing them to network with other distributors, learn recruiting, retention and retailing techniques from our leading distributors, and become more familiar with how to market and sell our products and business opportunities. Accordingly, management believes that these development and motivation programs can increase the productivity of the supervisor network. The expenses for such programs are included in selling, general & administrative expenses. Sales are driven by several factors including the number and productivity of distributor leaders who continually build, educate and motivate their respective distribution and sales organizations. We also use product event and non-event promotions to motivate distributors to increase recruiting, retention and retailing activities. These promotions have ranged from our 2003 laptop computer promotion to vacations or other qualifying events for distributors that meet certain selling and recruiting goals. The costs of these promotions are included in selling, general, & administrative expenses. A current example is the "Atlanta Challenge" discussed below. While it is not currently possible for

us to draw a precise quantitative correlation between a successful promotion and a resultant long-term effect on net sales, we are in the process of developing business intelligence systems that will give us better access to data to help draw better conclusions and develop leading indicators of business performance.

The factors described above have driven growth in our business. The following net sales by geographic region discussion further details some of the above factors and describes unique growth factors specific to certain major countries. The Company believes that the correct foundation, coupled with ongoing training and promotional initiatives is required to increase recruiting and retention of distributors and retailing of the product. The correct foundation includes strong country management that works closely with the distributor leadership, a broad product line that appeals to local consumer needs, a favorable regulatory environment, a scalable and stable technology platform and an attractive marketing plan. Initiatives such as Success Training Seminars, World Team Schools, Promotional Events and regional Extravaganzas are integral components of developing a highly motivated and educated distributor sales organization that will work toward increasing the recruitment and retention of distributors.

The Company's strategy has included and will continue to include generating and maintaining growth within existing markets. We generally expect to continue to spend the current level of selling, general & administrative expenses (as a percent of net sales) to maintain or stimulate sales growth, while making strategic investments in new initiatives. In addition, new ideas are being generated in our regional markets, either by distributors, country management or corporate management. Examples are the Nutrition Clubs in Mexico and the Total Plan in Brazil, as described in the net sales discussion below. Management's strategy is to review the applicability of expanding successful country initiatives throughout a region and/or globally where appropriate.

The Americas

Net sales in The Americas increased \$29.3 million, or 26.4%, for the three months ended March 31, 2005, as compared to 2004. In local currency, net sales increased by 24.8% for the three months ended March 31, 2005, as compared to the same period

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of 2004. The fluctuation of foreign currency rates had positive impact on net sales of \$1.8 million for the three months ended March 31, 2005. The overall increase was a result of net sales growth in Mexico, Brazil, and the U.S. of \$15.6 million, \$8.1 million, and \$2.8 million, or 71.8%, 52.9%, and 4.4%, respectively, for the three months ended March 31, 2005, compared to the same period of 2004. Mexico and Brazil continue to benefit from strong country and distributor leadership that focuses on recruiting and retention of the distributor force that retails our product, and a product line and business opportunity that is attractive to the demographics in those countries.

The continued net sales growth in Mexico is evidenced by the increased number of supervisors, up 45.9% at March 31, 2005 compared to March 31, 2004, which reflects the renewed emphasis on distributor and customer retention programs such as the Nutrition Clubs, which are new and innovative means by which distributors are retailing our products to new customers, some of whom may eventually become distributors of our products. The costs to set up a Nutrition Club are generally nominal, and are borne solely by the distributor. Our distributors have opened over 2000 Nutrition Clubs to date.

The continued net sales growth in Brazil is evidenced by the increased number of supervisors, up 44.6% at March 31, 2005 compared to March 31, 2004, the expansion of the Total Plan, strong distributor leadership, an effective country management team and a good product portfolio. The Total Plan is a low-cost lead generating method where distributors use our personal care line of products and offer consultations to obtain referrals. This concept specifically supports our retailing and recruiting initiatives and has been a catalyst for growth in Brazil.

We believe the increase in the U.S. is a result of the numerous steps taken in 2004 and early 2005 to improve the business including the establishment of a U.S. country management team, the announcement of the 2005 President's Team Challenge, a promotion with a specific country sales target as well as individual President Team member targets, and the World Team Bonus.

We expect 2005 sales in the Americas region to continue its positive year over year growth primarily as a result of the expected continuation of the strong performance in Mexico and Brazil and the continued improvement in U.S. sales.

Europe

Net sales in Europe increased \$7.9 million, or 5.8%, for the three months ended March 31, 2005, as compared to the same period of 2004. In local currency net sales increased 0.4% for the three months ended March 31, 2005, as compared to 2004. The fluctuation of foreign currency rates had a positive impact on net sales of \$7.3 million for the three months ended March 31, 2005. Throughout 2004, Europe experienced significant sales growth when compared to the prior year corresponding quarters, partly due to a very successful Billion Dollar promotion in the first and second quarter of 2004. Such sales growth was not expected to be sustainable in 2005 for all the countries within the region. While some markets did sustain growth, two key countries, Germany and the Netherlands, experienced sales declines of 21.4% and 13.1%, respectively for the three months ended March 31, 2005 when compared to the same period in 2004.

Net sales in Spain were up \$2.9 million, or 41.0%, for the three months ended March 31, 2005, as compared to the same period of 2004, due to a cohesive, renewed focus by distributor leadership, an increasing emphasis locally on health and nutrition and the continuing positive impact of certain promotions in 2005. Net sales in Turkey were up \$1.6 million, or 31.0%, for the three months ended March 31, 2005, as compared to 2004, due to increasing acceptance of the direct selling concept in Turkey as well as an energetic distributor leadership group. In Russia and Greece, net sales were up \$2.4 million and \$1.8 million, or 51.4% and 70.5%, for the three months ended March 31, 2005, as compared to 2004, primarily due to a temporary dip in sales during the first quarter of 2004 just prior to our taking over the management of product distribution in both countries. Prior to this, we used third-party importers to manage and distribute our product to distributors in these countries.

Excluding the effect of foreign exchange, we believe that 2005 sales should be flat to slightly positive year over year partly due to sales increases we expect to generate from the upcoming World Team Cup promotion, and new product introductions, some of which were launched at the 25th Anniversary Extravaganza.

Asia/Pacific Rim

Net sales in Asia/Pacific Rim increased \$13.9 million, or 30.0%, for the three months ended March 31, 2005, as compared to the same period of 2004. In local currency, net sales increased 23.8% for the three months ended March 31, 2005, as compared to 2004. The fluctuation of foreign currency rates had a \$2.8 million positive impact on net sales for the three months ended March 31, 2005. The overall increase was attributable mainly to an increase in Taiwan and South Korea.

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Net sales in Taiwan increased \$8.6 million, or 55.5%, for the three months ended March 31, 2005 over the same period of 2004, due primarily to an increase in the number of supervisors by 43.4% for the three months ended March 31, 2005 over the same period of 2004, highly engaged distributor leadership, strong country management, increased local distributor trainings and initiatives to promote individual recognition of well performing distributors, new product launches, and various promotions including the Atlanta Challenge. Net sales in South Korea increased \$1.3 million, or 15.6%, for the three months ended March 31, 2005, as compared to 2004. We believe that the numerous initiatives to stimulate sales in South Korea, are beginning to make a positive impact.

Overall, we believe that new product launches, continued local distributor training and the momentum we expect to generate from the 25th Anniversary Extravaganza, will contribute to ongoing sales increases in the Asia/Pacific Rim region in 2005.

Japan

Net sales in Japan decreased \$3.1 million, or 10.1%, for the three months ended March 31, 2005, as compared to 2004. In local currency, net sales in Japan decreased 12.5% for the three months ended March 31, 2005, as compared to the same period of 2004. The fluctuation of foreign currency rates had a \$0.7 million favorable impact on net sales for the three months ended March 31, 2005. The net sales decline, is a continuation of a five-year downward trend in Japan, albeit at a slower rate for this reporting period, has been a result of too few product introductions that met distributor expectations, strong competition from other direct selling companies and the slow process to fully re-engage the distributor leadership. In the third quarter of 2004, we appointed a new country manager who is currently focusing on uniting and motivating distributor leadership to improve recruiting and retention of distributors, and we are in the process of expanding our product line to address local country demographic needs. For example, in late 2004 we introduced a green tea flavored Formula 1 and we created individual serving “packets” for our Formula 1 product. In the second quarter of 2005 we will be opening a new sales office in a central location of Tokyo, a significant improvement over the existing location that we believe should give us greater visibility in a key population center. In combination with implementing new brand and volume incentive promotional programs, we believe the above initiatives should help improve financial performance in 2005.

Sales by Product Category

	Three Months Ended March 31,										% Change In Net Sales
	2004					2005					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	
	(dollars in millions)										
Weight Management	\$ 239.0	\$ (117.6)	121.4	\$ 20.7	\$ 142.1	\$ 270.6	\$ (133.5)	\$ 137.1	\$ 22.9	\$ 160.0	12.6%
Inner Nutrition	234.5	(115.4)	119.1	20.2	139.3	256.7	(126.6)	130.1	21.7	151.8	9.0%
Outer Nutrition®	49.9	(24.6)	25.3	4.3	29.6	72.0	(35.5)	36.5	6.1	42.6	43.9%
Literature, Promotional and Other	7.9	4.5	12.4	0.7	13.1	13.7	2.8	16.5	1.2	17.7	35.1%
Total	\$ 531.3	\$ (253.1)	\$ 278.2	45.9	\$ 324.1	\$ 613.0	\$ (292.8)	\$ 320.2	\$ 51.9	\$ 372.1	14.8%

Our increased emphasis on the science of weight management and nutrition during the past two years, illustrated by our assembly of the Scientific Advisory Board and the Medical Advisory Board, has resulted in product introductions such as *Niteworks* and *Garden 70* and the introduction of *ShapeWorks*, a personalized meal replacement program. Due to the launch of our *ShapeWorks* product line in March 2004 and the introduction of new personal care products, net sales of weight management products and Outer Nutrition® products increased at a higher rate than net sales of inner nutrition products. The rationalization of our Outer Nutrition® product line in 2002 resulted in an initial decrease in sales, but since then the line has represented approximately 11% of our net sales. For the three months ended March 31, 2005, sales of Outer Nutrition product has increased at a greater rate than other categories. This increase is primarily due to the increased use of the Total Plan by distributors in Brazil and worldwide, which uses Outer Nutrition products as its foundation. Literature, Promotional and Other, which is net of product buy-backs and returns in all product categories, increased due to a decrease in returns and refunds. We expect shifts within these categories from time to time as we launch new products.

Gross Profit

Gross profit was \$296.3 million for the three months ended March 31, 2005, as compared to \$260.4 million in the same period of 2004. As a percentage of net sales, gross profit for the three months ended March 31, 2005 decreased from 80.4% to 79.6%, as compared to the same period of 2004. The decrease in gross profit as a percentage of net sales for the three months ended March 31, 2005 was attributable mainly to an increase in provisions made for slow moving and obsolete inventory of \$1.1 million, primarily in the U.S., as well as country sales mix. Generally, gross profit percentages do not vary significantly as a percentage of sales other than due to ongoing cost reduction initiatives and provisions for slow moving and obsolete inventory. Additionally, we

believe that we have the ability to mitigate price increases by raising the prices of our products or shifting product sourcing to alternative manufacturers.

Royalty Overrides

Royalty Overrides as a percentage of net sales were 36.3% for the three months ended March 31, 2005, as compared to 35.8% in the same period of 2004. Generally, this ratio varies slightly from period to period due to changes in the mix of products and countries because full Royalty Overrides are not paid on certain products or in certain countries. Due to the structure of our global compensation plan, we do not expect to see significant fluctuations in Royalty Overrides as a percent of net sales.

Selling, General, & Administrative Expenses

Selling, General, & Administrative expenses as a percentage of net sales were 29.6% for the three months ended March 31, 2005, as compared to 33.3% in the same period of 2004.

For the three months ended March 31, 2005, Selling, General & Administrative expenses increased \$2.2 million to \$110.0 million from \$107.8 million in the same period of 2004. The increase included \$4.7 million in higher salaries and benefits, due primarily to normal merit increases, the impact of foreign currency fluctuations, and increases related to the strengthening of the management team regionally and in the U.S.; \$1.8 million in additional professional fees primarily associated with our technology infrastructure; and \$1.8 million in additional promotional expenses related primarily to our 25th Anniversary promotions. The increases were partially offset by \$0.9 million lower amortization expense of intangibles; \$1.8 million lower monitoring fees and other expenses due to the termination of the agreement with Whitney and Golden Gate and \$3.7 million transition expenses related to changes in the Russia and Greece models which were incurred in 2004 but not in 2005.

We expect 2005 Selling, General & Administrative expenses to increase approximately 5% to 6% over 2004 levels, reflecting general salary merit increases and further investments in China and sales events, although as a percentage of net sales, these expenses should be slightly down from 2004 levels.

Net Interest Expense

Net interest expense was \$22.2 million for the three months ended March 31, 2005, as compared to \$27.4 million in 2004. This includes \$14.2 million and \$15.4 million of recapitalization expenses for the three months ended March 31, 2005 and 2004, respectively. The recapitalization expenses were due to the redemption of 40% or \$110 million principal amount of the 9½% Notes completed in February 2005 and the redemption of the 15½% senior notes completed in March 2004.

Income Taxes

Income taxes were \$15.6 million for the three months ended March 31, 2005, as compared to \$9.8 million in 2004. As a percentage of pre-tax income, the effective income tax rate was 54.1% for the three months ended March 31, 2005, as compared to 105.2% in 2004. The decrease in the effective tax rate for the three months ended March 31, 2005 as compared to 2004 was caused primarily by the higher pre-tax income and the impact of less non-deductible interest including the aforementioned non-deductible recapitalization charges in each period. To a lesser extent, the impact of our corporate restructuring, completed in the first quarter of 2005, also had a favorable impact on the effective tax rate. Excluding the impact of the recapitalization expenses of \$14.2 million and \$15.4 million for the three months ended March 31, 2005 and

2004, respectively, the effective tax rate would have been approximately 37% and 40% for the three months ended March 31, 2005 and 2004, respectively.

Foreign Currency Fluctuations

Currency fluctuations had a favorable impact of \$1.8 million on net results for the three months ended March 31, 2005, when compared to what current year net results would have been using last year's foreign exchange rates. For the three months ended March 31, 2005, the regional effects were a favorable \$0.9 million in Europe, a favorable \$0.8 million in Asia/Pacific Rim, a minimal impact in The Americas, and a favorable \$0.3 million in Japan.

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Net Results

Net results for the three months ended March 31, 2005 was income of \$13.3 million, or \$0.19 per diluted share, which was \$13.8 million higher than the net loss of \$0.5 million, or \$0.01 per diluted share for the same period last year. The net results included \$14.2 million and \$15.4 million of pre-tax recapitalization expense for the three months ended March 31, 2005 and 2004, respectively. The recapitalization expenses resulted from the repurchase of our 9½% Notes in 2005, and the repurchase of our 15½% Senior Notes in 2004. Net results were also impacted by the 14.8% increase in net sales, the favorable impact of the appreciation of foreign currencies, lower interest and income tax expense, partially offset by higher labor, promotional and professional fee expenses. Overall, the appreciation of foreign currencies had a \$1.8 million favorable impact on net results for the three months ended March 31, 2005.

Liquidity and Capital Resources

We have historically met our working capital and capital expenditure requirements, including funding for expansion of operations, through net cash flows provided by operating activities. Our principal source of liquidity is our operating cash flows. Variations in sales of our products would directly affect the availability of funds. There are no material restrictions on the ability to transfer and remit funds among our international affiliated companies.

For the three months ended March 31, 2005, we generated \$25.0 million from operating cash flows, as compared to \$14.4 million in 2004. The improved operating cash flow was primarily due to the 14.8% increase in net sales, decrease in interest payments, decrease in inventory purchases and the timing difference of the payments of Mark Hughes Bonus, partially offset by higher receivables resulted from higher sales volume at the end of the 1st quarter of 2005, the payments made towards the 25th Anniversary Extravaganza and the timing difference of employee bonus payments.

Capital expenditures, including capital leases, for the three months ended March 31, 2005 were \$4.4 million, as compared to \$5.4 million in 2004. The majority of these expenditures represented investments in management information systems and internet tools for distributors. We expect to incur capital expenditures of up to \$40.0 million mostly in the second half of 2005 primarily related to investments in management information systems, internet tools for distributors, office facilities and China expansion.

In March 2004, we and our lenders amended our existing senior credit facility. Under the terms of the amendment, we made a prepayment of \$40.0 million to reduce outstanding amounts under our senior credit facility. In connection with this prepayment, the lenders under Herbalife International's senior credit facility waived the March 31, 2004 mandatory amortization payment of \$6.5 million along with a mandatory 50% excess cash flow payment for the year ended December 31, 2003. The amendment also lowered the interest rate to LIBOR plus a 2.5% margin, increased the capital spending allowance under our existing senior credit facility and permitted us to complete a recapitalization. The schedule of the principal payments was also modified so that we were obligated to pay approximately \$4.4 million on March 31, 2004 and in each subsequent quarter through June 30, 2008. The senior credit facility was replaced in December 2004.

In March 2004, we completed the \$275.0 million offering of the 9½% Notes. The proceeds of the offering together with available cash were used to pay \$183.1 million for the original issue price in cash due upon conversion of 104.1 million outstanding Herbalife 12% Series A Cumulative Convertible preferred shares including 2.0 million warrants exercised in connection with this offering, to pay all accrued and unpaid dividends on the preferred shares of \$38.5 million, to redeem our 15½% senior notes and to pay related fees and expenses. Interest on the 9½% Notes is paid in cash semi-annually in arrears on April 1 and October 1 of each year. The 9½% Notes are our general unsecured obligations, ranking equally with any of our existing and future senior indebtedness and senior to all of Herbalife's future subordinated indebtedness. Also, the 9½% Notes are effectively subordinated to all existing and future indebtedness and other liabilities of Herbalife's subsidiaries.

In December 2004, Herbalife completed an initial public offering in connection with which several recapitalization transactions were completed, including the tender for all of the outstanding 11¼% Notes, of which 99.9% accepted the tender offer, and a replacement of the existing term loan and revolving credit facility with a new \$225.0 million senior credit facility. In addition, we redeemed \$110 million principal value excluding discounts or 40% of our outstanding 9½% Notes in February of 2005 for the cash value of \$124.1 million including a premium of \$10.5 million and accrued interest of \$3.6 million. The total interest expense in the first quarter of 2005 related to the redemption was \$14.2 million which included the \$10.5 million premium and \$3.7 million write off of deferred financing cost and discount.

The new \$225.0 million senior credit facility consists of a senior secured revolving credit facility with total availability of up to \$25.0 million and a senior secured term loan facility in an aggregate principal amount of \$200.0 million. The revolver is available until December 21, 2009. The revolver bears interest at LIBOR plus 2% and the term loan bears interest at LIBOR plus

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2¼%. With regard to the term loan we are obligated to pay \$0.5 million every quarter until September 30, 2010 and the remaining principal amount on December 21, 2010. As of March 31, 2005, no amounts had been borrowed under the revolving credit facility.

The new senior credit facility and the 9½% Notes include customary covenants that restrict, among other things, the ability to incur additional debt, pay dividends or make certain other restricted payments, incur liens, merge or sell all or substantially all of our assets, or enter into various transactions with affiliates. Additionally, the new senior credit facility includes covenants relating to the maintenance of certain leverage, fixed charge coverage, and interest coverage ratios, and requirements to make early payments to the extent of excess cash flow, as defined therein.

The following summarizes our contractual obligations including interest at March 31, 2005 and the effect such obligations are expected to have on our liquidity and cash flows in future periods:

	Payments due by period						
	Total	2005	2006	2007	2008	2009	2010 & thereafter
	(in millions)						
Term Debt	\$ 258.8	\$ 11.1	\$ 12.2	\$ 12.1	\$ 12.0	\$ 11.9	\$ 199.5
11¼% Notes	0.2	—	—	—	—	—	0.2
9½% Notes	266.9	15.7	15.7	15.7	15.7	15.7	188.5
Capital Lease	8.5	4.5	2.5	1.5	—	—	—

Other debt	7.1	5.1	1.2	0.8	—	—	—
Operating leases	21.3	10.2	6.3	2.1	1.0	0.7	1.0
Total	\$ 562.8	\$ 46.6	\$ 37.9	\$ 32.2	\$ 28.7	\$ 28.3	\$ 389.2

Whitney and Golden Gate (and/or their affiliates) were parties to a Share Purchase Agreement (the “Share Purchase Agreement”) pursuant to which they originally purchased our Preferred Shares. Under the terms of the Share Purchase Agreement, Whitney and Golden Gate could, subject to approval by our board of directors and 75% of our shareholders, require us to pay a dividend to all of our shareholders related to certain income that may be taxable to them resulting from their ownership of our shares. We completed our analysis with regard to this payment and based on this analysis, we made \$1.4 million and \$4.9 million dividend payments to our shareholders in the fourth quarter of 2004, related to certain income that may be taxable to them for the years ended December 31, 2003 and December 31, 2004, respectively.

We recently entered into a termination agreement with the parties to the Share Purchase Agreement. Pursuant to the termination agreement, the Share Purchase Agreement and all obligations and liabilities of the parties under the Share Purchase Agreement were terminated. In consideration for the termination of the Share Purchase Agreement, we entered into a Tax Indemnification Agreement with certain Equity Sponsors (and/or their affiliates). As consideration for the termination of the Share Purchase Agreement, we have entered into a Tax Indemnification Agreement with certain Equity Sponsors (and/or their affiliates) pursuant to which we have agreed to indemnify each of those parties for the Federal income tax liability and any related losses they incur in respect of income of Herbalife that is (or would be) includible in the gross income of that party for any taxable period under Section 951(a) of the Internal Revenue Code of 1986, as amended (the “Code”). Under the terms of the Tax Indemnification Agreement, we assume, for this purpose, that each indemnified party is a “United States shareholder” as defined in Section 951(b) of the Code. We do not, however, have any obligation to provide an indemnity with respect to any taxes or related losses incurred that have been reimbursed under the Share Purchase Agreement. Our new credit facility permits us to pay these tax indemnity payments, but restricts the aggregate amount that we can pay in any given year to no more than \$15 million. We currently anticipate that any amounts that we are required to pay under this agreement in the future will be immaterial to our financial condition and operating results.

In connection with the initial public offering we paid a special cash dividend to stockholders of record prior to the offering in the amount of \$139.7 million.

The declaration of future dividends is subject to the discretion of our board of directors and will depend upon various factors, including our earnings, financial condition, restrictions imposed by our credit agreement, cash requirements, future prospects and other factors deemed relevant by our board of directors. Our credit agreement permits payments of dividends as long as no default exists and the amount does not exceed \$20.0 million per fiscal year provided that the amount of dividends may be increased by 25% of the consolidated net income for the prior fiscal year if the Leverage Ratio (as defined in our credit agreement) for the four fiscal quarters of such fiscal year is less than or equal to 2.00:1.00.

As of March 31, 2005, we had working capital of \$16.5 million. Cash and cash equivalents were \$103.7 million at March 31, 2005, compared to \$201.6 million at December 31, 2004.

We expect that cash and funds provided from operations and available borrowings under our new revolving credit facility will provide sufficient working capital to operate our business, to make expected capital expenditures and to meet foreseeable liquidity requirements, including debt service on the 9½% Notes and the new senior credit facility. There can be no assurance, however, that our business will service our debt, including our outstanding notes, or fund our other liquidity needs.

The majority of our purchases from suppliers are generally made in U.S. dollars, while sales to Herbalife distributors generally are made in local currencies. Consequently, strengthening of the U.S. dollar versus a foreign currency can have a negative impact on operating margins and can generate transaction losses on intercompany transactions. For discussion of our foreign exchange contracts and other hedging arrangements, see the quantitative and qualitative disclosures about market risks described below.

Contingencies

We are from time to time engaged in routine litigation. We regularly review all pending litigation matters in which we are involved and establish reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of certain Herbalife International distributors violate the Telephone Consumer Protection Act, or TCPA, and seeks to hold Herbalife International vicariously liable for the practices of its distributors. More specifically, the plaintiffs’ complaint alleges that several of Herbalife International’s distributors used pre-recorded telephone messages and autodialers to contact prospective customers in violation of the TCPA’s prohibition of such practices. Herbalife International’s distributors are independent contractors and, if any such distributors in fact violated the TCPA, they also violated Herbalife’s policies, which require its distributors to comply with all applicable federal, state and local laws. We believe that we have meritorious defenses to the suit.

Herbalife International and certain of its independent distributors have been named as defendants in a purported class action lawsuit filed February 17, 2005 in the Superior Court of California, County of San Francisco, and served on Herbalife International on March 14, 2005 (*Minton v. Herbalife International, et al*). Herbalife International filed a motion on April 8, 2005, which the plaintiff is not opposing, to transfer the case to the Los Angeles County Superior Court. The plaintiff is challenging the marketing practices of certain Herbalife International independent distributors and Herbalife International under various state laws prohibiting “endless chain schemes,” insufficient disclosure in assisted marketing plans, unfair and deceptive business practices, and fraud and deceit. The plaintiff alleges that the Freedom Group system operated by certain independent distributors of Herbalife International products places too much emphasis on recruiting and encourages excessively large purchases of product and promotional materials by distributors. The plaintiff also alleges that Freedom Group pressured distributors to disseminate misleading promotional materials. The plaintiff seeks to hold Herbalife International vicariously liable for the actions of its independent distributors and is seeking damages and injunctive relief. The Company believes that we have meritorious defenses to the suit.

In February 2005 Herbalife voluntarily elected to temporarily withdraw its Sesame & Herb tablet product from the Israeli market. This product, which has been on the market since 1989, is sold only in Israel. Herbalife’s voluntary decision to temporarily withdraw this product accompanied the initiation of a review by the Israeli Ministry of Health (the “Israel MOH”) of a small number of anecdotal case reports of individuals having liver dysfunction who had also consumed Herbalife products. Herbalife scientists and medical doctors are closely cooperating with the Ministry of Health to facilitate this ongoing review. In May, 2005, the Israel MOH issued a press release stating that although their investigation was continuing, no causal link has been shown between the consumption of Herbalife products and liver function abnormalities. In addition, the Israel MOH requested that individuals consuming or intending to consume Herbalife products obtain liver function tests before and one month after beginning their use, and that persons with liver function disorders refrain from consuming dietary supplements. Independent analysis of Herbalife’s Israeli products has confirmed that Herbalife products do not contain any substances indicated by the Israel MOH as being of concern in relation to this small number of reported cases of liver dysfunction. Herbalife believes that Herbalife products are not the cause of these few reported anecdotal cases of liver dysfunction.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been and are currently subjected to various product liability claims. The effects of these claims to date have not been material to us, and the reasonably possible range of exposure on currently existing claims is not material to us. We believe that we have meritorious defenses to the allegations contained in the lawsuits. We currently maintain product liability insurance with a self insured retention of \$10 million.

Certain of our subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. We and our tax advisors believe that there are substantial defenses to their allegations that additional taxes are owing, and we are vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and we cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material effect on our financial condition and operating results. This opinion is based on our belief that any losses we suffer in excess of amounts reserved would not be material

and that we have meritorious defenses. Although we have reserved an amount that we believe represents the likely outcome of the resolution of these disputes, if we are incorrect in our assessment we may have to record additional expenses.

Critical Accounting Policies

Our Consolidated Financial Statements are prepared in conformity with accounting principles generally accepted in the United States, which require us 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 revenue and expenses during the year. Actual results could differ from those estimates. We consider the following policies to be most critical in understanding the judgments that are involved in preparing the financial statements and the uncertainties that could impact our results of operations, financial condition and cash flows.

We are a network marketing company that sells a wide range of weight management products, nutritional supplements and personal care products within one industry segment as defined under SFAS 131, "Disclosures about Segments of an Enterprise and Related Information." Our products are manufactured by third party providers and then sold to independent distributors who sell Herbalife products to retail consumers or other distributors.

We sell products in 59 countries throughout the world and is organized and managed by geographic region. In the first quarter of 2003, we elected to aggregate our operating segments into one reporting segment, as management believes that our operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers products are sold to, the methods used to distribute the products, and the nature of the regulatory environment.

Revenue is recognized when products are shipped and title passes to the independent distributor or importer. Amounts billed for freight and handling costs are included in net sales. We generally receive the net sales price in cash or through credit card payments at the point of sale. Related royalty overrides and allowances for product returns are recorded when the merchandise is shipped.

Allowances for product returns primarily in connection with our buyback program are provided at the time the product is shipped. This accrual is based upon historic return rates for each country, which vary from zero to approximately 5.0% of retail sales, and the relevant return pattern, which reflects anticipated returns to be received over a period of up to 12 months following the original sale. Historically, product returns and buybacks have not been significant. Product returns and buybacks were approximately 1.7% and 0.9% for the three months ended March 31, 2004 and 2005 respectively. No material changes in estimates have been recognized for the three months ended March 31, 2004 and 2005.

We record reserves against our inventory to provide for estimated obsolete or unsalable inventory based on assumptions about future demand for our products and market conditions. If future demand and market conditions are less favorable than management's assumptions, additional reserves could be required. Likewise, favorable future demand and market conditions could positively impact future operating results if previously reserved for inventory is sold. We reserved for obsolete and slow moving inventory totaling \$6.2 million, and \$7.1 million as of December 31, 2004 and March 31, 2005, respectively.

In accordance with Statement of Financial Accounting Standards ("SFAS") 144, long-lived assets, such as property, plant, and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposed group classified as held for sale would be presented separately in the appropriate asset and liability sections of the balance sheet.

Goodwill and other intangibles not subject to amortization are tested annually for impairment, and are tested for impairment more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value. This determination is made at the reporting unit level and consists of two steps. First, the Company determines the fair value of a reporting unit and compares it to its carrying amount.

Second, if the carrying amount of a reporting unit exceeds its fair value, an impairment loss is recognized for any excess of the carrying amount of the reporting unit's goodwill and other intangibles over the implied fair value. The implied fair value is determined by allocating the fair value of the reporting unit in a manner similar to a purchase price allocation, in accordance with SFAS No. 141, *Business Combinations*. The residual fair value after this allocation is the implied fair value of the reporting unit goodwill and other intangibles. As of March 31, 2005, we had goodwill of approximately \$167.5 million, and marketing franchise of \$310.0 million. No write-downs have been recognized for the three months ended March 31, 2004 and 2005.

Contingencies are accounted for in accordance with SFAS 5, "Accounting for Contingencies." SFAS 5 requires that we record an estimated loss from a loss contingency when information available prior to issuance of our financial statements indicates that it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. Accounting for contingencies such as legal and income tax matters requires us to use judgment. Many of these legal and tax contingencies can take years to be resolved. Generally, as the time period increases over which the uncertainties are resolved, the likelihood of changes to the estimate of the ultimate outcome increases.

Deferred income tax assets have been established for net operating loss carryforwards of certain foreign subsidiaries and have been reduced by a valuation allowance to reflect them at amounts estimated to be ultimately recognized. The net operating loss carryforwards expire in varying amounts over a future period of time. Realization of the income tax carryforwards is dependent on generating sufficient taxable income prior to expiration of the carryforwards. Although realization is not assured, we believe it is more likely than not that the net carrying value of the income tax carryforwards will be realized. The amount of the income tax carryforwards that is considered realizable, however, could change if estimates of future taxable income during the carryforward period are adjusted.

New Accounting Pronouncements

In December 2004, the Financial Accounting Standards Board (“FASB”) enacted Statement of Financial Accounting Standards 123—revised 2004 (“SFAS 123R”), “Share-Based Payment” which replaces Statement of Financial Accounting Standards No. 123 (“SFAS 123”), “Accounting for Stock-Based Compensation” and supersedes Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees.” SFAS 123R requires the measurement of all employee share-based payments to employees, including grants of employee stock options, using a fair-value-based method and the recording of such expense in our consolidated statements of operations. The accounting provisions of SFAS 123R are effective for reporting periods beginning after December 15, 2005.

We are required to adopt SFAS 123R in the first quarter of fiscal 2006. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition. See Note 2 in our Notes to Consolidated Financial Statements for the pro forma net income and net income per share amounts, for fiscal 2002 through fiscal 2004, as if we had used a fair-value-based method similar to the methods required under SFAS 123R to measure compensation expense for employee stock incentive awards. Although we have not yet determined whether the adoption of SFAS 123R will result in amounts that are similar to the current pro forma disclosures under SFAS 123, we are evaluating the requirements under SFAS 123R and on a preliminary basis we expect the adoption will not have a material impact on our consolidated statements of operations, relative to currently existing options.

In December 2004, the FASB issued FASB Staff Position No. FAS 109-2 (“FAS 109-2”), “Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creations Act of 2004” (“AJCA”). The AJCA introduces a limited time 85% dividends received deduction on the repatriation of certain foreign earnings to a U.S. taxpayer (repatriation provision), provided certain criteria are met. FAS 109-2 provides accounting and disclosure guidance for the repatriation provision. Although FAS 109-2 is effective immediately, we do not expect to be able to complete our evaluation of the repatriation provision until after Congress or the Treasury Department provides additional clarifying language on key elements of the provision. In January 2005, the Treasury Department began to issue the first of a series of clarifying guidance documents related to this provision. We expect to complete our evaluation of the effects of the repatriation provision within the second quarter of 2005.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks, which arise during the normal course of business from changes in interest rates and foreign currency exchange rates. On a selected basis, we use derivative financial instruments to manage or hedge these risks. All hedging transactions are authorized and executed pursuant to written guidelines and procedures.

We have adopted SFAS 133, “Accounting for Derivative Instruments and Hedging Activities.” SFAS 133, as amended and interpreted, established accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated in hedging relationships or not, are

required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair-value hedge, the changes in the fair value of the derivative and the underlying hedged item are recognized concurrently in earnings. If the derivative is designated as a cash-flow hedge, changes in the fair value of the derivative are recorded in other comprehensive income (“OCI”) and are recognized in the statement of operations when the hedged item affects earnings. SFAS 133 defined new requirements for designation and documentation of hedging relationships as well as ongoing effectiveness assessments in order to use hedge accounting. For a derivative that does not qualify as a hedge, changes in fair value are recognized concurrently in earnings.

A discussion of our primary market risk exposures and derivatives is presented below.

Foreign Exchange Risk

We enter into foreign exchange derivatives in the ordinary course of business primarily to reduce exposure to currency fluctuations attributable to intercompany transactions and translation of local currency revenue. Most of these foreign exchange contracts are designated as cash flow hedges for forecasted transactions.

We purchase average rate put options, which give us the right, but not the obligation, to sell foreign currency at a specified exchange rate (“strike rate”). These contracts provide protection in the event that the foreign currency weakens beyond the option strike rate.

The following table provides information about the details of our option contracts:

<u>Foreign Currency</u>	<u>Coverage</u> (in millions)	<u>Average Strike Price</u>	<u>Fair value</u> (in millions)	<u>Maturity date</u>
Purchase Puts (Company may sell yen/buy USD)				
Japanese yen	\$ 4.5	\$101.31 - \$102.63	\$ 0.2	Apr-Jun 2005
Japanese yen	\$ 4.5	\$100.52 - \$101.79	\$ 0.2	Jul-Sep 2005
Japanese yen	\$ 4.5	\$99.70 - \$100.90	\$ 0.2	Oct-Dec 2005
	<u>\$ 13.5</u>		<u>0.6</u>	
Purchase Puts (Company may sell euro/buy USD)				
Euro	\$ 10.2	\$1.3162 - \$1.3522	\$ 0.3	Apr-Jun 2005
Euro	\$ 10.2	\$1.3125 - \$1.3551	\$ 0.3	Jul-Sep 2005
Euro	\$ 10.2	\$1.3155 - \$1.3584	\$ 0.4	Oct-Dec 2005
	<u>\$ 30.6</u>		<u>\$ 1.0</u>	

Foreign exchange forward contracts are used to hedge advances between subsidiaries. The objective of these contracts is to neutralize the impact of foreign currency movements on the subsidiary’s operating results. The fair value of forward contracts is based on third-party bank quotes.

The following table provides information about the details of our forward contracts:

<u>Foreign currency</u>	<u>Contract date</u>	<u>Forward position</u> (in millions)	<u>Maturity date</u>	<u>Contract rate</u>	<u>Fair value</u> (in millions)
At March 31, 2005					
Buy SEK sell USD	3/22/2005	\$ 2.9	4/24/2005	6.98	\$ 2.8
Buy EUR sell USD	3/22/2005	\$ 3.3	4/24/2005	1.31	\$ 3.3
Buy GBP sell USD	3/22/2005	\$ 3.4	4/24/2005	1.88	\$ 3.4
Buy YEN sell USD	3/22/2005	\$ 23.8	4/24/2005	105.30	\$ 23.5
Buy MXP sell Euro	3/2/2005	\$ 4.5	4/4/2005	14.66	\$ 4.6
Buy DKK sell Euro	3/2/2005	\$ 0.3	4/4/2005	7.45	\$ 0.3

Buy NOK sell Euro	3/2/2005	\$	0.8	4/4/2005	8.22	\$	0.8
Buy CAD sell Euro	3/2/2005	\$	1.4	4/4/2005	1.57	\$	1.5
Buy NZD sell Euro	3/2/2005	\$	0.4	4/4/2005	1.82	\$	0.4
Buy EUR sell USD	3/22/2005	\$	14.6	4/25/2005	1.31	\$	14.5
Buy EUR sell USD	3/22/2005	\$	14.7	4/25/2005	1.31	\$	14.9

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All our foreign subsidiaries, excluding those operating in hyper-inflationary environments, designate their local currencies as their functional currency. At March 31, 2005, the total amount of our foreign subsidiary cash was \$79.6 million, of which \$7.4 million was invested in U.S. dollars.

Interest Rate Risk

We use interest rate swaps to hedge the interest rate exposure on the variable interest rate associated with our senior credit facility. They provide protection in the event the LIBOR rates fluctuate. Interest rate swaps are designated as cash flow hedges. The table below describes the interest rate swap that was outstanding:

Interest rate	National amount (in millions)	Average rate		Fair value (in millions)	Maturity date
At March 31, 2005					
Interest rate swap	\$ 125.0	4.2%	Current	\$ 0.1	1/28/2008
			Non-Current	\$ 0.4	

The table below presents principal cash flows and interest rates by maturity dates and the fair values of our borrowings as of March 31, 2005. Fair values for fixed rate borrowings have been determined based on recent market trade values. The fair values for variable rate borrowings approximate their carrying value. Variable interest rates disclosed represent the rates on the borrowings at March 31, 2005. Interest rate risk related to our capital leases is not significant.

	Expected Maturity Date						Total	Fair Value
	2005	2006	2007	2008	2009	Thereafter		
Long-term Debt								
Fixed Rate (in millions)	\$ —						\$ 0.1	\$ 0.1
Average Interest Rate								11.75%
Variable Rate (in millions)	\$ 1.5	\$ 2.0	\$ 2.0	\$ 2.0	\$ 2.0	\$ 190.0	\$ 199.5	\$ 199.5
Average Interest Rate								5.02%
Fixed Rate (in millions)	—	—	—	—	—	\$ 161.0	\$ 161.0	\$ 179.9
Average Interest Rate								9.5%

Under the new \$200.0 million term loan, the Company is obligated to enter into (for a minimum of three years after December 21, 2004) an interest rate hedge for up to 25% of the aggregate principal amount of the term loan. On February 24, 2005 the Company entered into an interest rate swap, as discussed above, to fulfill this obligation.

Item 4. Controls And Procedures

Evaluation of Disclosure Controls and Procedures. Our management, including our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Act of 1933, as amended (the Securities Act)) as of the end of the quarter covered by this report (the "Evaluation Date"). Based on such evaluation, such officers have concluded that, as of the Evaluation Date, our disclosure controls and procedures are effective in alerting them on a timely basis to material information relating to the Company (including our consolidated subsidiaries) required to be included in our periodic filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

There were no changes in our internal control over financial reporting that occurred during the last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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FORWARD LOOKING STATEMENTS

This document contains "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including any projections of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning proposed new services or developments; any statements regarding future economic conditions or performance; any statements of belief; and any statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words "may," "will," "estimate," "intend," "continue," "believe," "expect" or "anticipate" and other similar words.

Although we believe that the expectations reflected in any of our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties, such as those disclosed in this document. Important factors that could cause our actual results, performance and achievements, or industry results to differ materially from estimates or projections contained in our forward-looking statements include, among others, the following:

- our relationship with, and our ability to influence the actions of, our distributors;
- adverse publicity associated with our products or network marketing organization;
- changing consumer preferences and demands;
- the competitive nature of our business;
- regulatory matters governing our products and network marketing program;
- risks associated with operating internationally, including foreign exchange risks;

- our dependence on increased penetration of existing markets;
- contractual limitations on our ability to expand our business;
- our reliance on our information technology infrastructure and outside manufacturers;
- the sufficiency of trademarks and other intellectual property rights
- product concentration;
- our reliance on our management team;
- product liability claims;
- uncertainties relating to the application of transfer pricing and similar tax regulations; and
- taxation relating to our distributors.

Additional factors that could cause actual results to differ materially from our forward-looking statements are set forth in this Prospectus, including under the headings “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Business” and our “Prospectus Summary-Summary Consolidated Financial Data” and the related notes. We do not intend, and undertake no obligation, to update any forward-looking statement.

Before deciding whether to invest in our common shares, you should carefully consider the matters set forth under the heading “Risk Factors” and all other information contained in this prospectus. All subsequent written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements.

Forward-looking statements in this quarterly report on Form 10-Q speak only as of the date hereof, and forward looking statements in documents attached are incorporated by reference speak only as of the date of those documents. The Company does

not undertake any obligation to update or release any revisions to any forward-looking statement or to report any events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, except as required by law.

PART II. OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

See discussion under Note 5 to the Notes to the Consolidated Financial Statements included in Item 1 of this report.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

Item 5. OTHER INFORMATION

(a) None.

(b) None.

Item 6. EXHIBITS

(a) Exhibit Index:

Exhibit Number	Description	Reference
2.1	Agreement and Plan of Merger, dated April 10, 2002, by and among Herbalife International, Inc., WH Holdings (Cayman Islands) Ltd. and WH Acquisition Corp.	(a)
3.1	Form of Amended and Restated Memorandum and Articles of Association of Herbalife Ltd.	(d)
4.1	Indenture, dated as of June 27, 2002 between WH Acquisition Corp., WH Intermediate Holdings Ltd., WH Luxembourg Holdings SàRL, WH Luxembourg Intermediate Holdings SàRL, WH Luxembourg CM SàRL and The Bank of New York as Trustee governing 11¾% Senior Subordinated Notes due 2010	(a)

4.2	Indenture, dated as of March 8, 2004 between WH Holdings (Cayman Islands) Ltd., WH Capital Corporation and The Bank of New York as trustee governing 9½% Notes due 2011	(a)
4.3	Form of Share Certificate	(d)
9.1	Shareholders' Agreement dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., WH Investments Ltd., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, L.P., CCG AV, LLC-Series C, CCG AV, LLC-Series E, and certain other persons	(a)
9.2	Institutional Shareholders' Agreement dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., WH Investments Ltd., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, L.P., CCG AV, LLC-Series C, CCG AV, LLC-Series E, and certain other persons	(a)
9.3	Voting Agreement, dated as of December 31, 2004 by and among Whitney V, L.P., Whitney Strategic Partners V, L.P., Whitney Private Debt Fund, L.P. and Green River Offshore Fund, Ltd., on the one hand, and CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC,, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series E and CCG CI, LLC on the other hand	(f)
10.1	Form of Indemnity Agreement between Herbalife International Inc. and certain officers and directors of Herbalife International Inc.	(a)
10.2	Office lease agreement between Herbalife International of America Inc. and State Teacher's Retirement System, dated July 11, 1995	(a)
10.3	Herbalife International of America, Inc.'s Senior Executive Deferred Compensation Plan, effective January 1, 1996, as amended	(a)
10.4	Herbalife International of America, Inc.'s Management Deferred Compensation Plan, effective January 1, 1996, as amended	(a)
10.5	Master Trust Agreement between Herbalife International of America, Inc. and Imperial Trust Company, Inc., effective January 1, 1996	(a)
10.6	Herbalife International Inc. 401K Profit Sharing Plan and Trust, as amended	(a)
10.7	Trust Agreement for Herbalife 2001 Executive Retention Plan, effective March 15, 2001	(a)
10.8	Herbalife 2001 Executive Retention Plan, effective March 15, 2001	(a)
10.9	Separation Agreement and General Release, dated as of May 17, 2002, between Robert Sandler and Herbalife International, Inc. and Herbalife International of America, Inc. and Clarification	(a)
10.10	Agreement for Retention of Legal Services, dated as of May 20, 2002, by and among Herbalife International, Inc., Herbalife International of America, Inc. and Robert A. Sandler	(a)

Exhibit Number	Description	Reference
10.11	Purchase Agreement, dated as of June 21, 2002, by and among WH Acquisition Corp., Herbalife International, Inc., WH Intermediate Holdings Ltd., WH Luxembourg Holdings SàRL, WH Luxembourg Intermediate Holdings SàRL, WH Luxembourg CM SàRL and UBS Warburg LLC	(a)
10.12	Registration Rights Agreement, dated as of June 27, 2002, by and among WH Acquisition Corp., WH Intermediate Holdings Ltd., WH Luxembourg Holdings SàRL, WH Luxembourg Intermediate Holdings SàRL, WH Luxembourg CM SàRL and UBS Warburg LLC	(a)
10.13	Notice to Distributors regarding Amendment to Agreements of Distributorship, dated as of July 18, 2002 between Herbalife International, Inc. and each Herbalife Distributor	(a)
10.14	Monitoring Fee Agreement dated as of July 31, 2002, between WH Holdings (Cayman Islands) Ltd., Herbalife International, Inc. and Whitney & Co., LLC	(a)
10.15	Monitoring Fee Agreement dated as of July 31, 2002, between WH Holdings (Cayman Islands) Ltd., Herbalife International, Inc. and GGC Administration, LLC	(a)
10.16	Indemnity Agreement dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., WH Acquisition Corp., Whitney & Co., LLC, Whitney V, L.P., Whitney Strategic Partners V, L.P., GGC Administration, L.L.C., Golden Gate Private Equity, Inc., CCG Investments (BVI), L.P., CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series E, CCG Associates-QP, LLC and WH Investments Ltd.	(a)
10.17	Independent Director's Stock Option Plan of WH Holdings (Cayman Islands) Ltd.	(a)
10.18	Employment Agreement, dated as of March 10, 2003 between Brian Kane and Herbalife International, Inc. and Herbalife International of America, Inc.	(a)
10.19	Employment Agreement dated as of March 10, 2003 between Carol Hannah and Herbalife International, Inc. and Herbalife International of America, Inc.	(a)
10.20	Non-Statutory Stock Option Agreement, dated as of March 10, 2003 between WH Holdings (Cayman Islands) Ltd. and Brian Kane	(a)

10.21	Non-Statutory Stock Option Agreement, dated as of March 10, 2003 between WH Holdings (Cayman Islands) Ltd. and Carol Hannah	(a)
10.22	WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan, as restated, dated as of November 5, 2003	(a)

Exhibit Number	Description	Reference
10.23	Side Letter Agreement dated as of March 10, 2003 by and among WH Holdings (Cayman Islands) Ltd., Brian Kane and Carol Hannah and the Shareholders listed therein	(a)
10.24	Employment Agreement dated as of April 3, 2003 between Michael O. Johnson and Herbalife International, Inc. and Herbalife International of America, Inc.	(a)
10.25	Non-Statutory Stock Option Agreement, dated as of April 3, 2003 between WH Holdings (Cayman Islands) Ltd. and Michael O. Johnson	(a)
10.26	Side Letter Agreement dated as of April 3, 2003 by and among WH Holdings (Cayman Islands) Ltd., Michael O. Johnson and the Shareholders listed therein	(a)
10.27	Employment Agreement dated as of July 14, 2003 between Matt Wisk and Herbalife International of America, Inc.	(a)
10.28	Employment Agreement dated as of July 31, 2003 between Gregory L. Probert and Herbalife International of America, Inc.	(a)
10.29	Employment Agreement dated October 6, 2003 between Brett R. Chapman and Herbalife International of America, Inc.	(a)
10.30	Form of Non-Statutory Stock Option Agreement (Non-Executive Agreement)	(a)
10.31	Form of Non-Statutory Stock Option Agreement (Executive Agreement)	(a)
10.32	Registration Rights Agreement, dated as of March 8, 2004, by and among WH Holdings (Cayman Islands) Ltd., WH Capital Corporation and UBS Securities, LLC	(a)
10.33	Indemnity Agreement, dated as of February 9, 2004, among WH Capital Corporation and Gregory Probert	(a)
10.34	Indemnity Agreement, dated as of February 9, 2004, among WH Capital Corporation and Brett R. Chapman	(a)
10.35	Stock Subscription Agreement of WH Capital Corporation, dated as of February 9, 2004, between WH Capital Corporation and WH Holdings (Cayman Islands) Ltd.	(a)
10.36	First Amendment to Amended and Restated WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan, dated November 5, 2003	(a)
10.37	Separation Agreement and General Release dated May 1, 2004, among Herbalife International, Inc., Herbalife International of America, Inc. and Carol Hannah	(a)
10.38	Consulting Agreement dated May 1, 2004 among Herbalife International of America, Inc. and Carol Hannah	(a)
10.39	Employment Agreement dated June 1, 2004 among Herbalife International of America, Inc. and Richard Goudis	(a)
10.40	Purchase Agreement, dated March 3, 2004, by and among WH Holdings (Cayman Islands) Ltd., WH Capital Corporation and UBS Securities LLC	(a)
10.41	Registration Rights Agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., WH Investments Ltd., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, L.P., CCG AV, LLC-Series C and CCG AV, LLC-Series E.	(b)

Exhibit Number	Description	Reference
10.42	Share Purchase Agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney Strategic Partners V, L.P., WH Investments Ltd., Whitney V, L.P., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C and CCG AV, LLC-Series E.	(b)
10.43	Form of Indemnification Agreement between Herbalife Ltd. and the directors and certain officers of Herbalife Ltd.	(c)
10.44	Herbalife Ltd. 2004 Stock Incentive Plan, effective December 1, 2004	(c)
10.45	Termination Agreement, dated as of December 1, 2004, between Herbalife Ltd., Herbalife International, Inc. and Whitney & Co., LLC.	(d)
10.46	Termination Agreement, dated as of December 1, 2004, between Herbalife Ltd., Herbalife International Inc. and GGC Administration, L.L.C.	(d)
10.47	Termination Agreement, dated as of December 13, 2004, by and among Herbalife Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series E and CCG CI, LLC.	(d)

10.48	Indemnification Agreement, dated as of December 13, 2004, by and among Herbalife Ltd., Herbalife International, Inc., Whitney V, L.P., Whitney Strategic Partners V, L.P., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series E, CCG CI, LLC and GGC Administration, LLC.	(d)
10.49	Amendment No. 1 to Herbalife Ltd. 2004 Stock Incentive Plan	(e)
10.50	Form of Stock Bonus Award Agreement	(e)
10.51	Credit Agreement, dated as of December 21, 2004, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.á.R. L., HLF Luxembourg Holdings, S.á.R. L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.á.R. L. and the Subsidiary Guarantors party hereto, and certain lenders and agents named therein.	*
10.52	Security Agreement, dated as of December 21, 2004, by and among Herbalife International, Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.á.R. L., HLF Luxembourg Holdings, S.á.R. L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.á.R.L., and the Subsidiary Guarantors party thereto in favor of Morgan Stanley & Co. Incorporated, as Collateral Agent.	*
10.53	First Amendment to Credit Agreement, dated as of April 12, 2005, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.á.R. L., HLF Luxembourg Holdings, S.á.R. L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.á.R. L. and the Subsidiary Guarantors party hereto, and certain lenders and agents named therein.	*
31.1	Certification of Chief Executive Officer	*
31.2	Certification of Chief Financial Officer	*
32.1	Certificate Pursuant to Section 906 of the Sarbanes-Oxley Act	*
99.1	Disposition Agreement dated as of December 13, 2004 is by and among Whitney V, L.P., a Delaware limited partnership, Whitney Strategic Partners V, L.P., a Delaware limited partnership, Whitney Private Debt Fund, L.P., a Delaware limited partnership and Green River Offshore Fund, Ltd., a Cayman Islands company on the one hand, and CCG Investments (BVI), L.P., a British Virgin Islands limited partnership, CCG Associates-QP, LLC, a Delaware limited liability company, CCG Associates-AI, LLC, a Delaware limited liability company, CCG Investment Fund-AI, LP, a Delaware limited partnership, CCG AV, LLC-Series C, a Delaware limited liability company, CCG AV, LLC-Series E, a Delaware limited liability company and CCG CI, LLC a Delaware limited liability company on the other hand.	(d)
99.2	Contract for Services of a Consultant between Herbalife International Luxembourg S.a.R.L. and Brian Kane dated as of October 18, 2004	(f)
99.3	Compromise Agreement between Herbalife International Luxembourg S.a.R.L. and Brian Kane dated as of October 18, 2004	(f)
99.4	Employment Agreement dated as of January 1, 2005 between Herbalife Ltd. and Henry Burdick	(f)

* Filed herewith.

- (a) Previously filed on October 1, 2004 as an Exhibit of like number to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.
- (b) Previously filed on November 9, 2004 as an Exhibit of like number to Amendment No. 2 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.
- (c) Previously filed on December 2, 2004 as an Exhibit of like number to Amendment No. 4 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.
- (d) Previously filed on December 14, 2004 as an Exhibit of like number to Amendment No. 5 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.
- (e) Previously filed on February 17, 2005 as an Exhibit to the Company's registration statement on Form S-8 (File No. 333-122871) and is incorporated herein by reference.
- (f) Previously filed on March 14, 2005 as an Exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2004 and is incorporated herein by reference.

SIGNATURES

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

Date: May 9, 2005

HERBALIFE LTD.

(Registrant)

By: /s/ Richard Goudis

Richard Goudis
Chief Financial Officer

CREDIT AGREEMENT

Dated as of December 21, 2004

among

HERBALIFE INTERNATIONAL, INC.,
as Borrower,HERBALIFE LTD.,
WH INTERMEDIATE HOLDINGS LTD.,
HBL LTD.,
WH LUXEMBOURG HOLDINGS S.à.R.L.,
HLF LUXEMBOURG HOLDINGS S.à R.L.,
WH CAPITAL CORPORATION,
WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L.,THE SUBSIDIARY GUARANTORS PARTY HERETO,
as Guarantors,

THE LENDERS PARTY HERETO,

RABOBANK INTERNATIONAL,
as Documentation Agent,MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED,
as Syndication Agent,

MORGAN STANLEY SENIOR FUNDING, INC.

and

MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED,
as Joint Lead Arrangers and Joint Bookrunners,MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent

and

MORGAN STANLEY & CO. INCORPORATED,
as Collateral Agent

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of December 21, 2004, is among HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("Borrower"); HERBALIFE LTD., a Cayman Islands exempted company with limited liability ("Holdings"); WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands exempted company with limited liability and a direct, wholly-owned subsidiary of Holdings ("Parent"); HBL LTD., a Cayman Islands exempted company with limited liability and a direct, wholly-owned subsidiary of Parent ("Cayman III"); WH LUXEMBOURG HOLDINGS S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Parent ("Luxembourg Holdings"); HLF LUXEMBOURG HOLDINGS, S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Luxembourg Holdings ("New Lux"); WH CAPITAL CORPORATION, a Nevada corporation and a direct, wholly-owned subsidiary of New Lux ("WH Capital"); WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of WH Capital ("Luxembourg Intermediate Holdings"); EACH OF THE SUBSIDIARY GUARANTORS LISTED ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME BECOMING A PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with Holdings, Parent, Cayman III, Luxembourg Holdings, New Lux, WH Capital, Luxembourg Intermediate Holdings and each other Subsidiary Guarantor from time to time executing a Guarantee (defined herein) as required hereunder, the "Guarantors"); THE LENDERS PARTY HERETO; MORGAN STANLEY SENIOR FUNDING, INC. and MERRILL LYNCH,

PIERCE, FENNER & SMITH, INCORPORATED, as joint lead arrangers and joint bookrunners (in such capacity, the “Arrangers”); RABOBANK INTERNATIONAL, as Documentation Agent (in such capacity, the “Documentation Agent”); MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, as Syndication Agent (in such capacity, the “Syndication Agent”); MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent for the Lenders (in such capacity, the “Administrative Agent”); MORGAN STANLEY & CO. INCORPORATED, as collateral agent for the Secured Parties (defined herein) (in such capacity, the “Collateral Agent”); and RABOBANK INTERNATIONAL, as Issuing Bank.

WITNESSETH:

WHEREAS, Borrower has requested that the Lenders extend certain credit facilities to Borrower hereunder, the proceeds of which will used, together with the proceeds to be received by Holdings, in connection with an initial public offering of its common stock, pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “IPO”) to (a) repay all outstanding obligations under that certain Amended and Restated Credit Agreement dated as of March 8, 2004 (as amended, amended and restated, supplemented or otherwise modified as of the date hereof, the “Existing Credit Agreement”) among Borrower, the guarantors party thereto, the lenders party thereto, Rabobank International, as documentation agent, General Electric Capital Corporation, as syndication agent, UBS Securities LLC, as arranger, and UBS AG, Stamford Branch, as administrative agent and collateral agent (the “Refinancing”); (b) fund a distribution to the pre-IPO equity holders of Holdings (the “Distribution”); (c) redeem (i) up to all of the Senior Subordinated Notes (as defined herein) and (ii) 40% of the Holdings Senior Notes (as defined herein) (collectively, the “Redemption” and, together with the IPO, the Refinancing, the Distribution and all other transactions contemplated hereby and in connection therewith, the “Transactions”); (d) repay the related fees and expenses incurred in connection with the Transactions (collectively “Transaction Costs”); and (e) use for ongoing working capital and general corporate purposes of Borrower and its Subsidiaries, all subject to the terms and conditions contained herein;

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WHEREAS, each of Holdings, Parent, Cayman III, Luxembourg Holdings, New Lux, WH Capital, Luxembourg Intermediate Holdings and the Subsidiary Guarantors desires to guarantee Borrower’s obligations hereunder and under the other applicable Loan Documents, as each will benefit from the Loans (as defined below) made hereunder; and

WHEREAS, the Lenders are willing to make such credit facilities available upon and subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

Definitions

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

“**ABR**,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**ABR Borrowing**” means a Borrowing comprised of ABR Loans.

“**ABR Loan**” means any ABR Term Loan or ABR Revolving Loan.

“**ABR Revolving Loan**” means any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**ABR Term Borrowing**” means a Borrowing comprised of ABR Term Loans.

“**ABR Term Loan**” means any Term Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**Adjusted LIBOR Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period, (a) an interest rate per annum (rounded upward, if necessary, to the next 1/100 of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 minus the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period.

“**Administrative Agent**” has the meaning assigned to such term in the preamble hereto.

“**Administrative Agent Fees**” has the meaning assigned to such term in Section 2.05(b).

“**Administrative Questionnaire**” means an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent.

“**Administrative Services Agreement**” means that certain Administrative Services Agreement dated as of October 1, 2003 between Herbalife International Luxembourg S.à.R.L. and Herbalife International of America, Inc., as the same may be amended from time to time in accordance with the provisions hereof.

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“**Affiliate**” means, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the person specified; *provided, however*, that, for purposes of Section 6.06, the term “**Affiliate**” shall also include any person that directly or indirectly owns more than 10% of any class of Equity Interests of the person specified or that is an officer or director of the person specified.

“**Agents**” means the Syndication Agent, the Administrative Agent and the Collateral Agent.

“**Agreement**” has the meaning assigned to such term in the preamble hereto.

“**Agreement and Estoppel Certificate**” means any Agreement and Estoppel Certificate between a Loan Party, as tenant, and the applicable holder of the fee interest, as landlord, substantially in the form of Exhibit E-1.

“**Alternate Base Rate**” means, for any day, a rate per annum (rounded upward, if necessary, to the next 1/100 of 1%) equal to the greater of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day *plus* 0.50%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent

to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

“**Applicable Commitment Fee Percentage**” means, for any day (i) for the first two full quarters after the Closing Date an amount *per annum* equal to 0.50% and (ii) for the period after the first two full quarters, the Applicable Commitment Fee Percentage shall be determined by reference to the Debt Rating and the Applicable Commitment Fee Percentage set forth below; *provided*, in the event of a split rating, the higher of such Debt Ratings shall be used to determine the Applicable Commitment Fee Percentage, except that, if there is a two tier difference in the Debt Ratings, the Debt Rating one notch higher than the lower of the two Debt Ratings shall be used to determine the Applicable Commitment Fee Percentage.

Senior Credit Facilities Rating Moody's/S&P	Applicable Commitment Fee Percentage
\$Ba1/BB+	0.375%
<Ba1/BB+	0.50%

“**Applicable Margin**” means (i) for the first two full quarters after the Closing Date (A)(I) 2.00% in the case of Revolving Loans maintained as Eurodollar Loans and (II) 1.00% in the case of Revolving Loans maintained as ABR Loans and (B)(I) 2.25% in the case of Term Loans maintained as Eurodollar Loans and (II) 1.25% in the case of Term Loans maintained as ABR Loans and (ii) for the period after the first two full quarters, the Applicable Margin shall be determined by reference to the Debt Rating and the Applicable Percentage set forth below; *provided*, in the event of a split rating, the higher of such Debt Ratings shall be used to determine

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the Applicable Margin, except that, if there is a two tier difference in the Debt Ratings, the Debt Rating one notch higher than the lower of the two Debt Ratings shall be used to determine the Applicable Margin.

Senior Credit Facilities Rating Moody's/S&P	Applicable Percentage (Term Loans)	
	Eurodollar	ABR
\$Ba1/BB+	2.00%	1.00%
<Ba1/BB+	2.25%	1.25%

Senior Credit Facilities Rating Moody's/S&P	Applicable Percentage (Revolving Loans)	
	Eurodollar	ABR
\$Ba1/BB+	1.75%	0.75%
<Ba1/BB+	2.00%	1.00%

“**Arranger**” has the meaning assigned to such term in the preamble hereto.

“**Asset Sale**” means (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property (including stock of any of Holdings’ Subsidiaries by the holder thereof) by Holdings or any of its Subsidiaries to any person other than a Loan Party (other than sales and other dispositions of inventory in the ordinary course of business) and (b) any issuance or sale by any Subsidiary of Holdings of its Equity Interests to any person other than a Loan Party.

“**Assignment and Acceptance**” means an assignment and acceptance entered into by a Lender and its assignee, and accepted by the Administrative Agent, in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

“**Attributable Indebtedness**” means, when used with respect to any sale and leaseback transaction, as at the time of determination, the present value (discounted at a rate equivalent to Borrower’s then-current weighted-average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such sale and leaseback transaction.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Base Rate**” means, for any day, a rate per annum that is from time to time published in the “Money Rates” section of the Wall Street Journal as being the “Prime Rate” (or, if more than one rate is published as the Prime Rate, then the highest of such rates). The Base Rate will change as of the date of publication in the Wall Street Journal of a Base Rate that is different from that published on the preceding Business Day. In the event that The Wall Street Journal

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shall, for any reason, fail or cease to publish the Base Rate, Administrative Agent shall choose a reasonably comparable index or source to use as the basis for the Base Rate.

“**Board**” means the Board of Governors of the Federal Reserve System of the United States of America.

“**Borrower**” has the meaning assigned to such term in the preamble hereto.

“**Borrowing**” means Loans made of the same Class and Type and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“**Borrowing Request**” means a request by Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

“**Business Day**” means any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close *provided*, however, that when used in connection with a Eurodollar Loan, the term “**Business Day**” does not include any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“**Capital Expenditures**” means, with respect to any person, for any period, the aggregate of all expenditures of such person and its Consolidated Subsidiaries for the acquisition of fixed or capital assets which should be capitalized under GAAP on a consolidated balance sheet of such person and its Consolidated Subsidiaries. Notwithstanding the foregoing, Capital Expenditures shall not include (i) expenditures with Net Cash Proceeds from Asset Sales (other than through leases) in accordance with this Agreement, to the extent such expenditures do not exceed the book value of such assets, and (ii) expenditures of Net Cash Proceeds from a Casualty Event in accordance with this Agreement.

“**Capital Lease Obligations**” of any person means 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 Equivalent**” 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 (*provided* that, the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person; (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or that is the principal banking subsidiary of a bank holding company 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 million 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; (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) investments in money market or mutual funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above; (f) demand deposit accounts (including the deposit accounts identified on

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Schedule 1.01(a) maintained in the ordinary course of business; (g) investments in tax-exempt obligations of any state of the United States of America, or any municipality of any such state, in each case rated “AA” or better by S&P, “Aa2” or better by Moody’s or an equivalent rating by any other credit rating agency of recognized national standing, *provided* that, such obligations mature within six months from the date of acquisition thereof; and (h) investments in mutual funds or variable rate notes that invest in tax exempt obligations of the types described in clause (g) above.

“**Casualty Event**” means, with respect to any property (including Real Property) of any person, any loss of title with respect to such property or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, such property for which such person or any of its subsidiaries receives insurance proceeds or proceeds of a condemnation award or other compensation. “**Casualty Event**” includes any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military.

“**CERCLA**” has the meaning assigned thereto in the definition of “Environmental Law.”

A “**Change in Control**” is deemed to have occurred if: (a) Holdings at any time ceases to own, directly or indirectly, 100% of the capital stock of Borrower and each Guarantor (other than Holdings); (b) the Permitted Holders cease to own, or to have the power to vote or direct the voting of, Voting Stock representing at least 25% of the voting power of the total outstanding Voting Stock; or (c) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (c)) such person or group is deemed to have “beneficial ownership” of all securities that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock representing more than 35% of the voting power of the total outstanding Voting Stock; (d) a Change of Control (as defined in the Holdings Senior Note Agreement) or a “change of control” or similar event, however denominated shall occur under and as defined under any other indenture or Material Agreement to which Borrower or any Subsidiary is a party; or (e) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Holdings (together with any new directors whose election to such Board of Directors or whose nomination for election by the stockholders of Holdings was approved by a vote of at least a majority of the directors of Holdings then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Holdings.

“**Change in Law**” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Bank (or for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“**Charges**” has the meaning assigned to such term in Section 11.13.

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“**Class**” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Term Loans.

“**Closing Date**” means the date of the initial Credit Extension.

“**Collateral**” means all of the Security Agreement Collateral, any Mortgaged Real Property and all other property of whatever kind and nature pledged as collateral under any Security Document.

“**Collateral Account**” has the meaning assigned to such term in the U.S. Security Agreement.

“**Collateral Agent**” has the meaning assigned to such term in the preamble hereto.

“**Commercial Letter of Credit**” means any letter of credit or similar instrument issued for the account of Borrower for the benefit of Borrower or any of its Subsidiaries, for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by Borrower or any of its Subsidiaries in the ordinary course of business of Borrower or such Subsidiaries.

“**Commitment**” means, with respect to any Lender, such Lender’s Revolving Commitment.

“**Commitment Fee**” has the meaning assigned to such term in Section 2.05(a).

“**Commitment Letter**” means the Commitment Letter, dated November 5, 2004, among Herbalife International, Inc., Morgan Stanley Senior Funding, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, as amended.

“**Companies**” means Holdings and its Subsidiaries; and “**Company**” means any one of them.

“**Company Lease**” has the meaning assigned to such term in Section 3.05(b).

“**Consolidated Companies**” means Holdings and its Consolidated Subsidiaries.

“**Consolidated Current Assets**” means, with respect to any person as at any date of determination, the total assets of such person and its Consolidated Subsidiaries that may properly be classified as current assets on a consolidated balance sheet of such person and its Consolidated Subsidiaries in accordance with GAAP.

“**Consolidated Current Liabilities**” means, with respect to any person as at any date of determination, the total liabilities of such person and its Consolidated Subsidiaries that may properly be classified as current liabilities (other than the current portion of any Loans or Capital Lease Obligations) on a consolidated balance sheet of such person and its Consolidated Subsidiaries in accordance with GAAP.

“**Consolidated EBITDA**” means, with respect to any person for any period, Consolidated Net Income for such period, adjusted, in each case only to the extent (and in the same proportion) deducted in determining Consolidated Net Income, without duplication, by (x) adding thereto (i) Consolidated Interest Expense, (ii) provision for taxes based on income, (iii)

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depreciation, (iv) amortization (including amortization of deferred fees and the accretion of original issue discount), (v) all other noncash items subtracted in determining Consolidated Net Income (including any noncash compensation charge arising from any grant of stock, stock options or other equity-based awards of such person or any of its Subsidiaries and noncash losses or charges related to impairment of goodwill and other intangible assets and excluding any noncash charge that results in an accrual of a reserve for cash charges in any future period) for such period, (vi) nonrecurring expenses and charges, (vii) aggregate cash payments made in respect of the Tax Indemnity not to exceed \$15 million for any fiscal year and (viii) Transactions Costs; and (y) subtracting therefrom the aggregate amount of all noncash items, determined on a consolidated basis, to the extent such items were added in determining Consolidated Net Income for such period.

“**Consolidated Indebtedness**” means, with respect to any person as at any date of determination, the aggregate amount of all Indebtedness (but including in any event the then outstanding principal amount of all Loans, all Capital Lease Obligations and all LC Exposure) of such person and its Consolidated Subsidiaries on a consolidated basis as determined in accordance with GAAP.

“**Consolidated Interest Coverage Ratio**” means, as of the last day of any fiscal quarter of Holdings, the ratio computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters of: (a) Consolidated EBITDA (for all such fiscal quarters) to (b) Consolidated Interest Expense (for all such fiscal quarters).

“**Consolidated Interest Expense**” means, with respect to any person for any period, the total consolidated cash interest expense (including that portion attributable to Capital Leases Obligations) of such person and its Consolidated Subsidiaries for such period (calculated without regard to any limitations on the payment thereof and including commitment fees, letter-of-credit fees and net amounts payable under Interest Rate Protection Agreements) determined in accordance with GAAP.

“**Consolidated Net Income**” means, with respect to any person for any period, the consolidated net after tax income of such person and its Consolidated Subsidiaries determined in accordance with GAAP, but excluding in any event (a) net earnings or loss of any other person (other than a Subsidiary of Holdings) in which such person or any of its Consolidated Subsidiaries has an ownership interest, except (in the case of any such net earnings) to the extent such net earnings shall have actually been received by such person or any of its Consolidated Subsidiaries in the form of cash distributions and (b) the income (or loss) of any other person accrued prior to the date it becomes a Subsidiary of such person or any of its Consolidated Subsidiaries or is merged into or consolidated with such person or any of its Consolidated Subsidiaries or that other person’s assets are acquired by such person or its Consolidated Subsidiaries after the Closing Date.

“**Consolidated Subsidiaries**” means, as to any person, all subsidiaries of such person that are consolidated with such person for financial reporting purposes in accordance with GAAP.

“**Contested Collateral Lien Conditions**” means, with respect to any Permitted Lien of the type described in Sections 6.02(a), (b) and (d), the following conditions:

(a) any proceeding instituted contesting such Lien shall conclusively operate to stay the sale or forfeiture of any portion of the Collateral on account of such Lien;

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(b) the appropriate Loan Party shall maintain cash reserves in an amount sufficient to pay and discharge such Lien in accordance with GAAP; and

(c) such Lien shall in all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by the Security Documents, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Lien and security interest created and evidenced by the Security Documents.

“**Contingent Obligation**” means, as to any person, any obligation of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“**primary obligations**”) of any other person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term “**Contingent Obligation**” shall not include (w) endorsements of instruments for deposit or collection in the ordinary course of business, (x) any product warranties issued on products by Holdings or any of its Subsidiaries in the ordinary course of business, (y) any obligation to buy back products in the ordinary course of business made pursuant to the buyback policy of Holdings and its Subsidiaries or pursuant to applicable Requirements of Law, and (z) any operating lease guarantees (other than in respect of Synthetic Lease Obligations) executed by Borrower in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“**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 ownership of voting securities, by contract or otherwise, and the terms “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Control Agreement**” has the meaning assigned to such term in the U.S. Security Agreement.

“**Cost Sharing Agreement**” means that certain Cost Sharing Agreement to be entered into between Borrower and HIL Swiss, substantially in the form of Exhibit N, as the same may be amended from time to time in accordance with the provisions hereof.

“**Credit Extension**” has the meaning assigned to such term in Section 4.01.

“**Debt Issuance**” means the incurrence by Holdings or any of its Subsidiaries of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

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“**Debt Rating**” means the Moody’s Rating and/or the S&P Rating, as the context may require.

“**Default**” means any event or condition that is, or upon notice or lapse of time would constitute, an Event of Default.

“**Designated Subsidiaries**” means Herbalife (China) Health Products Ltd., Herbalife China, LLC, Herbalife Dominicana, S.A., Herbalife Del Ecuador, S.A., Herbalife Hungary Trading, Limited, Herbalife International SDN. BHD. and Herbalife International Products N.V.

“**Disqualified Capital Stock**” means any Equity Interest that, 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 first anniversary of the Term Loan Maturity Date; (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities, or (ii) any Equity Interests referred to in clause (a) above, in each case at any time prior to the first anniversary of the Term Loan Maturity Date; or (c) contains any repurchase obligation that may come into effect prior to payment in full of all amounts hereunder.

“**Distribution**” has the meaning assigned to such term in the recitals hereto.

“**Dividend**” with respect to any person means that such person has declared or paid a dividend or returned any equity capital to its stockholders or authorized or made any other distribution, payment or delivery of property (other than common stock of such person) or cash to its stockholders as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any shares of any class of its capital stock outstanding on or after the Closing Date (or any options or warrants issued by such person with respect to its capital stock), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the capital stock of such person outstanding on or after the Closing Date (or any options or warrants issued by such person with respect to its capital stock). Without limiting the foregoing, “**Dividend**” with respect to any person also includes all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

“**Documentation Agent**” has the meaning assigned to such term in the preamble hereto.

“**dollars**” or “**\$**” means the lawful money of the United States of America.

“**Domesticated Foreign Subsidiary**” means a Foreign Subsidiary which has become domesticated into the United States.

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

“**Environmental Claim**” means any written accusation, allegation, notice of violation, investigation or potential liability claim, demand, order, directive, cost recovery action or other cause of action by, or on behalf of, any Governmental Authority or any person for damages,

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injunctive or equitable relief, personal injury (including sickness, disease or death), Response action costs, tangible or intangible property damage, natural resource damages, nuisance, pollution, any adverse effect on the environment caused by any Hazardous Material, or for fines, penalties, restrictions or modification of operations or equipment, resulting from or based upon (a) the existence, or the continuation of the existence, of a Release (including sudden or non-sudden, accidental or non-accidental Releases of Hazardous Material); (b) exposure to any Hazardous Material; (c) the presence, use, handling, transportation, storage, treatment or disposal of any Hazardous Material; or (d) the violation or alleged violation of any Environmental Law or Environmental Permit.

“**Environmental Law**” means any and all applicable present and future treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, or the common law relating in any way to the protection or preservation of the environment (including preservation or reclamation of natural resources), the management, Release or threatened Release of any Hazardous Material or to public or occupational health and safety matters, including The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.* (collectively “**CERCLA**”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act of 1970, as amended, 42 U.S.C. §§ 7401 *et seq.*, the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, and any similar or implementing state, local or foreign law, and all amendments to or regulations promulgated under, any of the foregoing.

“**Environmental Permit**” means any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any 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 non-voting), of capital of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest (other than an interest constituting Indebtedness) or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on or issued after the Closing Date.

“**Equity Issuance**” means, without duplication, any issuance or sale by Holdings or any of its Subsidiaries (other than (x) by Borrower or any Guarantor to another Guarantor or (y) by a Subsidiary of Holdings to any Wholly Owned Subsidiary of Holdings) after the Closing Date of (a) any Equity Interests (including any Equity Interests issued upon exercise of any warrant or option) or any warrants or options to purchase Equity Interests, or (b) any other security or instrument representing an Equity Interest (or the right to obtain any Equity Interest) in the issuing or selling person; *provided, however*, that an Equity Issuance shall not include any such sale or issuance by Holdings of (i) not more than an aggregate amount of 15.5% of the shares of its Equity Interests or any warrants or options to purchase its Equity Interests (including such

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Equity Interests issued upon exercise of any warrant or option but excluding any Disqualified Capital Stock), in each case to directors, officers or employees of any Company

or (ii) its Equity Interests in connection with the Transactions.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“ERISA Affiliate” means, with respect to any employer any trade or business (whether or not incorporated) that, together with such employer, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Tax Code.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Tax Code or Section 302 of ERISA), whether or not waived, the failure to make by its due date a required installment under Section 412(m) of the Tax Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the filing pursuant to Section 412(d) of the Tax Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Company or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition that could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (f) the provision to an affected party by the administrator of any Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (g) the withdrawal by any Company or any of its ERISA Affiliates from any Plan with two or more contributing sponsors or the termination of any such Plan resulting in liability to any Company or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (h) the receipt by any Company or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (i) making of any amendment to any Plan that could result in the imposition of a lien or the posting of a bond or other security; (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Tax Code or Section 406 of ERISA) that could result in a Material Adverse Effect; (k) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Tax Code or pursuant to ERISA with respect to any Plan; and (l) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Company or any of its ERISA Affiliates in connection with any Plan.

“Eurodollar Borrowing” means a Borrowing comprised of Eurodollar Loans.

“Eurodollar Loan” means any Eurodollar Revolving Loan or Eurodollar Term Loan.

“Eurodollar Revolving Loan” means any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

“Eurodollar Term Borrowing” means a Borrowing comprised of Eurodollar Term Loans.

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“Eurodollar Term Loan” means any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

“Event of Default” has the meaning assigned to such term in Article VIII.

“Excess Cash Flow” means, for any fiscal year of Holdings, the sum, without duplication, of

- (a) Consolidated EBITDA of Holdings for such fiscal year; *plus*
- (b) Losses from Asset Sales; *plus*
- (c) reductions to noncash working capital of Holdings and its Consolidated Subsidiaries for such fiscal year (i.e., the decrease, if any, in Consolidated Current Assets *minus* Consolidated Current Liabilities from the beginning to the end of such fiscal year); *minus*
- (d) the amount of any cash income taxes payable by Holdings and its Consolidated Subsidiaries with respect to such fiscal year and, to the extent permitted hereunder; *minus*
- (e) Consolidated Interest Expense of Holdings during such fiscal year; *minus*
- (f) Capital Expenditures of Holdings made in cash in accordance with Section 6.07(c) during such fiscal year, to the extent funded from internally generated funds; *minus*
- (g) permanent repayments of Indebtedness made by Holdings and its Consolidated Subsidiaries during such fiscal year (including payments of principal in respect of the Revolving Loans to the extent there is an equivalent reduction in the Revolving Commitments hereunder); *minus*
- (h) aggregate cash payments made in respect of the Tax Indemnity not to exceed \$15 million in any fiscal year; *minus*
- (i) additions to noncash working capital of Holdings and its Consolidated Subsidiaries for such fiscal year (i.e., the increase, if any, in Consolidated Current Assets *minus* Consolidated Current Liabilities from the beginning to the end of such fiscal year); *minus*
- (j) gains from Asset Sales.

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

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) foreign, federal, state or local income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is doing business, is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America and (c) in the case of a Foreign

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Lender (other than an assignee pursuant to a request by Borrower under Section 2.16), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 2.15(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive

additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.15(a).

“**Existing Credit Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Federal Funds Effective Rate**” means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“**Fee Letter**” means the Fee Letter, dated November 5, 2004, among Herbalife International, Inc., Morgan Stanley Senior Funding, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, as amended.

“**Fees**” mean the Commitment Fees, the Administrative Agent Fees, the LC Participation Fees and the Fronting Fees.

“**Financial Officer**” of any person means the chief financial officer, principal accounting officer, treasurer or controller of such person.

“**FIRREA**” means the Federal Institutions Reform, Recovery and Enforcement Act of 1989.

“**Foreign Lender**” means any Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Tax Code.

“**Foreign Plan**” means any employee benefit plan, program, policy, arrangement or agreement that would be an “employee pension benefit plan” under Section 3(2) of ERISA if such plan, program, policy, arrangement or agreement was not maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens with respect to which any Company could incur liability.

“**Foreign Security Agreements**” means each security, pledge or similar agreement necessary or desirable to evidence the grant of a security interest or pledge of assets of any Subsidiary Guarantor that is a Foreign Subsidiary and that is required hereunder, in each case in form and substance satisfactory to the Collateral Agent and as such agreement may thereafter be amended, supplemented or otherwise modified from time to time.

“**Foreign Subsidiary**” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia.

“**Fronting Fees**” has the meaning assigned to such term in Section 2.05(c).

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“**GAAP**” means generally accepted accounting principles in the United States.

“**Governmental Authority**” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

“**Governmental Real Property Disclosure Requirements**” means any Requirement of Law of any Governmental Authority requiring notification of the buyer, mortgagee or assignee of Real Property, or notification, registration or filing to or with any Governmental Authority, prior to the sale, mortgage or assignment of any Real Property or transfer of control of an establishment, of the actual or threatened presence or release into the environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property to be sold, mortgaged or assigned or the establishment for which control is to be transferred.

“**Guaranteed Obligations**” has the meaning assigned to such term in Section 7.01.

“**Guarantees**” means the guarantees issued pursuant to Article VII (or pursuant to any other form of guarantee required by applicable Requirements of Law and in form and substance reasonably satisfactory to the Administrative Agent) by Holdings, Parent, the LuxCos, Cayman III, WH Capital and the Subsidiary Guarantors.

“**Guarantors**” has the meaning assigned to such term in the preamble hereof.

“**Hazardous Materials**” means all pollutants, contaminants, chemicals, wastes, substances and constituents including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls (“**PCBs**”) or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances or wastes, of any nature subject to regulation, or that can give rise to liability under any Environmental Law.

“**Hedging Agreement**” means any Interest Rate Protection Agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“**HIL**” means Herbalife International Luxembourg S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Luxembourg Holdings.

“**HIL Swiss**” means HIL Swiss International G.m.b.H., a limited liability company organized under to the laws of Switzerland.

“**HIL Swiss Intercompany Agreements**” means, collectively, the Trademark License Agreement, License Agreement, Cost Sharing Agreement and Administrative Services Agreement.

“**Holding Companies**” means, collectively, Holdings, Parent, Cayman III, Luxembourg Holdings, New Lux, WH Capital, Luxembourg Intermediate Holdings and, individually, each of the foregoing.

“**Holdings**” has the meaning assigned to such term in the preamble hereto.

“**Holdings Senior Note Agreement**” means that certain Indenture dated as of March 8, 2004 (as in effect on the date hereof) by and among Holdings and WH Capital, as issuers, and The Bank of New York, as trustee.

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“**Holdings Senior Note Documents**” means the Holdings Senior Notes, the Holdings Senior Note Agreement, and all other documents executed and delivered with respect to either of the foregoing.

“**Holdings Senior Notes**” means the \$275.0 million in the aggregate principal amount of 9½ Notes due 2011 issued by Holdings and WH Capital under the Holdings Senior Note Agreement.

“**Immaterial Subsidiary**” means a Subsidiary that generates less than \$1.0 million of net sales during any fiscal year (or, in the case of a Subsidiary without prior operating history, is reasonably projected by Borrower to generate less than \$1.0 million of net sales during its first full year of operation). Notwithstanding the foregoing, Herbalife Hungary Trading, Limited and Herbalife International SDN, BHD shall be deemed Immaterial Subsidiaries. All Immaterial Subsidiaries in existence on the Closing Date are identified on Schedule 1.01(b).

“**Indebtedness**” of any person means, without duplication, (a) all obligations of such person for borrowed money; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person upon which interest charges are customarily paid or accrued; (d) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable incurred in the ordinary course of business); (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed; (g) all Capital Lease Obligations, Purchase Money Obligations and Synthetic Lease Obligations of such person; (h) all obligations of such person in respect of Hedging Agreements; *provided* that, the amount of Indebtedness of the type referred to in this clause (h) of any person shall be zero unless and until such Indebtedness shall be terminated, in which case the amount of such Indebtedness shall be the termination payment due thereunder by such person; (i) all obligations of such person as an account party in respect of letters of credit, letters of guaranty and bankers’ acceptances; (j) all Attributable Indebtedness of such person; and (k) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (j) above. The Indebtedness of any person shall include the Indebtedness of any other entity (including any partnership in which such person is a general partner) to the extent such person is liable therefor as a result of such person’s ownership interest in or other relationship with such entity, except to the extent that the terms of such Indebtedness provide that such person is not liable therefor.

“**Indemnified Taxes**” means Taxes other than Excluded Taxes.

“**Indemnitee**” has the meaning assigned to such term in Section 11.03(b).

“**Information**” has the meaning assigned to such term in Section 11.12.

“**Intellectual Property**” has the meaning assigned to such term in the U.S. Security Agreement.

“**Intercompany Note**” means a promissory note, substantially in the form of Exhibit G, evidencing Indebtedness payable by a payor Company to a payee Loan Party.

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“**Interest Election Request**” means a request by Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit D.

“**Interest Payment Date**” means (a) with respect to any ABR Loan, the last day of each March, June, September and December to occur during the period that such Loan is outstanding and the final maturity date of such Loan; and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and in the case of a Eurodollar Loan with an Interest Period of more than three-months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three-months’ duration after the first day of such Interest Period.

“**Interest Period**” means, with respect to any Eurodollar Borrowing, (a) the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six, or if available to all Lenders, 9 or 12 months thereafter, and (b) in addition to the periods identified in clause (a) but only for the period commencing on the Closing Date through the earlier of (i) the date that is 30 days thereafter or (ii) the date upon which Morgan Stanley Senior Funding, Inc. has determined (and notifies the Borrower) that the primary syndication of the credit facilities established hereunder (and the resultant addition of institutions as Lenders) has been completed, the period commencing on the date of such Borrowing and ending one week thereafter, in each case, as Borrower may elect; *provided* that, (A) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day; and (B) any Interest Period that commences on the last Business Day of a calendar month, or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period, shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“**Interest Rate Protection Agreement**” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or similar agreement or arrangement designed to protect Holdings or its Subsidiaries against fluctuations in interest rates and not entered into for speculation.

“**internally generated funds**” means funds not constituting the proceeds of any Loan, Debt Issuance, Equity Issuance, Asset Sale, insurance recovery or Indebtedness (in each case without regard to the exclusions from the definition thereof).

“**Investments**” has the meaning assigned to such term in Section 6.03.

“**IPO**” has the meaning assigned to such term in the recitals hereto.

“**Issuing Bank**” means, as the context may require, (a) Rabobank International with respect to Letters of Credit issued by it; (b) any other Lender that may become an Issuing Bank pursuant to Section 2.17(i), with respect to Letters of Credit issued by such Lender; or (c) collectively, all of the foregoing.

“**Joinder Agreement**” means a joinder agreement substantially in the form of Exhibit H.

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“**Landlord Lien Waiver and Access Agreement**” means the Landlord Lien Waiver and Access Agreement, substantially in the form of Exhibit E-2 or otherwise in form and substance reasonably satisfactory to the Collateral Agent.

“**LC Commitment**” means the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.17.

“**LC Disbursement**” means a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

“**LC Exposure**” means at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time.

“**LC Participation Fee**” has the meaning assigned to such term in Section 2.05(c).

“**LC Sub-Account**” has the meaning assigned to such term in Section 9.01(d).

“**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.

“**Lenders**” means (a) the financial institutions listed on Annex II (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance.

“**Lender Affiliate**” means with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such advisor.

“**Letter of Credit**” means any (i) Standby Letter of Credit and (ii) Commercial Letter of Credit, in each case, issued or to be issued by an Issuing Bank for the account of Borrower pursuant to Section 2.17.

“**Letter of Credit Request**” means a request by Borrower in accordance with the terms of Section 2.17 and substantially in the form of Exhibit M, or such other form as shall be approved by the Administrative Agent and the Issuing Bank.

“**Leverage Ratio**” means, as of the last day of any fiscal quarter of Holdings, the ratio of: (a) Consolidated Indebtedness of Holdings on such date to (b) Consolidated EBITDA of Holdings computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters.

“**LIBOR Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum determined by the Administrative Agent to be the arithmetic mean (rounded to the nearest 1/100th of 1%) of the offered rates for deposits in dollars with a term

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comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided, however*, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period, and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, “**LIBOR Rate**” shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Administrative Agent determines that prime banks are offered deposits in dollars at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. “**Telerate British Bankers Assoc. Interest Settlement Rates Page**” means the display designated as Page 3750 on the Telerate System Incorporated Service (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

“**License Agreement**” means that certain License Agreement to be entered into between Borrower and HIL Swiss, substantially in the form of Exhibit O, as the same may be amended from time to time in accordance with the provisions hereof.

“**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, any other type of preferential arrangement in respect of such property, 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.

“**Loan Documents**” means this Agreement, each Guarantee, the Letters of Credit, the Notes (if any) and the Security Documents.

“**Loan Parties**” means Holdings, Parent, Cayman III, the LuxCos, WH Capital, Borrower, and each other Guarantor.

“**Loan**” means, as the context may require, a Revolving Loan or a Term Loan.

“**LuxCos**” means Luxembourg Holdings, New Lux and Luxembourg Intermediate Holdings.

“**Luxembourg Holdings**” has the meaning assigned to such term in the preamble hereof.

“**Luxembourg Intermediate Holdings**” has the meaning assigned to such term in the preamble hereof.

“**Margin Stock**” has the meaning assigned to such term in Regulation U.

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“**Material Adverse Effect**” means (a) a material adverse effect on the business, property, results of operations, prospects or condition, financial or otherwise, of Holdings and its Subsidiaries, taken as a whole; (b) material impairment of the ability of the Loan Parties to perform their obligations under any Loan Document; (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agent under any Loan Document; or (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the priority of such Liens.

“**Material Agreement**” means those agreements, documents or instruments set forth in Schedule 3.08 and any other agreements, documents or instruments to which Holdings or any of its Subsidiaries is a party and which the breach thereof by such party or failure by such party to maintain such agreement, document or instrument in effect would reasonably be expected to have a Material Adverse Effect.

“**Material Leased Real Property**” means all right, title and interest in and to any and all parcels of or interests in real property 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 where a Loan Party maintains Collateral having a value in excess of \$5.0 million.

“**Maximum Rate**” has the meaning assigned to such term in Section 11.13.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Moody’s Rating**” means the debt rating of Borrower’s senior secured debt rating most recently announced.

“**Mortgage**” means an agreement, including a mortgage, deed of trust or any other document, creating and evidencing a Lien on a Mortgaged Real Property, which shall be in form and substance reasonably satisfactory to the Administrative Agent, with such schedules and including such provisions as shall be necessary to conform such document to applicable or local law or as shall be customary under local law, as the same may at any time be amended in accordance with the terms thereof and hereof.

“**Mortgaged Real Property**” means each Real Property, if any, that shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 5.11.

“**Multiemployer Plan**” means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA (a) to which any Company or any of its ERISA Affiliates is then making or accruing an obligation to make contributions, (b) to which any Company or any ERISA Affiliate has within the preceding five plan years made contributions, or (c) with respect to which any Company or any ERISA Affiliate could incur liability.

“**Net Cash Proceeds**” means:

(a) with respect to any Asset Sale, the cash proceeds received by any Loan Party (including cash proceeds subsequently received (as and when received by any Loan Party) in respect of noncash consideration initially received) net of (i) selling expenses (including reasonable brokers’ fees or commissions, legal fees, transfer and similar taxes

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and Borrower’s reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by Holdings or any of its Subsidiaries in connection with such Asset Sale in the taxable year that such sale is consummated or in the immediately succeeding taxable year, the computation of which shall take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes; (ii) amounts escrowed or provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Sale (*provided that*, to the extent and at the time any such amounts are released from such escrow or reserve, such amounts shall constitute Net Cash Proceeds); (iii) Borrower’s good faith estimate of payments required to be made with respect to unassumed liabilities relating to the assets sold within 90 days of such Asset Sale (*provided that*, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 90 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money that is secured by a senior Lien on the asset sold in such Asset Sale and that is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset);

(b) with respect to any Debt Issuance or Equity Issuance, the cash proceeds thereof, net of customary fees, commissions, discounts, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

“**New Lux**” has the meaning assigned to such term in the preamble hereof.

“**New Parent**” has the meaning assigned to such term in Section 6.04(o).

“**New Wholly Owned Subsidiary**” has the meaning assigned to such term in Section 5.11(b).

“**Non-Guarantor Subsidiary**” means (a) all of the Companies designated on Schedule 3.06(a) (as in effect on the Closing Date) as a “Non-Guarantor Subsidiary”, (b) each Subsidiary that has been and remains released from its Guarantee in accordance with Section 7.09 hereof, and (c) each New Wholly Owned Subsidiary that is not required to become a Guarantor hereunder in accordance with Section 5.11.

“**Notes**” means any notes evidencing the Term Loans or Revolving Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibit J-1 or J-2, as applicable.

“**Obligations**” means (a) obligations of each Loan Party 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 each Loan

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Party under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, 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 (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of each Loan Party under this Agreement and the other Loan Documents; (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of each Loan Party under or pursuant to this Agreement and the other Loan Documents; (c) the due and punctual payment and performance of all obligations of each Loan Party under each Hedging Agreement entered into with any counterparty that was a Lender or Affiliate of a Lender at the time such Hedging Agreement was entered into; and (d) the due and punctual payment and performance of all obligations in respect of overdrafts and related liabilities owed to any Lender, any Affiliate of a Lender, the Administrative Agent or the Collateral Agent arising from treasury, depository and cash management services or in connection with any automated clearinghouse transfer of funds.

“**Preliminary Prospectus**” means that certain Preliminary Prospectus, dated December 14, 2004, relating to the IPO.

“**Officers’ Certificate**” means, as applied to any corporation, a certificate executed on behalf of such corporation by its Chairman of the Board (if an officer), its Chief Executive Officer, its President or one of its Vice Presidents (or an equivalent officer) or by its Chief Financial Officer, Vice President-Finance or its Treasurer (or an equivalent officer), each in their official (and not individual) capacity.

“**Other Taxes**” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“**Parent**” has the meaning assigned to such term in the preamble hereto.

“**Participant**” has the meaning assigned to such term in Section 11.04(e).

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“**Perfection Certificate**” means a certificate in the form of Exhibit I-1 or any other form approved by the Collateral Agent, as the same shall be supplemented from time to time by a Perfection Certificate Supplement.

“**Perfection Certificate Supplement**” means a certificate supplement in the form of Exhibit I-2 or any other form approved by the Collateral Agent.

“**Permitted Acquisitions**” means any acquisition of 100% of the issued and outstanding Equity Interests of, or assets constituting a business, division or product line of, any other person, *provided*, that (a) Holdings shall be in compliance on *apro forma* basis after giving effect to such acquisition, with the requirements of Section 6.07 as of the last measurement date, (b) no Default or Event of Default shall have occurred and be continuing or result therefrom, (c) the aggregate purchase price of all such acquisitions shall not exceed \$25,000,000 in the aggregate since the Closing Date, which purchase prices shall be deemed to include the amount of any Indebtedness

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assumed by the Holdings or any of its Subsidiaries in connection therewith (but excluding any Equity Interests of Holdings issued in connection therewith) and (d) the provisions of Section 5.11 shall have been complied with to the satisfaction of the Administrative Agent and the Collateral Agent.

“**Permitted Dividends**” has the meaning assigned to such term in Section 6.05(i).

“**Permitted Holders**” means the Sponsors and their Affiliates.

“**Permitted Liens**” has the meaning assigned to such term in Section 6.02.

“**Permitted Preferred Stock**” means capital stock of Holdings or Parent issued to Borrower that is not subject to mandatory redemption, or to mandatory repurchase at the option of the holder thereof, on any date or upon the existence or occurrence of any fact or circumstance, at any time prior to the date that is one year after the Term Loan Maturity Date, and otherwise on terms reasonably acceptable to the Administrative Agent.

“**person**” means any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

“**Plan**” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Tax Code or Section 307 of ERISA, and in respect of which any Company or any of its ERISA Affiliates is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA or with respect to which any Company could incur liability.

“**Preferred Stock**” means, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now outstanding or issued after the Closing Date.

“**Principals**” means each of Whitney V, L.P. and CCG Investments (BVI), L.P.

“**Pro Rata Percentage**” of any Revolving Lender at any time means the percentage of the total Revolving Commitment represented by such Lender’s Revolving Commitment.

“**property**” means any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired.

“**Purchase Money Obligation**” means, for any person, the obligations of such person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of installation, construction or improvement of any property or assets and any refinancing thereof; *provided, however*, that such Indebtedness is incurred within 90 days after such acquisition of such property by such person.

“**Qualified Capital Stock**” of any person means any capital stock of such person that is not Disqualified Capital Stock.

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“**Real Property**” means, collectively, all right, title and interest (including any leasehold 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.

“**Redemption**” has the meaning assigned to such term in the recitals hereto.

“**Register**” has the meaning assigned to such term in Section 11.04(c).

“**Refinancing**” has the meaning assigned to such term in the recitals hereto.

“**Regulation D**” means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

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

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

“**Related Party**” means, with respect to any of the Principals, any person who controls, is controlled by, or is under common control with such Principal; *provided* that, for purposes of this definition only “control” means the beneficial ownership of more than 80% of the total voting power of a person normally entitled to vote in the election of directors, managers or trustees, as applicable, of a person.

“**Release**” means any spilling, leaking, 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.

“**Released Guarantor**” has the meaning assigned to such term in Section 7.09.

“**Required Lenders**” means, at any time, Lenders having Loans, LC Exposure and unused Revolving Commitments representing at least a majority of the sum of all Loans outstanding, LC Exposure and unused Revolving Commitments at such time.

“**Requirements of Law**” means, collectively, any and all requirements of any Governmental Authority including any and all laws, ordinances, rules, regulations or similar statutes or case law.

“**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.

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

“**Revolving Availability Period**” means the period from and including the Closing Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

“**Revolving Borrowing**” means a Borrowing comprised of Revolving Loans.

“**Revolving Commitment**” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder as set forth on Annex II, or in the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The amount of each Lender’s Revolving Commitment is set forth on Annex II, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable. The aggregate amount of the Lenders’ Revolving Commitments as of the Closing Date is \$25.0 million.

“**Revolving Exposure**” means, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender’s LC Exposure.

“**Revolving Lender**” means a Lender with a Revolving Commitment.

“**Revolving Loans**” means a Loan made by the Lenders to Borrower pursuant to Section 2.01(b).

“**Revolving Maturity Date**” means the fifth anniversary of the Closing Date.

“**S&P**” mean Standard & Poor’s Rating Service, a division of The McGraw-Hill Companies.

“**S&P Rating**” means the rating of Borrower’s senior secured debt rating most recently announced by S&P.

“**Secured Parties**” has the meaning assigned to such term in the Security Documents.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Agreements**” means, collectively, the U.S. Security Agreement and each Foreign Security Agreement.

“**Security Agreement Collateral**” has the meaning set forth in any Security Agreement delivered on the Closing Date or thereafter pursuant to the terms of this Agreement.

“**Security Documents**” means the Security Agreements, the Mortgages, the Perfection Certificate and each other security document or pledge agreement required by applicable local law to grant a valid, perfected security interest in any property acquired or developed, and all instruments of perfection required by this Agreement, any Security Agreement or any Mortgage

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to be filed with respect to the security interests in property and fixtures created pursuant to any Security Agreement or any Mortgage and any other document or instrument utilized to pledge as collateral for the Obligations any property of whatever kind or nature.

“**Senior Subordinated Note Agreement**” means that certain Indenture, dated as of June 27, 2002 (and as in effect on the date hereof), by and among Borrower, as issuer, the guarantors party thereto and The Bank of New York, as trustee.

“**Senior Subordinated Notes**” means Borrower’s \$165.0 million 11¾% Senior Subordinated Notes due 2010, issued pursuant to the Senior Subordinated Note Agreement.

“**Sponsor**” means each of Whitney V, L.P., Whitney Strategic Partners V, L.P. and CCG Investments (BVI), L.P.

“**Standby Letter of Credit**” means any standby letter of credit or similar instrument issued for the purpose of supporting (a) workers’ compensation liabilities of Borrower or any Subsidiary, (b) the obligations of third-party insurers of Borrower or any Subsidiary arising by virtue of the laws of any jurisdiction requiring third-party insurers to obtain such letters of credit, or (c) performance, payment, deposit or surety obligations of Borrower or any Subsidiary if required by law or governmental rule or regulation or in accordance with custom and practice in the industry.

“**Statutory Reserves**” means, for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against “Eurodollar liabilities” (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets that may be available from time to time to any Lender under Regulation D.

“**Subsidiary**” means, with respect to any person (the “**parent**”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“**Subsidiary Guarantor**” means each Subsidiary listed on Schedule 1.01(e), each other Subsidiary that is or becomes a party to this Agreement pursuant to Section 5.11 (but excluding any Released Guarantor that remains released from its Guarantee in accordance with Section 7.09 hereof and including each Foreign Subsidiary that enters into any other Guarantee required by applicable Requirements of Law).

“**Syndication Agent**” shall have the meaning assigned to such term in the preamble hereto.

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“**Synthetic Lease**” means, as applied to any person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (a) that is not a capital lease in accordance with GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any such lease under which that person is the lessor.

“**Synthetic Lease Obligation**” means the monetary obligation of a person under a Synthetic Lease.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended.

“**Tax Indemnity**” means that certain indemnity payable by Holdings and Borrower to certain shareholders of Holdings in respect of certain tax matters as set forth in that certain Indemnification Agreement dated as of December 1, 2004 among Holdings, Whitney Strategic Partners V, L.P., Whitney Private Debt Fund, L.P., Green River Offshore Fund, CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG AV, LLC-Series C, CCG AV, LLC-Series E, CCG CI, LLC, and GGC Administration, LLC.

“**Tax Refund**” has the meaning assigned to such term in Section 2.15(f).

“**Tax Return**” means all returns, statements, filings, attachments and other documents or certifications required to be filed in respect of Taxes or any amendments thereof or thereto.

“**Taxes**” mean any and all present or future taxes, duties, levies, fees, assessments, imposts, deductions, charges or withholdings, whether computed on a separate, consolidated, unitary, combined or other basis and any and all liabilities (including interest, fines, penalties or additions to tax) with respect to the foregoing.

“**Term Lender**” means a Lender with an outstanding Term Loan.

“**Term Loan**” means the term loans made by the Lenders to Borrower on the Closing Date. Each Term Loan shall be either an ABR Term Loan or a Eurodollar Term Loan.

“**Term Loan Commitment**” means, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder on the Closing Date, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Lender hereunder. The initial amount of each Lender’s Term loan Commitment is set forth in Annex II. The initial aggregate amount of the Lenders’ Term Loan Commitments is \$200.0 million.

“**Term Loan Maturity Date**” means the sixth anniversary of the Closing Date.

“**Term Loan Repayment Date**” has the meaning assigned to such term in Section 2.09(a).

“**Title Company**” means any title insurance company as shall be retained by Borrower and reasonably acceptable to the Administrative Agent.

“**Title Policy**” has the meaning assigned to such term in Section 5.11(d)(iii).

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“**Trademark License Agreement**” means that certain Trademark License Agreement to be entered into between Borrower and HIL Swiss, substantially in the form of Exhibit P, as the same may be amended from time to time in accordance with the provisions hereof

“**Transaction Costs**” has the meaning assigned to such term in the recitals hereto.

“**Transaction Documents**” means any and all documents entered into or delivered in connection with the Transactions, including, without limitation, the Loan Documents delivered on the Closing Date, the documents entered into or delivered in connection with the Distribution and the Holdings Senior Note Documents.

“**Transactions**” has the meaning assigned to such term in the recitals hereto.

“**Type**,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

“**UCC**” has the meaning set forth in the U.S. Security Agreement.

“**U.S. Security Agreement**” means a Security Agreement substantially in the form of Exhibit F among the Loan Parties and Collateral Agent for the benefit of the Secured Parties, as the same may be amended in accordance with the terms thereof and hereof, or such other agreements reasonably acceptable to Collateral Agent as shall be necessary to comply with applicable Requirements of Law and effective to grant to Collateral Agent (on behalf of the Secured Parties) a perfected, first-priority security interest in the Security Agreement Collateral covered thereby.

“**WH Capital**” has the meaning assigned to such term in the recitals hereto.

“**Voting Stock**” means any class or classes of capital stock of Holdings 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 Holdings.

“**Wholly Owned Subsidiary**” means, as to any person, (a) any corporation 100% of whose capital stock (other than directors’ qualifying shares) 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.

“**Withdrawal Liability**” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “**Revolving Loan**”) or by Type (e.g., a “**Eurodollar Loan**”) or by Class and Type (e.g., a “**Eurodollar Revolving Loan**”). Borrowings also may be classified and referred to by Class (e.g., a “**Revolving Borrowing**”) or by Type (e.g., a “**Eurodollar Borrowing**”) or by Class and Type (e.g., a “**Eurodollar Revolving Borrowing**”).

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SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be modified by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument of other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified in accordance with the provisions hereof and thereof; (b) any reference herein to any person shall be construed to include such person’s successors and assigns; (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement; (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement; and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All references to the knowledge of any Company or to facts known by any Company shall mean actual knowledge of any Responsible Officer of any Loan Party or any of its Subsidiaries.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP, as in effect from time to time. Financial statements and other information required to be delivered by Holdings to Lenders pursuant to Sections 5.01(a), (b) and (c) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Notwithstanding the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the historical financial statements delivered on the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Borrower, the Administrative Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and 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, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(a) each Term Lender agrees, severally and not jointly to make a Term Loan to Borrower on the Closing Date in a principal amount not to exceed its Term Loan Commitment; and

(b) each Revolving Lender agrees, severally and not jointly to make Revolving Loans to Borrower, at any time and from time to time after the Closing Date, and until the earlier of the Revolving Maturity Date and the termination of the Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any

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time outstanding that will not result in such Lender’s Revolving Exposure exceeding such Lender’s Revolving Commitment.

Amounts paid or prepaid in respect of Term Loans may not be reborrowed. Within the limits set forth in clause (b) above and subject to the terms, conditions and limitations set forth herein, Borrower may borrow, pay or prepay and reborrow Revolving Loans.

SECTION 2.02. Loans.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided, however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1.0 million or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that, any exercise of such option shall not affect the obligation of Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that Borrower shall not be entitled to request any Borrowing that, if made, would result in more than ten Eurodollar Borrowings outstanding hereunder at any time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 12:00 noon, New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by Borrower in the applicable Borrowing Request maintained with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with Section 2.02(c), and the Administrative Agent may, in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount

together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing of Eurodollar Loans if the Interest Period requested with respect thereto would end after the Revolving Maturity Date or the Term Loan Maturity Date, as applicable.

(f) If the Issuing Bank shall not have received from Borrower the payment required to be made by Section 2.17(e) within the time specified in such section, the Issuing Bank will promptly notify the Administrative Agent of the LC Disbursement and the Administrative Agent will promptly notify each Revolving Lender of such LC Disbursement and its Pro Rata Percentage thereof. Each Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Revolving Lender shall have received such notice later than 12:00 noon, New York City time, on any day, not later than 11:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender's Pro Rata Percentage of such LC Disbursement (it being understood that such amount shall be deemed to constitute an ABR Revolving Loan of such Lender, and such payment shall be deemed to have reduced the LC Exposure), and the Administrative Agent will promptly pay to the Issuing Bank amounts so received by it from the Revolving Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from Borrower pursuant to Section 2.17(e) prior to the time that any Revolving Lender makes any payment pursuant to this Section 2.02(f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the Issuing Bank, as their interests may appear. If any Revolving Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, such Lender and Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this Section 2.02(f) to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Effective Rate, and for each day thereafter, the Alternate Base Rate.

SECTION 2.03. Borrowing Procedure. To request a Revolving Borrowing, Borrower shall notify the Administrative Agent of such request by telephone (promptly confirmed by teletype) or by delivering a duly completed Borrowing Request (a) in the case of a Eurodollar Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day before the date of the proposed Borrowing; *provided* that, any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.17(e) may be given not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing

Request shall be irrevocable and shall be confirmed not later than 3:00 p.m., New York City time, on such Business Day by hand delivery or teletype to the Administrative Agent of a written Borrowing Request substantially in the form of Exhibit C and signed by Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (a) the aggregate amount of such Borrowing;
- (b) the date of such Borrowing, which shall be a Business Day;
- (c) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (d) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (e) the location and number of Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Evidence of Debt; Repayment of Loans. (a) Borrower hereby unconditionally promises to pay to (i) each Lender holding Term Loans, the principal amount of each Term Loan of such Lender as provided in Section 2.09; and (ii) each Revolving Lender, the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type and Class thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to Sections 2.04(b) and (c) shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded (in the absence of manifest error); *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans of any Class made by it be evidenced by a Note. In such event, Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more Notes in such form payable to the order of the payee named therein (or, if such Note is a registered note, to such payee and its registered

assigns).

All payments shall be made on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders.

SECTION 2.05. Fees.

(a) **Commitment Fee.** Borrower agrees to pay to each Lender, a commitment fee (a “**Commitment Fee**”) equal to the Applicable Commitment Fee Percentage times the average daily unused amount of the Revolving Commitments of such Lender. All Commitment Fees shall be payable quarterly in arrears on the last Business Day of March, June, September and December in each year (commencing with the first such date to occur after the Closing Date) and on each date (including the Revolving Maturity Date) on which any Commitment of such Lender shall expire or be terminated as provided herein. All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the date on which the Revolving Commitment of such Lender shall expire or be terminated as provided herein.

(b) **Administrative Agent Fees.** Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between Borrower and the Administrative Agent (the “**Administrative Agent Fees**”).

(c) **LC and Fronting Fees.** Borrower agrees to pay (i) to each Revolving Lender a participation fee (“**LC Participation Fee**”) with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on Eurodollar Revolving Loans pursuant to [Section 2.06](#) on the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender’s Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee (“**Fronting Fee**”), which shall accrue at the rate of 0.25% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. LC Participation Fees and Fronting Fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Closing Date; *provided* that, all such fees shall be payable on the

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date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this [Section 2.05\(c\)](#) shall be payable within ten days after demand. All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

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

SECTION 2.06. Interest on Loans.

(a) Subject to the provisions of [Section 2.06\(c\)](#), the Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate *plus* the Applicable Margin in effect from time to time.

(b) Subject to the provisions of [Section 2.06\(c\)](#), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuation of any Event of Default, and at the election of the Required Lenders following written notice thereof to the Borrower, the outstanding principal amount of all Loans and, to the extent permitted by applicable law, any interest payments thereon and any fees and other amounts hereunder, in each case that are due and payable and have not been paid, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable upon demand at a rate that is 2% per annum in excess of the interest rate otherwise applicable under this Agreement with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement for ABR Loans); *provided* that, in the case of Eurodollar Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such Eurodollar Rate Loans, at the time the Borrower is notified in accordance with [Section 2.08\(c\)](#), shall thereupon become ABR Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement for ABR Loans. Payment or acceptance of the increased rates of interest provided for in this [Section 2.06\(c\)](#) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; *provided* that, (i) interest accrued pursuant to [Section 2.06\(c\)](#) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the

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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.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.07. Termination and Reduction of Commitments.

(a) The Revolving Commitments and the LC Commitment shall automatically terminate on the Revolving Maturity Date.

(b) Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments *provided* that, (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$500,000 and not less than \$1.0 million and (ii) the Revolving Commitments shall not be terminated

or reduced if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10(b), the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments.

(c) Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under Section 2.07(b) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this Section 2.07(b) shall be irrevocable. Any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Revolving Lenders in accordance with their respective Revolving Commitments.

SECTION 2.08. Interest Elections.

(a) Each Revolving Borrowing and Term Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.08, Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if Borrower were requesting a Revolving

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Borrowing or Term Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit D.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then (except in the case of clause (iv) above) Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies Borrower, then, after the occurrence and during the continuance of a Default, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Amortization of Term Borrowings

(a) Borrower shall pay to the Administrative Agent, for the account of the Term Lenders, on the dates set forth on Annex I, or if any such date is not a Business Day, on the next preceding Business Day (each such date being a "**Term Loan Repayment**")

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Date"), a principal amount of the Term Loans (as adjusted from time to time pursuant to Sections 2.09(b) and 2.10) equal to the amount set forth on Annex I for such date (less all mandatory and optional prepayments made thereon), together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Term Loan Maturity Date.

SECTION 2.10. Optional and Mandatory Prepayments of Loans.

(a) **Optional Prepayments.** Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.10; provided that, each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000 and, in the case of any prepayment of the Term Loans, not less than \$5.0 million.

(b) **Revolving Loan Prepayments.** In the event of any termination of all the Revolving Commitments, Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Borrowings and replace all outstanding Letters of Credit, cause the issuance of backstop letters of credit, and/or deposit an amount equal to the LC Exposure in the LC Sub-Account. In the event of any partial reduction of the Revolving Commitments, (i) at or prior to the effective date of such reduction, the Administrative Agent shall notify Borrower and the Revolving Lenders of the sum of the Revolving Exposures after giving effect thereto and (ii) if the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments after giving effect to such reduction or termination, then Borrower shall, on the date of such reduction or termination, repay or prepay Revolving Borrowings and/or replace or cash collateralize outstanding Letters of Credit in an amount sufficient to eliminate such excess.

(c) **Asset Sales.** Not later than five Business Days following the receipt of any Net Cash Proceeds of any Asset Sale (in the case of Asset Sales by non-U.S. parties, to the extent such amounts can be repatriated to the United States without materially adverse tax or other economic consequences taking into account the

amount of proceeds received from such Asset Sale as determined by the Administrative Agent (after consultation with Borrower)), Borrower shall apply 100% of the Net Cash Proceeds received with respect thereto to make prepayments in accordance with Sections 2.10(h) and (i); *provided that*:

(i) no such prepayment shall be required with respect to (A) any Asset Sale permitted by Sections 6.04(b)(i), 6.04(d), 6.04(g)(ii), 6.04(i), and 6.04(k), (B) the disposition of assets subject to a condemnation or eminent domain proceeding or insurance settlement to the extent it does not constitute a Casualty Event, (C) Asset Sales for fair market value resulting in no more than \$2.5 million in Net Cash Proceeds in any fiscal year and (D) an issuance of Equity Interests by a Non-Guarantor Subsidiary to another Non-Guarantor Subsidiary; and

(ii) so long as no Default shall then exist or would arise therefrom, no such prepayment shall be required to the extent that (A)

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Borrower shall have delivered an Officers' Certificate to the Administrative Agent on or prior to such date stating that the Net Cash Proceeds of such Asset Sale will be used to purchase replacement assets or other assets useful in such person's business within 270 days of such Asset Sale and setting forth estimates of the proceeds to be so expended, and (B) all such Net Cash Proceeds in excess of \$2.5 million in respect of any Asset Sale and \$5.0 million in the aggregate for all Asset Sales in any fiscal year of Borrower shall be held in the Collateral Account and released therefrom only in accordance with the provisions of Article IX; *provided, however*, that if any portion of such Net Cash Proceeds are not reinvested in accordance with this clause (ii), such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(c).

(d) **Debt Issuance.** Upon any Debt Issuance after the Closing Date, Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate principal amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(e) **Equity Issuance.** Upon any Equity Issuance after the Closing Date, Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate principal amount equal to 50% of the Net Cash Proceeds of such Equity Issuance.

(f) **Casualty Events.** Not later than one Business Day following the receipt of any Net Cash Proceeds from a Casualty Event (in the case of a Casualty Event by non-U.S. parties, to the extent such amounts can be repatriated to the United States without materially adverse tax or other economic consequences taking into account the amount of proceeds received from such Casualty Event as determined by the Administrative Agent (after consultation with Borrower)), Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an amount equal to 100% of such Net Cash Proceeds; *provided, however*, that:

(i) so long as no Default or Event of Default then exists or would arise therefrom, the Net Cash Proceeds thereof shall not be required to be so applied on such date to the extent that Borrower has delivered an Officers' Certificate to the Collateral Agent on or prior to such date stating that such proceeds shall be used to fund the acquisition of property used or usable in the business of Borrower and its Subsidiaries or repair, replace or restore the property in accordance with the provisions of the applicable Security Document in respect of which such Casualty Event has occurred, in each case within 270 days following the date of the receipt of such Net Cash Proceeds;

(ii) to the extent such Casualty Event affects any of the Collateral, all property acquired to effect any repair, replacement or restoration of such Collateral shall be made subject to the Lien of the Security Documents in accordance with the provisions of Section 5.11;

(iii) all such Net Cash Proceeds in excess of \$1.0 million in respect of any Casualty Event or in the aggregate for all such Casualty

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Events shall be held in the Collateral Account and released therefrom only in accordance with the terms of Article IX;

(iv) if all or any portion of such Net Cash Proceeds shall not be so applied within such 270-day period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(f); and

(v) no such prepayment shall be required with respect to Casualty Events resulting in no more than \$1.0 million in Net Cash Proceeds in any fiscal year.

(g) **Excess Cash Flow.** No later than 120 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending on December 31, 2005, the Borrower shall make prepayments in accordance with Section 2.10(i)(ii) and Section 2.10(j) in an aggregate principal amount equal to 50% of Excess Cash Flow for the fiscal year then ended; *provided*, that if the Moody's Rating is equal to or greater than Ba1 and the S&P Rating is equal to or greater than BB+, then the Borrower shall make prepayments in accordance with Section 2.10(i)(ii) and Section 2.10(j) in an aggregate principal amount equal to 25% of Excess Cash Flow for the fiscal year then ended; *provided, further*, in the event of a split rating, the higher of such Debt Ratings shall be used to determine the applicable percentage above, except that, if there is a two tier difference in the Debt Ratings, the Debt Rating one notch higher than the lower of the two Debt Ratings shall be used to determine the applicable percentage above.

(h) **Redemption of Holdings Senior Notes.** If Holdings does not redeem Holdings Senior Notes in an aggregate principal amount at least equal to \$110.0 million, within 45 days after the Closing Date, the Borrower shall make prepayments in accordance with Section 2.10(i) and Section 2.10(j), in an aggregate principal amount equal to \$110.0 million less the aggregate principal amount of Holdings Senior Notes so redeemed.

(i) **Application of Prepayments.**

(i) Optional prepayments under this Agreement shall be applied to Loans of the Class and Type (and, in the case of prepayment of Term Loans, to reduce the scheduled installments of principal) as specified by Borrower in the applicable notice of prepayment in Section 2.10(j); *provided that*, in the event Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied *first* to repay outstanding Revolving Loans to the full extent thereof, and *second* to repay outstanding Term Loans to the full extent thereof. Mandatory prepayments of Term Loans made under this Agreement shall be applied to reduce the remaining scheduled installments of principal due in respect of the Term Loans under Section 2.09 pro rata on the basis of the respective amounts thereof then unpaid. After application of mandatory prepayments pursuant to the immediately preceding sentence and to the extent there are mandatory prepayment amounts remaining after such application, any such remaining portion of the mandatory prepayment amounts shall be applied (i) to prepay the Revolving Loans to the full extent thereof and to further permanently

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reduce the Revolving Commitments ratably among the Revolving Lenders by the amount of such prepayment (and Borrower shall comply with Section 2.10(h)), and (ii) then, to the extent of any remaining portion of the mandatory prepayment amounts, to further permanently reduce the Revolving

Commitments ratably among the Revolving Lenders to the full extent thereof.

(ii) Amounts to be applied pursuant to this Section 2.10 to the prepayment of Term Loans and Revolving Loans shall be applied, as applicable, first to reduce outstanding ABR Term Loans and ABR Revolving Loans, respectively. Any amounts remaining after each such application shall be applied to prepay Eurodollar Term Loans or Eurodollar Revolving Loans, as applicable. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrower, the balance of such required prepayment shall be either (x) deposited in the Collateral Account and applied to the prepayment of Eurodollar Loans on the last day of the then next-expiring Interest Period for Eurodollar Loans (with all interest accruing thereon for the account of Borrower) or (y) prepaid immediately, together with any amounts owing to the Lenders under Section 2.13. Notwithstanding any such deposit in the Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(j) **Notice of Prepayment.** Borrower shall notify the Administrative Agent by telephone (confirmed by teletype) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment, and (iii) in the case of any mandatory prepayment under Section 2.10(g), not later than 11:00 a.m., New York City time, ten Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

SECTION 2.11. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

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

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

then the Administrative Agent shall give notice thereof to Borrower and the Lenders by telephone or teletype as promptly as practicable thereafter and, until the Administrative Agent notifies Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.12. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar 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 Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise) (except for purposes of this subsection (a) any such increased cost or reduction resulting from Taxes or Other Taxes (as to which Section 2.15 shall govern)), then Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding

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company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in Section 2.12(a) or Section 2.12(b), in detail sufficient to allow the Borrower to verify the computation thereof, shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that, Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.13. Breakage Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto,

(c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to [Section 2.16](#), then, in any such event, Borrower shall compensate each Lender for the reasonable loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), *over* (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this [Section 2.13](#), in detail sufficient to allow the Borrower to verify the computation thereof, shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.14. Payments Generally; Pro Rata Treatment; Sharing of Set-offs

(a) Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under [Section 2.12](#), [2.13](#) or [2.15](#), or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 1633 Broadway, 25th Floor, New York, New York 10036, Attention: James Morgan, except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to [Sections 2.12](#), [2.13](#), [2.15](#) and [11.03](#) shall be made directly to the persons entitled thereto and payments pursuant to other Loan Documents shall be made to the persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) *first* towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second* towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal or of interest on any of its Revolving Loans, Term Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements of the other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements; *provided* that, (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this [Section 2.14\(c\)](#) shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment or

sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this [Section 2.14\(c\)](#) shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to [Section 2.02\(f\)](#), [2.14\(d\)](#), [2.17\(d\)](#) or [11.03\(d\)](#), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such sections until all such unsatisfied obligations are fully paid.

SECTION 2.15. Taxes.

(a) Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made without set-off, counterclaim or other defense and free and clear of and without deduction or withholding for any and all Indemnified Taxes or Other Taxes; *provided* that, if Borrower shall be required by law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this [Section 2.15](#)) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) Borrower shall make such deductions or withholdings and (iii) Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

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

(c) Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within ten Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender

or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this [Section 2.15](#)) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. If in the reasonable opinion of Borrower, any amount has been paid to, by or on behalf of the Administrative Agent, any Lender or the Issuing Bank (as the case may be) pursuant to [clause \(a\)](#), [\(b\)](#) or this [\(c\)](#) of this [Section 2.15](#) with respect to Taxes or Other Taxes which are not correctly or legally asserted, the Administrative Agent, such Lender or the Issuing Bank (as the case may be) will cooperate with Borrower in seeking to obtain a refund for the benefit of Borrower of such amount, *provided* that, the rendering of any such cooperation by the Administrative Agent, such Lender, or the Issuing Bank, would not, in the reasonable opinion of the Administrative Agent, such Lender, or the Issuing Bank, (i) cause the Administrative Agent, such Lender, or the Issuing Bank, to incur any expense or liability (which is not otherwise paid in full by Borrower prior to or at the time that such expense or liability is incurred) or (ii) have any adverse effect on the Administrative Agent, such Lender, or the Issuing Bank. A certificate as to the amount of such payment or liability, in detail sufficient to allow the Borrower to verify the computation thereof, delivered to Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error. If the Administrative Agent, any Lender, or the Issuing Bank receives a written notice of Tax assessment from any Governmental Authority regarding any Tax in respect of which indemnification may be required pursuant to this [Section 2.15\(c\)](#), the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, shall notify Borrower within 120 days following the receipt of such notice that such notice has been received; *provided, however*, that the failure of the Administrative Agent, such Lender, or the Issuing Bank to provide such notice shall not relieve Borrower of its obligation to make any indemnification payment under this Agreement.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) On or before the Closing Date in the case of the Administrative Agent, any Lender or the Issuing Bank, or on or before the acceptance of any appointment as the Administrative Agent in the case of a successor Agent, or on or before the effective date of an Assignment and Acceptance pursuant to which it became a Lender in the case of an assignee, or on or prior to the date that any Lender becomes an Issuing Bank pursuant to [Section 2.17\(i\)](#), and if otherwise reasonably requested from time to time by Borrower or the Administrative Agent, within 30 days of such request, the Administrative Agent, each Lender or the Issuing Bank which is not a U.S. Person within the meaning of Section 7701(a)(30) of the Tax Code shall provide to each of the Administrative Agent and Borrower two duly completed and signed copies of Internal Revenue Service Forms W-8BEN, or W-8ECI or successor form(s), as the case may be, certifying as to such Administrative Agent's, Lender's or Issuing Bank's (if applicable) status for purposes of determining exemption from United States withholding taxes with respect to all payments

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to be made to the Administrative Agent, each Lender or the Issuing Bank under this Agreement. Until Borrower and the Administrative Agent have received such forms and indicating that payments under this Agreement are subject to an exemption from or reduction of United States withholding tax, Borrower or the Administrative Agent (if not withheld by Borrower) shall withhold taxes from such payments at the applicable statutory rate, without any obligation to "gross-up" or make the Administrative Agent, such Lender or Issuing Bank whole under [clause \(a\)](#) of this Section. In the case of an Administrative Agent, Lender, or Issuing Bank that is subject to a reduction of, rather than exemption from, United States withholding tax, the obligation of Borrower to "gross-up" under [clause \(a\)](#) of this Section shall not apply in respect of the amount of United States withholding tax that the Administrative Agent, such Lender, or the Issuing Bank is subject to at the time they become a party to this Agreement (*provided, however*, that in the case of an assignee that becomes a Lender pursuant to [Section 11.04](#), the obligation of Borrower to "gross-up" under [clause \(a\)](#) of this Section, or indemnify for Indemnified Taxes under [clause \(c\)](#) of this Section, shall apply in respect of the amount of United States withholding tax that is applicable to payments made on or after the date upon which the assignee first becomes a Lender to the same extent that Borrower would have been obligated to "gross-up" under [clause \(a\)](#) of this Section, or indemnify for Indemnified Taxes under [clause \(c\)](#) of this Section, had the Administrative Agent, relevant Lender, or the Issuing Bank, as the case may be, not made such assignment to such assignee).

(f) If (i) the Administrative Agent, any Lender, or the Issuing Bank receives a cash refund in respect of an overpayment of Indemnified Taxes or Other Taxes from a Governmental Authority with respect to, and actually resulting from, an amount of Indemnified Taxes or Other Taxes actually paid to or on behalf of the Administrative Agent, such Lender, or Issuing Bank by Borrower (a "Tax Refund") and (ii) the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, determines in its reasonable opinion that such Tax Refund has been correctly paid by such Governmental Authority and will not be required to be repaid to such Governmental Authority, then the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, shall use its reasonable efforts to notify Borrower of such Tax Refund and to forward the proceeds of such Tax Refund (or relevant portion thereof) to Borrower as reduced by any expense or liability incurred by the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, in connection with obtaining such Tax Refund.

SECTION 2.16. Mitigation Obligations; Replacement of Lenders

(a) **Mitigation of Obligations.** If any Lender requests compensation under [Section 2.12](#), or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to [Section 2.15](#), then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to [Section 2.12](#) or [2.15](#), as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

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(b) **Replacement of Lenders.** If any Lender requests compensation under [Section 2.12](#), or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to [Section 2.15](#), or if any Lender defaults in its obligation to fund Loans hereunder, then Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in [Section 11.04](#)), all of its interests, rights and obligations under this Agreement to an assignee selected by Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that, (i) Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld; (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts); and (iii) in the case of any such assignment resulting from a claim for compensation under [Section 2.12](#) or payments required to be made pursuant to [Section 2.15](#), such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

SECTION 2.17. Letters of Credit.

(a) **General.** Subject to the terms and conditions set forth herein, Borrower may request the issuance of Letters of Credit for its own account or the account

of a Subsidiary in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period (provided that, Borrower shall be a co-applicant with respect to each Letter of Credit issued for the account of or in favor of a Subsidiary). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter-of-credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) **Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.** To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (at least three Business Days in advance of the requested date of issuance, amendment, renewal or extension, or such shorter period as is acceptable to such respective Issuing Bank) a duly completed Letter of Credit Request, together with such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, Borrower also shall submit a letter-of-credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, Borrower shall be deemed to represent and warrant that) after giving effect to such issuance, amendment, renewal or extension, (i) the LC Exposure shall not exceed \$10.0 million, (ii) the total Revolving

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Exposures shall not exceed the total Revolving Commitments, (iii) the stated amount of each Letter of Credit shall be no less than \$500,000, or such lesser amount as is acceptable to the Issuing Bank, and (iv) each Letter of Credit shall be denominated in dollars.

(c) **Expiration Date.** Each Letter of Credit shall expire no later than the close of business on the earlier of (i) in the case of a Standby Letter of Credit, (x) the date one year after the date of the issuance of such Standby Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the date that is 15 Business Days prior to the Revolving Maturity Date and (ii) in the case of a Commercial Letter of Credit, (x) the date that is 180 days after the date of issuance of such Commercial Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the date that is 15 Business Days prior to the Revolving Maturity Date.

(d) **Participations.** By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by Borrower on the date due as provided in [Section 2.17\(e\)](#), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this [Section 2.17\(d\)](#) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) **Reimbursement.** If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to the Issuing Bank an amount equal to such LC Disbursement not later than 2:00 p.m., New York City time, on the date that such LC Disbursement is made, if Borrower shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 2:00 p.m., New York City time, on (i) the Business Day that Borrower receives such notice, if such notice is received prior to 11:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with [Section 2.03](#) that such payment be financed with an ABR Revolving Borrowing in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If Borrower fails to make such payment when due, the Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from Borrower in respect thereof and such Lender's Pro Rata Percentage thereof.

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Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed LC Disbursement in the same manner as provided in [Section 2.02\(f\)](#), with respect to Loans made by such Lender, and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from Borrower pursuant to this [Section 2.17\(e\)](#), the Administrative Agent shall, to the extent that Revolving Lenders have made payments pursuant to this [Section 2.17\(e\)](#) to reimburse the Issuing Bank, distribute such payment to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this [Section 2.17\(e\)](#) to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve Borrower of its obligation to reimburse such LC Disbursement.

(f) **Obligations Absolute.** The obligation of Borrower to reimburse LC Disbursements as provided in [Section 2.17\(e\)](#) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this [Section 2.17\(f\)](#), constitute a legal or equitable discharge of, or provide a right of set-off against, the obligations of Borrower hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Affiliates, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that, the foregoing shall not be construed to excuse the Issuing Bank from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

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(g) **Disbursement Procedures.** The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that, any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement (other than with respect to the timing of such reimbursement obligation set forth in Section 2.17(e)).

(h) **Interim Interest.** If the Issuing Bank shall make any LC Disbursement, then, unless Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; *provided* that, if Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.17(e), then Section 2.06(c) shall apply. Interest accrued pursuant to this Section 2.17(h) shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.17(e) to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) **Resignation or Removal of the Issuing Bank; Additional Issuing Banks.** The Issuing Bank may resign as Issuing Bank or be replaced at any time by written agreement among Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, by written agreement designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank or any such additional Issuing Bank. At the time any such replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such replacement or addition, as applicable, (i) the successor or additional Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter by such Lender, and (ii) references herein and in the other Loan Documents to the term "Issuing Bank" shall be deemed to refer to such successor or such addition to any previous Issuing Bank, or to such successor or such addition and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Bank hereunder, Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) **Cash Collateralization.** If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this Section 2.17(j),

Borrower shall deposit in the LC Sub-Account, in the name of the Collateral Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date *plus* any accrued and unpaid interest thereon; *provided* that, the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in paragraph (g) or (h) of Article VIII. Each such deposit shall be held by the Collateral Agent as collateral for the payment and performance of the obligations of Borrower under this Agreement. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Collateral Agent and at the risk and expense of Borrower, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be invested in Cash Equivalents and applied by the Collateral Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of Borrower under this Agreement. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount *plus* any accrued interest or realized profits or such amounts (to the extent not applied as aforesaid) shall be returned to Borrower within three Business Days after all Events of Default have been cured or waived.

ARTICLE III

Representations and Warranties

Each of the Loan Parties, as applicable, represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders that:

SECTION 3.01. Organization; Powers. Each Company (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02. Authorization; Enforceability. The Transactions to be entered into by each Loan Party are within such Loan Party's powers and have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by each Loan Party and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. Except as set forth on Schedule 3.03, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created under the Loan Documents and (iii) consents, approvals, registrations, filings or actions the failure of which to obtain or perform could not reasonably be expected to result in a Material Adverse Effect; (b) will not violate (i) any applicable law or regulation except for violations that could not reasonably be expected to result in a Material Adverse Effect, or (ii) the charter, bylaws or other organizational documents of any Company (other than any Immaterial Subsidiary) or any order of any Governmental Authority; (c) will not violate, result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon any Company or its assets, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect; and (d) will not result in the creation or imposition of any Lien on any asset of any Company, except Liens created under the Loan Documents and Permitted Liens.

SECTION 3.04. Financial Statements. The historical financial statements and the notes thereto included in the Preliminary Prospectus present fairly in all material respects the consolidated financial position, income statement, cash flows and changes in stockholder's equity of Holdings and its Subsidiaries at the respective dates and for the respective periods indicated. All financial statements delivered to the Lenders by the Borrower have been prepared in accordance with GAAP applied on a consistent basis throughout the periods presented (except as disclosed therein, and in the case of interim financial statements for the absence of footnotes and year-end

adjustments). The unaudited *pro forma* financial statements and the notes thereto delivered to the Lenders by the Borrower have been prepared on a basis consistent with the historical financial statements of Holdings and its Subsidiaries and give effect to assumptions used in the preparation thereof on a reasonable basis and in good faith and present fairly in all material respects the historical and proposed transactions contemplated by the Preliminary Prospectus.

SECTION 3.05. Properties.

(a) Each Loan Party has good title to, or valid leasehold interests in or other valid rights to use, all of such Company's Real Property, and all of such Loan Party's personal property material to its business. Title to all such property held by such Loan Party is free and clear of all Liens except for Permitted Liens. The property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) (except to the extent such condition could not reasonably be expected to result in a Material Adverse Effect) and (ii) constitutes all the properties that are required for the business and operations of the Companies as currently conducted.

(b) For each Loan Party, Schedule 3.05(b) contains a true and complete list of each parcel of Real Property (i) owned by such Loan Party as of the Closing Date, including a description of the type of interest therein held by such Loan Party, and the name of the Loan Party holding such interest or (ii) leased, subleased or otherwise occupied or utilized by any Loan Party, as lessee or sublessee, as of the Closing Date, including a description of the type of interest therein held by such Loan Party, the name of the Loan Party holding such interest, and whether such lease, sublease or other instrument (each, a "Company Lease") requires the consent of the landlord thereunder or

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other parties thereto to the Transactions. Each Company Lease is a legal, valid and binding agreement, enforceable in accordance with its terms, of the Loan Party that is a party thereto, and there is no, nor has any Loan Party received notice of any, default thereunder (or to the knowledge of any Loan Party, any condition or event that, after notice or a lapse of time or both, would constitute a default thereunder). No Loan Party, and, to the knowledge of each Loan Party, no third party to any Company Lease, has assigned any Company Lease that is a Material Agreement or sublet any part of the premises covered thereby or exercised any renewal or purchase option thereunder. No penalties are accrued and unpaid by any Loan Party under any Company Lease that is a Material Agreement. True and complete copies of all Company Leases that are Material Agreements, together with all modifications, extensions, amendments and assignments thereof have heretofore been made available to the Administrative Agent. None of the Loan Parties has granted any options or rights of first refusal, or rights of first offer to third parties to purchase or otherwise acquire an interest in any of the Real Property.

(c) Each Company owns, or is licensed to use, all Intellectual Property used in the conduct of its business as currently conducted, except for those the failure to own or license that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. 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 does any Company know of any valid basis for any such claim. The use of such Intellectual Property by each Company does not infringe the rights of any person, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(d) No Company has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event, zoning change, variance or special zoning exception affecting or that would affect all or any portion of the property that would reasonably be expected to have a Material Adverse Effect.

SECTION 3.06. Equity Interests and Subsidiaries; Consent

(a) Schedule 3.06(a) sets forth a list of (i) all Subsidiaries of Holdings and their jurisdiction of organization as of the Closing Date; (ii) the number of shares of each class of its Equity Interests authorized, and the number outstanding, on the Closing Date and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date of each such Subsidiary; and (iii) a designation as to whether such Subsidiary constitutes a Non-Guarantor Subsidiary. Schedule 3.06(a) designates the only Subsidiaries of Borrower that constitute Non-Guarantor Subsidiaries on the Closing Date. Such schedule may be amended from time to time without the prior written consent of the Administrative Agent so long as the Loan Parties and their Subsidiaries comply with all related obligations under this Agreement (including obligations described in Section 5.11 hereof). All Equity Interests of each direct and indirect Subsidiary of Holdings are duly and validly issued, are fully paid and non-assessable. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it under the applicable Security Agreement, free of any and all Liens, rights or claims of other persons, except for the security interest created by the Security Agreements.

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(b) No consent of any person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any trust beneficiary is necessary or desirable in connection with the creation, perfection or first priority status of the security interest of the Collateral Agent in any Equity Interests, pledged to the Collateral Agent for the benefit of the Secured Parties under any Security Agreement or the exercise by the Collateral Agent of the voting or other rights provided for in any Security Agreement or the exercise of remedies in respect thereof.

SECTION 3.07. Litigation; Compliance with Laws.

(a) Except as set forth on Schedule 3.07, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of any Company, threatened against or affecting any Company or any business, property or rights of any such person (i) that involve any Loan Document, HIL Swiss Intercompany Agreements or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for matters covered by Section 3.17, no Company or any of its property is in violation of, nor will the continued operation of their property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Real Property or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, in each case where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Agreements.

(a) No Company is a party to any agreement or instrument or subject to any corporate or other constitutional restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) No Company is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its property are or may be bound, where such default could reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.08 accurately and completely lists all material agreements (other than Leases of Real Property set forth on Schedule 3.05(b)) to which any

Loan Party is a party that were in effect on the Closing Date in connection with the operation of the business conducted thereby and Borrower has delivered to the Administrative Agent complete and correct copies of all such material agreements, including any amendments, supplements or modifications with respect thereto.

SECTION 3.09. Federal Reserve Regulations.

(a) No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

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(b) No part of the proceeds of any Loan or any Letter of Credit will be used in any manner, whether directly or indirectly, for any purpose that violates, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Securities Collateral pursuant to the Security Agreements does not violate such regulations.

SECTION 3.10. Investment Company Act; Public Utility Holding Company Act No Company is (a) an “investment company” or a company “controlled” by an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) a “holding company,” an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company,” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935, as amended.

SECTION 3.11. Use of Proceeds. Borrower will use the proceeds of the (a) Term Loans to finance a portion of the Transactions and the Transaction Costs and (b) Revolving Loans after the Closing Date for general corporate purposes (it being understood that no Revolving Loans shall be made on the Closing Date).

SECTION 3.12. Taxes. Each Company has (a) filed or caused to be filed all federal Tax Returns and all material state, local and foreign Tax Returns or materials required to have been filed by it and (b) duly paid or caused to be duly paid all Taxes (whether or not shown on any Tax Return) due and payable by it and all assessments received by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Company shall have set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.13. No Material Misstatements. None of any of the written information, report, financial statement, exhibit or schedule furnished by or on behalf of any Company to any Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto (including the Preliminary Prospectus), taken together with all related information so furnished, contained, contains or will contain (when delivered) any material misstatement of fact or omitted, omits or will omit (when delivered) to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading as of the date such information is dated or certified; *provided* that, to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast, projection or *pro forma* adjustment, each Company represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that, with respect to projected financial information, actual results may vary significantly from such projected results).

SECTION 3.14. Labor Matters. As of the Closing Date, there are no strikes, lockouts or slowdowns against any Company pending or, to the knowledge of any Company, threatened which could reasonably be expected to result in a Material Adverse Effect. The hours worked by and payments made to employees of any Company have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters in any manner that could reasonably be expected to result in a Material Adverse Effect. All payments due from any Company, or for which any claim may be made against any Company, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Company except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of

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renegotiation on the part of any union under any collective bargaining agreement to which any Company is bound.

SECTION 3.15. Solvency. Immediately after the consummation of the Transactions 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, (a) the fair value of the assets of the Loan Parties, taken as a whole, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Loan Parties, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their collective debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Loan Parties, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Loan Parties, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

SECTION 3.16. Employee Benefit Plans.

(a) Each Company and its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Tax Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in a Material Adverse Effect. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by any Company or any ERISA Affiliate. No Company or any of its ERISA Affiliates sponsor, contribute, participate in or have any liability under a plan established under Title IV of ERISA or a Multiemployer Plan.

(b) Each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except when such failure to comply is not reasonably expected to result in a Material Adverse Effect. No Company has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan that is reasonably expected to result in a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the respective Company on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Plan by an amount that is reasonably expected to result in a Material Adverse Effect.

SECTION 3.17. Environmental Matters.

(a) The Real Property of the Companies does not contain, and has not previously contained, therein, thereon or thereunder, including the soil and groundwater thereunder, any Hazardous Materials in amounts or concentrations that (i) constitute or constituted a violation of, (ii) require a Response under, or (iii) could give rise to liability under, Environmental Laws, which violations, Response and liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

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(b) All operations of the Companies are in compliance, and, to the knowledge of the Companies, the Real Property is, and in the last three years such operations and the Real Property have been in compliance, with all Environmental Laws and all necessary permits have been obtained and are in effect, except to the extent that such non-compliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(c) There have been no Releases or threatened Releases by any Company or, to their knowledge, by any other party, at, from, under or proximate to the Real Property or otherwise in connection with the operations of any Company, which Releases or threatened Releases, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(d) None of the Companies has received any notice of an Environmental Claim in connection with the Real Property or operations of any Company or with regard to any person whose liabilities for environmental matters any of the Companies has retained or assumed, in whole or in part, contractually, by operation of law or otherwise, that, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(e) Hazardous Materials have not been transported from Real Property of the Companies by or on behalf of any of the Companies, nor have Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such Real Property in a manner that could give rise to liability under, or in violation of, any Environmental Law, nor has any Company retained or assumed any liability, contractually, by operation of law or otherwise, with respect to the generation, treatment, storage, transport or disposal of Hazardous Materials, which transportation, generation, treatment, storage or disposal, or retained or assumed liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(f) No Lien has been recorded, or to the knowledge of any Company threatened, under any Environmental Law with respect to any owned Real Property or relating to any operations or assets of any Company;

(g) No Real Property of the Companies is (i) listed or proposed for listing on the National Priorities List under CERCLA or (ii) to the knowledge of the Companies, listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA, or (iii) to the knowledge of the Companies, included on any similar list maintained by any Governmental Authority (except in the case of clauses (ii) and (iii), for listings relating to events or conditions that could not reasonably be expected to have a Material Adverse Effect); and

(h) No Company is currently conducting any Response pursuant to any Environmental Law with respect to any Real Property or any other location except such waste management activities, air emission or water discharges which are conducted in compliance with Environmental Laws in the normal course of the Companies' operations or any other Response that could not reasonably be expected to result in a Material Adverse Effect

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all insurance maintained by each Loan Party as of the Closing Date. As of such date, such insurance is in full force and effect and all premiums have been duly paid. Each

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Company has insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19. Security Documents.

(a) The Security Agreements are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in and Lien on the Security Agreement Collateral and, when (i) financing statements and other filings in appropriate form are filed in the offices specified in Section III.B of the Perfection Certificate and (ii) the Loan Parties have complied with Article III of the U.S. Security Agreement, the security interest granted under the U.S. Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral (other than (A) the Intellectual Property and (B) such Collateral in which a security interest cannot be perfected under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction for filing), in each case subject to no Liens other than Permitted Liens.

(b) When the appropriate financing statements are filed in the appropriate filing offices and the U.S. Security Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted under the U.S. Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property (as defined in the U.S. Security Agreement), in each case subject to no Liens other than Permitted Liens (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the grantors after the Closing Date).

(c) Each Security Document delivered pursuant to Section 5.11 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable Lien on all of the Loan Parties' right, title and interest in and to the Collateral described therein, and when such Security Document is filed or recorded in the appropriate offices as may be required under applicable law, such Security Document will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Security Agreement Collateral, in each case subject to no Liens other than the applicable Permitted Liens.

SECTION 3.20. Material Adverse Changes. Since December 31, 2003, there has been no change that could reasonably be expected to result in a Material Adverse Effect.

ARTICLE IV

Conditions of Lending

The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions:

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SECTION 4.01. All Credit Extensions. On the date of each Borrowing, and on the date of each issuance, amendment, extension or renewal of a Letter of Credit (each such event being called a "Credit Extension"):

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.17(b).

(b) Borrower and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and, at the time of and immediately after such Credit Extension, no Default or Event of Default shall have

occurred and be continuing.

(c) Each of the representations and warranties set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case shall have been true and correct in all material respects (except that those that are qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects) on and as of such earlier date).

Each Credit Extension shall be deemed to constitute a representation and warranty by Borrower and each other Loan Party on the date of such Credit Extension as to the matters specified in paragraphs (b) and (c) above.

SECTION 4.02. Initial Credit Extension. The effectiveness of this Agreement is subject to the fulfillment, to the satisfaction of the Administrative Agent, of each of the following conditions:

(a) **Loan Documents.** All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent and the Administrative Agent shall have received a duly executed counterpart of each of the Loan Documents, including, with out limitation, this Agreement, each Security Agreement and the Perfection Certificate.

(b) **Corporate Documents.** The Administrative Agent shall have received:

(i) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the certificate or articles of incorporation or other constitutive documents, including all amendments thereto certified as of a recent date by the Secretary of State (or like official) of the jurisdiction of its organization (if such document is of a type that may be so certified), (B) that attached thereto is a true and

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complete copy of the bylaws or other organizational documents of each Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors or other governing body of such person authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such person (together with a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate in this clause (i));

(ii) certificates as to the good standing of each Loan Party as of a recent date, from the Secretary of State (or like official) of the jurisdiction of its organization, to the extent such certificates or their equivalent are issued by such jurisdiction; and

(iii) such other documents as the Administrative Agent, the Issuing Bank or the Lenders may reasonably request.

(c) **Officer's Certificate.** The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of Borrower, confirming compliance with the conditions precedent set forth in Section 4.01 and stating that each of Holdings and its Subsidiaries is compliance with all applicable Requirements of Law, including all applicable environmental laws and regulations, except to the extent such noncompliance could not reasonably be expected to have a Material Adverse Effect.

(d) **Redemption of the Senior Subordinated Notes, Redemption of the Holdings Senior Notes and Other Transactions, Etc**

(i) The Administrative Agent shall have received evidence satisfactory to it that Holdings has received the gross cash proceeds from the IPO and shall have applied the net proceeds from such issuance in part to consummate the Refinancing.

(ii) The Lenders shall be reasonably satisfied with the form and substance of the Transaction Documents; the Transactions scheduled to occur on the Closing Date shall have been consummated or shall be consummated simultaneously on the Closing Date, in each case in all material respects in accordance with the terms hereof and the terms of the Transaction Documents (and without the waiver or amendment of any such terms not approved by the Administrative Agent and the Arranger).

(iii) The Administrative Agent shall have received evidence satisfactory to it that at least 87.5% the Senior Subordinated Notes have been redeemed or provision provided therefor and the covenants of the

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Senior Subordinated Notes shall have been amended in manner satisfactory to the Administrative Agent.

(iv) The Administrative Agent shall have received copies of the Holdings Senior Note Documents certified by a Responsible Officer of Holdings as true, complete and current.

(v) The Refinancing shall have been consummated in full to the satisfaction of the Lenders with all Liens in favor of the lenders to the Existing Credit Agreement being unconditionally released; the Administrative Agent shall have received a “pay-off” letter with respect to all debt being refinanced in the Refinancing; the Administrative Agent shall have received from any person holding any Lien securing any such debt, such UCC (or other) termination statements, mortgage releases, releases of assignments of leases and rents and other instruments, in each case in proper form for recording, as the Administrative Agent shall have reasonably requested to release and terminate of record the Liens securing such debt.

(vi) The Lenders shall be reasonably satisfied with the capitalization, the terms and conditions of any equity arrangements, the ownership, management, tax, corporate, legal or other organizational structure of Borrower and each Guarantor.

(e) **Indebtedness.** After giving effect to the Transactions and the other transactions contemplated hereby, no Company shall have outstanding any Indebtedness, preferred stock or minority interests other than (i) the Loans and extensions of credit hereunder, (ii) the Holdings Senior Notes, (iii) the Indebtedness described on Schedule 6.01 attached hereto and (iv) the minority interests described on Schedule 3.06(a) attached hereto.

(f) **Financial Statements: Pro Forma Balance Sheet; Projections.** The Lenders shall have received, reviewed, and be reasonably satisfied with, (i) the unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for each fiscal quarter of

the fiscal year in which the Closing Date occurs ended prior to 30 days prior to the Closing Date and for the comparable periods of the preceding fiscal year; (ii) (A) the *pro forma* consolidated balance sheets and statements of income for Holdings and its Subsidiaries, as well as the *pro forma* levels of EBITDA and other operating data, for the fiscal year ended December 31, 2003 and each fiscal quarter of the fiscal year in which the Closing Date occurs ended prior to 45 days prior to the Closing Date and for the comparable periods of the preceding fiscal year, after giving effect to the transactions contemplated hereby, and (B) a statement of Holdings' *pro forma* consolidated cash balance as of the Closing Date certified by Borrower's chief financial officer as demonstrating compliance with Section 4.02(d)(vii), after giving effect to the Transactions; and (iii) final forecasts of the financial performance of Holdings and its Subsidiaries. The forecasts provided to the Lenders and any cost savings shall be included in such financial statements prepared in accordance with GAAP only to the extent permitted to be included in *pro forma* financial statements set forth in a registration statement filed with the Securities and Exchange Commission.

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(g) **Opinions of Counsel.** The Administrative Agent shall have received, on behalf of itself, the other Agents, the Arranger, the Lenders and the Issuing Bank, (i) a favorable written opinion of Gibson, Dunn & Crutcher LLP, special counsel for certain of the Loan Parties, and of each other local counsel listed on Schedule 4.02(g), in each case (A) in form reasonably acceptable to the Administrative Agent, (B) dated the Closing Date, (C) addressed to the Agents, the Arranger, the Issuing Bank, and the Lenders and (D) covering such other matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request, and (ii) a copy of each legal opinion delivered under the other Transaction Documents, if any, together with reliance letters from the party delivering such opinion authorizing the Agents, Lenders and the Issuing Bank to rely thereon as if such opinion were addressed to them.

(h) **Requirements of Law.** The Administrative Agent shall be satisfied that the Transactions shall be in full compliance with all material Requirements of Law, including Regulations T, U and X of the Board.

(i) **Financial Condition Certificate.** The Administrative Agent shall have received a certificate from the chief financial officer of Borrower, substantially in the form of Exhibit L, dated the Closing Date and with appropriate attachments, demonstrating, after giving effect to the Transaction, the solvency of the Loan Parties on a consolidated basis.

(j) **Consents.** The Administrative Agent shall be satisfied that all material consents and approvals required from Governmental Authorities and third parties in connection with the Transactions have been obtained and remain in effect, and there shall be no governmental or judicial action (or any adverse development therein), actual or threatened, that the Lenders shall reasonably determine has or could have, singly or in the aggregate, a Material Adverse Effect or could materially and adversely affect the ability of Holdings and its Subsidiaries to fully and timely perform their respective obligations under the Transaction Documents, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(k) **Litigation.** Except as set forth on Schedule 3.07, there shall be no litigation, public or private, or administrative proceedings, governmental investigation or other legal or regulatory developments that, singly or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or could materially and adversely affect the ability of Holdings and its Subsidiaries to fully and timely perform their respective obligations under the Transaction Documents, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(l) **Sources and Uses.** The sources and uses of the Loans shall be as set forth in Section 3.11.

(m) **Fees and Expenses.** The Arrangers, Lenders and Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses (including the reasonable legal fees and expenses of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel to the Administrative Agent and other foreign and local counsel to the Administrative Agent) required to be reimbursed or paid by Borrower hereunder or under any other Loan Document.

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(n) **Personal Property Requirements.** The Collateral Agent shall have received from each Loan Party (except to the extent the Administrative Agent determines that any of the following is not commercially feasible, taking into account the cost to procure and the effectiveness and enforceability under local law):

(i) all certificates, agreements or instruments representing or evidencing the Pledged Equity Interests and the Pledged Intercompany Debt (each as defined in the U.S. Security Agreement) accompanied by instruments of transfer and stock powers endorsed in blank;

(ii) all other certificates, agreements, including Control Agreements, or instruments necessary to perfect security interests in all Chattel Paper, all Instruments, all Deposit Accounts and all Investment Property of each Loan Party (as each such term is defined in the U.S. Security Agreement and to the extent required by the terms of the U.S. Security Agreement);

(iii) UCC financing statements in appropriate form for filing under the UCC and such other documents under applicable Requirements of Law in each jurisdiction as may be necessary or appropriate to perfect the Liens created, or purported to be created, by the Security Documents;

(iv) certified copies of Requests for Information (Form UCC-11), tax lien, judgment lien, bankruptcy and pending lawsuit searches or equivalent reports or lien search reports, each of a recent date listing all effective financing statements, lien notices or comparable documents that name (A) any domestic Loan Party as debtor and that are filed in those state and county jurisdictions in which any of the property of such domestic Loan Party is located and the state and county jurisdictions in which such domestic Loan Party's principal place of business is located, and (B) any foreign Loan Party, to the extent obtainable from the District of Columbia, none of which encumber the Collateral covered or intended to be covered by the Security Documents (other than those relating to Liens acceptable to the Collateral Agent);

(v) delivery of such documents and instruments as the Collateral Agent may request for filing with the United States Patent, Trademark and Copyright Offices, and the execution and/or delivery of such other security and other documents, and the taking of all actions as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect the Liens created, or purported to be created, by the Security Agreements;

(vi) any documents required to be submitted to the Collateral Agent by the Loan Parties as may be necessary or desirable to perfect the security interest of the Collateral Agent pursuant to each Foreign Security Agreement; and

(vii) evidence acceptable to the Collateral Agent of payment by the Loan Parties of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Security Documents.

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(o) **Insurance.** The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04

and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a “standard” or “New York” lender’s loss payable endorsement and to name the Collateral Agent as additional insured, in form and substance satisfactory to the Administrative Agent.

(p) **Subsidiary Guarantors.** Each Subsidiary Guarantor listed on Schedule 1.01(e) that is a Foreign Subsidiary and is not a signatory to this Agreement shall have executed and delivered a Guarantee in form and substance satisfactory to the Administrative Agent.

(q) **Ratings.** The Administrative Agent shall have received certified copies of the Moody’s Rating and the S&P Rating.

(r) **Environmental.** The Lenders shall be reasonably satisfied that there are no material liabilities in respect of the Real Property of Holdings and its Subsidiaries.

ARTICLE V

Affirmative Covenants

Each Loan Party covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, each Loan Party will, and will cause each of its Subsidiaries to:

SECTION 5.01. Financial Statements, Reports, Etc. In the case of Borrower, furnish to the Administrative Agent and each Lender:

(a) **Annual Reports.** Within 90 days after the end of each fiscal year (commencing with fiscal year 2004), (i) the consolidated balance sheet of Holdings as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders’ equity for such fiscal year, and notes thereto (including a note with a balance sheet and statements of income and cash flows separating out the Loan Parties (other than Holdings) from the Non-Guarantor Subsidiaries), all prepared in accordance with Regulation S-X under the Securities Act and in a manner acceptable to the Securities and Exchange Commission and accompanied by an opinion of KPMG LLP or other independent public accountants of recognized national standing satisfactory to the Administrative Agent (which opinion shall not be qualified as to scope or contain any going concern or other qualification), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations, cash flows and changes in stockholders’ equity of the Consolidated Companies as of the end of and for such fiscal year in accordance with GAAP; (ii) a management report in a customary form setting forth, on a consolidated basis, the financial condition, results of operations and cash flows as of the end of and for such fiscal year, as compared to the Companies’ financial condition, results of operations and cash flows as of the end of and

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for the previous fiscal year and its budgeted results of operations and cash flows (including notes separating out the financial condition, results of operations and cash flows of the Loan Parties from the financial condition, results of operations and cash flows of the Non-Guarantor Subsidiaries), and (iii) a management’s discussion and analysis of the financial condition and results of operations for such fiscal year, as compared to the previous fiscal year;

(b) **Quarterly Reports.** Within 45 days after the end of each of the first three fiscal quarters of each fiscal year, (i) the consolidated balance sheet of Holdings as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, and notes thereto (including a note with a balance sheet and statements of income and cash flows separating out the Loan Parties from the Non-Guarantor Subsidiaries), all prepared in accordance with Regulation S-X under the Securities Act and in a manner acceptable to the Securities and Exchange Commission and accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Consolidated Companies as of the date and for the periods specified in accordance with GAAP and on a basis consistent with the audited financial statements referred to in Section 5.01(a), subject to normal year-end audit adjustments and the absence of footnotes; (ii) a management report in a customary form setting forth, on a consolidated basis, the financial condition, results of operations and cash flows as of the end of and for such fiscal quarter and for the then elapsed portion of the fiscal year, as compared to the Companies’ financial condition, results of operations and cash flows as of the end of such fiscal quarter and for the comparable periods in the previous fiscal year and its budgeted results of operations and cash flows (including notes separating out the financial condition, results of operations and cash flows of the Loan Parties from the financial condition, results of operations and cash flows of the Non-Guarantor Subsidiaries); and (iii) a management’s discussion and analysis of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the fiscal year, as compared to the comparable periods in the previous fiscal year;

(c) **Financial Officer’s Compliance Certificate.** (i) Concurrently with any delivery of financial statements under Sections 5.01(a) and (b), a certificate of a Financial Officer certifying that no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; (ii) concurrently with any delivery of financial statements under Sections 5.01(a) and (b), a certificate of a Financial Officer, substantially in the form of Exhibit K attached hereto, setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Section 6.07 and, in the case of Section 5.01(a), setting forth Borrower’s calculation of Excess Cash Flow (if applicable); and (iii) in the case of Section 5.01(a) above, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of Holdings and its Subsidiaries, which audit was conducted in accordance with GAAP, nothing came to their attention that caused them to believe that the any Loan Party failed to comply with the terms, covenants, provisions or conditions of Article VI of this Agreement, insofar as they relate to financial and accounting matters, or if any Default has been noted, specifying the nature and extent thereof;

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(d) **Financial Officer’s Certificate Regarding Collateral.** Concurrently with any delivery of financial statements under Sections 5.01(a), a Perfection Certificate Supplement;

(e) **Public Reports.** Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Company with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(f) **Management Letters.** Promptly after the receipt thereof by any Company, a copy of any “management letter” received by any such person from its certified public accountants and management’s responses thereto;

(g) **Budgets.** No later than 60 days after the first day of each fiscal year of Holdings, an annual budget in form reasonably satisfactory to the Administrative Agent (including budgeted statements of income by each of Borrower’s business units and sources and uses of cash and balance sheets) prepared by Holdings for (i) each fiscal month of such fiscal year prepared in detail and (ii) each of the five years immediately following such fiscal year prepared in summary form, in each case, of Holdings and its Subsidiaries for each fiscal month of such fiscal year prepared in detail with appropriate presentation and discussion of the principal assumptions

upon which such budgets are based, accompanied by the statement of a Financial Officer of each of Holdings and Borrower to the effect that the budget is a reasonable estimate for the period covered thereby (it being understood that actual results may vary significantly from any such projected or forecasted results);

(h) **Annual Meetings with Lenders.** Within 120 days after the close of each fiscal year of Borrower (commencing with fiscal year 2004, each of Holdings and Borrower shall, at the request of the Administrative Agent or Required Lenders, hold a meeting (at a mutually agreeable location and time and at the expense of the participating Lenders (other than with respect to the cost of the location of such meeting, which shall be paid by Borrower)) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Companies and the budgets presented for the current fiscal year of the Companies;

(i) **Notices in Connection with the Holdings Senior Note Documents.** Promptly following the delivery or receipt by any Loan Party of any written notice or communication pursuant to or in connection with any Holdings Senior Note Document, a copy of such notice or communication; and

(j) **Other Information.** Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

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SECTION 5.02. Litigation and Other Notices. Furnish to the Administrative Agent and each Lender prompt written notice upon any Responsible Officer of a Loan Party becoming aware of the following:

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity by or before any Governmental Authority (i) against any Company (or any Affiliate thereof) that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(c) any development that has resulted in, or could reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence of a Casualty Event in excess of \$1,000,000 and will ensure that the Net Cash Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are applied in accordance with the applicable provisions of this Agreement and the Security Documents; and

(e) the incurrence of any material Lien (other than Permitted Liens) on, or claim asserted against any of the Collateral.

SECTION 5.03. Existence; Businesses and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05 or, in the case of any Subsidiary, where the failure to perform such obligations, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; comply with all applicable Requirements of Law (including any and all zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Leases, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; and at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times; *provided, however*, that nothing in this Section 5.03(b) shall prevent (i) sales of assets, consolidations or mergers by or involving any Company in accordance with Section 6.04; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the

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aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Company of any property, rights, franchises, licenses, trademarks, tradenames, copyrights or patents that such person reasonably determines are not useful to its business.

SECTION 5.04. Insurance.

(a) Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any property owned, occupied or controlled by it, to the extent obtainable on commercially reasonable terms; and maintain such other insurance as may be required by law; and, with respect to any Mortgaged Property, otherwise maintain all insurance coverage required under the applicable Mortgage, such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Collateral Agent and the Lenders.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Collateral Agent of written notice thereof; (ii) name the Collateral Agent as insured party or loss payee; (iii) if reasonably requested by the Collateral Agent, include a breach-of-warranty clause; and (iv) be reasonably satisfactory in all other respects to the Collateral Agent.

(c) Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by any Company; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(d) Borrower shall deliver to the Administrative Agent and the Collateral Agent and the Lenders a report of a reputable insurance broker annually with respect to such insurance and such supplemental reports with respect thereto as the Administrative Agent or the Collateral Agent may from time to time reasonably request.

(e) Obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time require, to the extent obtainable on commercially reasonable terms, if at any time the area in which any improvements located on any real property covered by a Mortgage is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the

SECTION 5.05. Taxes. Pay and discharge promptly when due all Taxes before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon such properties or any part thereof; *provided, however*, that such payment and discharge shall not be required with respect to any such Taxes, as well as all lawful claims for labor, materials and

supplies or otherwise, so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the applicable Company shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such proceeding (or orders entered in connection with such proceedings) operate to prevent the forfeiture or sale of the property or assets subject to any such Lien and suspend collection of the contested Tax and enforcement of a Lien and, in the case of Collateral, the applicable Company shall have otherwise complied with the provisions of the applicable Security Document in connection with such nonpayment.

SECTION 5.06. Employee Benefits. (a) Comply in all material respects with the applicable provisions of ERISA and the Tax Code, and (b) furnish to the Administrative Agent (i) as soon as possible after, and in any event within ten days after any Responsible Officer of the Companies or their ERISA Affiliates or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred that, alone or together with any other ERISA Event, could reasonably be expected to result in liability of the Companies or their ERISA Affiliates under Title IV of ERISA, Section 302 of ERISA or Section 401(a)(29) or 412(n) of the Tax Code in any amount or other liability in an aggregate amount exceeding \$1.0 million, a statement of a Financial Officer of Holdings setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto, and (ii) upon request by the Administrative Agent, copies of: (w) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Company or any ERISA Affiliate with the Internal Revenue Service with respect to each Plan, (x) the most recent actuarial valuation report for each Plan, (y) all notices received by any Company or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event, and (z) such other documents or governmental reports or filings relating to any Plan (or employee benefit plan sponsored or contributed to by any Company) as the Administrative Agent shall reasonably request.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Keep proper books of record and account (i) in which full, true and correct entries are made in conformity with GAAP and in all material respects in conformity with all Requirements of Law, and (ii) in which all material dealings and transactions in relation to its business and activities are recorded. Each Company will permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the property of such Company at reasonable times during normal business hours and upon reasonable advance notice (no more frequently than twice during any fiscal year of Holdings and at the sole cost and expense of the Lenders unless a Default or Event of Default shall have occurred and be continuing) and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of any Company with and be advised as to the same by the officers thereof and the independent accountants therefor.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes set forth in Section 3.11.

SECTION 5.09. Compliance with Environmental Laws; Environmental Reports.

(a) Comply and cause all lessees and other persons occupying Real Property, to the extent owned, operated or otherwise controlled by any Company, to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and property and obtain and renew all material Environmental Permits applicable to its operations and property and conduct any Response in accordance with Environmental Laws; *provided, however*, that no Company shall be required to undertake

any Response to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

(b) If a Default caused by reason of a breach of Section 3.17 or 5.09(a) shall have occurred and be continuing for more than 20 days without the Companies commencing activities reasonably likely to cure such Default, at the written request of the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the expense of Borrower, an environmental site assessment report regarding the matters that are the subject of such default, including where appropriate, any soil and/or groundwater sampling prepared by an environmental consulting firm and in form and substance 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 in connection with such Default.

SECTION 5.10. Interest Rate Protection. No later than the 90th day after the Closing Date, Borrower shall enter into, for a minimum of three years after the Closing Date, Interest Rate Protection Agreements acceptable to the Administrative Agent that result in an amount to be determined by the Administrative Agent of up to 25% of the aggregate principal amount of Terms Loans outstanding hereunder being effectively subject to a fixed or maximum interest rate acceptable to the Administrative Agent.

SECTION 5.11. Additional Collateral; Additional Guarantors.

(a) Subject to this Section 5.11 and except to the extent the Administrative Agent (after consultation with Borrower) determines that any of the following is not commercially reasonable (taking into account the expense of obtaining the same, the ability of Borrower or the relevant Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law), with respect to any assets acquired after the Closing Date by Borrower or any other Loan Party that are intended to be subject to the Lien created by any of the Security Documents but that are not so subject, and with respect to any assets held by Borrower or any other Loan Party on the Closing Date not made subject to a Lien created by any of the Security Documents but of a type intended to be subject to the Lien created by the applicable Security Documents (but, in any event, excluding any assets described in Section 5.11(b)), promptly (and in any event within 60 days after the acquisition thereof or upon the Administrative Agent's request): (i) execute and deliver to the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Collateral Agent shall deem necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such properties or assets, 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 Document in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Collateral Agent. Borrower or any such Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Collateral Agent shall require to confirm the validity, perfection and priority of the Lien of Security Documents against such after-acquired properties or assets, and such assets held on the Closing Date not made subject to a Lien created by any of the Security Documents.

(b) To the extent the Administrative Agent (after consultation with Borrower) determines that any of the following is commercially reasonable (taking into account the expense (including taxes) of obtaining the same, the ability of Borrower or the relevant Subsidiary to obtain any necessary approvals or consents required

to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law), with respect to any person that becomes, after the Closing Date, a Wholly Owned Subsidiary directly owned by a Loan Party (a “**New Wholly Owned Subsidiary**”), promptly, and in any event no later than 60 days after each such person becomes a New Wholly Owned Subsidiary, cause such Subsidiary (i) to become a Guarantor and deliver to the Collateral Agent the certificates representing the Equity Interests of such Subsidiary (*provided*, that, in no event shall the stock of any such Subsidiary be required to be pledged if such pledge is illegal under applicable law and no reasonable alternative structure can be devised having substantially the same effect as such pledge that would not be illegal under applicable law), together with undated stock powers executed and delivered in blank by a duly authorized officer of such Subsidiary’s parent, as the case may be, and all Intercompany Notes owing from such Subsidiary to any Loan Party; and (ii) (A) to execute a Joinder Agreement or such comparable documentation, in form and substance reasonably satisfactory to the Administrative Agent, and (B) to take all actions reasonably necessary or advisable to cause the Lien created by each Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Collateral Agent (*provided*, that any such Subsidiary shall not be required to comply with clause (ii)(A) and (B) above if satisfying such requirements is illegal under applicable law and no reasonable alternative structure can be devised having substantially the same effect as such pledge that would not be illegal under applicable law).

(c) Notwithstanding anything to the contrary contained herein, in the case of any (x) New Wholly Owned Subsidiary that has not previously become (and, if so, does not remain) a Guarantor or (y) other Non-Guarantor Subsidiary directly owned by a Loan Party, 66% of the Equity Interests of any such Subsidiary (and 100% of the Equity Interests of any Domesticated Foreign Subsidiary) (exclusive, however, of Herbalife China LLC, Herbalife Del Ecuador, S.A., Herbalife International Products, N.V. or any Immaterial Subsidiary) shall be subject to a Lien or be required to be pledged under the applicable Loan Document (except to the extent the Administrative Agent, after consultation with Borrower, determines that such Lien or pledge is not commercially reasonable (taking into account the expense, including taxes, of obtaining the same, the ability of Borrower or such Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law)).

(d) Upon the written request of the Administrative Agent (*provided*, that, except as otherwise provided in Section 5.12, the Administrative Agent shall not make such written request if (after consultation with Borrower) it determines that any of the following is not commercially feasible (taking into account the expense of obtaining the same and the effectiveness and enforceability thereof under applicable law)), each Loan Party will promptly grant to the Collateral Agent, within 60 days of such request, security interests and Mortgages in such owned Real Property of such Loan Party located in the United States as is acquired by such Loan Party after the Closing Date by Borrower or such Subsidiary and that is used for warehouse, manufacturing, distribution, or laboratory purposes, has a value as determined in good faith by the Administrative Agent in excess

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of \$5.0 million or is otherwise material to the business operations of Borrower or such Subsidiary, as additional security for the Secured Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 6.02). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Collateral Agent and shall constitute valid and enforceable perfected Liens subject only to Permitted Liens and such 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 shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent shall require to confirm the validity, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property within 60 days of the written request of the Collateral Agent, including a survey and local counsel opinion (in form and substance reasonably satisfactory to the Collateral Agent) and all of the following items in respect of such Mortgage:

(i) Mortgages encumbering each Mortgaged Real Property in favor of the Collateral Agent, for the benefit of the Secured Parties, duly executed and acknowledged by the Loan Party that is the owner of such Mortgaged Real Property, and otherwise in form for recording in the recording office of each political subdivision where each such Mortgaged Real Property is situated, and such certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof to create a Lien under applicable law, and such UCC financing statements and fixture filings, all of which shall be in form and substance reasonably satisfactory to Collateral Agent, and any other instruments necessary to grant a mortgage lien under the laws of any applicable jurisdiction;

(ii) with respect to each Mortgage, a policy (or commitment to issue a policy) of title insurance insuring (or committing to insure) the Lien of such Mortgage as a valid first mortgage Lien on the Real Property and fixtures described therein in an amount equal to the fair market value of such Real Property which policies (or commitments) (each, a “**Title Policy**”) shall (A) be issued by the Title Company, (B) to the extent necessary, include such reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to the Collateral Agent, (C) contain a “tie-in” or “cluster” endorsement (if available under applicable law) (i.e., policies that insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (D) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent to the extent that such opinions can be obtained at a cost that is reasonable with respect to the value of the Real Property subject to such Mortgage) as shall be requested reasonably by the Collateral Agent, to the extent such endorsements are available in the applicable jurisdiction (including endorsements on matters relating to usury, first loss, last dollar, zoning,

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contiguity, revolving credit, doing business, non-imputation, public road access, survey, variable rate, environmental lien and so-called comprehensive coverage over covenants and restrictions), and (E) contain no exceptions to title other than exceptions for the Permitted Liens applicable to such Mortgaged Real Property and otherwise acceptable to the Collateral Agent;

(iii) with respect to each Mortgaged Real Property, such affidavits, certificates, information (including financial data) and instruments of indemnification (including a so-called “gap,” “mechanics lien,” and “owner’s” indemnifications and affidavits) as shall be required to induce the Title Company to issue the Title Policy/ies (or commitment) and endorsements contemplated in clause (iii) above;

(iv) evidence reasonably acceptable to the Collateral Agent of payment by Borrower of all Title Policy premiums, escrow, search and examination charges, and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the Title Policies referred to in clause (iii) above; and

(v) with respect to each Mortgaged Real Property, Borrower and each Subsidiary shall have made all notification, registrations and filings, to the extent required by, and in accordance with, all Governmental Real Property Disclosure Requirements applicable to such Mortgaged Real Property, including the use of forms provided by state or local agencies, where such forms exist, whether to Borrower or to or with the state or local agency.

SECTION 5.12. Security Interests; Further Assurances. Each Loan Party shall, at its own cost and expense, take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Collateral Agent in the Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 6.02. Promptly, upon the reasonable request of the Administrative Agent, any Lender or the Collateral Agent, at Borrower’s expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by Administrative Agent or

the Collateral Agent reasonably necessary or desirable for the continued validity, perfection and priority of the Liens on the Collateral covered thereby superior and prior to the rights of all third persons other than the holders of Permitted Liens and subject to other Liens except as permitted by the Security Documents, or obtain any consents, including landlord or similar Lien waivers and consents, as may be necessary or appropriate in connection therewith, to the extent contemplated hereby. Deliver or cause to be delivered to the Administrative Agent and the Collateral Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as the Administrative Agent or the Collateral Agent shall deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents. Upon the exercise by the Administrative Agent or the Collateral Agent of any power, right, privilege or remedy pursuant to any Loan Document that requires any consent, approval, registration, qualification or authorization of any Governmental Authority or any other person, execute and

deliver and/or obtain all applications, certifications, instruments and other documents and papers that the Administrative Agent or the Collateral Agent may be so required to obtain. Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred and is continuing, the Administrative Agent and the Collateral Agent shall have the right to require any Loan Party to execute and deliver documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as the Administrative Agent or the Collateral Agent shall deem necessary to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a valid and perfected Lien subject to no Liens other than Permitted Liens on such assets and properties not otherwise required hereunder, except to the extent such requirements are illegal under applicable law, and no reasonable alternative structure can be devised having substantially the same effect as such actions that would not be illegal under applicable law. If the Administrative Agent, the Collateral Agent or the Required Lenders determine that they are required by law or regulation to have appraisals prepared in respect of the Real Property of any Loan Party constituting Collateral, Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA and are in form and substance satisfactory to the Administrative Agent and the Collateral Agent.

SECTION 5.13. Know-Your-Customer Rules.

If:

- (a) (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (ii) any change in the status of a Loan Party after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer, obliges the Administrative Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Loan Party shall promptly upon the request of the Administrative Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Administrative Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Loan Documents.

Each Lender shall promptly upon the request of the Administrative Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself) in order for the Administrative Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Loan Documents.

SECTION 5.14. Leasehold Undertakings.

At any time following a fiscal quarter in which Consolidated EBITDA for the four fiscal quarters then ended was less than \$125,000,000 and thereafter until Consolidated EBITDA for any four fiscal quarters period was greater than \$125,000,000 then, within 60 days of the written request of the Collateral Agent, each Loan Party shall use its best efforts to deliver to the Collateral Agent:

- (a) Mortgages encumbering each Material Leased Real Property in favor of the Collateral Agent, for the benefit of the Secured Parties, duly executed and acknowledged by the Loan Party that is the holder of an interest in such Material Leased Real Property, and otherwise in form for recording in the recording office of each political subdivision where each such Material Leased Real Property is situated, and such certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof to create a Lien under applicable law, and such UCC financing statements and fixture filings, all of which shall be in form and substance reasonably satisfactory to Collateral Agent, and any other instruments necessary to grant a mortgage lien under the laws of any applicable jurisdiction (including using its best efforts to deliver a Landlord Lien Waiver and Access Agreement);
- (b) with respect to each Material Leased Real Property for which a Mortgage is obtained in accordance with clause (a), an Agreement and Estoppel Certificate executed by the applicable Loan Party and fee interest holder, and such other consents, approvals, amendments, supplements, memoranda of lease estoppels, tenant subordination agreements or other instruments as necessary or required by the Collateral Agent in order for the owner or holder of the fee or leasehold interest constituting such Material Leased Real Property to grant the Lien contemplated by the Mortgage with respect to such Material Leased Real Property;
- (c) with respect to each Mortgage, a Title Policy shall (i) be issued by the Title Company, (ii) to the extent necessary, include such reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to the Collateral Agent, (iii) contain a "tie-in" or "cluster" endorsement (if available under applicable law) (i.e., policies that insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (iv) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent to the extent that such opinions can be obtained at a cost that is reasonable with respect to the value of the Material Leased Real Property subject to such Mortgage) as shall be requested by the Collateral Agent, to the extent such endorsements are available in the applicable jurisdiction (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 and so-called comprehensive coverage over covenants and restrictions), and (v) contain no exceptions

to title other than exceptions for the Permitted Liens applicable to such Material Leased Real Property and otherwise acceptable to the Collateral Agent;

- (d) with respect to each Mortgaged Real Property for which a Mortgage is obtained in accordance with clause (a) above, such affidavits, certificates,

information (including financial data) and instruments of indemnification (including a so-called "gap," "mechanics lien," and "owner's" indemnifications and affidavits) as shall be required to induce the Title Company to issue the Title Policy/ies (or commitment) and endorsements contemplated in clause (c) above;

(e) evidence reasonably acceptable to the Collateral Agent of payment by Borrower of all Title Policy premiums, escrow, search and examination charges, and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the Title Policies referred to in clause (c);

(f) with respect to each Material Leased Real Property, copies of all Leases in which Borrower or any Subsidiary holds the lessor's interest or other agreements relating to possessory interests, if any. To the extent any of the foregoing affect any Material Leased Real Property for which a Mortgage is obtained in accordance with clause (a), such agreement shall be subordinate to the Lien of the Mortgage to be recorded against such Mortgaged Real Property, either expressly by its terms or pursuant to a subordination, non-disturbance and attornment agreement, and shall otherwise be acceptable to the Collateral Agent;

(g) with respect to each Material Leased Real Property for which a Mortgage is obtained in accordance with clause (a), Borrower and each Subsidiary shall have made all notification, registrations and filings, to the extent required by, and in accordance with, all Governmental Real Property Disclosure Requirements applicable to such Material Leased Real Property, including the use of forms provided by state or local agencies, where such forms exist, whether to Borrower or to or with the state or local agency; and

(h) with respect to each Material Leased Real Property for which a Mortgage is obtained in accordance with clause (a), an Officers' Certificate or other evidence reasonably satisfactory to the Collateral Agent that as of the date thereof (i) there is no outstanding citation, violation or similar notice indicating that the Material Leased Real Property contains conditions that are not in compliance in any material respect with local codes or ordinances relating to building or fire safety or structural soundness, (ii) there has not occurred any taking or destruction of any Material Leased Real Property and (iii) there are no material disputes regarding boundary lines, location, encroachment or possession of such Material Leased Real Property and to the best knowledge of Borrower or any Subsidiary that is the holder of an interest in such Material Leased Real Property, no state of facts exist that could give rise to any such claim.

SECTION 5.15. HIL Cash Balances. Commencing March 31, 2005 and thereafter, HIL shall maintain cash balances on its balance sheet in an amount that is at anytime in excess of the amount of HIL's trade payables at such time.

SECTION 5.16. Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 5.16, in each case within the time limits specified on such schedule or as such time as may be extended by the Collateral Agent in its sole discretion.

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ARTICLE VI

Negative Covenants

Each Loan Party covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, no Loan Party will, nor will any Loan Party cause or permit any of its Subsidiaries to:

SECTION 6.01. Indebtedness. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Loan Documents;

(b) Indebtedness under Interest Rate Protection Agreements entered into in compliance with Section 5.10 and such other non-speculative Interest Rate Protection Agreements that may be entered into from time to time by any Company and that such Company in good faith believes will provide protection against fluctuations in interest rates with respect to floating rate Indebtedness then outstanding, and permitted to remain outstanding, pursuant to the other provisions of this Section 6.01;

(c) Indebtedness under Hedging Agreements (other than Interest Rate Protection Agreements) entered into from time to time by any Company in accordance with Section 6.03(c);

(d) intercompany Indebtedness of the Companies outstanding to the extent permitted by Sections 6.03(d), (k), (l), (m), (n) and (o);

(e) Indebtedness of the Borrower and its Subsidiaries in respect of Purchase Money Obligations and Capital Lease Obligations and refinancings or renewals thereof, in an aggregate amount not to exceed at any time outstanding (i) if in respect of lease obligations incurred in connection with the establishment of new real estate leasehold interests, \$100.0 million, so long as such payments are made over not less than ten years, (ii) if in respect of the build out and related tenant improvements for the new leasehold interests contemplated by the preceding clause (i), \$25.0 million, and (iii) otherwise \$20.0 million at that time;

(f) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds and completion guarantees provided by a Company in the ordinary course of its business;

(g) (i) Indebtedness (other than as described in clauses (iii) and (iv) below) actually outstanding on the Closing Date and listed on Schedule 6.01, *provided*, that, any such scheduled Indebtedness that constitutes intercompany Indebtedness (A) owing to a Loan Party by a Loan Party must be subordinated to the Obligations of the Loan Parties in accordance with a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent, and (B) shall not be repaid, prepaid, refinanced

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or renewed unless the repayment, prepayment, refinancing or renewal thereof is treated as an Investment and permitted under Section 6.03; (ii) refinancings or renewals thereof, *provided*, that, (A) any such refinancing Indebtedness is in an aggregate principal amount not greater than the aggregate principal amount of the Indebtedness being renewed or refinanced, *plus* the amount of any premiums required to be paid thereon and fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life than the Indebtedness being renewed or refinanced and (C) the covenants, events of default subordination and other provisions thereof (including any guarantees thereof) shall be, in the aggregate, not materially less favorable to the Lenders than those contained in the Indebtedness being renewed or refinanced; (iii) the Holdings Senior Notes (including any notes issued in exchange therefor in accordance with any registration rights agreement entered into in connection with the issuance of the Holdings Senior Notes); and (iv) Senior Subordinated Notes outstanding after giving effect to the Transactions;

(h) so long as no Default exists or would result therefrom, Indebtedness of the Borrower in respect of the Tax Indemnity, so long as the Borrower is not

obligated to make payments in excess of \$15 million in any fiscal year;

(i) other Indebtedness of Borrower and its Subsidiaries not to exceed \$25.0 million in aggregate principal amount at any time outstanding; and

(j) Indebtedness assumed in connection with a Permitted Acquisition so long as such Indebtedness is in existence at the time of the consummation of the Permitted Acquisition and is not created in anticipation thereof;

provided, however, that notwithstanding anything to the contrary herein, no Subsidiary of Holdings (other than WH Capital) may guarantee or otherwise become liable for any obligations in respect of the Holdings Senior Notes or any other Holdings Senior Note Document.

SECTION 6.02. Liens. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except (each of the following being the “**Permitted Liens**”):

(a) inchoate Liens for Taxes not yet due and payable or delinquent and Liens for Taxes that (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien, or (ii) in the case of any such charge or claim that has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(b) Liens in respect of property of Borrower and its Subsidiaries imposed by law that were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s, landlords’, workmen’s, suppliers’, repairmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as (A) adequate reserves have been established in accordance with GAAP, and (B)

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in the case of any such Lien that has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(c) easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the conduct of the business of the Companies at such Real Property;

(d) Liens arising out of judgments or awards not resulting in an Event of Default and in respect of which such Company shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(e) Liens (other than any Lien imposed by ERISA or Section 401(a)(29) or 412(n) or the Tax Code) (i) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (including obligations imposed by the applicable laws of foreign jurisdictions and exclusive of obligations for the payment of borrowed money); or (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided that*, (x) with respect to clauses (i), (ii) and (iii) above such Liens are set amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings for orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien, (y) to the extent such Liens are not imposed by Law, such Liens shall in no event encumber any property other than cash and Cash Equivalents, and (z) in the case of any such Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(f) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower and its Subsidiaries in the ordinary course of business in accordance with the past practices of Borrower and its Subsidiaries;

(g) Liens arising pursuant to Purchase Money Obligations or Capital Lease Obligations incurred pursuant to Section 6.01(c); *provided that*, (i) the Indebtedness secured by any such Lien (including refinancings thereof) does not exceed 100% of the cost (including financing cost) of the property being acquired or leased at the time of the incurrence of such Indebtedness and (ii) any such Liens attach only to the property being financed pursuant to such Purchase Money Obligations or Capital Lease Obligations and directly related assets, such as proceeds (including insurance proceeds), products, accessions and substitutions, and do not encumber any other property of any Company;

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(h) bankers’ Liens, rights of set-off and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by Borrower and its Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided that*, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(i) Liens on assets of a person (and its Subsidiaries) existing at the time such person is acquired or merged with or into or consolidated with Borrower or any of its Subsidiaries (and not created in anticipation or contemplation thereof); *provided that*, such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements thereon) and are no more favorable to the lien holders than the existing Lien;

(j) Liens pursuant to the Security Documents;

(k) Liens in existence on the Closing Date and set forth on Schedule 6.02; *provided that*, (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase; and (ii) such Liens do not encumber any property other than the property subject thereto on the Closing Date;

(l) Licenses of Intellectual Property (i) granted by Holdings and its Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of Holdings and its Subsidiaries and (ii) licenses contemplated by the HIL Swiss Intercompany Agreements;

(m) cash deposits required to secure obligations in respect of (i) letters of credit and bank guarantees actually outstanding on the Closing Date and listed on Schedule 6.01 and (ii) refinancings or renewals thereof permitted under Section 6.01(g);

(n) restrictions on transfers of securities imposed by applicable securities laws; and

(o) Liens on assets not constituting Collateral and securing Indebtedness permitted under Section 6.01(h) in an amount not to exceed \$5.0 million at any one time;

provided, however, that no Liens shall be permitted to exist, directly or indirectly, on any Securities Collateral (as defined in the U.S. Security Agreement) except to the extent permitted under Section 6.02(m) above).

SECTION 6.03. Investments, Loans and Advances. Directly or indirectly, lend money or credit or make advances to any person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, “**Investments**”), except that the following shall be permitted:

(a) the Companies may consummate the Transactions in accordance with the provisions of the Transaction Documents;

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(b) Borrower and its Subsidiaries may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments for collection in the ordinary course of business, or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(c) the Loan Parties may enter into Interest Rate Protection Agreements to the extent permitted by Section 6.01(b) and may enter into and perform its obligations under Hedging Agreements entered into in the ordinary course of business and so long as any such Hedging Agreement is not speculative in nature;

(d) any Loan Party may make an Investment in any other Loan Party; *provided* that, if such Investment is in the form of an intercompany loan, such loan shall be (i) evidenced by an Intercompany Note, (ii) pledged (and delivered) by such Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable Security Agreement and (iii) subordinated to the prior payment in full of the Obligations pursuant to a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent;

(e) Holdings and its Subsidiaries may make Investments in the form of advances to employees for travel, relocation and like expenses, in each case, in the ordinary course of business and consistent with such Company’s past practices;

(f) Holdings and its Subsidiaries may make Investments in the form of loans and advances not to exceed \$7.0 million at any one time outstanding pursuant to this Section 6.03(f) to employees, directors and distributors of Holdings and its Subsidiaries for the purpose of funding the purchase of Equity Interests of Holdings by such employees, directors and distributors;

(g) Holdings and its Subsidiaries may sell or transfer amounts to the extent permitted by Section 6.04;

(h) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with such Company’s past practices that are received in the settlement of bona fide disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(i) Investments made by Holdings or any Subsidiary as a result of consideration received in connection with an Asset Sale or other transaction effected in compliance with Section 6.04;

(j) Investments outstanding on the Closing Date and identified on Schedule 6.03;

(k) the Loan Parties may make Investments in other persons, including Non-Guarantor Subsidiaries; provided that, (i) after giving pro forma effect to each such Investment, the aggregate amount of all such Investments made by all Loan Parties on and after the Closing Date pursuant to this Section 6.03(k) that are outstanding at any time does not exceed \$25.0 million (excluding any amounts invested in any Non-Guarantor

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Subsidiary that subsequently becomes a Guarantor (effective only upon such person becoming a Guarantor and only for so long as such person remains a Guarantor)) and (ii) if such Investment is in the form of an intercompany loan, such loan shall be (A) evidenced by an Intercompany Note and (B) pledged (and delivered) by the Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable Security Agreement;

(l) the Loan Parties may make Investments in Non-Guarantor Subsidiaries in the form of intercompany loans to such Non-Guarantor Subsidiaries for the purposes of enabling such Non-Guarantor Subsidiaries to comply with statutory obligations imposed by Governmental Authorities; provided that, each such intercompany loan shall be evidenced by an Intercompany Note and shall be pledged (and delivered) by the Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable Security Agreement; *provided, further* that after giving *pro forma* effect to each such Investment, the aggregate amount of all such Investments made by all Loan Parties on and after the Closing Date pursuant to this Section 6.03(l) that are outstanding at any time does not exceed \$10.0 million (excluding any amounts invested in any Non-Guarantor Subsidiary that subsequently becomes a Guarantor (effective only upon such person becoming a Guarantor and only for so long as such person remains a Guarantor));

(m) Investments by the Loan Parties in Non-Guarantor Subsidiaries; *provided*, that, (i) such Investments are contemporaneously or within five Business Days remitted to the Loan Parties, (ii) such Investments are made to facilitate repatriation of monies to the United States, and (iii) the aggregate amount of all such Investments made under this Section 6.03(m) outstanding at any one time shall not exceed \$5.0 million;

(n) Investments by Non-Guarantor Subsidiaries in Loan Parties;

(o) Investments by Non-Guarantor Subsidiaries in Non-Guarantor Subsidiaries;

(p) Investments by Borrower in the Collateral Account and LC Sub-Account;

(q) Holdings or Parent may issue Permitted Preferred Stock, and Borrower may purchase Permitted Preferred Stock, so long as (i) after giving effect to any such purchase on a *pro forma* basis, no Default or Event of Default exists or would result therefrom, (ii) if such Permitted Preferred Stock is issued by Parent, all proceeds thereof are used by Parent to pay cash Dividends to Holdings in compliance with Section 6.05 and (iii) all proceeds of the issuance of such Permitted Preferred Stock or of such Dividends are used by Holdings to pay, or provide for the payment of, regularly scheduled payments of stated interest (and any applicable withholding tax gross-up or other tax indemnity payments in respect thereof) on the Holdings Senior Notes pursuant to the terms of the Holdings Senior Note Documents as in effect on the Closing Date, to the extent such purchase of Permitted Preferred Stock by Borrower and/or payment of Dividends by Parent, as the case may be, is permitted under Section 4.09(a) of the Senior Subordinated Note Agreement (if such agreement is still in effect), so long as, until such time as the proceeds

of the issuance of such Permitted Preferred Stock are applied to the payment of such regularly scheduled payments of stated interest, the Collateral Agent shall have a valid and perfected Lien on and security interest in such proceeds in accordance with [Section 5.11](#) and [Section 5.12](#); and

(r) Permitted Acquisitions.

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SECTION 6.04. Mergers, Consolidations, Sales and Purchases of Assets. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation, or convey, sell, lease or otherwise dispose of (or agree to do any of the foregoing at any future time) all or any part of its property or assets (other than sales and other dispositions of inventory in the ordinary course of business), or purchase or otherwise acquire (in one or a series of related transactions) any part of the property or assets (other than purchases or other acquisitions of assets used or useful in the Companies' business, but not all or substantially all of a person's assets) of any person (or agree to do any of the foregoing at any future time), except that:

(a) Capital Expenditures by Borrower and its Subsidiaries shall be permitted to the extent permitted by [Section 6.07\(c\)](#);

(b) (i) Asset Sales of used, worn out, obsolete or surplus property by any Company in the ordinary course of business and the abandonment or other Asset Sale of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Companies, taken as a whole, shall be permitted; (ii) any Company shall be permitted to barter obsolete inventory for advertising media and for other ordinary course trade purposes; and (iii) subject to [Section 2.10\(c\)](#), sell, lease or otherwise dispose of any assets, *provided* that, the aggregate consideration received in respect of all Asset Sales pursuant to this [clause \(iii\)](#) shall not exceed \$6.0 million in any four fiscal quarters of Holdings;

(c) Investments shall be permitted to the extent permitted by [Section 6.03](#);

(d) Holdings and its Subsidiaries may sell Cash Equivalents in the ordinary course of business;

(e) Holdings and its Subsidiaries may lease (as lessee or lessor) real or personal property and may guaranty such lease in the ordinary course of business;

(f) any Subsidiary may be merged into Borrower (as long as Borrower is the surviving corporation of such merger and remains a Wholly Owned Subsidiary of Holdings) or any other Wholly Owned Subsidiary Guarantor; *provided, however*, that the Lien on and security interest in such property granted in favor of the Collateral Agent under the Security Documents shall be maintained in accordance with the provisions of [Section 5.11](#);

(g) (i) Holdings or any Subsidiary of Holdings may merge, convey, sell, transfer, assign or otherwise dispose of assets to Borrower or any other Loan Party and (ii) Borrower may convey, sell, transfer, assign or otherwise dispose of assets constituting Equity Interests of Designated Subsidiaries and other intangible assets relating to the operations of such Foreign Subsidiary to HIL;

(h) Holdings and its Subsidiaries may incur Liens that are not prohibited hereunder;

(i) any Non-Guarantor Subsidiary may merge, convey, sell, transfer, assign or otherwise dispose of assets to any Company;

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(j) Holdings and its Subsidiaries may make Investments pursuant to and in accordance with [Section 6.03](#);

(k) licenses and sublicenses by any Company of software, Intellectual Property and other general intangibles in the ordinary course of business and which do not materially interfere with the ordinary conduct of business of such Company;

(l) Holdings and its Subsidiaries may settle, release or surrender tort or other litigation claims in the ordinary course of business;

(m) any Non-Guarantor Subsidiary (other than HIL) and any Immaterial Subsidiary may voluntarily dissolve, liquidate or wind up;

(n) Holdings may sell its capital stock to officers, directors, distributors and employees of Holdings and its Subsidiaries;

(o) Luxembourg Intermediate Holdings may create a Subsidiary ("New Parent") and convey, sell, transfer or assign all of its assets to New Parent and immediately thereafter liquidate or merge with and into its parent, WH Capital with WH Capital being the surviving entity; *provided*, that, concurrently with the organization of New Parent (but in any event within five Business Days thereof, but in all cases before the consummation of the transactions contemplated in the preceding clause (i)) New Parent shall immediately (A) become a Guarantor, (B) execute and deliver a joinder agreement, in form and substance satisfactory to the Administrative Agent, whereby New Parent shall grant a security interests in substantially all of its properties and assets, subject to no Liens (other than Permitted Liens), (C) to take all actions requested by the Collateral Agent that the Collateral Agent deems necessary or advisable to cause the Lien created by each Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be requested by the Collateral Agent, (D) upon receipt thereof, deliver to the Collateral Agent stock certificates in respect of the Equity Interest in the Borrower that it holds, together with undated stock powers executed and delivered in blank by a duly authorized officer of New Parent and (E) deliver to the Administrative Agent all such documents, agreements and instruments, including, without limitation, resolutions, good standing certificates and legal opinions, all in form and substance satisfactory to the Administrative Agent and (ii) WH Capital shall (A) deliver to the Collateral Agent the certificates representing the Equity Interests of New Parent, together with undated stock powers executed and delivered in blank by a duly authorized officer of WH Capital, (B) execute and deliver to the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Collateral Agent shall deem necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a security interest on such properties or assets, subject to no Liens other than Permitted Liens, (C) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be requested by the Collateral Agent and (D) deliver to the Administrative Agent all such documents, agreements and instruments, including, without limitation, resolutions, good standing certificates and legal opinions, all in form and substance satisfactory to the Administrative Agent; and

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(p) Any sales or conveyances contemplated by the HIL Swiss Intercompany Agreements.

To the extent the Required Lenders waive the provisions of this [Section 6.04](#) with respect to the sale of any Collateral, or any Collateral is sold as permitted by this [Section 6.04](#), such Collateral (unless sold to a Company) shall be sold free and clear of the Liens created by the Security Documents, and the Agents shall take all actions deemed appropriate to effect the foregoing.

SECTION 6.05. Dividends. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company, except that:

(a) any Subsidiary of Borrower (i) may pay cash Dividends to Borrower or any Wholly Owned Subsidiary of Borrower and (ii) if such Subsidiary is not a Wholly Owned Subsidiary of Borrower, may pay cash Dividends to its shareholders generally so long as Borrower or its Subsidiary that owns the equity interest or interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holdings of Equity Interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests in such Subsidiary);

(b) any Non-Guarantor Subsidiary (i) may pay cash Dividends to its parent and (ii) if such Non-Guarantor Subsidiary is not a Wholly Owned Subsidiary, may pay cash Dividends to its shareholders generally so long as the Subsidiary of Holdings that owns the Equity Interest in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holdings of Equity Interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests in such Subsidiary)

(c) so long as no Default exists or would result therefrom, Borrower and each Guarantor may pay Dividends for the purpose of enabling Holdings to, and Holdings may, repurchase outstanding shares of its capital stock (or options to purchase such common stock) following the death, disability, retirement or termination of employment of current or former employees, officers, distributors or directors of any Company; *provided* that, (i) all amounts used to effect such repurchases are obtained by Holdings from a substantially concurrent issuance of its capital stock (or exercise of options to purchase such capital stock) to other employees, members of management, distributors, executive officers or directors of Holdings, Borrower or any of its Subsidiaries; or (ii) to the extent the proceeds used to effect any repurchase pursuant to this clause (ii) are not obtained as described in preceding clause (i), the aggregate amount of Dividends paid by Holdings pursuant to this Section 6.05(b) (exclusive of amounts paid as described pursuant to preceding clause (i)) shall not exceed \$10.0 million in the aggregate on and after the Closing Date *plus* the amount of any key-man life insurance proceeds actually received in any fiscal year of Holdings;

(d) so long as no Default exists or would result therefrom, Borrower and each Guarantor may pay cash Dividends for the purpose of paying, so long as all proceeds thereof are promptly used to pay, each Loan Party's operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including legal and accounting expenses and similar expenses); *provided* that, the aggregate amount of Dividends paid pursuant to this Section 6.05(c) shall not exceed \$150,000 in any fiscal year of Holdings;

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(e) so long as, after giving effect to any such cash Dividend on *apro forma* basis, no Default or Event of Default exists or would result therefrom, then Borrower and each Guarantor may pay cash Dividends for the purpose of enabling Holdings to pay (so long as all proceeds thereof are used by Holdings to pay) regularly scheduled payments of stated interest (and any applicable withholding tax gross-up payments or other tax indemnity payments in respect thereof) on the Holdings Senior Notes (pursuant to the terms of the Holdings Senior Note Documents as in effect on the Closing Date), so long as, until such time as the amount of cash Dividends made by Borrower pursuant to this Section 6.05(d) are applied to the payment of such regularly scheduled payments of stated interest, the Collateral Agent shall have a valid and perfected Lien on and security interest in such proceeds in accordance with Sections 5.11 and 5.12;

(f) Parent may pay cash Dividends to Holdings in an amount equal to the proceeds from issuances of Permitted Preferred Stock to Borrower in compliance with Section 6.03(q);

(g) so long as no Default exists or would result therefrom, Holdings and any Subsidiary of Holdings may make Dividends in respect of any stock appreciation rights, plans, equity incentive or achievement plans or any similar plan, so long as such rights or similar plans are approved by the board of directors of Holdings (or a duly constituted committee thereof);

(h) so long as no Default exists or would result therefrom, any Subsidiary of Holdings may purchase the capital stock of Holdings in connection with the exercise of stock option or similar arrangements by a director, officer or employee of such Subsidiary; *provided*, that such capital stock is immediately granted to the applicable director, officer or employee of such Subsidiary;

(i) so long as no Default exists or would result therefrom, (i) Holdings may pay cash Dividends in an aggregate amount not to exceed \$20,000,000 per fiscal year (commencing in fiscal year 2005) ("**Permitted Dividends**"), *provided*, that the amount of Permitted Dividends may be increased by 25% of the Consolidated Net Income for the prior fiscal year (commencing with fiscal year 2005), if the Leverage Ratio of Holdings for the four fiscal quarters of such fiscal year is less than or equal to 2.00:1.00 and (ii) the Subsidiaries of Holdings may pay cash Dividends in an aggregate amount equal to the amount of Permitted Dividends that Holdings declares under clause (i) per fiscal year (commencing in fiscal year 2005) in order for Holdings to be able to make such Permitted Dividends so long as Holdings uses such Permitted Dividends as contemplated under clause (i); *provided, further*, that to the extent that the Permitted Dividends made by Holdings and its Subsidiaries is less than the amount permitted to be made in such fiscal year, the amount of such difference may be carried forward and used to make Permitted Dividends in the next succeeding fiscal year;

(j) so long as no Default exists or would result therefrom, Holdings may pay cash Dividends to its shareholders in an amount equal to \$109.3 million plus the aggregate gross proceeds realized from the exercise of any over-allotment option in connection with the IPO; and

(k) Borrower and its direct and indirect parent companies may pay cash Dividends to their respective parent companies (and such parent companies may pay cash Dividends) to the extent of U.S. federal and state income and other tax obligations of WH

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Capital to the extent that such U.S. federal and state income and tax obligations are reasonably attributable to income or operations of the Borrower and any of its Subsidiaries. Any payments made pursuant to this Section 6.05(k) shall, no later than the 30th day after receipt, either be used to pay such obligations to the applicable taxing authority or be remitted to the Borrower.

SECTION 6.06. Transactions with Affiliates. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company, other than in the ordinary course of business and on terms and conditions substantially as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that:

(a) Dividends that are not otherwise restricted hereby may be made;

(b) loans may be made and other transactions may be entered into between and among any Company and its Affiliates to the extent permitted by Sections 6.01 and 6.03;

(c) assets sales permitted by Section 6.04;

(d) customary fees may be paid to non-officer directors of the Loan Parties, and customary indemnities may be provided to all directors of the Loan Parties;

- (e) the transactions contemplated by the HIL Swiss Intercompany Agreements may be effected; and
- (f) the Transactions may be effected.

SECTION 6.07. Financial Covenants.

(a) **Maximum Leverage Ratio.** Permit the Leverage Ratio of Holdings, as of the last day of the fiscal quarter of Holdings ending on March 31, 2005 and every fiscal quarter thereafter, to exceed 2.50:1.00.

(b) **Minimum Interest Coverage Ratio.** Permit the Consolidated Interest Coverage Ratio of Holdings, as of the last day of the fiscal quarter of Holdings ending on March 31, 2005 and every fiscal quarter thereafter, to be less than 4.00:1.00.

(c) **Limitation on Capital Expenditures.** (i) Make or commit to make any Capital Expenditures, other than Capital Expenditures made or committed to be made by Holdings and its Consolidated Subsidiaries (A) in fiscal year 2005 which in the aggregate do not exceed \$55.0 million, (B) in fiscal year 2006 which in the aggregate do not exceed \$45.0 million or (C) in each fiscal year of Holdings thereafter which in the aggregate do not exceed \$40.0 million or (D) for purposes of the build out and tenant improvements for the new leasehold interests contemplated by Section 6.01(e), in an aggregate amount not to exceed \$25.0 million. (ii) Notwithstanding anything to the contrary contained in clause (i) above, to the extent that the Capital Expenditures made by Holdings and its Consolidated Subsidiaries in any period set forth in clause (i) above are less than the amount permitted to be made in such period (without giving effect to any additional amount available as a result of this clause (ii)), the amount of such difference may be

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carried forward and used to make Capital Expenditures in the next succeeding fiscal year of Holdings.

SECTION 6.08. Limitation on Modifications of Indebtedness; Modifications of Certificate of Incorporation, Other Constitutive Documents or Bylaws and Certain Other Agreements, Etc.

(a) Amend or modify, or permit the amendment or modification of, any provision of any existing Indebtedness in respect of the Holdings Senior Note Documents and the Holdings Senior Notes or other Indebtedness of greater than \$5.0 million aggregate principal amount, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or modification would be either to (i) increase the interest rate applicable thereto, (ii) change (to earlier dates) any dates upon which payments of principal or interest are due thereon, (iii) change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), (iv) change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), (v) change any collateral therefor (other than to release such collateral), (vi) or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Indebtedness (or trustee or other representative on their behalf), or (vii) otherwise cause the restrictive covenants governing such Indebtedness to be more restrictive, taken as a whole, than the restrictive covenants set forth herein;

(b) Except as set forth in Section 5.16, make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding under the Holdings Senior Notes;

(c) Amend or modify, or permit the amendment or modification of, any provision of any agreement comprising a HIL Swiss Intercompany Agreement if the effect of such amendment or modification would be to (i) decrease the amounts payable thereunder by HIL to Borrower, (ii) cause the sale, assignment or other conveyance of an interest in the assets of the parties thereto, other than as contemplated by such agreements on the Closing Date or (iii) result in the Borrower forbearing from exercising any rights with respect to the terms or provisions contained therein;

(d) Amend or modify, or permit the amendment or modification of, any provision of any agreement comprising a Material Agreement (other than any Material Agreement referred to in clause (a) and clause (b)) if the effect of such amendment or modification would be to result in (i) the reduction of any rights a Loan Party may have thereunder or (ii) a Loan Party forbearing from exercising any rights with respect to the terms or provisions contained therein;

(e) In respect of all the Companies other than the Borrower, amend, modify or change its articles of incorporation or other constitutive documents or bylaws in any manner that would limit or restrict its ability to guaranty the Obligations or to satisfy its obligations in respect of such guaranty, or, in the case of any Subsidiary of the Borrower, restrict its ability to make distributions or otherwise transfer assets to the Borrower; and

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(f) In respect of the Borrower, amend, modify or change its articles of incorporation or other constitutive documents (including by the filing or modification of any certificate of designation) or bylaws, or any agreement entered into by it, with respect to its capital stock (including any shareholders' agreement), or enter into any new agreement with respect to its capital stock, other than any amendments, modifications, agreements or changes pursuant to this clause (f) or any such new agreements pursuant to this clause (f) that do not in any way adversely and materially affect the interests of the Lenders.

SECTION 6.09. Limitation on Certain Restrictions on Subsidiaries. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by Borrower or any Subsidiary of Borrower, or pay any Indebtedness owed to Borrower or a Subsidiary of Borrower; (b) make loans or advances to Borrower or any of Borrower's Subsidiaries; or (c) transfer any of its properties to Borrower or any of Borrower's Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Loan Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Borrower or a Subsidiary of Borrower, (iv) existing restrictions under Indebtedness existing on the Closing Date and described in Schedule 6.01 attached hereto, (v) restrictions with respect solely to any Subsidiary of Holdings imposed pursuant to a binding agreement which has been entered into for the sale or disposition of all of the Equity Interests or assets of such Subsidiary; *provided that*, such restrictions apply solely to the Equity Interests or assets of such Subsidiary which are being sold, (vi) in connection with and pursuant to refinancings permitted under this Agreement, replacements of restrictions imposed pursuant to clause (iv) or this clause (vi) that are not more restrictive taken as a whole than those being replaced and do not apply to any other person or assets other than those that would have been covered by the restrictions in the Indebtedness so refinanced or replaced, or (vii) customary provisions with respect to the disposition or distribution of assets in joint venture agreements and other similar agreements relating solely to the assets subject to such agreement.

SECTION 6.10. Limitation on Issuance of Capital Stock. Holdings will not permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, Equity Interests, except (i) for stock splits, stock dividends and additional Equity Interest issuances that do not decrease the percentage ownership of any Subsidiary in any class of the Equity Interest of such Subsidiary; (ii) Subsidiaries of Holdings formed after the Closing Date pursuant to Section 6.11 may issue Equity Interests to Holdings or the Subsidiary of Holdings that is to own such stock; (iii) Borrower may issue common stock that is Qualified Capital Stock to a Guarantor (so long as the Collateral Agent has a valid and perfected Lien on and security interest in such Qualified Capital Stock); (iv) only

to the extent required in accordance with applicable law, any Foreign Subsidiary may issue directors' qualifying shares; and (v) in connection with a transaction permitted under Section 6.04. All Equity Interests (other than capital stock issued by Holdings) issued in accordance with this Section 6.10 shall, to the extent required by Section 5.12 or the applicable Security Agreement, be delivered to the Collateral Agent for pledge pursuant to the applicable Security Agreement.

SECTION 6.11. Limitation on Creation of Subsidiaries. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Required Lenders; *provided*, that, Holdings or any of its Subsidiaries may establish or create one or more Wholly Owned Subsidiaries without such consent so long as (except to the extent any of the following is

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expressly exempted, not required or otherwise limited pursuant to Section 5.11(b), but subject, in any event, to the requirements of Section 5.11(c): (a) 100% of the Equity Interest of any new Subsidiary is upon the creation or establishment of any such new Subsidiary pledged and delivered to the Collateral Agent for the benefit of the Secured Parties under the applicable Security Agreement; and (b) upon the creation or establishment of any such new Subsidiary, such Subsidiary becomes a party to the applicable Security Documents and shall become a Guarantor hereunder and execute a Joinder Agreement and other applicable Loan Documents all in accordance with Section 5.11(b).

SECTION 6.12. Sale and Leaseback Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred, except such transactions among Loan Parties, unless (i) the sale of such property is permitted by Section 6.04 and (ii) any Liens arising in connection with its use of such property are permitted by Section 6.02.

SECTION 6.13. Holding Companies. Notwithstanding anything to the contrary contained in this Agreement, with respect to the Holding Companies, (i) incur, directly or indirectly, any Indebtedness other than the Obligations under the Loan Documents to which any such Company is a party, the Holdings Senior Notes and any intercompany Indebtedness between Holding Companies permitted hereunder or incurred in connection with the payments required to consummate the Transactions, (ii) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by such Company other than the Liens created under the Security Documents to which such Company is a party, (iii) engage in any business or own any assets other than holding the Equity Interest of such Company's direct Subsidiaries, claims against another Company, proceeds received in connection with the Transactions, and activities reasonably related to each of the foregoing; (iv) consolidate with or merge with or into, or convey, transfer (except in connection with the Transactions) or lease all or any portion of its assets to, any person other than a Loan Party or (v) sell or otherwise dispose of any Equity Interest of any of such Company's Subsidiaries other than to Loan Party.

SECTION 6.14. Business.

Holding and its Subsidiaries, engage (directly or indirectly) in any business other than those businesses in which Borrower and its Subsidiaries are engaged on the Closing Date (or that are incidental, complementary or substantially related thereto or are reasonable extensions thereof).

SECTION 6.15. Limitation on Accounting Changes. Make or permit any change in accounting policies or reporting practices without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or are required by GAAP.

SECTION 6.16. Fiscal Year. Change its fiscal year-end to a date other than December 31.

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ARTICLE VII

Guarantee

SECTION 7.01. The Guarantee. The Guarantors hereby irrevocably and unconditionally, jointly and severally guarantee as primary obligors and not as sureties to each Secured Party and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on (including any interest, fees, costs or charges that would accrue but for the provisions of Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or Interest Rate Protection Agreement relating to the Loans, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby irrevocably and unconditionally, jointly and severally agree that if Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 7.02. Obligations Unconditional. The obligations of the Guarantors under Section 7.01 shall constitute a guaranty of payment (and not of collection) and are absolute, irrevocable and unconditional, joint and several (except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex III attached hereto or in any other Guarantee required by applicable Requirements of Law), irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder, which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed

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Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, the Issuing Bank or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Loan Party exhaust any right, power or remedy or proceed against Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against Borrower or against any other person that may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

For purposes of this paragraph only, references to the "principal" include each Loan Party and references to the "creditor" include each Secured Party. In accordance with Section 2856 of the California Civil Code, each Guarantor waives all rights and defenses (i) available to such Guarantor by reason of Sections 2787 through 2855, 2899, and 3433 of the California Civil Code, including all rights or defenses such Guarantor may have by reason of protection afforded to the principal with respect to any of the Guaranteed Obligations, or to any other guarantor of any of the Guaranteed Obligations with respect to any of such guarantor's obligations under its guarantee, in either case in accordance with the antideficiency or other laws of the State of California limiting or discharging the principal's Indebtedness or such other guarantor's obligations, including Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure; and (ii) arising out of an election of remedies by the creditor, even though such election, such as a nonjudicial foreclosure with respect to security for any Guaranteed Obligation (or any obligation of any other guarantor of any of the Guaranteed Obligations), has destroyed such Guarantor's right of subrogation and reimbursement against the principal (or such other guarantor) by the operation of Section 580d of the California Code of Civil Procedure or otherwise. No other provision of this Guarantee shall be construed as limiting the generality of any of the covenants and waivers set forth in this paragraph. As provided below, this Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of the

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State of New York. This paragraph is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to any of the Guaranteed Obligations.

SECTION 7.03. Reinstatement. The obligations of the Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Holdings, Borrower or any other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Guarantors jointly and severally (except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex III attached hereto or in any other Guarantee required by applicable Requirements of Law) agree that they will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the gross negligence, bad faith or willful misconduct of such Secured Party.

SECTION 7.04. Subrogation; Subordination. Each Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation or otherwise, against Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. The payment of any amounts due with respect to any indebtedness of Borrower or any other Guarantor now or hereafter owing to any Guarantor or Borrower by reason of any payment by such Guarantor under the Guarantee in this Article VII is hereby subordinated to the prior indefeasible payment in full in cash of the Guaranteed Obligations. In addition, any Indebtedness of the Guarantors now or hereafter held by any Guarantor is hereby subordinated in right of payment in full in cash to the Guaranteed Obligations. Each Guarantor agrees that it will not demand, sue for or otherwise attempt to collect any such indebtedness of Borrower or any other Guarantor to such Guarantor until the Obligations shall have been indefeasibly paid in full in cash. If, notwithstanding the preceding sentence, any Guarantor shall, prior to the indefeasible payment in full in cash of the Guaranteed Obligations, collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Guarantor as trustee for the Secured Parties and be paid over to Administrative Agent on account of the Guaranteed Obligations without affecting in any manner the liability of such Guarantor under the other provisions of the guaranty contained herein.

SECTION 7.05. Remedies. The Guarantors jointly and severally (except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex III attached hereto) agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Article VIII (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VIII) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

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SECTION 7.06. Instrument for the Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213 to the extent permitted thereunder.

SECTION 7.07. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 7.08. Continuing Guarantee. The Guarantees in this Article VII are continuing guarantees of payment, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 7.09. Release of Guarantors. If at any time after the Closing Date and in connection with the Guarantee of any Loan Party in this Article VII (i) subject to the requirements of Section 5.11(c), in the case of a Foreign Subsidiary, the Administrative Agent (after consultation with Borrower) determines that in the case of any existing Guarantor, it would not be commercially reasonable for such Guarantor to remain a Guarantor (taking into account the expense (including taxes), the ability of Borrower or such Guarantor to obtain any necessary approvals or consents required to be obtained under applicable law (but have not been previously obtained) in connection therewith, and the effectiveness and enforceability thereof under applicable law) or (ii) such Guarantee becomes illegal under applicable law and such Loan Party delivers to the Administrative Agent, the Lenders and the Collateral Agent a legal opinion from its counsel to such effect, and no reasonable alternative structure can be devised having substantially the same effect as the issuance of a Guarantee that would not be illegal under applicable law, then, so long as such Guarantor has been released or is contemporaneously released under any other guaranty such Guarantor may be a party to, in case of each of the immediately preceding clauses (i) and (ii), the Collateral Agent shall (at the expense of Borrower) take all action necessary to release its security interest in that portion of the Security Agreement Collateral owned by such Guarantor (*provided, however*, that 65% of the Equity Interests of such Guarantor (and 100% of the Equity Interests of any Domesticated Foreign Subsidiary) shall not be released from the Security Agreement Collateral), and such Guarantor shall be released from its obligations in respect of the Guarantees in this Article VII (such Guarantor being hereinafter referred to as a “**Released Guarantor**,” so long as it continues to be a Non-Guarantor Subsidiary), which release from such Guarantees, in the case of an event described in the immediately preceding clause (i), shall become effective as of the closing of the last day of the taxable year that immediately precedes the date that the Administrative Agent makes a determination described in such clause (i); *provided* that, such Released Guarantor shall continue to be subject to Section 5.11(b).

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ARTICLE VIII

Events of Default

In case of the happening of any of the following events (“**Events of Default**”):

(a) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof (including a Term Loan Repayment Date) or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or HIL Swiss Intercompany Agreement or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in Section 5.02, 5.03 or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) above), or under any Hedging Agreement entered into with any Lender or Affiliate of a Lender, and such default shall continue unremedied or shall not be waived for a period of 30 days after the earlier of (i) an Officer of such Company becoming aware of such default or (ii) receipt by Borrower and such Company of notice from the Administrative Agent or any Lender of such default; *provided, however*, that with respect to any default in obligations under Section 5.09(a), such 30-day period shall be extended if the relevant Company has commenced and continues diligently to pursue prudent and necessary response actions and otherwise complies with Section 5.09(b) and any applicable Environmental Laws;

(f) any Company (other than any Immaterial Subsidiary) shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations) when and as the same shall become due and payable (after all applicable grace periods have expired); or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity; *provided* that, it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$5.0 million at any one time;

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(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company (other than any Immaterial Subsidiary), or of a substantial part of the property or assets of any Company (other than any Immaterial Subsidiary), under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequester, conservator or similar official for any Company (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of any Company; or (iii) the winding-up or liquidation of any Company (other than any Immaterial Subsidiary); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Company (other than any Immaterial Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequester, conservator or similar official for any Company (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of any Company (other than any Immaterial Subsidiary); (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$5.0 million (to the extent not covered by insurance as to which the insurer does not dispute coverage thereof) shall be rendered against any Company or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Company to enforce any such judgment;

(j) an ERISA Event occurs, an event of noncompliance with respect to any Foreign Plan occurs or, if the present value of the accrued benefit liabilities (whether or not vested) under any Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the respective Loan Party on the basis of actuarial assumptions proper under applicable foreign law, exceeds the current value of the assets of such Foreign Plan by more than \$1.0 million, that in the opinion of the Required Lenders, when taken together with all other such ERISA Events, noncompliance and underfunding, could reasonably be expected to result in liability

to any Company or its ERISA Affiliates in an aggregate amount exceeding \$1.0 million;

(k) any security interests and Liens on an asset or assets of the Loan Parties whose fair market value in the aggregate is greater than \$100,000, purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a perfected first priority security interest in and Lien on all of the Collateral thereunder (except as otherwise expressly provided in such Security Documents)) in favor of the

Collateral Agent, or shall be asserted by Holdings, Borrower or any other Loan Party not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby;

(l) any Guarantee or any Security Document shall cease to be in full force and effect, except to the extent expressly permitted to be released hereunder in accordance with Section 7.09;

(m) any Loan Document or HIL Swiss Intercompany Agreement or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny that it has any liability or obligation for the payment of principal or interest or other obligations purported to be created under any Loan Document; or

(n) there shall have occurred a Change in Control;

then, and in every such event (other than an event described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments; (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (iii) direct Borrower to pay (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any event specified in paragraph (g) or (h) above to pay) to the Administrative Agent such additional amounts of cash, to be invested in Cash Equivalents and held as security for Borrower's reimbursement Obligations in respect of Letters of Credit then outstanding, equal to the LC Exposure at such time. In any event described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding.

ARTICLE IX

Collateral Account; Application of Collateral Proceeds

SECTION 9.01. Collateral Account.

(a) The Collateral Agent is hereby authorized to establish and maintain at its office at 1633 Broadway, 25th Floor, New York, New York 10036, Attention: Erma

Dell'Aquila, in the name of the Collateral Agent and pursuant to a Control Agreement, a restricted deposit account designated "Collateral Account." Each Loan Party shall deposit into the Collateral Account from time to time (i) the cash proceeds of any of the Collateral (including pursuant to any disposition thereof) to the extent contemplated herein or in any other Loan Document, (ii) the cash proceeds of any Casualty Event with respect to Collateral to the extent contemplated herein or in any other Loan Document, and (iii) any cash such Loan Party is required to pledge as additional collateral security hereunder pursuant to the Loan Documents.

(b) The balance from time to time in the Collateral Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. So long as no Event of Default has occurred and is continuing or will result therefrom, the Collateral Agent shall, within two Business Days of receiving a request of the applicable Loan Party for release of cash proceeds constituting (i) Net Cash Proceeds from the Collateral Account, remit such cash proceeds on deposit in the Collateral Account to or upon the order of such Loan Party, so long as such Loan Party has satisfied the conditions relating thereto set forth in Section 9.02; (ii) Net Cash Proceeds from any sale or other disposition of Collateral from the Collateral Account, remit such cash proceeds on deposit in the Collateral Account, so long as such Loan Party has satisfied the conditions relating thereto set forth in Section 9.02; and (iii) with respect to the LC Sub-Account at such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of the Letters of Credit have been indefeasibly paid in full. At any time following the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion apply or cause to be applied (subject to collection) the balance from time to time outstanding to the credit of the Collateral Account to the payment of the Obligations in the manner specified in Section 9.03, subject, however, in the case of amounts deposited in the LC Sub-Account, to the provisions of Sections 2.17(j) and 9.03. The Loan Parties shall have no right to withdraw, transfer or otherwise receive any funds deposited in the Collateral Account except to the extent specifically provided herein.

(c) Amounts on deposit in the Collateral Account shall be invested from time to time in Cash Equivalents as the applicable Loan Party (or, after the occurrence and during the continuance of an Event of Default, the Collateral Agent) shall determine, which Cash Equivalents shall be held in the name and be under the control of the Collateral Agent (or any sub-agent); *provided that*, at any time after the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such Cash Equivalents and to apply or cause to be applied the proceeds thereof to the payment of the Obligations in the manner specified in Section 9.03.

(d) Amounts deposited into the Collateral Account as cover for liabilities in respect of Letters of Credit under any provision of this Agreement requiring such cover shall be held by the Administrative Agent in a separate sub-account designated as the "LC Sub-Account" (the "**LC Sub-Account**").

SECTION 9.02. Proceeds of Casualty Events and Collateral Dispositions.

(a) So long as no Event of Default shall have occurred and be continuing, in the event there shall be any Net Cash Proceeds in respect of any Casualty Event

or from any Asset Sale of Collateral, the applicable Loan Party shall have the right, at such Loan Party's option, to apply such Net Cash Proceeds in accordance with the applicable provisions of this Agreement.

(b) In the event any Net Cash Proceeds are required to be deposited in the Collateral Account in accordance with Section 2.10, the Collateral Agent shall not release any part of such Net Cash Proceeds until the applicable Loan Party has furnished to the Collateral Agent (i) an Officers' Certificate setting forth: (A) a brief description of the reason for the release, (B) the dollar amount of the expenditures to be made, or costs incurred by such Loan Party in connection with such release and (C) each request for payment shall be made on at least ten day's prior notice to the Collateral Agent and such request shall state that the properties acquired in connection with such release have a fair market value at least equal to the amount of such Net Cash Proceeds requested to be released from the Collateral Account; and (ii) all security agreements and Mortgages and other items required by the provisions of Sections 5.11 and 5.12 to, among other things, subject such reinvestment properties or assets to the Lien of the Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties.

SECTION 9.03. Application of Proceeds. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Collateral Agent as follows:

(a) First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including compensation to the Collateral Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) Second, to the payment of all other reasonable costs and expenses of such sale, collection or other realization, including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) Third, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, *pro rata*, of (i) interest, principal and other amounts constituting Obligations (other than the Obligations arising under the Interest Rate Protection Agreements), in each case equally and ratably in accordance with the respective amounts thereof then due and owing and (ii) the Obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

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(d) Fourth, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (c) of this Section 9.03, the Loan Parties shall remain liable for any deficiency.

ARTICLE X

The Administrative Agent and the Collateral Agent

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent (it being understood that reference in this Article X to the Administrative Agent shall be deemed to include the Collateral Agent) as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02); and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall not be deemed to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document; (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith; (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document; (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document; or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

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The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

The Administrative Agent may resign as administrative agent hereunder at any time upon at least 30-days' prior notice to the Lenders, the Issuing Bank and Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor from among the Lenders. If no successor shall have been so appointed by the Required Lenders or shall have accepted appointment within 30 days after the retiring Administrative Agent gives notice of its

resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which successor shall be a commercial banking institution organized under the laws of the United States (or any state thereof) or a United States branch or agency of a commercial banking institution, and having combined capital and surplus of at least \$250.0 million; *provided, however*, that if such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor as provided above. Upon the acceptance by a successor of its appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article X and Section 11.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender 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

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taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

The Lenders identified in this Agreement, the Syndication Agent and the Documentation Agent shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders. Without limiting the foregoing, neither the Syndication Agent nor the Documentation Agent shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the Syndication Agent and the Documentation Agent as it makes with respect to the Administrative Agent or any other Lender in this Article X. Notwithstanding the foregoing, the parties hereto acknowledge that the Documentation Agent and Syndication Agent hold such titles in name only, and that such titles confer no additional rights or obligations relative to those conferred on any Lender hereunder.

ARTICLE XI

Miscellaneous

SECTION 11.01. Notices. 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 telecopy, as follows:

(a) if to any Loan Party, to Borrower at:

Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: William D. Lowe
Phone: (310) 410-9600
Telecopy No.: (310) 557-3913;

With courtesy copies to each of:

Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: Kevin J. Curley
Phone: (203) 973-1400
Telecopy No.: (203) 973-1422;

Golden Gate Private Equity, Inc.
One Embarcadero Center, Suite 3300
San Francisco, California 94111
Attention: Jesse Rogers
Phone: (415) 627-4500
Telecopy No.: (415) 627-4501;

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Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071
Attention: Brian D. Kilb, Esq.
Phone: (213) 229-7236
Telecopy No.: (213) 229-7520;

(b) if to the Administrative Agent or the Collateral Agent, to it at:

Morgan Stanley Senior Funding, Inc.
1633 Broadway
25th Floor
New York, New York 10036
Attention: James Morgan
Phone: (212) 537-1470
Telecopy No.: (212) 507-3562; and
Attention: Erma Dell'Aquila
Phone: (212) 537-1532
Telecopy No.: (212) 507-3544; and

(c) if to a Lender, to it at its address (or telecopy number) set forth on Annex II or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 11.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 11.01, and failure to deliver courtesy copies of notices and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

SECTION 11.02. Waivers; Amendment.

(a) No failure or delay by the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by Section 11.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

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(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; *provided that*, no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender; (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any Fees payable hereunder, without the written consent of each Lender affected thereby (except in connection with any waiver of the applicability of any post-default increase in interest rates); (iii) postpone the maturity of any Loan, or any scheduled date of payment of or installment otherwise due on the principal amount of any Term Loan under Section 2.09, or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment or postpone the scheduled date of expiration of any Letter of Credit beyond the Revolving Maturity Date, without the written consent of each Lender affected thereby; (iv) change Section 2.14(b) or (c) in a manner that would alter the *pro rata* sharing of payments or set-offs required thereby without the written consent of each Lender; (v) change the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document (including this Section 11.02(b)) specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder without the written consent of each Lender (or each Lender of such Class, as the case may be); (vi) except as otherwise expressly permitted under this Agreement, (A) release Holdings, Parent, Cayman III, any of the LuxCos and WH Capital from their respective Guarantees or limit its liability in respect of such Guarantee or (B) release all or substantially all of the Subsidiary Guarantors from their Guarantees, or limit the liability of all or substantially all of the Subsidiary Guarantors in respect of their Guarantees, in each case without the written consent of each Lender; (vii) release all or substantially all of the Collateral from the Liens of the Security Documents or alter the relative priorities of the Obligations entitled to the Liens of the Security Documents (except in connection with securing additional Obligations equally and ratably with the other Obligations), in each case without the written consent of each Lender; or (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each affected Class; *provided further that*, (1) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, or the Issuing Bank without the prior written consent of the Administrative Agent, the Collateral Agent, or the Issuing Bank, as the case may be; and (2) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Revolving Lenders (but not the Term Lenders) or the Term Lenders (but not the Revolving Lenders) may be effected by an agreement or agreements in writing entered into by Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 11.02(b) if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by Borrower, the Required Lenders and the

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Administrative Agent (and, if its rights or obligations are affected thereby, the Issuing Bank) if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement.

(c) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by Section 11.02(b), 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 Borrower shall have the right to replace one or more of such non-consenting Lender or Lenders (so long as all non-consenting Lenders are so replaced) with one or more persons pursuant to Section 2.16 so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination.

SECTION 11.03. Expenses; Indemnity.

(a) Borrower agrees to pay all reasonable out-of-pocket expenses (including reasonable legal fees and expenses of counsel, expenses incurred in connection with due diligence and travel, courier, reproduction, printing and delivery expenses) incurred by the Administrative Agent, the Arranger and the Issuing Bank in connection with the syndication of the credit facilities provided for herein and the preparation, execution and delivery, administration of this Agreement and the other

Loan Documents or in connection with any amendments, modifications, enforcement costs or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated), or incurred by the Administrative Agent, the Arranger or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the reasonable fees, charges and disbursements of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Administrative Agent and the Collateral Agent (and one local counsel in each foreign jurisdiction where the Administrative Agent deems such local counsel advisable and any additional counsel to the Lenders required in the event of a conflict of interest), and, in connection with any such enforcement or protection, the fees, charges and disbursements of any consultants and advisors in connection with any out-of-court workout or in any bankruptcy case.

(b) Except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex III attached hereto, the Loan Parties agree, jointly and severally, to indemnify the Agents, the Arranger, each Lender, and the Issuing Bank, each Affiliate of any of the foregoing persons, and each of their respective directors, officers, trustees, employees and agents (each such person being called an “Indemnitee”) against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) any actual or proposed use of the proceeds of the Loans or issuances of Letters of Credit; (ii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto; or (iii) any actual or alleged presence or Release

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or threatened Release of Hazardous Materials, on, under or from any property owned, leased or operated by any Company, or any Environmental Claim related in any way to any Company; *provided* that, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee.

(c) The provisions of this Section 11.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents, the Arranger, the Issuing Bank or any Lender. All amounts due under this Section 11.03 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(d) To the extent that the Loan Parties fail to pay any amount required to be paid by it to the Agents, the Arranger or the Issuing Bank under Section 11.03(a) or (b), each Lender severally agrees to pay to the Agents, the Arranger or the Issuing Bank, 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 any of the Agents, the Arranger or the Issuing Bank in its capacity as such. For purposes hereof, a Lender’s “*pro rata* share” shall be determined based upon its share of the sum of the total Revolving Exposure, outstanding Term Loans and unused Commitments at the time.

SECTION 11.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder (except in a transaction permitted under Section 6.04(f) or 6.04(g)) without the prior written consent of each Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void). Nothing in this Agreement, express or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Affiliates of each of the Agents, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees (other than Holdings or any of its Affiliates or Subsidiaries) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that, (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or a Lender Affiliate, each of Borrower and the Administrative Agent (and, in the case of an assignment of all or a portion of a Revolving Commitment or any Lender’s obligations in respect of its LC Exposure, the Issuing Bank) must give their prior written

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consent to such assignment (which consent shall not be unreasonably withheld or delayed); (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or a Lender Affiliate, any assignment made in connection with the primary syndication of the Commitment and Loans by the Arranger or an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in a principal amount that is an integral multiple of \$500,000 and not less than \$1.0 million, unless each of Borrower and the Administrative Agent otherwise consent; (iii) 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, except that this clause (iii) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender’s rights and obligations in respect of one Class of Commitments or Loans; (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance; and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; *provided further* that, any consent of Borrower otherwise required under this Section 11.04(b) shall not be required if a Default or an Event of Default under Article VIII has occurred and is continuing. Subject to acceptance and recording thereof pursuant to Section 11.04(d), from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement (*provided* that, any liability of Borrower to such assignee under Section 2.12, 2.13 or 2.15 shall be limited to the amount, if any, that would have been payable thereunder by Borrower in the absence of such assignment), and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 11.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.04(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.04(e).

(c) The Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices in Stamford, Connecticut a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive and Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee’s completed

accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 11.04(d).

(e) Any Lender may, without the consent of Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans 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) Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *provided* that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.02(b) that affects such Participant. Subject to Section 11.04(f), Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.04(b), *provided*, that the respective Lender shall provide to the Borrower written notice of the name and address of such Participant, which notice may be delivered via email or facsimile, in each case, with a copy thereof to the Borrower via U.S. mail. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; *provided* that, such Participant agrees to be subject to Section 2.14(c) as though it were a Lender, *provided, further*, that the respective Lender shall provide to the Borrower written notice of the name and address of such Participant, which notice may be delivered via email or facsimile, in each case, with a copy thereof to the Borrower via U.S. mail.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the prior written consent of Borrower. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.15(e) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and the other provisions of this Section 11.04 shall not apply to any such pledge or assignment of a security interest; *provided* that, no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

SECTION 11.05. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan

Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.14, 2.15 and 11.03 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 11.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, the Commitment Letter and the Fee Letter constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 11.08. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final (other than deposits in trust accounts)) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the obligations of any Loan Party now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section 11.08 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

SECTION 11.09. Governing Law; Jurisdiction; Consent to Service of Process

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect

any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 11.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 11.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.10.

SECTION 11.11. Headings. Article and section headings and the table of contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 11.12. Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Lender Affiliates' directors,

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officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or 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 11.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations; (g) with the consent of Borrower; or (h) to the extent such Information (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section 11.12, or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than Borrower or any Subsidiary. For the purposes of this Section 11.12, "Information" shall mean all information received from Borrower or any Subsidiary on a confidential basis relating to Borrower or any Subsidiary or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary. Any person required to maintain the confidentiality of Information as provided in this Section 11.12 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.

SECTION 11.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 11.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 11.14. USA Patriot Act Notice. Each Lender and the Agents (for the Agents and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-5 (signed into law on October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or the Agent, as applicable, to identify Borrower in accordance with the Act.

[signature pages follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

HERBALIFE INTERNATIONAL, INC.,
a Nevada corporation, as Borrower

By: /s/ Brett R. Chapman
Name: BRETT R. CHAPMAN
Title: General Counsel & Secretary

WH CAPITAL CORPORATION,
a Nevada corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
a Nevada corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

HERBALIFE INTERNATIONAL OF EUROPE, INC.,
a California corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

HERBALIFE INTERNATIONAL COMMUNICATIONS, INC.,
a California corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

HERBALIFE INTERNATIONAL DISTRIBUTION, INC.,
a California corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: BRETT R. CHAPMAN
Title: Secretary

HERBALIFE TAIWAN, INC.,
a California corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

HERBALIFE INTERNATIONAL (THAILAND), LTD.,
a California corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

HERBALIFE INTERNATIONAL DO BRASIL LTDA.,
a corporation dually organized in Brazil and Delaware,
as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

HERBALIFE LTD.,
a Cayman Islands exempted company with limited liability,
as a Guarantor

By: /s/ Brett R. Chapman
Name: BRETT R. CHAPMAN
Title: General Counsel & Secretary

WH INTERMEDIATE HOLDINGS LTD.,
a Cayman Islands exempted company with limited liability,
as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

HBL LTD.,
a Cayman Islands exempted company with limited liability,
as a Guarantor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: Secretary

WH LUXEMBOURG HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ Christophe Thomann
Name: Christophe Thomann
Title: Manager

HLF LUXEMBOURG HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ Christophe Thomann
Name: Christophe Thomann
Title: Manager

WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ Christophe Thomann
Name: Christophe Thomann
Title: Manager

HERBALIFE INTERNATIONAL OF ISRAEL (1990) LTD.,
an Israeli corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: BRETT R. CHAPMAN
Title: Authorized Signatory

HERBALIFE INTERNATIONAL FINLAND OY,
a Finnish corporation, as a Guarantor

By: /s/ Brett R. Chapman
Name: BRETT R. CHAPMAN
Title: Authorized Signatory

MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent, Joint Lead Arranger, Joint
Bookrunner and a Lender

By: /s/ Eugene F. Martin
Name: Eugene F. Martin
Title: Vice President
Morgan Stanley Senior Funding Inc

MORGAN STANLEY & CO. INCORPORATED,
as Collateral Agent

By: /s/ Eugene F. Martin
Name: Eugene F. Martin
Title: Managing Director
Morgan Stanley, Inc

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INCORPORATED,
as Joint Lead Arranger, Joint Bookrunner and
Syndication Agent

By: /s/ Bill Gates
Name: Bill Gates
Title: Authorized Signatory

MERRILL LYNCH CAPITAL CORPORATION,
as a Lender

By: /s/ Bill Gates
Name: Bill Gates
Title: Authorized Signatory

COÖPERATIEVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A.,
"RABOBANK INTERNATIONAL",
NEW YORK BRANCH, as Documentation
Agent, as Issuing Bank and as a Lender

By: /s/ J David Thomas
Name: J David Thomas
Title: Executive Director

By: /s/ Rebecca O. Morrow
Name: Rebecca O. Morrow
Title: Executive Director

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

By: /s/ Kevin J. Trieber
Name: Kevin J. Trieber
Title: Senior Vice President

UNION BANK OF CALIFORNIA,
as a Lender

By: /s/ David J. Stassel
Name: David J. Stassel
Title: V.P.

Annex I

Amortization Table

<u>Date</u>	<u>Term Loan Amount</u>
March 31, 2005	\$ 500,000
June 30, 2005	\$ 500,000
September 30, 2005	\$ 500,000
December 31, 2005	\$ 500,000

March 31, 2006	\$	500,000
June 30, 2006	\$	500,000
September 30, 2006	\$	500,000
December 31, 2006	\$	500,000
March 31, 2007	\$	500,000
June 30, 2007	\$	500,000
September 30, 2007	\$	500,000
December 31, 2007	\$	500,000
March 31, 2008	\$	500,000
June 30, 2008	\$	500,000
September 30, 2008	\$	500,000
December 31, 2008	\$	500,000
March 31, 2009	\$	500,000
June 30, 2009	\$	500,000
September 30, 2009	\$	500,000
December 31, 2009	\$	500,000
March 31, 2010	\$	500,000
June 30, 2010	\$	500,000
September 30, 2010	\$	500,000
December 21, 2010	\$	188,500,000

Lenders' Notice Information and Commitments

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Term Loan Commitment</u>
Morgan Stanley Senior Funding, Inc.	\$ 5,000,000	\$ 97,000,000
Merrill Lynch Capital Corporation	\$ 5,000,000	\$ 97,000,000
Rabobank International	\$ 5,000,000	\$ 6,000,000
Bank of America, N.A.	\$ 5,000,000	—
Union Bank of California	\$ 5,000,000	—
Total	\$ 25,000,000	\$ 200,000,000

Morgan Stanley Senior Funding, Inc.

Morgan Stanley Senior Funding, Inc.
1633 Broadway
25th Floor
New York, New York 10036
Attention: James Morgan
Phone: (212) 537-1470
Telecopy No.: (212) 507-3562; and
Attention: Erma Dell'Aquila
Phone: (212) 537-1532
Telecopy No.: (212) 507-3544

Merrill Lynch Capital Corporation

Merrill Lynch Capital Corporation
4 World Financial Center
16th Floor
New York, NY 10080
Attention: Nancy Meadows
Phone: (212) 449-2879
Telecopy No.: (212) 738-1186; and

Merrill Lynch Bank USA
Attention: Document Compliance Specialist
15 West South Temple, 3rd FL
Salt Lake City, UT 84101
Phone: (801) 526-8300
Telecopy No.: (801) 531-7470

Rabobank International

Rabobank International
13355 Noel Rd.
Suite 1000
Dallas, Texas 75240
Attention: David Thomas
Phone: (972) 419-5266
Telecopy No.: (972) 419-6315

Bank of America, N.A.

Bank of America, N.A.
333 South Hope Street, Suite 1300
Los Angeles, CA 90071
Attention: Kevin J. Trieber
Phone: (213) 621-7169
Telecopy No.: (213) 621-3611; and

Bank of America, N.A.
333 S. Beaudry Avenue
Los Angeles, CA 90017
Attention: Linda Escamilla
Phone: (213) 345-7748
Telecopy No.: (213) 345-6081

Union Bank of California, N.A.

Union Bank of California, N.A.
445 South Figueroa Street, 18th Floor
Los Angeles, CA 90071
Attention: David Stassel
Tel: (213) 236-5273
Telecopy No.: (213) 236-7636; and

Union Bank of California, N.A.
601 Potrero Grande Dr., 2nd Floor
Monterey Park, CA 91755
Attention: Ruby Gonzales
Tel: (323) 720-2870
Telecopy No.: (323) 724-6198

Annex III

Limitations on Guarantees and Indemnities Under Applicable Foreign Laws

Limitations on the Guarantee of Herbalife International of Israel (1990) Ltd. (“Herbalife Israel”)

1. Herbalife Israel’s guarantee under the Agreement together with all Herbalife Israel’s obligations and undertakings under and in connection with the Agreement shall be in an unlimited amount, subject to the provisions of any applicable Israeli law.
2. Any and all payments by or on account of any obligation of Herbalife Israel under any of the Loan Documents shall be subject to withholding tax at source as required under applicable Israeli law, unless an appropriate exemption of such deduction has been obtained. Any amounts withheld at source shall be treated as if paid on account of such obligations.
3. Notwithstanding the provisions of Agreement, the Indebtedness of Herbalife Israel now and hereafter held by Herbalife Israel shall be subordinated in right of payment in full in cash to the Guaranteed Obligations, except if (i) applicable Israeli law provides otherwise; or (ii) if any prior third party has not agreed to such subordination.
4. The provision of Section 7.05 of the Agreement shall apply subject to applicable Israeli law.
5. Any stamp duty payable in connection with the Agreement, if any, will be payable by the Borrower.

Limitations on the Guarantee of Herbalife International of Finland OY

Under Chapter 12, Section 7 Subsection 1 of the Finish Companies Act, the Guarantee is limited to the amount of retained earnings.

Limitations on the Guarantee Herbalife International Do Brasil Ltda.

Central bank approval is necessary if cash has to be sent out of Brazil for the Guarantee.

Limitations on the Guarantee Herbalife International (Thailand) Ltd.

Under the Exchange Control Law, to collect on the Guarantee the beneficiary must receive approval from the Bank of Thailand to remit money.

SECURITY AGREEMENT

by

HERBALIFE INTERNATIONAL, INC.,
 HERBALIFE LTD.,
 WH INTERMEDIATE HOLDINGS LTD.,
 HBL LTD.,
 WH LUXEMBOURG HOLDINGS S.à.R.L.,
 HLF LUXEMBOURG HOLDINGS S.à R.L.,
 WH CAPITAL CORPORATION,
 WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L.,
 THE SUBSIDIARY GUARANTORS,
 as Pledgors

in favor of

MORGAN STANLEY & CO. INCORPORATED,
 as Collateral Agent

Dated as of December 21, 2004

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SECURITY AGREEMENT

This SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of December 21, 2004, is made by HERBALIFE INTERNATIONAL, INC., a Nevada corporation (“**Borrower**”); HERBALIFE LTD., a Cayman Islands exempted company with limited liability (formerly known as WH Holdings (Cayman Islands) Ltd.) (“**Holdings**”); WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands exempted company with limited liability and a direct, wholly-owned subsidiary of Holdings (“**Parent**”); HBL LTD., a Cayman Islands exempted company with limited liability and a direct, wholly-owned subsidiary of Parent (“**Cayman III**”); WH LUXEMBOURG HOLDINGS S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Parent (“**Luxembourg Holdings**”); HLF LUXEMBOURG HOLDINGS, S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Luxembourg Holdings (“**New Lux**”); WH CAPITAL CORPORATION, a Nevada corporation and a direct, wholly-owned subsidiary of New Lux (“**WH Capital**”); WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of WH Capital (“**Luxembourg Intermediate Holdings**”); EACH OF THE SUBSIDIARY GUARANTORS LISTED ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME BECOMING A PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with Holdings, Parent, Cayman III, Luxembourg Holdings, New Lux, WH Capital and Luxembourg Intermediate Holdings, the “**Guarantors**”), as pledgors and collateral assignors (Borrower, together with the Guarantors, in such capacities and together with any successors in such capacities, the “**Pledgors**”), in favor of MORGAN STANLEY & CO. INCORPORATED (“**Morgan Stanley**”), in its capacity as collateral agent for the lending institutions from time to time party to the Credit Agreement (defined below) (such lending institutions, collectively, the “**Lenders**”), as pledgee, collateral assignee and secured party (in such capacities and together with any successors in such capacities, “**Collateral Agent**”).

WITNESSETH:

WHEREAS, simultaneously herewith, Borrower, certain of the Guarantors, the Lenders and Morgan Stanley, as Administrative Agent, have entered into that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), whereby the Lenders have agreed to make certain Loans and to issue certain Credit Agreement L/Cs (defined below) to or for the account of Borrower;

WHEREAS, in accordance with the Credit Agreement, it is contemplated that one or more of the Pledgors may enter into one or more Hedging Agreements with one or more of the Lenders or their respective Affiliates;

WHEREAS, in accordance with the Credit Agreement, each Guarantor has, among other things, guaranteed the obligations of Borrower under the Credit Agreement and the other Loan Documents (the “**Guarantees**”);

WHEREAS, each Guarantor will receive substantial benefits from the execution, delivery and performance of the Loan Documents and each is, therefore, willing to enter into this Agreement;

WHEREAS, each Pledgor is or will be the legal or beneficial owner of the rights in the Security Agreement Collateral (defined below) to be pledged by it hereunder;

WHEREAS, it is a condition precedent to the obligations of the Lenders to make Loans under the Credit Agreement or to enter into Hedging Agreements, and of the Issuing Bank to issue Credit Agreement L/Cs thereunder, that each Pledgor execute and deliver the applicable Loan Documents, including this Agreement; and

WHEREAS, this Agreement is given by each Pledgor in favor of Collateral Agent for its benefit and the benefit of the Lenders and any of their respective Affiliates party to any Hedging Agreement (collectively, the “**Secured Parties**”) to secure the payment and performance of all of the Secured Obligations (defined below).

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Pledgors and Collateral Agent hereby agree as follows:

ARTICLE I

Definitions and Interpretation; Perfection Certificate

SECTION 1.01. Definitions.

(a) The following capitalized terms have the meanings assigned to them in the UCC:

“**Account**,” “**Bank**,” “**Certificate of Title**,” “**Chattel Paper**,” “**Commercial Tort Claim**,” “**Commodity Account**,” “**Commodity Contract**,”

“Commodity Intermediary,” “Contract,” “Document,” “Electronic Chattel Paper,” “Entitlement Holder,” “Entitlement Order,” “Equipment,” “Financial Asset,” “Fixtures,” “General Intangible,” “Goods,” “Inventory,” “Investment Property,” “Letter-of-Credit Right,” “Letter of Credit,” “Money,” “Proceeds,” “Record,” “Securities Entitlement,” “Securities Intermediary,” “Supporting Obligation,” and “Tangible Chattel Paper.”

(b) Capitalized terms used in this Agreement (including the preamble and recitals hereof) but not otherwise defined herein have the meanings assigned to such terms in the Credit Agreement. In this Agreement:

“**Agreement**” has the meaning assigned to such term in the preamble hereof.

“**Borrower**” has the meaning assigned to such term in the preamble hereof.

“**Charges**” mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed on or assessed against, and all claims (including landlords’, carriers’, mechanics’, workmen’s, repairmen’s, laborers’, materialmen’s, suppliers’ and warehousemen’s Liens and other claims arising by operation of law) against, all or any portion of the Security Agreement Collateral.

“**Collateral Account**” shall mean account number 0-27-SBAAN-3 in the name of “MSCO as Pledgee of Herbalife International, Inc., Collateral Account” maintained at Citibank, N.A. and any successor or sub-account established and maintained at Citibank N.A. (or a Lender that agrees to be an administrative sub-agent for the Collateral Agent) in accordance with Article IX of the Credit Agreement, and all funds from time to time on deposit in such

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account, including all Cash Equivalents, and all certificates and instruments from time to time representing or evidencing such Cash Equivalents.

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

“**Collateral Records**” means books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Security Agreement Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” means all property (real or personal) assigned, hypothecated or otherwise securing any Security Agreement Collateral, including any security agreement or other agreement granting a lien or security interest in such real or personal property.

“**Control Agreement**” means an agreement in form and substance satisfactory to Collateral Agent sufficient to establish control over any applicable Investment Property (including any Securities Account or Commodity Account) or Deposit Account.

“**Copyrights**” mean, collectively, with respect to each Pledgor, all copyrights (whether statutory or common law and whether established or registered in the United States or any other country) now owned or hereafter created or acquired by or assigned to such Pledgor, whether published or unpublished, and all copyright registrations and applications made by such Pledgor, including the copyrights, registrations and applications listed in Section II.I of the Perfection Certificate, together with any and all (a) rights and privileges arising under applicable law with respect to such Pledgor’s use of any copyrights, (b) reissues, renewals, continuations and extensions thereof, (c) income, fees, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (d) rights corresponding thereto throughout the world and (e) rights to sue for past, present or future infringements thereof.

“**Credit Agreement**” has the meaning assigned to such term in the recitals hereof.

“**Credit Agreement L/C**” has the meaning assigned to the term “Letter of Credit” in the Credit Agreement.

“**Deposit Account**” means, collectively, with respect to each Pledgor, (a) all “deposit accounts” as such term is defined in the UCC and in any event shall include the L/C Sub-Account and all accounts and sub-accounts relating to any of the foregoing accounts, and (b) all cash, funds, checks, notes and any instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (a) of this definition.

“**Distributions**” mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Equity Interests, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Equity Interests or Pledged Intercompany Debt.

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“**Documents Evidencing Goods**” means all Documents evidencing, representing or issued in connection with Goods.

“**Guarantee**” has the meaning assigned to such term in the recitals hereof.

“**Guarantor**” has the meaning assigned to such term in the preamble hereof.

“**Indemnified Liabilities**” has the meaning assigned to such term in [Section 7.04\(a\)](#).

“**Indemnitees**” has the meaning assigned to such term in [Section 7.04\(a\)](#).

“**Instruments**” mean, collectively, with respect to each Pledgor, all “instruments,” as such term is defined in Article 9, rather than Article 3, of the UCC to the extent such instruments evidence any amounts payable under or in connection with any item of Security Agreement Collateral or Mortgaged Real Property or such instruments constitute Proceeds of any item of Security Agreement Collateral or Mortgaged Real Property, and in any event shall include all promissory notes, drafts, bills of exchange or acceptances.

“**Insurance**” means all insurance policies covering any or all of the Security Agreement Collateral (regardless of whether Collateral Agent is the loss payee thereof), and all key-man life insurance policies.

“**Intellectual Property**” means, collectively, with respect to each Pledgor, (a) all Patents, (b) all Trademarks, (c) all Copyrights, (d) all Licenses and (e) the goodwill connected with such Pledgor’s business including (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property in which such Pledgor has any interest and (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any person or entity, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets that relate to such

goodwill.

“**Intercompany Indebtedness**” means Indebtedness (whether or not evidenced by a writing) of any Company (including any Pledgor) payable to a Pledgor.

“**Issuer**” means any issuer of any Pledged Equity Interests.

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

“**Licenses**” mean, collectively, with respect to each Pledgor, all license and distribution agreements, covenants not to sue or any other agreement with any other party with respect to any Patent, Trademark or Copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, including the license and distribution agreements listed in Section II.I of the Perfection Certificate, together with any and all (a) renewals, extensions, supplements and continuations thereof; (b) income, fees, royalties, damages, claims and payments now and hereafter due or payable thereunder and with respect thereto, including damages and payments for past, present or future infringements or violations thereof; (c) rights to sue for past, present and future infringements or violations thereof; and (d) any other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights.

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“**Material Contract**” means any Contract or other arrangement that any Pledgor is a party to and for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect. Notwithstanding the foregoing, each agreement set forth in Schedule 3.08 of the Credit Agreement shall constitute a Material Contract.

“**Non-payment Contract**” means any Contract or agreement to which any Pledgor is a party other than a contract whereby the account debtor’s principal obligation is a monetary obligation; *provided* that, Non-payment Contracts shall not include Receivables.

“**Operative Agreement**” means (a) in the case of any limited liability company or partnership or other noncorporate entity, any membership or partnership agreement or other organizational agreement or document thereof and (b) in the case of any corporation, any charter or certificate of incorporation and bylaws thereof.

“**Patents**” mean, collectively, with respect to each Pledgor, all patents issued or assigned to and all patent applications made by such Pledgor (whether established or registered or recorded in the United States or any other country), including the patents, patent applications and recordings listed in Section II.I of the Perfection Certificate, together with any and all (a) rights and privileges arising under applicable law with respect to such Pledgor’s use of any patents; (b) inventions and improvements described and claimed therein; (c) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (d) income, fees, royalties, damages, claims and payments now or hereafter due or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof; (e) rights corresponding thereto throughout the world; and (f) rights to sue for past, present or future infringements thereof.

“**Pledged Equity Interests**” mean, collectively, with respect to each Pledgor, (a) the issued and outstanding Equity Interests of each person, including all those listed in Section II.D of the Perfection Certificate; and (b) all rights, privileges, authority and powers of such Pledgor in and to each such person or under the Operative Agreements of each such person, and the certificates, instruments and agreements representing the Pledged Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to the Pledged Equity Interests, it being understood that, subject to Section 5.11 of the Credit Agreement, Pledged Equity Interests do not include any Equity Interests in excess of 66.0% of the Equity Interests of any Non-Guarantor Subsidiary, *provided* that, such Non-Guarantor Subsidiary is also a Foreign Subsidiary.

“**Pledged Intercompany Debt**” means, with respect to each Pledgor, all Intercompany Indebtedness payable to such Pledgor by any Company, including all Intercompany Indebtedness described in Section II.H of the Perfection Certificate (and each other intercompany note hereafter acquired by such Pledgor) and all Intercompany Notes, certificates, Instruments or agreements evidencing such Intercompany Indebtedness, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

“**Pledgor**” has the meaning assigned to such term in the preamble hereof.

“**Receivables**” means all rights to payment, whether or not earned by performance, for Goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all rights, if any, in any Goods or other property giving rise to such right to payment

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and all Collateral Support and Supporting Obligations related thereto and all Accounts, Chattel Paper, General Intangibles, Instruments and Receivables Records.

“**Receivables Records**” means (a) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables; (b) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of the Company or any computer bureau or agent from time to time acting for the Company or otherwise; (c) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including lien-search reports, from filing or other registration officers; (d) all credit information, reports and memoranda relating thereto; and (e) all other written or nonwritten forms of information related in any way to the foregoing.

“**Secured Obligations**” mean all obligations (whether or not constituting future advances, obligatory or otherwise) of Borrower and all of the Guarantors from time to time arising under or in respect of this Agreement, the Credit Agreement, the Notes (if any), the Guarantee, the Credit Agreement L/Cs, the other Loan Documents and all Hedging Agreements entered into with any Lender (including the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the obligations contained in this Agreement, the Credit Agreement, the Notes (if any), the Guarantee, the Credit Agreement L/Cs, the other Loan Documents and all Hedging Agreements entered into with any Lender), in each case whether (a) such obligations are direct or indirect, secured or unsecured, joint or several, absolute or contingent, reduced to judgment or not, liquidated or unliquidated, disputed or undisputed, legal or equitable, due or to become due whether at stated maturity, by acceleration or otherwise; (b) arising in the regular course of business or otherwise; (c) for payment or performance; (d) discharged, stayed or otherwise affected by any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other person; or (e) now existing or hereafter arising (including interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other person, or that would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding).

“**Secured Parties**” has the meaning assigned to such term in the recitals hereof.

“**Securities Account**” has the meaning assigned to such term in the UCC; *provided* that, the Collateral Account shall be treated as a Securities Account.

“**Securities Collateral**” means, collectively, the Pledged Equity Interests, the Pledged Intercompany Debt and the Distributions.

“**Security Agreement Collateral**” has the meaning assigned to such term in Section 2.01.

“**Software Embedded in Goods**” means, with respect to any Goods, any computer program embedded in such Goods and any supporting information provided in

connection with a transaction relating to such program if (a) the program is customarily considered part of such Goods or (b) by becoming the owner of such Goods a person acquires a right to use such program in connection therewith.

“**Trademarks**” mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, domain names, trade dress, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country) including the registrations and applications listed in Section II.I of the Perfection Certificate, together with any and all (a) rights and privileges arising under applicable law with respect to such Pledgor’s use of any trademarks; (b) reissues, continuations, extensions and renewals thereof; (c) income, fees, royalties, damages and payments now and hereafter due or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof; (d) rights corresponding thereto throughout the world; and (e) rights to sue for past, present and future infringements thereof.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York, *provided* that, if by reason of mandatory provisions of law, the perfection or the effect of perfection or nonperfection of the security interest in any item or portion of the Security Agreement Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “**UCC**” also means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or nonperfection.

SECTION 1.02. Interpretation. The rules of interpretation specified in the Credit Agreement, including Sections 1.03 and 11.11 thereof, shall be applicable to this Agreement. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the **Credit Agreement** shall govern.

SECTION 1.03. Perfection Certificate. Collateral Agent and each Loan Party agree that the Perfection Certificate and all descriptions of Security Agreement Collateral, schedules, amendments and supplements thereto are and shall at all times remain a part of this Agreement.

ARTICLE II

Grant of Security and Secured Obligations

SECTION 2.01. Pledge. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby grants to Collateral Agent, for its benefit and for the benefit of the Secured Parties, a security interest in and continuing lien on all personal property of such Pledgor, including all of such Pledgor’s right, title and interest in, to and under all of the following property, wherever located, whether now owned or existing, or hereafter arising or acquired from time to time (collectively, the “**Security Agreement Collateral**”):

- (i) all Accounts;
- (ii) all Chattel Paper;

- (iii) all Commercial Tort Claims;
- (iv) all Deposit Accounts;
- (v) all Documents;
- (vi) all General Intangibles;
- (vii) all Goods (including, in any event, Equipment, Fixtures, Inventory, Documents Evidencing Goods and Software Embedded in Goods);
- (viii) all Instruments;
- (ix) all Insurance;
- (x) all Intellectual Property;
- (xi) all Investment Property and Financial Assets;
- (xii) all Letters of Credit and Letter-of-Credit Rights;
- (xiii) all Material Contracts and Non-payment Contracts;
- (xiv) all Money;
- (xv) all Receivables;
- (xvi) all Securities Collateral;
- (xvii) all books and Records relating to any and/or all of the foregoing;
- (xviii) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any and/or all of the foregoing; and

(xix) to the extent not otherwise included above, all other personal property and all Proceeds and products of, accessions and additions to, profits and rents from, and replacements for or in respect of any of the foregoing;

it being understood that, subject to the other provisions hereof and of the Credit Agreement, the foregoing grant of a security interest shall not diminish any Pledgor's exclusive right and license to use, or grant to other persons license or sublicenses in, the Intellectual Property.

SECTION 2.02. Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.01(a) attach to, and the Security Agreement Collateral shall not include:

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(a) any agreement to which any Pledgor is a party to the extent that the collateral assignment thereof or the creation of a security interest therein would constitute a breach of the terms of such agreement, or would permit any party to such agreement to terminate such agreement, in each case as entered into by the applicable Pledgor; *provided* that, any of the agreements excluded in accordance with the foregoing shall cease to be so excluded (x) to the extent such term is, or would be (in the case of after-acquired property or changes to applicable law), rendered ineffective under Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction (or any successor provision) or any other applicable law (including the Bankruptcy Code) or principles of equity; or (y) if the applicable Pledgor has obtained all of the consents of the other parties to such agreement necessary for the collateral assignment of, or creation of a security interest in, such agreement;

(b) any property or asset hereafter acquired by any Pledgor that is subject to a Lien permitted to be incurred pursuant to Sections 6.02(g), (h), (i) and (k) of the Credit Agreement, solely to the extent that the documents evidencing such Lien prohibit the grant of a security interest in or Lien on such property or asset; *provided* that, upon such property or asset no longer being subject to such Lien or prohibition, such property or asset shall (without any act or delivery by any person) constitute Security Agreement Collateral hereunder;

(c) subject to Section 5.11 of the Credit Agreement, no more than 66.0% of the Equity Interests of Parent, Cayman III, Luxembourg Holdings, HIL or any Non-Guarantor Subsidiary, *provided* that, such Non-Guarantor Subsidiary is also a Foreign Subsidiary; or

(d) the Equity Interests of the Designated Subsidiaries.

Collateral Agent agrees that, at any Pledgor's reasonable request and expense, it will provide such Pledgor confirmation that the assets described in this Section 2.02 are in fact excluded from the Security Agreement Collateral.

SECTION 2.03. Secured Obligations; Continuing Liability.

(a) **Security for Obligations.** This Agreement secures, and the Security Agreement Collateral is collateral security for, the payment and performance in full when due of all the Secured Obligations.

(b) **Continuing Liability under Security Agreement Collateral.** Notwithstanding anything herein to the contrary, (i) each Pledgor shall remain liable under each of the obligations and agreements included in the Security Agreement Collateral, including any obligations or agreements relating to any Pledged Equity Interests, to perform all of the obligations undertaken by it thereunder, all in accordance with the terms and provisions thereof, and neither Collateral Agent nor any Secured Party shall have any obligation or liability (x) under any of such agreements by reason of this Agreement or any other document relating hereto, or (y) to make any inquiry regarding the nature or sufficiency of any payment received by it, or have any obligation to take any action to collect or enforce any rights under any agreement included in the Security Agreement Collateral, including any agreements relating to any Pledged Equity Interests; (ii) the exercise by Collateral Agent of any of its rights hereunder shall not release any Pledgor from any of its duties or obligations under the contracts and agreements included in the Security Agreement Collateral; and (iii) nothing herein is intended to or shall be a delegation of duties to Collateral Agent or any other Secured Party.

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ARTICLE III

Perfection; Supplements; Further Assurances; Use of Security Agreement Collateral

SECTION 3.01. Delivery of Certificated Securities Collateral. All certificates, agreements or instruments representing or evidencing the Securities Collateral, to the extent not previously delivered to Collateral Agent, shall promptly upon receipt thereof by any Pledgor be delivered to and held by or on behalf of Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Collateral Agent. Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.02. Perfection of Uncertificated Securities Collateral. If any Issuer of Pledged Equity Interests is organized in a jurisdiction that does not permit the use of certificates to evidence equity ownership, or if any of the Pledged Equity Interests are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, to the extent permitted by applicable law, record such pledge on the equityholder register or the books of the Issuer, cause the Issuer to execute and deliver to Collateral Agent an acknowledgment of the pledge of such Pledged Equity Interests substantially in the form of Exhibit A annexed hereto and, upon Collateral Agent's request therefor, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give Collateral Agent the right to transfer such Pledged Equity Interests under the terms hereof and provide to Collateral Agent an opinion of counsel, in form and substance satisfactory to Collateral Agent, confirming such pledge and perfection thereof.

SECTION 3.03. Financing Statements and Other Filings. Each Pledgor represents and warrants to Collateral Agent that the only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interest granted by each Pledgor to Collateral Agent (for the benefit of the Secured Parties) pursuant to this Agreement in respect of the Security Agreement Collateral are listed in Section III.B of the Perfection Certificate. Each Pledgor agrees that at any time and from time to time, at the sole cost and expense of the Pledgors, it will execute and file and refile (in accordance with Section 3.04), or permit Collateral Agent to file and refile, such financing statements, continuation statements and other documents (including this Agreement), in form acceptable to Collateral Agent, in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) as Collateral Agent may deem necessary or appropriate, wherever required by law to perfect, continue and maintain a valid, enforceable, first-priority security interest in the Security Agreement Collateral as provided herein and to preserve the other rights and interests granted to Collateral Agent hereunder, as against third parties, with respect to any Security Agreement Collateral.

SECTION 3.04. Other Actions. To further ensure the attachment, perfection and priority of, and the ability of Collateral Agent to enforce, Collateral Agent's

security interest in the Security Agreement Collateral, each Pledgor acknowledges and agrees as follows:

(a) **UCC Financing Statements.** Each Pledgor hereby irrevocably authorizes Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings), continuation statements, and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment, including (i) whether the Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Security Agreement Collateral relates. The Pledgor agrees to provide such information to Collateral Agent promptly upon request. Such financing statements or amendments may describe the Security Agreement Collateral as “all assets” or “all personal property, whether now owned or hereafter acquired,” or in any other manner that Collateral Agent, in its sole discretion, deems necessary, advisable or prudent to ensure the perfection of the security interests granted hereunder. Each Pledgor hereby ratifies its authorization for Collateral Agent to file in any relevant jurisdiction any financing statements or amendments thereto if filed prior to the date hereof.

(b) **Intellectual Property Filings.** Each Pledgor hereby irrevocably authorizes Collateral Agent to file documents with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by each Pledgor hereunder and naming any Pledgor or the Pledgors as debtors and Collateral Agent for its benefit and the benefit of the Lenders as secured party.

(c) **Instruments and Tangible Chattel Paper.** If any amount payable under or in connection with any of the Security Agreement Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, the Pledgor acquiring such Instrument or Tangible Chattel Paper shall forthwith endorse, assign and deliver the same to Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as Collateral Agent may from time to time specify.

(d) **Deposit Accounts.** Each Pledgor shall notify Collateral Agent of any Deposit Account such Pledgor has opened no later than 30 days after such Deposit Account is opened and (unless waived in writing by Collateral Agent in its sole discretion) either (i) pursuant to a Control Agreement cause the depository Bank to agree to comply at any time with instructions from Collateral Agent to such depository Bank directing the disposition of funds from time to time credited to such Deposit Account, without further consent of such Pledgor or any other person, or (ii) arrange for Collateral Agent to become the customer of the Bank with respect to the Deposit Account, with the Pledgor being permitted, so long as no Default or Event of Default exists and is continuing, to exercise rights to withdraw funds from such Deposit Account pursuant to an agreement in form and substance satisfactory to Collateral Agent. The preceding sentence shall not apply to Deposit Accounts for which Collateral Agent is the depository. Each Pledgor represents and warrants to Collateral Agent that, as of the date hereof, it maintains no Deposit Accounts other than (i) those set forth in Section II.F of the Perfection Certificate or (ii) those for which the applicable Pledgor has provided notice thereof to Collateral Agent pursuant to the preceding sentence. Each such Deposit Account is subject to a Control Agreement that is in full force and effect.

(e) **Investment Property.**

(i) If any Pledgor shall at any time hold or acquire any certificated securities constituting Investment Property, such Pledgor shall promptly endorse, assign and deliver the same to Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank, all in form and substance satisfactory to Collateral Agent. If any securities now or hereafter acquired by any Pledgor constituting Investment Property are uncertificated and are issued to such Pledgor or its nominee directly by the issuer thereof, such Pledgor shall promptly notify Collateral Agent thereof and such Pledgor shall either (A) pursuant to a Control Agreement cause the issuer to agree to comply with instructions from Collateral Agent as to such securities, without further consent of any Pledgor, such nominee or any other person, or (B) arrange for Collateral Agent to become the registered owner of the securities. If any securities constituting Investment Property, whether certificated or uncertificated, or other Investment Property now or hereafter acquired by any Pledgor is held by such Pledgor or its nominee through a Securities Intermediary or Commodity Intermediary, such Pledgor shall promptly notify Collateral Agent thereof and, unless waived in writing by Collateral Agent in its sole discretion, either (A) pursuant to a Control Agreement cause such Securities Intermediary or Commodity Intermediary, as the case may be, to agree to comply with Entitlement Orders or other instructions from Collateral Agent to such Securities Intermediary as to such securities or other Investment Property, or to apply any value distributed on account of any Commodity Contract as directed by Collateral Agent to such Commodity Intermediary, as the case may be, in each case without further consent of any Pledgor, such nominee or any other person, or (B) in the case of Financial Assets constituting Investment Property or other Investment Property held through a Securities Intermediary, arrange for Collateral Agent to become the Entitlement Holder with respect to such Investment Property, with the Pledgor being permitted, so long as no Default or Event of Default has occurred and is continuing, to exercise rights to withdraw or otherwise deal with such Investment Property pursuant to an agreement in form and substance satisfactory to Collateral Agent. The preceding sentence shall not apply to any Financial Assets credited to a Securities Account for which Collateral Agent is the Securities Intermediary. Each Pledgor represents and warrants to Collateral Agent that, as of the date hereof, such Pledgor maintains no Securities Accounts or Commodity Accounts with any Securities Intermediary or Commodity Intermediary other than (i) as set forth in Section II.E of the Perfection Certificate or (ii) those for which the applicable Pledgor has provided notice thereof to Collateral Agent pursuant to the preceding sentence. Subject to the provisions of this Section 3.04(e)(i), each such Securities Account or Commodities Account is subject to a Control Agreement that is in full force and effect.

(ii) As between Collateral Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property, and the risk of loss of, damage to, or the destruction of the Investment Property, whether in the possession of, or maintained as a Security Entitlement by, or subject to the control of, Collateral Agent, a Securities Intermediary, Commodities Intermediary, the Pledgor or any other person; *provided* that, nothing contained in this Section 3.04(e)(ii) shall release or relieve any Securities

Intermediary or Commodities Intermediary of its duties and obligations to the Pledgors or any other person under any Control Agreement or under applicable law. Each Pledgor shall promptly pay all Charges and fees of whatever kind or nature with respect to the Investment Property pledged by it or this Agreement. In the event any Pledgor shall fail to make such payment contemplated in the immediately preceding sentence, Collateral Agent may do so for the account of such Pledgor and the Pledgors shall promptly reimburse and indemnify Collateral Agent from all costs and expenses incurred by Collateral Agent under this Section 3.04(e)(ii) in accordance with Section 7.03.

(f) **Electronic Chattel Paper and Transferable Records.** If any amount payable under or in connection with any of the Security Agreement Collateral shall be evidenced by any Electronic Chattel Paper or any “transferable record,” as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Pledgor acquiring such Electronic Chattel Paper or transferable record shall promptly notify Collateral Agent thereof and, at the request of Collateral Agent, shall take such action as Collateral Agent may request to vest in Collateral Agent control under UCC Section 9-105 of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. Collateral Agent agrees with such Pledgor that Collateral Agent will arrange, pursuant to procedures satisfactory to Collateral Agent and so long as such

procedures will not result in Collateral Agent's loss of control, for the Pledgor to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act of Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Pledgor with respect to such Electronic Chattel Paper or transferable record.

(g) **Letter-of-Credit Rights.** If any Pledgor is at any time a beneficiary under a Letter of Credit in excess of \$1.0 million now or hereafter issued in favor of such Pledgor, such Pledgor shall promptly notify Collateral Agent thereof and, at the request of Collateral Agent, such Pledgor shall, pursuant to an agreement in form and substance satisfactory to Collateral Agent, either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for Collateral Agent to become the transferee beneficiary of the Letter of Credit.

(h) **Commercial Tort Claims.** If any Pledgor shall at any time hold or acquire a Commercial Tort Claim relating to any of the Security Agreement Collateral and such Pledgor, in the exercise of its reasonable business judgment, elects to pursue such commercial tort claim, such Pledgor shall promptly notify Collateral Agent in writing signed by such Pledgor of the brief details thereof and grant to Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all in accordance with this Agreement, with such writing to be in form and substance satisfactory to Collateral Agent.

(i) **Motor Vehicles.** Upon the request of Collateral Agent, each Pledgor shall deliver to Collateral Agent originals of the Certificates of Title or certificates of ownership for the motor vehicles (and any other Equipment covered by Certificates of Title or ownership owned by it) with Collateral Agent listed as lienholder therein.

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SECTION 3.05. Supplements; Further Assurances.

(a) The Pledgors shall cause each person that, from time to time after the date hereof, shall be required to pledge any assets to Collateral Agent for the benefit of the Secured Parties pursuant to the provisions of the Credit Agreement, to execute and deliver to Collateral Agent a Joinder Agreement and, upon such execution and delivery, such person shall constitute a "Guarantor" and a "Pledgor" for all purposes hereunder with the same force and effect as if originally named as a Guarantor and Pledgor herein. The execution and delivery of such Joinder Agreement shall not require the consent of any Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor and Pledgor as a party to this Agreement.

(b) Upon obtaining any Pledged Equity Interests or Pledged Intercompany Debt of any person, each Pledgor shall accept the same in trust for the benefit of Collateral Agent and forthwith deliver to Collateral Agent a Perfection Certificate Supplement, and the certificates and other documents required under this Article III in respect of the additional Pledged Equity Interests, Pledged Intercompany Debt or other possessory Security Agreement Collateral that is to be pledged pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Equity Interests or Pledged Intercompany Debt.

(c) Each Pledgor agrees to take such further actions, and to execute and deliver to Collateral Agent such additional assignments, agreements, supplements, powers and instruments, as Collateral Agent may in its reasonable judgment deem necessary or appropriate, to perfect, preserve and protect the security interest in the Security Agreement Collateral as provided herein and the rights and interests granted to Collateral Agent hereunder, to carry into effect the purposes hereof or to better assure and confirm unto Collateral Agent or permit Collateral Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Security Agreement Collateral. By way of example, such actions may include appearing in and defending any action or proceeding, at Collateral Agent's request, that may affect such Pledgor's title to or Collateral Agent's security interest in all or any part of the Security Agreement Collateral. Upon the reasonable request of Collateral Agent, each Pledgor shall further make, execute, endorse, acknowledge, file or refile or deliver to Collateral Agent from time to time such lists, descriptions and designations of the Security Agreement Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments. If a Default has occurred and is continuing, Collateral Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as Collateral Agent deems necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Security Agreement Collateral. All of the foregoing shall be at the sole cost and expense of the Pledgors.

(d) For the avoidance of doubt, the Pledgors and Collateral Agent acknowledge that this Agreement is intended to grant to Collateral Agent, for the benefit of the Secured Parties, a security interest in and continuing Lien on the Security Agreement Collateral, and does not constitute a present assignment of ownership rights, a transfer of ownership or title to any Security Agreement Collateral, except as otherwise provided herein following the occurrence and during the continuance of an Event of Default. Unless an Event of Default shall have occurred and be continuing, Collateral Agent agrees from time to time to deliver, upon written request of any Pledgor and at such Pledgor's sole cost and expense (including reasonable

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expenses of counsel to, among other things, review the effect thereof on Collateral Agent's security interest granted hereunder), any and all instruments, certificates or other documents, in a form reasonably requested by such Pledgor, necessary or appropriate in the reasonable judgment of such Pledgor to enable such Pledgor to continue to exploit, license, use and protect the Security Agreement Collateral in accordance with the terms hereof and of the Credit Agreement.

ARTICLE IV

Representations, Warranties and Covenants

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.01. Title. Except for the security interest granted to Collateral Agent for its benefit and for the benefit of the Secured Parties pursuant to this Agreement and Permitted Liens, such Pledgor owns the rights in each item of Security Agreement Collateral pledged by it hereunder, and with regard to each item of Security Agreement Collateral now existing or hereafter acquired, will continue to own or have such rights, in each case free and clear of any and all Liens or claims of others. No effective financing statement or other public notice with respect to all or any part of the Security Agreement Collateral is on file or of record in any public office, except such as have been filed in favor of Collateral Agent pursuant to this Agreement, are permitted by the Credit Agreement, or for which proper termination statements have been delivered to Collateral Agent for filing. No person other than Collateral Agent has control or possession of all or any part of the Security Agreement Collateral, except as permitted hereby or by the Credit Agreement.

SECTION 4.02. Organization; Authority; Enforceability. Such Pledgor (a) is duly organized or incorporated and validly existing under the laws of the jurisdiction of its organization or incorporation, (b) has all requisite power and authority enter into this Agreement and to carry out the obligations hereunder, and (c) has duly executed and delivered this Agreement. This Agreement and each other document, statement, or instrument relating hereto, when executed and delivered by such Pledgor, will constitute, a legal, valid and binding obligation of such Pledgor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 4.03. Authorizations and Approvals. No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (i) the pledge or grant by such Pledgor of the Liens purported to be created in favor of Collateral Agent hereunder, or (ii) the exercise by Collateral Agent of any rights or remedies in respect of any Security Agreement Collateral, in each case except for the filings and registrations contemplated under the Security Documents and as may be required in connection with the disposition of any Securities Collateral (by laws generally affecting the offering and sale of securities) or by laws pertaining to Intellectual Property.

SECTION 4.04. Perfected First-Priority Liens. The security interests granted pursuant to this Agreement (a) upon completion of the filings specified in Section III.B of the Perfection Certificate and completion of the actions described in Article III, will constitute valid perfected security interests in all of the Security Agreement Collateral located in the United States in favor of Collateral Agent as collateral security for the Secured Obligations, enforceable

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in accordance with the terms hereof against all creditors of such Pledgor and any persons purporting to purchase any Security Agreement Collateral from such Pledgor; and (b) are prior to all other Liens on the Security Agreement Collateral in existence on the date hereof except for Permitted Liens that have priority over the Liens on the Security Agreement Collateral by operation of law.

SECTION 4.05. Limitation on Liens. Such Pledgor shall, at its own cost and expense, defend title to the Security Agreement Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to Collateral Agent and the priority thereof against all claims and demands of all persons, at its own cost and expense, at any time claiming (except to the extent related to a Permitted Lien) any interest therein adverse to Collateral Agent or any other Secured Party.

SECTION 4.06. Other Financing Statements. So long as any of the Secured Obligations remain unpaid, or the Commitments of the Lenders to make any Loan or to issue any Credit Agreement L/Cs shall not have expired or been sooner terminated, such Pledgor shall not execute, authorize or permit to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to any Security Agreement Collateral, except, in each case, financing statements filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holder of Permitted Liens.

SECTION 4.07. Chief Executive Office; Change of Name; Jurisdiction of Organization

(a) Such Pledgor's exact legal name, type and jurisdiction of organization or incorporation, federal taxpayer and organizational identification numbers of such Pledgor (if applicable) is set forth in Section I.A of the Perfection Certificate, and its chief executive office is set forth in Section I.D of the Perfection Certificate. Such Pledgor has not done in the last five years business under any other name (including any trade name or fictitious business name) except for those names set forth in Sections I.B and I.C of the Perfection Certificate, and shall not (a) change its corporate name, (b) establish any other location where Security Agreement Collateral is maintained, (c) change its identity or type of organization or corporate structure, or (d) change its federal taxpayer identification number or organizational identification number (including by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction) unless (A) it shall have given Collateral Agent not less than 30 days' prior written notice of its intention so to do, clearly describing such change and providing such other information in connection therewith as Collateral Agent may request, and (B) with respect to such change, such Pledgor shall have taken all action that Collateral Agent deems necessary or desirable to maintain the perfection and priority of the security interest of Collateral Agent for the benefit of the Secured Parties in the Security Agreement Collateral intended to be granted hereby, including using commercially reasonable efforts to obtain waivers of landlord's or warehousemen's liens with respect to such new location, if applicable. Each Pledgor agrees to promptly provide Collateral Agent with certified organizational documents reflecting any of the changes described in the preceding sentence.

(b) Such Pledgor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Security Agreement Collateral owned by it as is consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which such Pledgor is engaged, but in

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any event to include complete accounting records as required by the Credit Agreement, and, at such time or times as Collateral Agent may request, promptly to prepare and deliver to Collateral Agent a duly certified schedule or schedules in form and detail satisfactory to Collateral Agent showing in summary form the identity, amount and location of any and all Security Agreement Collateral (except Security Agreement Collateral in the possession or control of Collateral Agent).

SECTION 4.08. Certain Provisions Concerning Securities Collateral.

(a) Such Pledgor has delivered to Collateral Agent true, correct and complete copies of the Operative Agreements, which are in full force and effect and have not as of the date hereof been amended or modified except as permitted by the Credit Agreement. Such Pledgor shall deliver to Collateral Agent a copy of any notice of default given or received by it under any Operative Agreement within ten days after such Pledgor gives or receives such notice.

(b) Such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Equity Interests pledged by it, and such Pledgor is not in violation of any other provisions of any such agreement to which such Pledgor is a party, or otherwise in default or violation thereunder, except where such default or noncompliance, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Operative Agreements and certificates, if any, delivered to Collateral Agent) that evidence any Pledged Equity Interests of such Pledgor.

(c) So long as no Event of Default shall have occurred and be continuing (and Borrower or such Pledgor has not received written notice relating to such Event of Default from Collateral Agent):

(i) Such Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Credit Agreement, or any other Loan Document evidencing the Secured Obligations; *provided that*, such Pledgor shall not in any event exercise such rights in any manner that would reasonably be expected to have an adverse effect on the value of the Security Agreement Collateral or the Lien and security interest intended to be granted to Collateral Agent hereunder;

(ii) Such Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Credit Agreement; *provided that*, any and all such Distributions consisting of rights or interests in the form of certificated securities shall be forthwith delivered to Collateral Agent to hold as Security Agreement Collateral and shall, if received by such Pledgor, be received in trust for the benefit of Collateral Agent, be segregated from the other property or funds of such Pledgor and be promptly delivered to Collateral Agent as Security Agreement Collateral in the same form as so received (with any necessary endorsement); and

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(iii) Without further action or formality, Collateral Agent shall be deemed to have granted to such Pledgor all necessary consents relating to voting rights and shall, if necessary, upon written request of such Pledgor and at the sole cost and expense of the Pledgors, from time to time execute and deliver (or cause to be executed and delivered) to such Pledgor all such instruments as such Pledgor may reasonably request to permit such Pledgor to exercise the voting and other rights that it is entitled to exercise pursuant to Section 4.08(c)(i) and to receive the Distributions that it is authorized to receive and retain pursuant to Section 4.08(c)(ii).

(d) Upon the occurrence and during the continuance of any Event of Default (and once Borrower or any Pledgor has received written notice relating to such Event of Default from Collateral Agent):

(i) All rights of such Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 4.08(c)(i) without any action or the giving of any notice shall cease, and all such rights shall thereupon become vested in Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights; and

(ii) All rights of such Pledgor to receive Distributions that it would otherwise be authorized to receive and retain pursuant to Section 4.08(c)(ii) shall cease and all such rights shall thereupon become vested in Collateral Agent, who shall thereupon have the sole right to receive and hold as Security Agreement Collateral such Distributions;

provided that, the rights described in clauses (i) and (ii) above shall revert back to such Pledgor following the cure or waiver of such Event of Default.

(e) Such Pledgor shall, at its sole cost and expense, from time to time execute and deliver to Collateral Agent appropriate instruments as Collateral Agent may request to permit Collateral Agent to exercise the voting and other rights that it may be entitled to exercise pursuant to Section 4.08(d)(i) and to receive all Distributions that it may be entitled to receive under Section 4.08(d)(ii).

(f) All Distributions that are received by such Pledgor contrary to the provisions of Section 4.08(d)(ii) shall be received in trust for the benefit of Collateral Agent, shall be segregated from other funds of such Pledgor and shall promptly be paid over to Collateral Agent as Security Agreement Collateral in the same form as so received (with any necessary endorsement).

SECTION 4.09. Certain Provisions Concerning Intellectual Property.

(a) Such Pledgor agrees that it will not, nor will it knowingly permit or authorize any of its licensees to, do any act, or omit to do any act, whereby any issued Patent may become invalidated, dedicated to the public, or unenforceable, and agrees that it shall continue to mark any products covered by a Patent with the relevant Patent Number or indication that such product is subject to a pending Patent application as necessary and sufficient to establish and preserve its maximum rights under applicable patent laws, except where the failure to so mark would not be reasonably likely to result in a Material Adverse Effect.

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(b) Such Pledgor (either itself or through its licensees or its sublicensees) will, for each material Trademark, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for nonuse, (ii) not materially diminish the value of such Trademark or the goodwill associated therewith, (iii) display such Trademark with notice of federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law, except where the failure to display with such notice would not be reasonably likely to result in a Material Adverse Effect, and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights.

(c) Such Pledgor (either itself or through licensees) will, for each work covered by a material Copyright, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice as necessary and sufficient to establish and preserve its maximum rights under applicable copyright laws, except where the failure to include notice would not be reasonably likely to result in a Material Adverse Effect.

(d) Such Pledgor shall notify Collateral Agent promptly if it knows or has reason to know that any Intellectual Property may become, or knows of circumstances that would cause any Intellectual Property to become: (i) abandoned, lost or dedicated to the public; (ii) invalid or unenforceable; or (iii) subject to any adverse determination or development regarding such Pledgor's ownership of any Intellectual Property, its right to register the same, or to keep and maintain the same.

(e) Such Pledgor will take all reasonable steps in the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States, Canada or in any other country, to maintain and pursue each application relating to the Intellectual Property (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registration of the Trademarks and Copyrights, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and to initiate opposition, interference and cancellation proceedings against third parties, in each case where necessary for the operation of such Pledgor's business as presently conducted and as contemplated by the Credit Agreement.

(f) In the event that such Pledgor knows that any Security Agreement Collateral consisting of Intellectual Property material to the conduct of such Pledgor's business has been or is about to be infringed, misappropriated or diluted by a third party, such Pledgor promptly shall notify Collateral Agent and shall promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, or take such other actions as are appropriate under the circumstances to protect such Security Agreement Collateral, except where the failure to so notify or take such actions would not be reasonably likely to result in a Material Adverse Effect.

(g) Upon the occurrence of an Event of Default, such Pledgor shall use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each License to effect the assignment of all of such Pledgor's right, title and interest thereunder to the Security Agreement Collateral Agent or its designee.

(h) Solely for the purpose of enabling Collateral Agent to exercise its rights and remedies upon the occurrence of an Event of Default, such Pledgor hereby grants to Collateral Agent, to the extent assignable, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Pledgor) to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired by such Pledgor, wherever the

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same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(i) It shall promptly (but in no event more than 45 days after any Pledgor obtains knowledge thereof) report to Collateral Agent (i) the filing of any application to register any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Pledgor or through any agent, employee, licensee, or designee thereof); and (ii) the registration of any

Intellectual Property by any such office.

(j) It shall, promptly upon the reasonable request of Collateral Agent, execute and deliver to Collateral Agent any document required to acknowledge, confirm, register, record, or perfect Collateral Agent's security interest granted hereunder in any part of the Intellectual Property, whether now owned or hereafter acquired.

(k) Except with the prior consent of Collateral Agent or as permitted under the Credit Agreement, such Pledgor shall not execute any financing statement or other document or instrument, and there will not be on file in any public office any effective financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of Collateral Agent, and such Pledgor shall not sell, assign, transfer, license, grant any option in, or create any Lien, claim, security interest or other encumbrance on or with respect to the Intellectual Property, or suffer to exist any effective Lien, claim, security interest or other encumbrance on or with respect to the Intellectual Property, except for the security interest created by and under this Security Agreement and Permitted Liens as otherwise permitted by the Credit Agreement.

(l) It shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that would materially impair or prevent the creation of a security interest in, or the assignment of, such Pledgor's rights and interests in any property included within the definitions of any Intellectual Property acquired under such contracts.

SECTION 4.10. Inspection and Verification. Collateral Agent or any representative designated by Collateral Agent shall have the same access and inspection rights as granted to the Administrative Agent by the Companies pursuant to Section 5.07 of the Credit Agreement; *provided* that, upon the occurrence and during the continuance of an Event of Default, Collateral Agent and its representatives shall at all times have the right to enter any premises of such Pledgor and inspect any property of such Pledgor where any of the Security Agreement Collateral of such Pledgor is located for the purpose of inspecting the same, observing its use, protecting its interests therein, or otherwise exercising the remedies provided under Article V. For the avoidance of doubt, in respect of Accounts or Security Agreement Collateral in the possession of any third person, upon the occurrence and during the continuance of an Event of Default, Collateral Agent or any designated representative shall have the right to contact such account debtors or third persons in possession of such Security Agreement Collateral for verification purposes. Collateral Agent shall have the absolute right to share any information it gains from such inspection or verification with any other Secured Party.

SECTION 4.11. Payment of Taxes; Contesting Liens; Claims. Such Pledgor represents and warrants that all Charges imposed on or assessed against the Security Agreement Collateral have been paid and discharged except to the extent such Charges (a)

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constitute a Permitted Lien or a Lien not yet due and payable or (b) are being contested in good faith by appropriate proceedings and for which such Pledgor shall have set aside on its books adequate reserves in accordance with GAAP. Notwithstanding the foregoing, such Pledgor may at its own expense contest the validity, amount or applicability of any Charges so long as the contest thereof shall satisfy the Contested Collateral Lien Conditions. Notwithstanding the foregoing provisions of this Section 4.11, no contest of any such obligation may be pursued by such Pledgor if such contest would expose Collateral Agent or any other Secured Party to any possible criminal liability.

SECTION 4.12. Transfers and Other Liens. Such Pledgor shall not sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Security Agreement Collateral pledged by it hereunder except as permitted by the Credit Agreement. Such Pledgor shall not make or permit to be made an assignment for security, pledge or hypothecation of the Security Agreement Collateral or shall grant any other Lien in respect of the Security Agreement Collateral, except as permitted by Section 6.02 of the Credit Agreement.

SECTION 4.13. Insurance. Such Pledgor, at its own expense, shall maintain or cause to be maintained, insurance covering physical loss or damage to the Inventory and Equipment in accordance with Section 5.04 of the Credit Agreement. Such Pledgor irrevocably makes, constitutes and appoints Collateral Agent (and all officers, employees or agents designated by Collateral Agent) as such Pledgor's true and lawful agent (and attorney-in-fact) for the purposes, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Security Agreement Collateral under policies of insurance, endorsing the name of such Pledgor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that such Pledgor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or in part relating thereto, Collateral Agent may, without waiving or releasing any obligation or liability of any Pledgor hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as Collateral Agent deems advisable. All sums disbursed by Collateral Agent in connection with this Section 4.13, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Pledgors to Collateral Agent and shall be additional Secured Obligations.

SECTION 4.14. Legend. Such Pledgor shall legend, in form and manner satisfactory to Collateral Agent, its Chattel Paper and its books, records, and documents evidencing or pertaining thereto with an appropriate reference to the fact that such Chattel Paper has been assigned to Collateral Agent for the benefit of the Secured Parties and that Collateral Agent has a security interest therein.

ARTICLE V

Remedies

SECTION 5.01. Remedies. Upon the occurrence and during the continuance of any Event of Default, Collateral Agent may from time to time exercise in respect of the Security Agreement Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it:

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(a) Personally, or by agents or attorneys, immediately take possession of the Security Agreement Collateral or any part thereof, from any Pledgor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter on any Pledgor's premises where any of the Security Agreement Collateral is located, remove such Security Agreement Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Security Agreement Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(b) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Security Agreement Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Security Agreement Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; *provided* that, in the event that any such payments are made directly to any Pledgor, prior to receipt by any such obligor of such instruction, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of Collateral Agent and shall promptly (but in no event later than one Business Day after receipt thereof) pay such amounts into the Collateral Account;

(c) Sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a license to use or otherwise liquidate,

any and all investments made in whole or in part with the Security Agreement Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(d) Take possession of the Security Agreement Collateral or any part thereof by directing any Pledgor in writing to deliver the same to Collateral Agent at any place or places so designated by Collateral Agent, in which event such Pledgor shall at its own expense: (i) forthwith cause the same to be moved to the place or places designated by Collateral Agent and there delivered to Collateral Agent, (ii) store and keep any Security Agreement Collateral so delivered to Collateral Agent at such place or places pending further action by Collateral Agent and (iii) while the Security Agreement Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Security Agreement Collateral as contemplated in this [Section 5.01\(d\)](#) is of the essence hereof. Upon application to a court of equity having jurisdiction, Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(e) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Security Agreement Collateral for application to the Secured Obligations as provided in Article IX of the Credit Agreement;

(f) Retain and apply the Distributions to the Secured Obligations as provided in the Credit Agreement;

(g) Exercise any and all rights as beneficial and legal owner of the Security Agreement Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Security Agreement Collateral; and

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(h) All the rights and remedies of a secured party on default under the UCC, and Collateral Agent may also in its sole discretion, without notice except as specified in [Section 5.02](#), sell, assign or grant a license to use the Security Agreement Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and on such other terms as Collateral Agent deems commercially reasonable. Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Security Agreement Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Security Agreement Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of any Security Agreement Collateral payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and appraisal that it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Collateral Agent shall not be obligated to make any sale of Security Agreement Collateral regardless of notice of sale having been given. Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by law, any claims against Collateral Agent arising by reason of the fact that the price at which any Security Agreement Collateral may have been sold, assigned or licensed at such a private sale was less than the price that might have been obtained at a public sale, even if Collateral Agent accepts the first offer received and does not offer such Security Agreement Collateral to more than one offeree.

(i) Upon the written demand of Collateral Agent, each Pledgor shall execute and deliver to Collateral Agent an assignment or assignments of the registered Intellectual Property and such other documents as are necessary or appropriate to carry out the intent and purposes hereof.

SECTION 5.02. Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale shall be required by law, ten days' notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Pledgor if it has signed, during the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 5.03. Waiver of Notice and Claims. Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with Collateral Agent's taking possession or Collateral Agent's disposition of any of the Security Agreement Collateral, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right that such Pledgor would otherwise have under law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law: (a) all damages occasioned by such taking of possession, (b) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of Collateral Agent's rights hereunder and (c) all rights of redemption, appraisal, valuation, stay, extension and moratorium now or hereafter in force under any applicable law. Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this [Article V](#) in the absence of gross negligence

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or willful misconduct. Any sale of, or the grant of options to purchase, or any other realization on, any Security Agreement Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against such Pledgor and against any and all persons claiming or attempting to claim the Security Agreement Collateral so sold, optioned or realized on, or any part thereof, from, through or under such Pledgor.

SECTION 5.04. Certain Sales of Security Agreement Collateral. Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

SECTION 5.05. No Waiver; Cumulative Remedies.

(a) No failure on the part of Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guarantees. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b) In the event that Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to Collateral Agent, then and in every such case, the Pledgors, Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Security Agreement Collateral, and all rights, remedies and powers of Collateral Agent and the other Secured Parties shall continue as if no such proceeding had

ARTICLE VI

Obligations Absolute; Waivers

SECTION 6.01. Liability of the Pledgors Absolute. Each Pledgor agrees that its obligations hereunder are irrevocable, absolute, independent, unconditional, and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a pledgor or surety, except for payment in full of the Secured Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Pledgor agrees as follows:

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(a) the obligations of each Pledgor hereunder are independent of the obligations of each other Pledgor and each guarantor of the obligations of the Loan Parties, and separate actions may be brought and prosecuted against such Pledgor whether or not any action is brought against any other Pledgor or guarantor, and whether or not such other Pledgor or guarantor is joined in any such actions;

(b) payment by any Loan Party of a portion of the Secured Obligations shall in no way limit, affect, modify or abridge such Pledgor's grant hereunder securing any portion of the Secured Obligations that has not been paid. By way of example and without limiting the generality of the foregoing, if Collateral Agent is awarded a judgment in any suit brought to enforce any Loan Party's covenant to pay a portion of the Secured Obligations, such judgment shall not be deemed to release such Pledgor from its grant hereunder securing the portion of the Secured Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Pledgor, limit, affect, modify or abridge any other Pledgor's grant hereunder securing the Secured Obligations;

(c) upon such terms as Collateral Agent deems appropriate, without obligation to give notice or demand, without affecting the validity or enforceability hereof, and without giving rise to any reduction, limitation, impairment, discharge or termination of the security interests granted hereunder or such Pledgor's liability hereunder, Collateral Agent may, from time to time, (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place and manner or terms of payment of any of the Secured Obligations in accordance with the terms of the other Loan Documents; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, any of the Secured Obligations or any agreement relating thereto, or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other pledges as security for any of the Secured Obligations, and take and hold security for the payment hereof or any of the Secured Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of any of the Secured Obligations, any guarantees of any of the Secured Obligations, or any other obligation of any person (including any other Pledgor) with respect to any of the Secured Obligations; (v) enforce and apply any security now or hereafter held by it in respect hereof or any of the Secured Obligations, and direct the order or manner of sale thereof, or exercise any other right or remedy that it may have against any such security, including foreclosure on any such security in accordance with one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is economically reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Pledgor against any other Loan Party, or any security for any of the Secured Obligations; and (vi) exercise any other rights available to it under the Loan Documents; and

(d) this Agreement and such Pledgor's obligations hereunder shall be valid and enforceable, and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of all the Secured Obligations), including the occurrence of any of the following (whether or not such Pledgor shall have had notice or knowledge of any of them): (i) any failure or omission to assert or enforce, any agreement or election not to assert or enforce, or any stay or enjoining by order of any court, by operation of law or otherwise, of the exercise or enforcement of any claim or demand, or any right, power or remedy (whether arising under the Loan Documents, at law, in equity, or otherwise) with respect to the Secured Obligations or any agreement related thereto, or with respect to any other guarantee of or security for the payment of the Secured Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the

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terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents, any agreement or instrument executed pursuant thereto, or any guarantee or other security for the Secured Obligations or any agreement relating thereto at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents or from the proceeds of any security for the Secured Obligations, except to the extent such security also serves as collateral for Indebtedness other than the Secured Obligations); (v) consent of Collateral Agent or any other Secured Party to the change, reorganization or termination of the corporate structure or existence of any Loan Party or any Subsidiary thereof, and to any corresponding restructuring of the Secured Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral that secures any of the Secured Obligations; (vii) any defenses, set-offs or counterclaims that any Loan Party may allege or assert against Collateral Agent or any other Secured Party in respect of the Secured Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction, and usury; and (viii) any other act, thing or omission, or delay to do any other act or thing, that in any manner and to any extent may vary such Pledgor's risk as a grantor of security securing the Secured Obligations.

SECTION 6.02. General Waivers. Each Pledgor hereby waives, for the benefit of Collateral Agent and the Secured Parties: (a) all rights to require Collateral Agent or any other Secured Party, as a condition to exercising Collateral Agent's rights hereunder against the Security Agreement Collateral, to (i) proceed against any other Loan Party, any other pledgor (including any other Pledgor) of security securing any of the Secured Obligations, or any other person, (ii) proceed against or exhaust any security held from any other Loan Party, any such other pledgor or any other person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of Collateral Agent or any other Secured Party in favor of any other Loan Party or any other person, or (iv) pursue any other remedy whatsoever in the capacity of secured party; (b) any defense arising by reason of incapacity, lack of authority, or any disability or other defenses of any other Loan Party, including any defense based on or arising from the lack of validity or enforceability of any of the Secured Obligations or any agreement or instrument relating thereto, or by reason of the cessation of the liability of any other Loan Party from any cause other than the payment in full of all the Secured Obligations; (c) any defense based on any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based on errors or omissions by Collateral Agent or any other Secured Party in the administration of any of the Secured Obligations, except behavior that amounts to bad faith, gross negligence or willful misconduct; (e) any principles or provisions of law, statutory or otherwise, that are or may be in conflict with the terms hereof, and any legal or equitable discharge of such Pledgor's obligations hereunder; (f) the benefit of any statute of limitations affecting such Pledgor's counterclaims; (g) promptness, diligence and any requirement that Collateral Agent or any other Secured Party protect, secure, perfect or insure any security interest or Lien or any property subject thereto; (h) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of any of the Secured Obligations or any agreement related thereto, notices of any extension of credit to any other Loan party and notices of any of the matters referred to in Section 6.01, and any right to consent to any thereof; and (i) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate pledgors or sureties, or that may conflict with the terms hereof.

SECTION 6.03. California Waivers. For purposes of this Section 6.03 only, references to the "principal" include each Loan Party and references to the "creditor"

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include each Secured Party. In accordance with Section 2856 of the California Civil Code, each Pledgor waives all rights and defenses (i) available to such Pledgor by reason of Sections 2787 through 2855, 2899, and 3433 of the California Civil Code, including all rights or defenses such Pledgor may have by reason of protection afforded to the principal with respect to any of the Secured Obligations, or to any other person liable for any of the Secured Obligations, in either case in accordance with the antideficiency or other laws of the State of California limiting or discharging the principal's Indebtedness or such person's obligations, including Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure; and (ii) arising out of an election of remedies by the creditor, even though such election, such as a nonjudicial foreclosure with respect to security for any Secured Obligation (or any obligation of any other person of any of the Secured Obligations), has destroyed such Pledgor's right of subrogation and reimbursement against the principal (or such other person), by operation of Section 580d of the California Code of Civil Procedure or otherwise. No other provision of this Agreement shall be construed as limiting the generality of any of the covenants and waivers set forth in this Section 6.03. As provided below, this Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of the State of New York. This Section 6.03 is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to any of the Secured Obligations.

ARTICLE VII

Miscellaneous

SECTION 7.01. Concerning Collateral Agent.

(a) Collateral Agent has been appointed as Collateral Agent pursuant to Article X of the Credit Agreement. The actions of Collateral Agent hereunder are subject to the provisions of the Credit Agreement. Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Security Agreement Collateral), in accordance with this Agreement and the Credit Agreement. Collateral Agent may employ agents and attorneys-in-fact in connection herewith. Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Collateral Agent.

(b) Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Security Agreement Collateral in its possession if such Security Agreement Collateral is accorded treatment substantially equivalent to that which Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither Collateral Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not Collateral Agent or any other Secured Party has or is deemed to have knowledge

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of such matters, or (ii) taking any necessary steps to preserve rights against any person with respect to any Security Agreement Collateral.

(c) Collateral Agent shall be entitled to rely on any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, on advice of counsel selected by it.

(d) With respect to any of its rights and obligations as a Lender, Collateral Agent shall have and may exercise the same rights and powers hereunder. The term "Lenders," "Lender" or any similar terms shall, unless the context clearly otherwise indicates, include Collateral Agent in its individual capacity as a Lender. Collateral Agent may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with such Pledgor or any Affiliate of such Pledgor to the same extent as if Collateral Agent were not acting as Collateral Agent.

(e) If any item of Security Agreement Collateral also constitutes collateral granted to Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, Collateral Agent, in its sole discretion, shall select which provision or provisions shall control.

SECTION 7.02. Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If an Event of Default shall have occurred and be continuing, Collateral Agent may (but shall not be obligated to) remedy or cause to be remedied any such breach, and may expend funds for such purpose; *provided* that, Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation that such Pledgor fails to pay or perform as and when required hereby and that such Pledgor does not contest in accordance with the provision of Section 6.02 of the Credit Agreement. Any and all amounts so expended by Collateral Agent shall be paid by the Pledgors in accordance with the provisions of Section 7.03. Neither the provisions of this Section 7.02 nor any action taken by Collateral Agent pursuant to the provisions of this Section 7.02 shall prevent any such failure by any Pledgor to observe any covenant contained in this Agreement nor any breach of warranty from constituting an Event of Default. Each Pledgor hereby appoints Collateral Agent its attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time during the continuance of an Event of Default in Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents that Collateral Agent may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is an irrevocable power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 7.03. Expenses. Each Pledgor will promptly pay to Collateral Agent the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and the fees and expenses of any experts and agents, that Collateral Agent may incur in connection with this Agreement, including all costs and expenses relating to (a) any and all filings and other actions taken to ensure the attachment, perfection and priority of, and the ability of Collateral Agent to enforce, Collateral Agent's security interest in the Security

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Agreement Collateral; (b) any action, suit or other proceeding affecting the Security Agreement Collateral or any part thereof commenced, in which action, suit or proceeding Collateral Agent is made a party or participates or in which the right to use the Security Agreement Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of Collateral Agent to defend or uphold the Lien hereof (including any action, suit or proceeding to establish or uphold the compliance of the Security Agreement Collateral with any requirements of any Governmental Authority or law); (c) the collection of the Secured Obligations; (d) the enforcement and administration hereof; (e) the custody or preservation of, or the sale of, collection from, or other realization on, any of the Security Agreement Collateral; (f) the exercise or enforcement of any of the rights of Collateral Agent or any Secured Party hereunder; or (g) the failure by any Pledgor to perform or observe any of the provisions hereof. All amounts expended by Collateral Agent and payable by any Pledgor under this Section 7.03 shall be due upon demand therefor (together with interest thereon accruing at the default rate during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations. Each Pledgor's obligations under this Section 7.03 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Credit

SECTION 7.04. Indemnity.

(a) **Indemnity.** Each Pledgor agrees to indemnify, defend and hold harmless Collateral Agent and each of the other Secured Parties, and the officers, directors, employees, agents and Affiliates of Collateral Agent and each of the other Secured Parties (collectively, the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including settlement costs), expenses or disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement or any other Loan Document (including any misrepresentation by any Pledgor in this Agreement or any other Loan Document) (the “**Indemnified Liabilities**”); *provided* that, no Pledgor shall have any obligation to an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision of a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, each Pledgor shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

(b) **Survival.** The obligations of the Pledgors contained in this Section 7.04 shall survive the termination hereof and the discharge of the Pledgors’ other obligations under this Agreement, any Hedging Agreement and under the other Loan Documents.

(c) **Reimbursement.** Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Security Agreement Collateral.

SECTION 7.05. Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Security Agreement Collateral and shall (a) remain in full force and effect until the payment in full of all Secured Obligations, (b) be

binding on the Pledgors, their respective successors and assigns, and (b) inure, together with the rights and remedies of the Lender hereunder, to the benefit of Collateral Agent and the other Secured Parties and each of their respective permitted successors, transferees and assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (b), any Secured Party may assign or otherwise transfer any Indebtedness held by it that is secured by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the other Loan Documents and any Hedging Agreement to which such Secured Party is a party.

SECTION 7.06. Termination; Release. Upon payment in full of all the Secured Obligations, or upon any partial release of Security Agreement Collateral in accordance with the other Loan Documents, the security interests granted hereby shall terminate hereunder and of record, and all rights to the Security Agreement Collateral shall revert to the Pledgors, it being understood that in the case any such partial release, the security interests granted hereby shall terminate hereunder and of record only with respect to such Security Agreement Collateral subject to such partial release. Upon any such termination, Collateral Agent shall, at the Pledgors’ expense, execute and deliver to the Pledgors such documents, and take such other actions, as the Pledgors reasonably request to evidence such termination.

SECTION 7.07. Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed by Collateral Agent. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 7.08. Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, if to any Pledgor, addressed to it at the address of Borrower set forth in the Credit Agreement, and if to Collateral Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 7.08.

SECTION 7.09. Governing Law; Jurisdiction; Consent to Service of Process

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT, IN ACCORDANCE WITH CHOICE-OF-LAW PRINCIPLES, THAT THE PERFECTION OF THE SECURITY INTERESTS GRANTED HEREUNDER, OR REMEDIES HEREUNDER IN RESPECT OF

ANY ITEM OR TYPE OF SECURITY AGREEMENT COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(b) Each Pledgor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that Collateral Agent or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Pledgor or its properties in the courts of any jurisdiction.

(c) Each Pledgor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 7.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.08. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 7.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

SECTION 7.11. Severability of Provisions. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 7.12. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so

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executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement.

SECTION 7.13. Business Days. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 7.14. No Credit for Payment of Taxes or Imposition. Each Pledgor shall not be entitled to any credit against the principal, premium (if any), or interest payable under the Credit Agreement, and such Pledgor shall not be entitled to any credit against any other sums that may become payable under the terms thereof or hereof, by reason of the payment of any Tax on the Security Agreement Collateral or any part thereof.

SECTION 7.15. No Claims Against Collateral Agent. Nothing contained in this Agreement shall constitute any consent or request by Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Security Agreement Collateral or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 7.16. No Release Under Agreements; No Liability of Collateral Agent or Secured Parties. Nothing set forth in this Agreement shall relieve the Pledgor from the performance of any term, covenant, condition or agreement on the Pledgor's part to be performed or observed under or in respect of any of the Security Agreement Collateral, or from any liability to any person under or in respect of any of the Security Agreement Collateral, or shall impose any obligation on Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Pledgor's part to be so performed or observed, or shall impose any liability on Collateral Agent or any other Secured Party for any act or omission on the part of the Pledgor relating thereto or for any breach of any Hedging Agreement, any representation or warranty on the part of the Pledgor contained in this Agreement, Credit Agreement or the other Security Documents, or under or in respect of the Security Agreement Collateral or made in connection herewith or therewith. The obligations of the Pledgor contained in this Section 7.16 shall survive the termination hereof and the discharge of the Pledgor's other obligations under this Agreement, the Credit Agreement, any Hedging Agreement and the other Security Documents.

SECTION 7.17. Obligations Absolute. Subject to Section 7.09 of the Credit Agreement, all obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Pledgor or any other Loan Party;
- (b) any lack of validity or enforceability of the Credit Agreement, any Hedging Agreement or any other Loan Document, or any other agreement or instrument relating thereto;

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(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document, any Hedging Agreement or any other agreement or instrument relating thereto;

(d) any pledge, exchange, release or nonperfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations, except to the extent that any such amendment, waiver or consent expressly relieves such Pledgor of any obligations;

(e) any exercise, nonexercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Credit Agreement, any Hedging Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 5.03; or

- (f) any other circumstances that might otherwise constitute a defense available to, or a discharge of, any Pledgor.

SECTION 7.18. Marshaling; Payments Set Aside. Collateral Agent shall not be under any obligation to marshal any assets in favor of any Pledgor or any other person or against or in payment of any or all of the Secured Obligations.

SECTION 7.19. Release of Pledgors. If any Pledgor is released from its Guarantee in accordance with the provisions of the Credit Agreement, then Collateral Agent shall (at the expense of Borrower) take all action necessary to release its security interest in that portion of the Security Agreement Collateral owned by such Pledgor, and shall release such Pledgor from its obligations hereunder (other than obligations intended to survive the termination hereof), in each case subject to and in accordance with Section 7.09 of the Credit Agreement.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the Pledgors and Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

HERBALIFE INTERNATIONAL, INC.,
a Nevada corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

WH CAPITAL CORPORATION,
a Nevada corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

HERBALIFE LTD.,
a Cayman Islands exempted company with limited liability,
as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

WH INTERMEDIATE HOLDINGS LTD.,
a Cayman Islands exempted company with limited liability,
as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

HBL LTD.,
a Cayman Islands exempted company with limited liability,
as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett R. Chapman
Title: General Counsel & Secretary

WH LUXEMBOURG HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Pledgor

By: /s/ Christophe Thomann
Name: Christophe Thomann
Title: Manager

HLF LUXEMBOURG HOLDINGS S.à R.L.,
a Luxembourg corporation, as a Pledgor

By: /s/ Christophe Thomann
Name: Christophe Thomann
Title: Manager

WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Pledgor

By: /s/ Christophe Thomann
Name: Christophe Thomann
Title: Manager

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
a Nevada corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett Chapman
Title: Secretary

HERBALIFE INTERNATIONAL OF EUROPE, INC.,
a California corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett Chapman
Title: Secretary

HERBALIFE INTERNATIONAL COMMUNICATIONS, INC.,
a California corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett Chapman
Title: Secretary

HERBALIFE INTERNATIONAL DISTRIBUTION, INC.,
a California corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett Chapman
Title: Secretary

HERBALIFE TAIWAN, INC.,
a California corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett Chapman
Title: Secretary

HERBALIFE INTERNATIONAL (THAILAND), LTD.,
a California corporation, as a Pledgor

By: /s/ Brett R. Chapman
Name: Brett Chapman
Title: Secretary

MORGAN STANLEY & CO. INCORPORATED,
as Collateral Agent

By: /s/ Eugene F. Martin
Name: Eugene F. Martin
Title: Managing Director

EXHIBIT A

Form of
ISSUER ACKNOWLEDGMENT

The undersigned hereby (a) acknowledges receipt of a copy of that certain security agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of December [], 2004, among Herbalife International, Inc., a Nevada corporation ("**Borrower**"), the Guarantors (defined therein), and Morgan Stanley & Co. Incorporated, as collateral agent (in such capacity and together with any successors in such capacity, "**Collateral Agent**"); (b) agrees promptly to note on its books the security interests granted to Collateral Agent and confirmed under the Security Agreement; (c) agrees that it will comply with Collateral Agent's instructions with respect to the applicable Securities Collateral without further consent by the applicable Pledgor; (d) agrees to notify Collateral Agent upon obtaining knowledge of any interest in favor of any person in the applicable Securities Collateral that is adverse to the interest of Collateral Agent therein; and (e) waives any right or requirement at any

time hereafter to receive a copy of the Security Agreement in connection with the registration of any Securities Collateral thereunder in the name of Collateral Agent or its nominee or the exercise of voting rights by Collateral Agent or its nominee.

[NAME OF ISSUER]

By:

Name:
Title:

FIRST AMENDMENT

FIRST AMENDMENT, dated as of April 12, 2005 (this "Amendment"), among Herbalife International, Inc., a Nevada corporation (the "Borrower"), the Guarantors identified as such on the signature pages hereto (collectively, the "Guarantors"), the Lenders identified as such on the signature pages hereto (the "Lenders") and Morgan Stanley Senior Funding, Inc., as administrative agent (in such capacity, the "Administrative Agent"), to that certain Credit Agreement, dated as of December 21, 2004 (the "Credit Agreement"), among the Borrower, the Guarantors identified as such on the signature pages thereto, the Lenders party thereto from time to time, Morgan Stanley & Co. Incorporated, as Collateral Agent, the joint lead arrangers, bookrunners and other agents identified therein and the Administrative Agent.

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent amend the definition of "Applicable Margin" in the Credit Agreement and make certain other changes to the Credit Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Defined Terms. Capitalized terms used herein and not otherwise defined are used herein as defined in the Credit Agreement.

2. Amendment.

(a) The definition of "Applicable Margin" is replaced in its entirety with the following:

"**Applicable Margin**" means (i) for the first two full quarters after the Closing Date (A)(I) 2.00% in the case of Revolving Loans maintained as Eurodollar Loans and (II) 1.00% in the case of Revolving Loans maintained as ABR Loans and (B)(I) 1.75% in the case of Term Loans maintained as Eurodollar Loans and (II) 0.75% in the case of Term Loans maintained as ABR Loans and (ii) for the period after the first two full quarters after the Closing Date, the Applicable Margin shall be determined by reference to the Debt Rating and the Applicable Percentage set forth below; *provided*, in the event of a split rating, the higher of such Debt Ratings shall be used to determine the Applicable Margin, except that, if there is a two-tier difference in the Debt Ratings, the Debt Rating one notch higher than the lower of the two Debt Ratings shall be used to determine the Applicable Margin.

Senior Credit Facilities Rating Moody's/S&P	Applicable Percentage (Term Loans)	
	Eurodollar	ABR
³ Ba3/BB	1.75 %	0.75 %
<Ba3/BB	2.00 %	1.00 %

Senior Credit Facilities Rating Moody's/S&P	Applicable Percentage (Revolving Loans)	
	Eurodollar	ABR
³ Ba1/BB+	1.75 %	0.75 %
<Ba1/BB+	2.00 %	1.00 %

(b) The following definition shall be added to Section 1.01 of the Credit Agreement in the appropriate alphabetical position:

"First Amendment Effective Date" means April 12, 2005.

(c) The following shall be inserted before the final period at the end of Section 2.10(a) of the Credit Agreement:

"*provided, further*, that the amount payable in connection with any optional prepayment of the Term Loans made on or before the first anniversary of the First Amendment Effective Date shall be equal to 101% of the principal amount of the Term Loans being prepaid if such prepayment is made with proceeds from a partial or complete bank refinancing of the Term Loans".

(d) Each of Section 2.10(c), Section 2.10(d), Section 2.10(e) and Section 2.10(f) of the Credit Agreement is hereby amended by replacing Sections 2.10(h) and (i) with "Sections 2.10(i) and (j)".

3. Effectiveness of Amendment. This Amendment shall become effective as of the date hereof (the "Effective Date") when (a) the Required Lenders, including all Term Lenders, have executed and delivered a counterpart of this Amendment and the Borrower and the Guarantors have delivered duly executed counterparts of this Amendment to the Administrative Agent and (b) the Administrative Agent has received payment from the Borrower for any and all fees, costs and expenses (including those of legal counsel) relating to the Credit Agreement and this Amendment.

4. Representations and Warranties. As of the Effective Date, before and after giving effect to this Amendment, each of the Borrower and the other Loan Parties hereby represents and warrants to the Administrative Agent and each Lender that:

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

(b) the representations and warranties of the Borrower and the other Loan Parties contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects as if made as of the Effective Date, except to the extent such representations and warranties expressly relate to a different date.

5. Status of Loan Documents.

(a) This Amendment is limited solely for the purposes and to the extent expressly set forth herein, and, except as expressly consented to and amended hereby, the terms, provisions and conditions of the Loan Documents shall continue in full force and effect and are hereby ratified and confirmed in all respects; and

(b) No consent, amendment or waiver of any terms or provisions of the Credit Agreement made hereunder shall relieve the Borrower or any other Loan Party from complying with any other term or provision of the Credit Agreement or the other Loan Documents.

6. Miscellaneous.

(a) No Waiver, Cumulative Remedies. No failure or delay or course of dealing on the part of the Lenders in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Lenders would otherwise have. No notice to or demand on the Borrower or any other Loan Party in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Lenders to any other or further action in any circumstances without notice or demand.

(b) Ratification and Reaffirmation; Confirmation; Acknowledgment. Each Guarantor (i) ratifies and reaffirms the Loan Documents to which such Guarantor is a party, (ii) confirms such Guarantor's agreement to the terms of this Amendment and (iii) acknowledges that such Guarantor has no offsets or defenses to such Guarantor's obligations under the Loan Documents to which such Guarantor is a party and no claims or counterclaims against the Lenders.

(c) Expenses. The Borrower agrees to pay and reimburse the Administrative Agent for all of its costs and expenses (including, without limitation, fees and disbursements of legal counsel) incurred up to and on the Effective Date or in connection with the Credit Agreement or this Amendment.

(d) Headings Descriptive. The headings of the several Sections and subsections of this Amendment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision.

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(e) Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) Counterparts. This Amendment may be executed and delivered in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. The delivery of a counterpart may be made by facsimile or electronic transmission.

(g) Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[Signature pages follow]

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

HERBALIFE INTERNATIONAL, INC.,
a Nevada corporation, as Borrower

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

WH CAPITAL CORPORATION,
a Nevada corporation, as a Guarantor

By: /s/ GREGORY L. PROBERT
Name: Gregory L. Probert
Title: President

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
a Nevada corporation, as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HERBALIFE INTERNATIONAL OF EUROPE, INC.,
a California corporation, as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HERBALIFE INTERNATIONAL COMMUNICATIONS, INC.,
a California corporation, as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HERBALIFE INTERNATIONAL DISTRIBUTION, INC.,
a California corporation, as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HERBALIFE TAIWAN, INC.,
a California corporation, as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HERBALIFE INTERNATIONAL (THAILAND), LTD.,
a California corporation, as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HERBALIFE INTERNATIONAL DO BRASIL LTDA.,
a corporation dually organized in Brazil and Delaware,
as a Guarantor

By: /s/ ENEIDA BINI
Name: Eneida Bini
Title: Managing Officer

HERBALIFE LTD.,
a Cayman Islands exempted company with limited liability,
as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

WH INTERMEDIATE HOLDINGS LTD.,
a Cayman Islands exempted company with limited liability,
as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

HBL LTD.,
a Cayman Islands exempted company with limited liability,
as a Guarantor

By: /s/ RICHARD P. GOUDIS
Name: Richard P. Goudis
Title: Chief Financial Officer

WH LUXEMBOURG HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: Manager

HLF LUXEMBOURG HOLDINGS S.à R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ BRIAN KANE

Name: Brian Kane
Title: Manager

WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: Manager

HERBALIFE INTERNATIONAL OF ISRAEL (1990) LTD.,
an Israeli corporation, as a Guarantor

By: /s/ GREGORY L. PROBERT
Name: Gregory L. Probert
Title: President

HERBALIFE INTERNATIONAL FINLAND OY,
a Finnish corporation, as a Guarantor

By: /s/ CHRISTOPHE THOMANN
Name: Christophe Thomann
Title: Managing Director

MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent

By: /s/ EUGENE F. MARTIN
Name: Eugene F. Martin
Title: Vice President

ACKNOWLEDGMENT AND CONSENT

By signing below, the each of the undersigned (x) ratifies and reaffirms the Loan Documents to which it is a party, (y) confirms its agreement to the terms of this First Amendment and (z) acknowledges that it has no offsets or defenses to its obligations under the Loan Documents to which it is a party and no claims or counterclaims against the Lenders.

HERBALIFE OF JAPAN, K.K.

By: /s/ WILLIAM RAHN
Name: William Rahn
Title: Representative Director

HERBALIFE INTERNATIONAL DE MEXICO, S.A. DE C.V.

By: /s/ SERGIO MEDINA
Name: Sergio Medina
Title: Authorized Signatory

HERBALIFE PRODUCTS DE MEXICO, S.A. DE C.V.

By: /s/ SERGIO MEDINA
Name: Sergio Medina
Title: Authorized Signatory

HERBALIFE (U.K.) LIMITED

By: /s/ RICHARD HOBBY
Name: Richard Hobby
Title: Managing Director

HERBALIFE EUROPE LIMITED

By: /s/ GREGORY L. PROBERT
Name: Gregory L. Probert
Title: Managing Director

SIGNATURE PAGE TO THE FIRST AMENDMENT, DATED AS OF THE FIRST DATE WRITTEN ABOVE,
TO THE CREDIT AGREEMENT, DATED AS OF DECEMBER 21, 2004, AMONG HERBALIFE
INTERNATIONAL, INC., THE GUARANTORS IDENTIFIED AS SUCH ON THE SIGNATURE PAGES
THERETO, THE LENDERS FROM TIME TO TIME PARTY THERETO, AND MORGAN STANLEY SENIOR
FUNDING, INC., AS ADMINISTRATIVE AGENT

NAME OF INSTITUTION:

FORTRESS PORTFOLIO TRUST
BY: FOUR CORNERS CAPITAL MANAGEMENT LLC
AS INVESTMENT MANAGER

AS A LENDER

By: /S/ VIJAY SRINIVASAN
Name: Vijay Srinivasan
Title: Authorized Signatory

NAME OF INSTITUTION:

BLACKROCK SENIOR INCOME SERIES

AS A LENDER

By: /S/ THOMAS COLWELL
Name: Thomas Colwell
Title: Authorized Signatory

NAME OF INSTITUTION:

MAGNETITE IV CLO, LTD

AS A LENDER

By: /S/ THOMAS COLWELL
Name: Thomas Colwell
Title: Authorized Signatory

NAME OF INSTITUTION:

MAGNETITE V CLO, LTD

AS A LENDER

By: /S/ THOMAS COLWELL
Name: Thomas Colwell
Title: Authorized Signatory

NAME OF INSTITUTION:

MARINER CDO 2002, LTD.
BY: ANTARES ASSET MGT. INC., AS COLLATERAL MGR.

AS A LENDER

By: /S/ DAVID MAHON
Name: David Mahon
Title: Vice President

NAME OF INSTITUTION:

MONUMENT PARK CDO LTD.
BY: BLACKSTONE DEBT ADVISORS L.P.

AS A LENDER

By: /S/ DEAN T. CRIARES
Name: Dean T. Criares

Title: Managing Director

NAME OF INSTITUTION:

MORGAN STANLEY SENIOR FUNDING INC.

AS A LENDER

By: /S/ EUGENE F. MARTIN

Name: Eugene F. Martin

Title: Vice President

NAME OF INSTITUTION:

NAVIGATOR CDO 2003, LTD

BY: ANTARES ASSET MGT. INC., AS COLLATERAL MGR

AS A LENDER

By: /S/ DAVID MAHON

Name: David Mahon

Title: Vice President

NAME OF INSTITUTION:

NAVIGATOR CDO 2004, LTD

BY: ANTARES ASSET MGMT. INC., AS AGENT

AS A LENDER

By: /S/ DAVID MAHON

Name: David Mahon

Title: Vice President

NAME OF INSTITUTION:

OPPENHEIMER SENIOR FLOATING RATE FUND

AS A LENDER

By: /S/ LISA CHAFFEE

Name: Lisa Chaffee

Title: AVP

NAME OF INSTITUTION:

PIONEER FLOATING RATE TRUST

BY: HIGHLAND CAPITAL MGMT., LP

AS SUB-ADVISOR

AS A LENDER

By: /S/ R. JOSEPH DOUGHERTY

Name: R. Joseph Dougherty

Title: Senior Vice President, Secretary

NAME OF INSTITUTION:

PREMIUM LOAN TRUST I, LTD.

AS A LENDER

By: /S/ GUIA TRUTTER

Name: Guia Trutter

Title: Managing Director

NAME OF INSTITUTION:

COOPERATIVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A.
"RABOBANK INTERNATIONAL:, NEW YORK BRANCH

AS A LENDER

By: /S/ PAMELA BEAL
Name: Pamela Beal
Title: Vice President

By: /S/ REBECCA O. MORROW
Name: Rebecca O. Morrow
Title: Executive Director

NAME OF INSTITUTION:

SANKATY ADVISORS, LLC AS COLLATERAL
MANAGER FOR RACE POINT CLO, LTD
AS TERM LENDER

AS A LENDER

By: /S/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director, Portfolio Manager

NAME OF INSTITUTION:

SANKATY ADVISORS, LLC AS COLLATERAL
MANAGER FOR RACE POINT II CLO,
LIMITED, AS TERM LENDER

AS A LENDER

By: /S/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director, Portfolio Manager

NAME OF INSTITUTION:

SANKATY HIGH YIELD ASSET PARTNERS, II L.P.

AS A LENDER

By: /S/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director, Portfolio Manager

NAME OF INSTITUTION:

SCOTIABANK (IRELAND) LIMITED

AS A LENDER

By: /S/ JOHN R.M. CAMPBELL
Name: John R.M. Campbell
Title: Authorized Signatory

NAME OF INSTITUTION:

SENIOR DEBT PORTFOLIO
BY: BOSTON MGT AND RESEARCH
AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF
Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

SENIOR LOAN PORTFOLIO

AS A LENDER

By: /S/ THOMAS COLWELL
Name: Thomas Colwell
Title: Authorized Signatory

NAME OF INSTITUTION:

SOUTHFORK CLO, LTD.
BY: HIGHLAND CAPITAL MANAGEMENT, L.P.
AS COLLATERAL MANAGER

AS A LENDER

By: /S/ DAVID LANCELOT
Name: David Lancelot
Title: Treasurer

NAME OF INSTITUTION:

STANFIELD QUATTRO CLO, LTD.
BY: STANFIELD CAPITAL PARTNERS LLC
AS ITS COLLATERAL MANAGER

AS A LENDER

By: /S/ CHRISTOPHER E. JANSEN
Name: Christopher E. Jansen
Title: Managing Partner

NAME OF INSTITUTION:

STANFIELD VANTAGE CLO, LTD.
BY: STANFIELD CAPITAL PARTNERS, LLC
AS ITS ASSET MANAGER

AS A LENDER

By: /S/ CHRISTOPHER E. JANSEN
Name: Christopher E. Jansen
Title: Managing Partner

NAME OF INSTITUTION:

TOLLI & CO.
BY: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF
Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

UNION BANK OF CALIFORNIA, N.A.

_____,
AS A LENDER

By: /S/ DAVID J. STASSEL
Name: David J. Stassel
Title: VP

NAME OF INSTITUTION:

UNION SQUARE CDO LTD.
BY: BLACKSTONE DEBT ADVISORS L.P.
AS COLLATERAL MANAGER

_____,
AS A LENDER

By: /S/ DEAN T CRIARES
Name: Dean T. Criares
Title: Managing Director

NAME OF INSTITUTION:

VENTURE CDO 2002, LIMITED
BY ITS INVESTMENT ADVISOR, MJX ASSET MANAGEMENT LLC

_____,
AS A LENDER

By: /S/ HANS CHRISTENSEN
Name: Hans Christensen
Title: Chief Investment Officer

NAME OF INSTITUTION:

VENTURE II CDO 2002 LIMITED
BY ITS INVESTMENT ADVISOR, MJX ASSET MGT LLC

_____,
AS A LENDER

By: /S/ HANS CHRISTENSEN
Name: Hans Christensen
Title: Chief Investment Officer

NAME OF INSTITUTION:

VENTURE III CDO LIMITED
BY ITS INVESTMENT ADVISOR, MJX ASSET MGT LLC

_____,
AS A LENDER

By: /S/ HANS CHRISTENSEN
Name: Hans Christensen
Title: Chief Investment Officer

NAME OF INSTITUTION:

VENTURE IV CDO LTD
BY ITS INVESTMENT ADVISOR, MJX ASSET MGT LLC

_____,
AS A LENDER

By: /S/ HANS CHRISTENSEN
Name: Hans Christensen
Title: Chief Investment Officer

NAME OF INSTITUTION:

VISTA LEVERAGED INCOME FUND
BY ITS INVESTMENT ADVISOR, MJX ASSET MGT LLC

AS A LENDER

By: /S/ HANS CHRISTENSEN
Name: Hans Christensen
Title: Chief Investment Officer

NAME OF INSTITUTION:

WHITNEY PRIVATE DEBT FUND, LP

AS A LENDER

By: /S/ KEVIN J. COREY
Name: Kevin J. Corey
Title: Authorized Signatory

NAME OF INSTITUTION:

BLACKROCK GLOBAL FLOATING RATE INCOME TRUST

AS A LENDER

By: /S/ THOMAS COLWELL
Name: Thomas Colwell
Title: Authorized Signatory

NAME OF INSTITUTION:

GALAXY IV CLO, LTD
BY: AIG GLOBAL INVESTMENT CORP.
ITS INVESTMENT ADVISOR

AS A LENDER

By: /S/ JULIE BOTHAMLEY
Name: Julie Bothamley
Title: Vice President

NAME OF INSTITUTION:

GALAXY CLO 1999-1 LTD.
BY: AIG GLOBAL INVESTMENT CORP.
AS COLLATERAL MANAGER

AS A LENDER

By: /S/ JULIE BOTHAMLEY
Name: Julie Bothamley
Title: Vice President

NAME OF INSTITUTION:

GENERAL ELECTRIC CAPITAL CORPORATION

AS A LENDER

By: /S/ MARIE G. MOLLO
Name: Marie G. Mollo
Title: Duly Authorized Signatory

NAME OF INSTITUTION:

GOLDENTREE LOAN OPPORTUNITIES I LTD
BY: GOLDENTREE ASSET MGT LP

AS A LENDER

By: /S/ THOMAS M. O'SHEA

Name: Thomas M. O'Shea

Title: Portfolio Manager

NAME OF INSTITUTION:

GOLDENTREE LOAN OPPORTUNITIES II LTD.

BY: GOLDENTREE ASSET MGT LP

AS A LENDER

By: /S/ THOMAS M. O'SHEA

Name: Thomas M. O'Shea

Title: Portfolio Manager

NAME OF INSTITUTION:

GOLDMAN SACHS CREDIT PARTNERS LP

AS A LENDER

By: /S/ PEDRO RAMIREZ

Name: Pedro Ramirez

Title: Authorized Signatory

NAME OF INSTITUTION:

GRAYSON & CO.

BY: BOSTON MANAGEMENT AND RESEARCH

AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof

Title: Vice President

NAME OF INSTITUTION:

GREEN LANE CLO LTD.

AS A LENDER

By: /S/ KAITLIN TRINH

Name: Kaitlin Trinh

Title: Vice President

NAME OF INSTITUTION:

HANOVER SQUARE CLO LTD.

BY: BLACKSTONE DEBT ADVISORS L.P.

AS COLLATERAL MANAGER

AS A LENDER

By: /S/ DEAN T. CRIARES

Name: Dean T. Criares

Title: Managing Director

NAME OF INSTITUTION:

HARBOUR TOWN FUNDING LLC

AS A LENDER

By: /S/ MEREDITH J. KOSLICK
Name: Meredith J. Koslick
Title: Assistant Vice President

NAME OF INSTITUTION:

HARCH CLO II LIMITED

AS A LENDER

By: /S/ MICHAEL E. LEWITT
Name: Michael E. Lewitt
Title: Authorized Signatory

NAME OF INSTITUTION:

HEWETT'S ISLAND CDO, LTD.
BY: CYPRESSTREE INVESTMENT MGT. CO. INC.
AS PORTFOLIO MANAGER

AS A LENDER

By: /S/ PRESTON I. CARNES, JR.
Name: Preston I. Carnes, Jr.
Title: Managing Director

NAME OF INSTITUTION:

HEWETT'S ISLAND CLO II, LTD.
BY: CYPRESSTREE INVESTMENT MGT. CO. INC.
AS PORTFOLIO MANAGER

AS A LENDER

By: /S/ PRESTON I. CARNES, JR.
Name: Preston I. Carnes, Jr.
Title: Managing Director

NAME OF INSTITUTION:

HIGHLAND LEGACY LIMITED
BY: HIGHLAND CAPITAL MGT. LP
AS COLLATERAL MANAGER

AS A LENDER

By: /S/ DAVID LANCELOT
Name: David Lancelot
Title: Treasurer

NAME OF INSTITUTION:

IKB CAPITAL CORPORATION

AS A LENDER

By: /S/ DAVID SNYDER
Name: David Snyder
Title: President

NAME OF INSTITUTION:

INVESTORS BANK & TRUST CO. AS SUB-CUSTODIAN AGENT OF
CYPRESSTREE INTERNATIONAL HOLDING COMPANY LIMITED

_____,
AS A LENDER

By: /S/ PRESTON I. CARNES JR.

Name: Preston I. Carnes Jr.

Title: Managing Director

By: /S/ JOHN FRABOTTA

Name: John Frabotta

Title: Managing Director

NAME OF INSTITUTION:

KATONAH III, LTD.

_____,
AS A LENDER

By: /S/ RALPH DELLA ROCCA

Name: Ralph Della Rocca

Title: Authorized Officer

NAME OF INSTITUTION:

KATONAH IV LTD.

_____,
AS A LENDER

By: /S/ RALPH DELLA ROCCA

Name: Ralph Della Rocca

Title: Authorized Officer

NAME OF INSTITUTION:

KATONAH VI, LTD.

_____,
AS A LENDER

By: /S/ RALPH DELLA ROCCA

Name: Ralph Della Rocca

Title: Authorized Officer

NAME OF INSTITUTION:

KC CLO I LIMITED

_____,
AS A LENDER

By: /S/ IRINA BORLSOVA

Name: Irina Borlsova

Title: Assistant Vice President

By: /S/ MARIO DE LELLIS

Name: Mario De Lellis

Title: Assistant Vice President

NAME OF INSTITUTION:

KZH SOLEIL LLC

_____,
AS A LENDER

By: /S/ HI HUA

Name: Hi Hua

Title: Authorized Agent

NAME OF INSTITUTION:

KZH SOLEIL 2 LLC

AS A LENDER

By: /S/ HI HUA

Name: Hi Hua

Title: Authorized Agent

NAME OF INSTITUTION:

LANDMARK CDO II LTD
ALADDIN CAPITAL MGT LLC

AS A LENDER

By: /S/ WILLIAM S. LUTKINS

Name: William S. Lutkins

Title: Director

NAME OF INSTITUTION:

LANDMARK CDO III LTD.
ALADDIN CAPITAL MGT LLC

AS A LENDER

By: /S/ WILLIAM S. LUTKINS

Name: William S. Lutkins

Title: Director

NAME OF INSTITUTION:

LFC2 LOAN FUNDING LLC, FOR ITSELF OR AS AGENT FOR LFC2
CFPI LOAN FUNDING LLC

AS A LENDER

By: /S/ DOMINIC BREA

Name: Dominic Brea

Title: As Attorney-in-Fact

NAME OF INSTITUTION:

LOAN FUNDING VI LLC FOR ITSELF OR AS AGENT FOR
CORPORATE LOAN FUNDING VI LLC

AS A LENDER

By: /S/ DEAN T. CRIARES

Name: Dean T. Criares

Title: Managing Director

NAME OF INSTITUTION:

SANKATY ADVISORS, LLC AS COLLATERAL
MANAGER FOR LOAN FUNDING XI LLC AS TERM LENDER

AS A LENDER

By: /S/ DIANE J. EXTER

Name: Diane J. Exter

Title: Managing Director, Portfolio Manager

NAME OF INSTITUTION:

MADISON PARK FUNDING I, LTD.

AS A LENDER

By: /S/ DAVID H. LERNER

Name: David H. Lerner

Title: Authorized Signatory

NAME OF INSTITUTION:

LANDMARK CDO LTD
ALADDIN CAPITAL MGT LLC

AS A LENDER

By: /S/ WILLIAM S. LUTKINS

Name: William S. Lutkins

Title: Director

NAME OF INSTITUTION:

FOUR CORNERS CLO 2005-1, LTD.
BY: FOUR CORNERS CAPTIAL MGT. LLC
AS COLLATERAL MANAGER

AS A LENDER

By: /S/ VIJAY SRINIVASAN

Name: Vijay Srinivasan

Title: Authorized Signatory

NAME OF INSTITUTION:

ANATARES CAPITAL CORP

AS A LENDER

By: /S/ DAVID MAHON

Name: David Mahon

Title: Director

NAME OF INSTITUTION:

JP MORGAN CHSE BANK, N.A. AS TRUSTEE OF THE ANTARES
FUNDING TRUST CREATED UNDER THE TRUST AGREEMENT
DATED AS OF NOVEMBER 30, 1999

AS A LENDER

By: /S/ LESLIE HUNDLEY

Name: Leslie Hundley

Title: AVP

NAME OF INSTITUTION:

BABSON CLO LTD. 2003-I
BY: BABSON CAPITAL MGT LLC AS COLLATERAL MGR

AS A LENDER

By: /S/ DAVID P. WELLS, CFA

Name: David P. Wells, CFA

Title: Managing Director

NAME OF INSTITUTION:

LOAN FUNDING VIII LLC
BY: BABSON CAPITAL MGT LLC AS COLLATERAL MANAGER

_____,
AS A LENDER

By: /S/ DAVID P. WELLS, CFA
Name: David P. Wells, CFA
Title: Managing Director

NAME OF INSTITUTION:

TRON CLO LTD, 2000-I
BY: BABSON CAPITAL MANAGEMENT LLC AS COLLATERAL
MANAGER

_____,
AS A LENDER

By: /S/ DAVID P. WELLS, CFA
Name: David P. Wells, CFA
Title: Managing Director

NAME OF INSTITUTION:

BANK OF AMERICA, N.A.

_____,
AS A LENDER

By: /S/ KEVIN J. TRIEBER
Name: Kevin J. Trieber
Title: Senior Vice President

NAME OF INSTITUTION:

BANK OF MONTREAL

_____,
AS A LENDER

By: /S/ G. WALKER
Name: G. Walker
Title: Authorized Signatory

NAME OF INSTITUTION:

BLACKROCK SENIOR INCOME SERIES II

_____,
AS A LENDER

By: /S/ THOMAS COLWELL
Name: Thomas Colwell
Title: Authorized Signatory

NAME OF INSTITUTION:

BUSHNELL CBNA LOAN FUNDING LLC FOR ITSELF OR AS
AGENT FOR BUSHNELL CFPI LOAN FUNDING LLC

_____,
AS A LENDER

By: /S/ JANET HAACK
Name: Janet Haack
Title: As Attorney-in-Fact

NAME OF INSTITUTION:

SANKATY ADVISORS, LLC AS COLLATERAL
MANAGER FOR CASTLE HILL I – INGOTS LTD., AS TERM
LENDER

AS A LENDER

By: /S/ DIANE J. EXTER

Name: Diane J. Exter

Title: Managing Director, Portfolio Manager

NAME OF INSTITUTION:

SANKATY ADVISORS, LLC AS COLLATERAL
MANAGER FOR CASTLE HILL II – INGOTS LTD, AS TERM
LENDER

AS A LENDER

By: /S/ DIANE J. EXTER

Name: Diane J. Exter

Title: Managing Director, Portfolio Director

NAME OF INSTITUTION:

SANKATY ADVISORS, LLC AS COLLATERAL
MANAGER FOR CASTLE HILL III CLO, LIMITED AS TERM
LENDER

AS A LENDER

By: /S/ DIANE J. EXTER

Name: Diane J. Exter

Title: Managing Director, Portfolio Director

NAME OF INSTITUTION:

CENTURION CDO 8, LTD
BY: AMERICAN EXPRESS ASSET MGT GROUP INC., AS
COLLATERAL MANAGER

AS A LENDER

By: /S/ VINCENT P. PHAN

Name: Vincent P. Phan

Title: Director Operations

NAME OF INSTITUTION:

COSTANTINUS EATON VANCE CDO V, LTD
BY: EATON VANCE MANAGEMENT AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Bothof

Title: Vice President

NAME OF INSTITUTION:

CYPRESSTREE CLAIF FUNDING LLC

AS A LENDER

By: /S/ MEREDITH J. KOSLICK

Name: Meredith J. Koslick

Title: Assistant Vice President

NAME OF INSTITUTION:

DENALI CAPITAL LLC MANAGING MEMBER OF DC FUNDING
PARTNERS, PORTFOLIO MANAGER FOR DENALI CAPITAL CLO
I, LTD., OR AN AFFILIATE

AS A LENDER

By: /S/ JOHN P. THACKER
Name: John P. Thacker
Title: Chief Credit Officer

NAME OF INSTITUTION:

DENALI CAPITAL LLC, MANAGING MEMBER OF DC FUNDING
PARTNERS, PORTFOLIO MANAGER FOR DENALI CAPITAL CLO
II, LTD., OR AN AFFILIATE

AS A LENDER

By: /S/ JOHN P. THACKER
Name: John P. Thacker
Title: Chief Credit Officer

NAME OF INSTITUTION:

DENALI CAPITAL LLC, MANAGING MEMBER OF DC FUNDING
PARTNERS, PORTFOLIO MANAGER FOR DENALI CAPITAL CLO
III, LTD. OR AN AFFILIATE

AS A LENDER

By: /S/ JOHN P. THACKER
Name: John P. Thacker
Title: Chief Credit Officer

NAME OF INSTITUTION:

DENALI CAPITAL LLC, MANAGING MEMBER OF DC FUNDING
PARTNERS PORTFOLIO MANAGER FOR DENALI CAPITAL CLO
IV, LTD. OR AN AFFILIATE

AS A LENDER

By: /S/ JOHN P. THACKER
Name: John P. Thacker
Title: Chief Credit Officer

NAME OF INSTITUTION:

EAGLE LOAN TRUST
BY: STANFIELD CAPITAL PARTNERS, LLC
AS ITS COLLATERAL MANAGER

AS A LENDER

By: /S/ CHRISTOPHER E. JANSEN
Name: Christopher E. Jansen
Title: Managing Partner

NAME OF INSTITUTION:

EATON VANCE INSTITUTIONAL SENIOR LOAN FUND BY:
EATON VANCE MANAGEMENT AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF
Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE CDO III, LTD.
BY: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE CDO VI LTD. BY: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE LIMITED DURATION INCOME FUND BY: EATON
VANCE MANAGEMENT AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE SENIOR
FLOATING-RATE TRUST
BY: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE SENIOR INCOME TRUST
BY: EATON VANCE MANAGEMENT AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE FLOATING RATE INCOME TRUST BY EATON
VANCE MANAGEMENT AS INVESTOR ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF

Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

EATON VANCE SHORT DURATION DIVERSIFIED INCOME FUND
BY: EATON VANCE MANAGEMENT AS INVESTMENT ADVISOR

AS A LENDER

By: /S/ MICHAEL B. BOTTHOF
Name: Michael B. Botthof
Title: Vice President

NAME OF INSTITUTION:

FIDELITY ADVISOR SERIES II FIDELITY
ADVISOR FLOATING RATE HIGH INCOME FUND

AS A LENDER

By: /S/ JOHN H. COSTELLO
Name: John H. Costello
Title: Assistant Treasurer

NAME OF INSTITUTION:

FIDELITY CENTRAL INVESTMENT PORTFOLIOS LLC: FIDELITY
FLOATING RATE CENTRAL INVESTMENT PORTFOLIO

AS A LENDER

By: /S/ JOHN H. COSTELLO
Name: John H. Costello
Title: Assistant Treasurer

Section 302 Certification

I, Michael O. Johnson, certify that:

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

Date: May 9, 2005

/s/ MICHAEL O. JOHNSON
Michael O. Johnson
Chief Executive Officer

Section 302 Certification

I, Richard Goudis, certify that:

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

Date: May 9, 2005

/s/ RICHARD GOUDIS
Richard Goudis
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2005 of Herbalife Ltd. (the "Company") as filed with the U.S. Securities and Exchange Commission (the "Commission") on the date hereof (the "Report") and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned officers of the Company certifies that:

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

Date: May 9, 2005

/s/ MICHAEL O. JOHNSON

Michael O. Johnson
Chief Executive Officer

Date: May 9, 2005

/s/ RICHARD GOUDIS

Richard Goudis
Chief Financial Officer

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