

29.14 Insurance

Each Obligor will:

- (a) as regards all its assets and property of any kind arrange and maintain in full force and effect insurances (including consequential loss, business interruption and public liability and damage and other insurances usually maintained by companies carrying on the same type of business under similar circumstances) in such amounts, on such terms and with such insurers as the Agent may reasonably approve and on a basis consistent with that outlined in the insurance report or other evidence delivered to the Agent pursuant to paragraph 11 of Schedule 2 (*Conditions Precedent*);
- (b) procure that the Security Trustee's interest is noted on all policies relating to loss/damage to property (including stock), machinery or equipment or business interruption so arranged in such manner as the Agent may in its absolute discretion require and ensure that the Security Trustee's is named as sole loss payee (but without having any obligation for premiums) in respect of those policies;
- (c) ensure that every policy of insurance contains a standard mortgagee clause, whereby such insurance will not be invalidated, vitiated or avoided as against a mortgagee (or such other terms as the Agent may agree);
- (d) supply to the Agent copies of all such policies of insurance and all endorsements and renewals of such policies, together with receipts for premiums;
- (e) duly and punctually pay all premiums in respect of its insurances and not do or omit to do any act, matter or thing whereby any such insurance may be or becomes void or voidable at the option of the insurers or settle any claim in excess of €50,000 in respect of those insurances without the prior written consent of the Agent, such consent not to be unreasonably withheld or delayed;
- (f) comply with, enforce and (except with the prior written consent of the Majority Lenders) not waive, release, terminate or vary (or agree so to do) any obligations arising under all policies of insurance and in particular, but without limitation, it shall notify the Agent immediately upon receiving notice from any insurer that the details of any insurance policy are to change in any way and upon receiving notice from any insurer terminating any insurance policies;
- (g) in the event that it receives from any insurer notice that such insurer is terminating any insurance policy, it shall use all reasonable endeavours to enter into a corresponding policy with an insurer approved by the Agent and procure that such reasonable steps are taken as may be necessary to ensure that such policy complies in all respects with the terms of this Agreement; and
- (h) immediately give notice to the Agent of any occurrence which gives rise, or might give rise, to a claim under any policy of insurance in excess of £50,000.

If any Obligor at any time fails to perform any of its obligations contained in this Clause 29.14 the Agent may effect or renew such insurance as it thinks fit and such Obligor shall reimburse the Agent for the costs thereby incurred on demand.

29.15 Financial Year End

No Obligor will alter its financial year end.

29.16 **Taxes**

Each Obligor will promptly pay all Taxes imposed upon it as and when they fall due (except where the Agent agrees that any relevant amounts are subject to a bona fide dispute).

29.17 **Change of Name**

No Obligor will change its name without giving the Agent 30 days prior written notice of the proposed new name and will supply a copy of the relevant certificate of incorporation on change of name to the Agent as soon as it becomes available.

29.18 **ERISA Compliance**

Each Obligor and Guarantor shall, and shall cause each of its ERISA Affiliates (if any), to:

- (a) maintain each Plan which it sponsors in compliance in all material respects with the applicable provisions of ERISA, the Code, the PBA and other Federal, State and Provincial law;
- (b) cause each Plan which is qualified under Section 401(a) of the Code, the Income Tax Act (Canada) or the PBA to maintain such qualification;
- (c) not terminate any of such Plans so as to incur any material liability to the Pension Benefit Guaranty Corporation or other similar government body;
- (d) not allow or suffer to exist any prohibited transaction involving any of such Plans or any trust created thereunder which would subject such Borrower, Guarantor or such ERISA Affiliate to a material tax or penalty or other liability on prohibited transactions;
- (e) make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or other laws or the terms of such Plan;
- (f) not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such Plan; or
- (g) allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation or other similar government body of any such Plan that is a single employer plan, which termination could result in any material liability to the Pension Benefit Guaranty Corporation or other similar government body,

except that no event shall be deemed to be a breach of this Clause unless, in the reasonable opinion of the Majority Lenders, such event is likely to have a Material Adverse Effect.

29.19 **Group Bank Accounts**

- (a) The Company shall ensure that all bank accounts of the Obligors (other than any existing bank accounts which are not and have not prior to the date hereof been subject to any Security Interest under the Finance Documents or in connection with the Existing Group Indebtedness or bank accounts of PT Doulton or any Subsidiary incorporated in Japan which is not a Borrower securing Financial Indebtedness permitted under paragraph (xviii) of Clause 29.8 (*Financial Indebtedness*) (the “**excluded bank accounts**”)) shall be opened and maintained with the Agent or an Affiliate of the Agent or such other banking institution reasonably acceptable to the Agent and in each case are subject to valid Security Interests under the Security Documents.

- (b) Without prejudice to Sub-Clause (a) above, the Company shall procure that each US Obligor shall transfer its bank accounts in the United States of America currently maintained with Wachovia Bank, National Association or any other banking institution in connection with the Existing Group Indebtedness to the Agent not later than 180 days after the date hereof and shall co-operate with the Agent to establish mutually acceptable cash management systems in connection with the Facilities within that time.
- (c) In respect of any Blocked Account of a Canadian Obligor, the Security Interest relating thereto shall be in the nature of a “springing dominion” Security Interest, so that the Canadian Obligor may utilise the cash in that Blocked Account in the ordinary course of its business until and unless, after the occurrence of an Event of Default which is continuing, the Agent serves a notice to the applicable Canadian bank at which that Blocked Account is maintained that the Agent or the Security Trustee has dominion over that Blocked Account pursuant to its Security Interest.

29.20 Pensions

- (a) The Company shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any of its employees are funded as required by applicable law and that no action or omission is taken by any member of the Group in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect.
- (b) Except for those listed in Schedule 9, the Company shall ensure that no member of the Group establishes any defined benefit occupational pension scheme.
- (c) The Company shall deliver to the Agent at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the Company), actuarial reports and trustee annual reports in relation to all pension schemes mentioned in (a) above.
- (d) The Company shall promptly notify the Agent of any material change in the rate of contributions to any pension schemes mentioned in (a) above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).
- (e) The Company shall ensure that all amounts payable to or in relation to any pension scheme of any member of the Group pursuant to any regulations or laws relating thereto are paid in full when due.
- (f) No Irish Obligor shall without the prior written consent of the Agent acting on the instructions of the Required Lenders:
 - (i) other than as required by the relevant regulator, agree any alteration to the basis agreed with the relevant trustees for calculating employer contributions to any pension scheme to which any Irish Obligor is required to contribute or
 - (ii) agree any amendment to any pension scheme to which any Irish Obligor is required to contribute which would remove the requirement for the Principal Employer’s agreement to the basis for calculating employer contributions.

29.21 Environmental compliance

Each Obligor shall (and the Company shall ensure that each member of the Group will):

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

29.22 Environmental claims

Each Obligor shall (through the Company), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

29.23 Preservation of assets

Each Obligor shall (and the Company shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

29.24 Burdensome Agreements

No Obligor shall:

- (a) enter into any arrangement that encumbers or restricts the ability of that Obligor to (i) pay dividends or make any other distributions to any Finance Party on its share capital or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Finance Party, (iii) make loans or advances to any Finance Party, (iv) sell, lease or transfer any of its assets or property to any Finance Party or (v) (A) save in respect of specific assets which are permitted to be secured in favour of a person other than the Security Trustee, the Agent or the Lenders pursuant to the terms of this Agreement, create any Security Interest over its assets, property or undertaking pursuant to the Finance Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (B) act as an Obligor pursuant to the Finance Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to above) for (1) this Agreement and the other Finance Documents and (2) the High Yield Bond Indenture in effect on the date hereof; or
- (b) save in respect of specific assets which are permitted to be secured in favour of a person other than the Security Trustee, the Agent or the Lenders pursuant to the terms of this Agreement, enter into any arrangements that prohibit or otherwise restrict the existence of any Security Interest upon any of its assets or properties in favour of the Agent or the Security Trustee for the purpose of securing the Facilities, whether now owned or hereafter acquired, or requiring the grant of any security for any obligation if such assets or properties are given as security for the Facilities and Loans.

29.25 Other Indebtedness, etc.

No Obligor shall (i) amend or modify any of the terms of any Financial Indebtedness of such Obligor (other than Indebtedness under the Finance Documents) if such amendment or modification would add or change any terms in a manner adverse to such Obligor, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto, (ii) make (or give any notice with respect thereto) any voluntary, optional or other non-scheduled payment, prepayment, redemption, acquisition for value, refund, refinance or exchange of any Financial Indebtedness of such Obligor (other than indebtedness under the Finance Documents)(except for mandatory prepayments to the extent those relate to Financial Indebtedness incurred to finance the acquisition of a specific asset the terms of which Financial Indebtedness in effect on the date hereof provide for such mandatory prepayment if that asset is sold, lost, destroyed or replaced or for mandatory prepayment from the proceeds of the assets or receivables financed pursuant to such Financial Indebtedness), or (iii) make any repayment of any Financial Indebtedness other than any loan included in Financial Indebtedness permitted under Clause 29.8(a)(i), Clause 29.8(a)(vii) and Clause 29.8(a)(xiv) (*Financial Indebtedness*) referred to and permitted by Clause 29.9(i).

29.26 Contractual rights

Each Obligor shall, (and the Company will procure that each relevant member of the Group will), take all reasonable and practical steps to preserve and enforce its rights (or the rights of any member of the Group) and pursue any claims and remedies arising under any contractual arrangements affecting its business or assets if failure to do so would have a Material Adverse Effect.

29.27 Bank Accounts

- (a) No Borrower will open any new bank account unless it has given not less than 30 days prior notice thereof to the Agent, such account is to be maintained at a bank or financial institution reasonably acceptable to the Agent and such account is made subject to a fixed charge (or equivalent Security Interest in the jurisdiction in which it is maintained) in favour of the Security Trustee or the Agent under a Security Document.
- (b) In respect of any Blocked Account of a Canadian Obligor, the Security Interest relating thereto shall be in the nature of a "springing dominion" Security Interest, so that the Canadian Obligor may utilise the cash in that Blocked Account in the ordinary course of its business until and unless, after the occurrence of an Event of Default, the Agent serves a notice to the Canadian Obligor that the Agent has dominion over that Blocked Account pursuant to its Security Interest.
- (c) If any Canadian Guarantor has on deposit in any bank account which is not a Blocked Account unapplied cash (being surplus cash not required by that Canadian Obligor for general working capital needs) exceeding C\$50,000 (when aggregated with any such unapplied cash so held on deposit in any such bank accounts by all other Canadian Obligors) at any time, it shall transfer such unapplied cash to a Borrower by loan, distribution or other intercompany transfer.

29.28 **“Know your customer” checks**

- (a) If:
- (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 an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the 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 Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the 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 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 with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Company shall, by not less than 10 Business Days prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 32 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

29.29 **Inspection of Property, Books and Records**

Each Obligor will keep books and records which accurately reflect all of its business affairs and material transactions and permit the Agent and each Lender or any of their respective

representatives, at reasonable times and intervals, to visit all of its offices and properties, to discuss its financial matters with its officers and independent chartered accountants and, upon the reasonable request of the Agent or a Lender, to examine (and, at the expense of the relevant Obligor, photocopy extracts from) any of its books or other corporate records.

29.30 Lease and Covenant Compliance

Each Obligor shall perform all the terms on its part contained in any lease or agreement for lease affecting any of its properties and not do anything whereby such properties might reasonably be expected to become forfeit or such leases or agreements for lease otherwise determinable save to the extent such action or inactions could not reasonably be expected to have Material Adverse Effect.

29.31 Disposal of Dungarvan Site and Tuscan Site

The Company shall ensure that immediately upon the disposal of the property known as the "Dungarvan Site" or the property known as the "Tuscan Site" the proceeds of disposal thereof (less any reasonable expenses incurred by the member of the Group so making that disposal to persons who are not members of the Group and any Tax incurred and required to be paid by the seller in connection with that disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance) are immediately applied by the Company within one Business Day's receipt by the seller of such property of cleared funds in and towards prepayment of the Loans and the Ancillary Facilities, and the cancellation of the Commitments in the manner provided for in Clause 13.6(d).

29.32 Landlord Waivers

The Company shall use its best efforts to obtain (within 90 days of the date hereof) from the landlords of leasehold premises in Germany, Canada and the United States of America in which Inventory or Equipment of any Obligor is located waivers (in terms satisfactory to the Agent) of such landlords' rights to distrain against, seize or otherwise exercise any similar right of recourse against any such Inventory or Equipment.

If such waivers are not so obtained, the Agent may make such Reserves therefor in its discretion in accordance with item (iii) of the definition of "Reserves".

29.33 Equipment Valuation

The Company shall procure that an Equipment Valuation, prepared by an appraiser acceptable to the Agent, and at the cost of the Company, and in terms satisfactory to the Agent, is delivered to the Agent, within 90 days following the date of the first Utilisation.

29.34 Dividends by Company

- (a) The Company will not, without obtaining the Agent's prior written consent, pay any dividend or make any other distribution of its assets unless that dividend or distribution satisfies the conditions of Sub-Clause (b) below.
- (b) The Company may pay a dividend or make a distribution of its assets if:
 - (i) that dividend or distribution is not paid before 1 January 2007; and
 - (ii) the Agent is satisfied that:
 - (A) during the last 30 day period immediately before the date of payment of that dividend or distribution, on every day during that period, the Minimum Excess Availability was €75,000,000; and

- (B) during the first 30 day period immediately after the date of payment of that dividend or distribution, on every day during that period, the Minimum Excess Availability will be €75,000,000; and
- (C) during the twelve month period ending on the date of payment of that dividend or distribution, the Fixed Charge Coverage Ratio (and after taking that dividend or distribution into account, as if it had been paid in that twelve month period) was equal to or more than 1.5:1.

29.35 Canadian Assets

- (a) The Company shall use all reasonable efforts to procure all necessary estoppel letters, in respect of any pre-existing Security Interest affecting any of the assets, properties or undertakings located in Canada of any of the Canadian Obligors on terms satisfactory to the Agent within 30 days of the date hereof, failing which the Receivables and Stock of any Canadian Obligor, in respect of whose assets, properties and undertaking such satisfactory estoppel letters have not been obtained, will not constitute Eligible Receivables or Eligible Stock under this Agreement.
- (b) Waterford Wedgwood Canada Inc. shall use all reasonable efforts to enter into within 60 days of the date hereof blocked account agreements on terms satisfactory to the Agent with those banks and in respect of those bank accounts which the Agent shall require, failing which the Receivables and Stock of Waterford Wedgwood Canada Inc. will not constitute Eligible Receivables or Eligible Stock under this Agreement.

29.36 Long Form Certificate of Title

The Company shall use all reasonable efforts to procure that in the case of the land at Barlaston (Registered Number SF292350) and Tuscan Works (Registered Numbers SF83979 and SF 378372) there is delivered to the Agent, in terms satisfactory to the Agent, a long form certificate of title (in the form of The City of London Law Society Land Law Sub-Committee format for a long form certificate of title), within 60 days of the date hereof, failing which the Agent shall make such Reserves as it considers appropriate acting in good faith and using its reasonable credit judgment in respect of the Property Loan Facility.

29.37 Completion of Security Interests

- (a) The Company shall procure that not later than 60 days after the date hereof all of the Security Documents specified in Part 2 of Schedule 2 (Conditions Precedent) to be executed by any Obligor incorporated in Indonesia and/or in respect of any assets, properties or undertakings located in Indonesia or subject to the laws of Indonesia is executed and delivered to the Agent in terms satisfactory to the Agent, which period for satisfaction of this obligation the Agent may in its discretion extend for a further 15 days upon its expiry.
- (b) The Company shall procure that not later than 30 days after the date hereof all of the Security Documents specified in Part 2 of Schedule 2 (Conditions Precedent) to be executed by any Obligor incorporated in Switzerland and/or in respect of any assets, properties or undertakings located in Switzerland or subject to the laws of Switzerland is executed and delivered to the Agent in terms satisfactory to the Agent, which period for satisfaction of this obligation the Agent may in its discretion extend for a further 15 days upon its expiry.

- (c) The Company shall procure that not later than 30 days after the date hereof all of the Security Documents specified in Part 2 of Schedule 2 (Conditions Precedent) to be executed by any Obligor incorporated in Italy and/or in respect of any assets, properties or undertakings located in Italy or subject to the laws of Italy is executed and delivered to the Agent in terms satisfactory to the Agent, which period for satisfaction of this obligation the Agent may in its discretion extend for a further 15 days upon its expiry.

29.38 Conditions Precedent

To the extent to which the Lenders may agree to waive any of the conditions specified in Schedule 2 (*Conditions Precedent*) in relation to the making of the first Utilisation, the Company shall procure the satisfaction of such conditions within 10 Business Days following the date of the first Utilisation.

30 EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 30 is an Event of Default. Clauses 30.14 (*Acceleration*) and 30.15 (*Agent's Rights following an Event of Default*) determine certain rights arising as a consequence of the occurrence of an Event of Default.

30.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless (i) its failure to pay is caused by administrative or technical error (not attributable to an Obligor) and (ii) payment is made within two Business Days of its due date.

30.2 Other obligations

(a) An Obligor does not comply with the provisions of Clauses 29.3 (*Negative Pledge*), 29.4 (*Disposals*), 29.5 (*Mergers and Acquisitions*), 29.7 (*Intra-Group Arrangements*), 29.8 (*Financial Indebtedness*), 29.9 (*Making Loans*), 29.10 (*WW Subordinated Facility and Rosenthal Subordinated Facility*), 29.14 (*Insurance*), 29.20 (*Pensions*) or any of the undertakings set out in Schedule 3 (*Reporting and Financial Undertakings; Release of Cash Collateral; Margin Adjustments*).

(b) An Obligor does not comply with any other provision of the Finance Documents and, where such non-compliance is capable of remedy, such Obligor fails to remedy same within 15 Business Days of becoming aware thereof.

30.3 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made and, if such state of affairs is capable of remedy, it has not been remedied within ten Business Days of the relevant Obligor becoming aware of such state of affairs.

30.4 Cross default

(a) Any Financial Indebtedness (excluding Financial Indebtedness under the Rosenthal Subordinated Facility) of any Obligor exceeding €150,000 (or its equivalent in other currencies) in the aggregate is not paid when due.

(b) Any Financial Indebtedness of any Obligor exceeding €150,000 (or its equivalent in other currencies) becomes prematurely due and payable (or becomes capable of being

declared prematurely due and payable) as a result of an event of default (however described).

- (c) Any Security Interest with respect to any Financial Indebtedness in excess of €150,000 (or its equivalent in other currencies) of any Obligor becomes enforceable.
- (d) An amount in excess of €15,000,000 in aggregate owed to trade creditors of the Group as a whole remains outstanding following the expiry of 60 days after the due date.

30.5 **Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling all or a substantial part of its indebtedness or all or a substantial part of any class of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities and the benefit of any Solvency Undertaking issued in favour of such Obligor).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor.

30.6 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, examination or reorganisation (by way of voluntary arrangement, petition, proposal, scheme of arrangement or otherwise) of any Obligor;
- (b) a composition, compromise, assignment, petition or arrangement with any creditor of any Obligor;
- (c) the appointment of a liquidator, receiver, monitor, custodian, sequestrator, administrative receiver, administrator, examiner, compulsory manager or other similar officer in respect of any Obligor or any of its assets; or
- (d) enforcement of any Security Interest over any assets of any Obligor,

or any analogous procedure or step is taken in any jurisdiction and is not dismissed or discharged within 18 days (provided that such 18 day grace period will not apply if the relevant action, proceedings or other step is taken by or at the instigation of the Board of Directors of the relevant Obligor).

30.7 **Cessation of Business**

Any Obligor ceases or threatens to cease, to carry on all or a substantial part of its business.

30.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution in excess of €150,000 affects any asset of any Obligor and is not discharged within 14 days.

30.9 **Change of Control**

Any single person or group of persons (other than the Permitted Holders and any entity formed by the Permitted Holders for the purposes of owning, or through which the Permitted Holders

directly or indirectly, own Capital Stock of the Company) acting in concert (as defined in the City Code on Takeovers and Mergers) not having control of the Company as at the date of this Agreement acquires control (as defined in Section 416 of the Income and Corporation Taxes Act 1988) of the Company.

30.10 Charged Account Arrangements

Any bank repudiates or purports to terminate the arrangements set out in the Debenture in relation to any Charged Account or a cash-sweep or payment required to be made under any Finance Document from a Charged Account is not made in the amount and manner required (unless attributable to a technical failure which is remedied promptly), unless the Company has previously established appropriate alternative arrangements to the reasonable satisfaction of the Majority Lenders.

30.11 Material adverse change

An event or series of events occurs which, in the reasonable opinion of the Majority Lenders, could be expected to have a Material Adverse Effect.

30.12 ERISA

An ERISA Event shall occur which results in or could reasonably be expected to have a Material Adverse Effect.

30.13 Repudiation and rescission of agreements

An Obligor (or any other party on behalf of such Obligor having legal authority to do so) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

30.14 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and if so directed by the Majority Lenders shall, by notice to the Company:

- (a) terminate, cancel or (permanently or temporarily) suspend the Facilities (other than the Ancillary Facilities which may be terminated, cancelled or suspended in accordance with their terms) whereupon they shall immediately be terminated, cancelled or (permanently or temporarily) suspended; and/or
- (b) declare that all or part of the Loans (excluding, for those purposes, any amounts owing in respect of the Ancillary Facilities), together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lenders.
- (d) declare that the Company shall immediately pay or procure the payment of cash cover in respect of the L/Cs. The provisions of Clause 12.12 (*Cash Collateral*) shall apply to any cash cover to be provided under this Clause 30.14(d).

30.15 Agent's Rights following an Event of Default

Without prejudice to the other provisions of this Clause 30 or any of its other rights under any Finance Documents, the Agent may, at any time while an Event of Default is continuing (and without incurring any liability for the exercise or non-exercise of any such power):

- (a) require each Obligor immediately to deliver to it all original documents relating to the Receivables and the contracts giving rise to them; and/or
- (b) give notice (or require the relevant Obligors to give notice) to the account debtors to the effect that the Receivables have been assigned to the Agent and requiring that payment be made to such account as the Agent may specify; and/or
- (c) extend the time for payment of any Receivable or otherwise enter into any arrangements for the settlement, compromise, release or discharge of any Receivable; and/or
- (d) generally take such action as it may deem fit for the protection of any rights, remedies or security conferred upon it by any of the Finance Documents.

30.16 Majority Senior Tranche B Lenders' Rights

- (a) Notwithstanding anything to the contrary contained herein, except as the Majority Senior Tranche B Lenders shall otherwise agree, the Agent shall demand payment of the obligations and commence and pursue such other Enforcement Actions as the Agent in good faith deems appropriate within one hundred and twenty (120) days (except with respect to Events of Default described in Clauses 30.5 (*Insolvency*) and 30.6 (*Insolvency Proceedings*), the Agent shall take such Enforcement Actions as it deems appropriate under the circumstances promptly upon receipt of notice) after the date of the receipt by the Agent of written notice executed and delivered by the Majority Senior Tranche B Lenders of an Event of Default described in Clauses 30.1 (*Non-Payment*), 30.4 (*Cross default*), 30.5 (*Insolvency*), 30.6 (*Insolvency Proceedings*) or 30.2 (*Other obligations*) (to the extent arising as a result of the failure to comply with Clauses 29.3 (*Negative Pledge*), 29.4 (*Disposal*), 29.5 (*Mergers and Acquisitions*), 29.7 (*Intra-Group Arrangements*), 29.8 (*Financial Indebtedness*), 29.9 (*Making Loans*), 29.10 (*WW Subordinated Facility and Rosenthal Subordinated Facility*), 29.20 (*Pensions*), 29.34 (*Dividends by Company*), 29.38 (*Conditions Precedent*) or 37.3 (*Additional Guarantors*) or Part (B) (*Financial Undertakings*) of Schedule 3 (*Reporting and Financial Undertakings: Release of Cash Collateral: Margin Adjustment*) after giving effect to all applicable cure periods) and requesting that the Agent commence Enforcement Actions, provided, that, (i) such Event of Default has not been waived or cured, (ii) in the good faith determination of the Agent, taking an Enforcement Action is permitted under the terms of this Agreement and applicable law, (iii) taking an Enforcement Action shall not result in any liability of the Agent or the Lenders to the Company, any Obligor or any other person (in which regard, this part (iii) is subject to Sub-Clause (b) of this Clause 30.16), (iv) the Agent shall be entitled to all of the benefits of Clause 33 (*Role of the Agent*), and (v) the Agent shall not be required to take an Enforcement Action so long as within the period provided above, the Agent shall, at its option, either (A) appoint the Original Senior Tranche B Lender or as an agent of the Agent for purposes of exercising the rights of the Agent to take an Enforcement Action, subject to the terms hereof or (B) resign as the Agent and the Original Senior Tranche B Lender shall automatically be deemed to be the successor Agent hereunder for purposes hereof, except with respect to the provisions of Clause 2 (*The Facilities*) and except in connection with all matters relating to the determination of Eligible Stock and Eligible Receivables, Reserves and receiving reports in respect of Collateral and conducting field examinations with respect to the Collateral and similar matters). This Clause 30.16(a) shall not apply to the Ancillary Facilities.

- (b) In the event that, as contemplated by part (iii) of Sub-Clause (a) of this Clause 30.16, the Agent determines that taking an Enforcement Action may result in a liability of the Agent or the Lenders to the Company, any Obligor or any other person, the Agent will advise the Original Senior Tranche B Lender thereof within the one hundred and twenty (120) day period specified, whereupon the Original Senior Tranche B Lender may, at its option, after giving not less than five Business Days notice thereof to the Agent, exercise the right of the Agent to take an Enforcement Action, provided that if it does so the Original Senior Tranche B Lender shall indemnify the Agent and each Senior Lender within three Business Days of its demand, against any cost, loss or liability incurred or suffered by the Agent or any such Lender in relation to, as a result of or in connection with such exercise by the Original Senior Tranche B Lender of the right of the Agent to take such an Enforcement Action.

31 **CHANGES TO THE LENDERS**

31.1 **Assignments and transfers by the Lenders**

- (a) The Senior Lenders may at any time assign, transfer, delegate or offer participations in all or a proportion of their rights and obligations under the Finance Documents to banks or financial institutions or to trusts, funds or other entities which are regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets subject to compliance with the terms of this Clause 31. The Senior Lenders shall not take any such action without the prior written consent of the Agent (not to be unreasonably withheld or delayed) and, provided no Default or Event of Default is continuing and unless such action is taken or assignment or transfer is made pursuant to Clause 14.2 (*Transfer and Assignment to Senior Tranche B Lender*), the Company (not to be unreasonably withheld or delayed).
- (b) Subject to obtaining the prior written consent of the Company at any time no Default or Event of Default is continuing (such consent not to be unreasonably withheld or delayed), each Senior Tranche B Lender may assign all or, if less than all, a portion equal to at least US\$1,000,000 in the aggregate for the assigning Lender, of such rights and obligations under this Agreement to one or more banks or financial institutions or to trusts, funds or other entities which are regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets, each of which assignees shall become a party to this Agreement as a Senior Tranche B Lender by execution of a Transfer Certificate; provided, that, the Agent shall have received for its sole account the fee set forth in Clause 31.3 (*Assignment or Transfer Fee*) unless the assignor is the Original Senior Tranche B Lender, in which case no such fee shall be payable to the Agent. Anything contained herein to the contrary notwithstanding, the consent of the Company or the Agent shall not be required, the minimum assignment amount shall not be applicable, such Transfer Certificate shall not be required to be executed by or delivered to the Agent in order to be effective, and payments of the processing fee shall not be required if (x) such assignment is in connection with any merger or consolidation of a Senior Tranche B Lender, (y) whilst a Default or Event of Default is continuing and has not been remedied or (z) in the case of any Senior Tranche B Lender, the assignee is an Affiliate of such Senior Tranche B Lender or any Related Fund, provided, however, that the Company, each other Obligor and the Agent may continue to deal solely and directly with the assigning Senior Tranche B Lender in connection with the interest so assigned until such time as written

notice of such assignment shall have been delivered by the assigning Senior Tranche B Lender or the assignee to the Agent.

- (c) If a Lender grants any risk or funded participations to any other party, then such Lender shall nevertheless remain responsible for the performance of the obligations expressed to be assumed by it pursuant to the Finance Documents. No such participant shall acquire any rights under any of the Finance Documents.
- (d) Notwithstanding Sub-Clause (b) above, each of the parties to this Agreement acknowledges, consents and agrees that on the first Business Day following the advance by the Original Senior Tranche B Lender of the Senior Tranche B Loan to the Company, the Original Senior Tranche B Lender may assign and transfer its rights and obligations under this Agreement and in respect of the Senior Tranche B Facility and the Senior Tranche B Loan to an Affiliate of the Original Senior Tranche B Lender. None of the restrictions, conditions or prohibitions on the assignment or transfer by the Original Senior Tranche B Lender of its rights and obligations under the Finance Documents under Sub-Clause 31.1(a) (other than in respect of the execution and delivery to the Agent of a Transfer Certificate) shall apply in relation to any such transfer or assignment effected pursuant to this Sub-Clause 31.1(d).

31.2 Assignment to Federal Reserve Bank

In addition to any other assignments or participation rights provided in this Clause 31, each Lender may assign and pledge all or any portion of its Loans and the other obligations owed to such Lender, without notice to or consent of any Party, to any Federal Reserve Bank pursuant to Regulation A of the Board of Governors of the Federal Reserve Bank and any operating circular issued by such Federal Reserve Bank; provided, however, that (i) no Lender shall be relieved of any of its obligations under this Agreement as a result of any such assignment and pledge and (ii) in no event shall such Federal Reserve Bank be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action under this Agreement.

31.3 Assignment or transfer fee

The assignee or transferee (the “New Lender”) shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of €3,500, except as otherwise provided by Clause 31.1(b).

31.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, the assignor or transferor (the “Existing Lender”) makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 31; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

31.5 Procedure for transfer

- (a) Subject to the conditions set out in this Clause 31.5 and except as otherwise provided in Clause 31.1(b), a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender (as those terms are defined in the Transfer Certificate). The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied that:
 - (i) it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender; and
 - (ii) it has received such further documentation as may be necessary to ensure that the New Lender agreed to become bound by the provisions of the Intercreditor Agreement.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);

- (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a "Lender".
- (d) In the case of lending to a US Borrower, no assignment or transfer shall be effective until the US Borrower is notified of the Transfer and provided with the transferee's name and relevant identifying information. Further, no Lender may sub-participate any portion of its interest in the relevant Facilities without a book entry record of ownership identifying the participant and the amount of such participation owned by the participant. Such book entry record of ownership shall be maintained by the Agent as agent for the US Borrower. Each participant shall also agree to the same restrictions on transfer.
- (e) For US federal income tax purposes only, each US Borrower designates the Agent as its agent for maintaining a book entry record of ownership identifying the Lenders and the amount of the respective interest in the Loan which they own. For U.S. federal income tax purposes only, to the extent that a Lender sells to any party participating interests in its Loan, such Lender shall maintain a book entry record of ownership identifying the participant(s) and the amount of such participation(s) owned by such participant(s). Such book entry record of ownership shall be maintained by the Agent as agent for each US Borrower. In the event that the IRS shall specifically request such information from a US Borrower, upon receipt of written notice thereof from such US Borrower (or its agent), together with a copy of the relevant portion of such request from the IRS, the Agent shall deliver to such US Borrower (or its agent) a copy of the register of such Lender's sub-participations, including the names and addresses of the owners of such sub-participations and the amount of such sub-participations owing to them. This Clause shall not impose any obligation or liability on any Lender or the Agent other than the obligation to deliver the specified information under the specific conditions in this Agreement. The foregoing provisions are intended to comply with the registration requirements in U.S. Treasury Regulation Section 5f.103-1 so that the Loans to the US Borrowers are considered to be in "registered form" pursuant to such regulation.

31.6 Copy of Transfer Certificate to Company

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, send to the Company a copy of that Transfer Certificate.

31.7 Disclosure of information

Any Lender may disclose to any of its Affiliates and any other person:

- (a) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;

- (b) with (or through) whom that Lender enters into (or may potentially enter into) any sub participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor; or
- (c) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about any Obligor, the Group and the Finance Documents as that Lender shall consider appropriate, if, in relation to paragraphs (a) and (b) above, the person to whom such information is to be disclosed has entered into a confidentiality undertaking substantially in the form recommended by the Loan Market Association.

31.8 Ancillary Facility Providers

An institution may become an Ancillary Facility Provider in accordance with the provisions of Clause 2.7(a) (*Ancillary Facility Provider*).

32 CHANGES TO THE OBLIGORS

32.1 Assignments and transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

32.2 Additional Borrowers

The Company may request that any of its Subsidiaries becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:

- (a) the Majority Lenders approve the addition of that Subsidiary;
- (b) the Company delivers to the Agent a duly completed and executed Accession Letter and Deed of Accession;
- (c) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower;
- (d) the Agent has received with respect to the Additional Borrower, documentation corresponding to that listed in paragraphs (A) and (B) of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent; and
- (e) that Subsidiary is, or concurrently becomes, a Guarantor.

32.3 Additional Guarantors

The Company shall procure that each of its Material Subsidiaries (other than the Rosenthal Companies, Spring Switzerland GmbH and WC Designs) is a Guarantor. If any company (other than a Rosenthal Company, Spring Switzerland GmbH and WC Designs) becomes a Material Subsidiary after the date of this Agreement, the Company shall procure that such Material Subsidiary becomes an Additional Guarantor by delivering to the Agent:

- (a) a duly completed and executed Accession Letter and Deed of Accession or (if the Material Subsidiary is incorporated outside England and Wales) such documentation as the Agent may reasonably require in order to obtain corresponding security in the relevant jurisdiction of incorporation; and

- (b) all of the corresponding documents and other evidence listed in paragraphs (A) and (B) of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

If any such Material Subsidiary is a public company or a Subsidiary of a public company, then the Company shall procure that such Material Subsidiary becomes an Additional Guarantor within 120 days of its acquisition.

32.4 **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

33 **ROLE OF THE AGENT**

33.1 **Appointment of the Agent**

- (a) Each other Finance Party appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) The Agent shall hold the benefit of all Security Interests under the Security Documents as agent and security trustee for all the Finance Parties and in accordance with the trusts created pursuant to the Intercreditor Agreement.
- (c) Each other Finance Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (d) Nothing in this Clause 33.1 shall have the effect of appointing the Agent to act as agent with respect to the documentation which creates or evidences any Ancillary Facilities.

33.2 **Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (e) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature. To the extent to which the administration of the Finance Documents may involve the making of any decisions or judgements or the exercise of any discretion (for example, as to whether any Stock or Receivables constitute Eligible Stock or Eligible Receivables, the administration of the Blocked Accounts, the establishment of any Reserves or any other matter whatsoever) the exculpatory and other

provisions of this Clause 33 (including, without limitation, Clauses 33.7 (*Responsibility for Documentation*) and Clause 33.8 (*Exclusion of Liability*)) shall be applicable thereto with any necessary adaptations.

33.3 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agent as a trustee or fiduciary of any other person. In so far as the Agent acts as security trustee pursuant to Clause 33.1 (*Appointment of the Agent*), it shall have no obligations beyond those set out in this Clause 33 and in the Intercreditor Agreement.
- (b) The Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

33.4 Business with the Group

The Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Company or any of its Affiliates.

33.5 Rights and discretions of the Agent

- (a) The Agent may rely on:
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised (whether received by fax, e-mail or by any other means whatsoever); and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 30.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

33.6 Majority Lenders' instructions

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders. The Agent may, however, carry out the mechanical and administrative functions described in Clause 33.2 (*Duties of the Agent*) without prior reference to the Lenders or any of them.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, from all of the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, from all of the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (f) If all monies owing in respect of the Senior Facility have been paid or repaid in full, then reference in this Clause 33.6 to the Majority Lenders shall instead be read as references to the Majority Senior Tranche B Lenders.

33.7 Responsibility for documentation

The Agent:

- (a) is not responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, an Obligor or any other person given in or in connection with any Finance Document; and
- (b) is not responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

33.8 Exclusion of liability

- (a) Without limiting paragraph (b) below, the Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause.

- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

33.9 Lenders' indemnity to the Agent

Each Senior Lender shall (in proportion to its share of the Total Senior Commitments or, if the Total Senior Commitments are then zero, to its share of the Total Senior Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document) in relation to the Senior Facility. Each Senior Tranche B Lender shall likewise indemnify the Agent against any cost, loss or liability incurred by the Agent in acting as Agent in respect of the Senior Tranche B Facility, on the terms of this Clause 33.9 with necessary adaptations.

33.10 Resignation and Removal of the Agent

- (a) The Agent may resign and appoint one of its Affiliates or an Affiliate of Bank of America, N.A. acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Company.
- (b) Alternatively the Agent may resign by giving notice to the other Finance Parties and the Company, in which case the Required Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Required Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Company) may appoint a successor.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 33. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

- (g) After consultation with the Company, the Required Lenders may, by giving notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (h) The Agent and the Security Trustee shall always be the same person.

33.11 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

33.12 Relationship with the Lenders

- (a) The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost.

33.13 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Company and its Affiliates;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

33.14 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to

that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

33.15 Agent as Security Trustee

The protections extended to the Agent pursuant to the foregoing provisions of this Clause 33 shall apply to it equally in its role as Security Trustee under the Security Documents and the Intercreditor Agreement. The ensuing provisions of this Clause 33 shall apply in addition in relation to the Security Trustee.

33.16 Appointment

The Lenders and the Obligors hereby appoint the Security Trustee to hold, and the Security Trustee agrees that it shall hold, the security constituted by the Security Documents in trust for the benefit of the Lenders, on the terms of and subject to the conditions of this Agreement and the Intercreditor Agreement and to act as trustee hereunder and thereunder and the Security Trustee shall exercise such rights, powers, discretions and duties as may be conferred or imposed upon it pursuant to the terms of this Agreement, the Intercreditor Agreement and the provisions of the general law.

33.17 Security Trustee as joint creditor

- (a) The Company, the Obligors and each of the Lenders agree that the Security Trustee, to the extent the Security Trustee is not a creditor itself, shall be the joint creditor (together with the relevant Lender) of each and every obligation of the Company and the Obligors in full towards each or any of the Lenders under each and any Finance Document, and that accordingly the Security Trustee will have its own independent right to demand performance by the Company or the Obligors of those obligations (and the obligations owed to the Security Trustee as joint creditor are hereinafter referred to as the "**Parallel Debt**"). However, a discharge of any such obligation to one of the Security Trustee or a Lender shall, to the same extent, discharge the corresponding obligation owing to the other.
- (b) Without limiting or affecting the Security Trustee's rights against the Company or the Obligors (whether under this paragraph or under any other provision of the Finance Documents), the Security Trustee agrees with each other Lender (on a several and divided basis) that, subject as set out in the next sentence, it will not exercise its rights as a joint creditor with a Lender except that after consultation with the relevant Lender. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Trustee's right to act in the protection or preservation of rights under or to enforce any Security Document as contemplated by this Deed and/or the relevant Security Document (or to do any act reasonably incidental to any of the foregoing).
- (c) For the purpose of this Clause 33.17, in relation to all Security Documents governed by German law (the "**German Security Documents**"), the Security Trustee acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Collateral granted under the German Security Documents to the Security Trustee to secure the Parallel Debt is granted to the Security Trustee in its capacity as creditor of the Parallel Debt and shall not be held on trust.
- (d) Waterford Wedgwood Japan ("**WWJ**"), Waterford Wedgwood plc, Wedgwood Limited, Statum Limited and Josiah Wedgwood & Sons Limited (the last four companies shall

hereinafter be collectively referred to as the “**Intragroup Creditors**” and individually as an “**Intragroup Creditor**”) agree that the Security Trustee shall be the joint creditor (together with the relevant Intragroup Creditor) of all present and future indebtedness, obligations and liabilities of every nature of WWJ from time to time owed to each of the Intragroup Creditors under trade accounts payable by WWJ arising in the ordinary course of business and not overdue by 90 days or more, and that accordingly the Security Trustee will have its own independent right to demand performance by WWJ of those indebtedness, obligations and liabilities (such indebtedness, obligations and liabilities owed to the Security Trustee as joint creditor shall hereinafter be referred to as the “**Parallel Intragroup Debt**”). However, a discharge of any such indebtedness, obligation or liability to either of the Security Trustee or an Intragroup Creditor shall, to the same extent, discharge the corresponding indebtedness, obligation or the liability owing to the other.

- (e) For the purpose of this Clause 33.17, in relation to all Security Documents governed by Japanese law (the “**Japanese Security Documents**”), the Security Trustee acts in its own name and not as trustee, and its claims in respect of the Parallel Debt and the Parallel Intragroup Debt shall not be held on trust. The Collateral granted under the Japanese Security Documents to the Security Trustee to secure the Parallel Debt and the Parallel Intragroup Debt is granted to the Security Trustee, in its capacity as creditor of the Parallel Debt and the Parallel Intragroup Debt and shall not be held on trust.

33.18 **The German Security Documents**

In relation to the German Security Documents the following additional provisions shall apply:

- (a) The Security Trustee shall:
 - (i) hold and administer any German Security which is security assigned (*Sicherungseigentum/Sicherungsabretung*) or otherwise transferred under a non-accessory security right (*nicht akzessorische Sicherheit*) to it as trustee (*Treuhänder*) for the benefit of the Lenders;
 - (ii) hold and administer any German Security which is pledged (*Verpfändung*) or otherwise transferred to it under an accessory security right (*akzessorische Sicherheit*) and secures the Parallel Debt as trustee (*Treuhänder*) for the benefit of the Lenders.
- (b) Each of the Lenders hereby authorises the Security Trustee (whether or not by or through employees or agents):
 - (i) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Security Trustee by the German Security Documents together with such powers and discretions as are reasonably incidental thereto;
 - (ii) to take such action on its behalf as may from time to time be authorised under or in accordance with the German Security Documents; and
 - (iii) unless the Security Trustee receives pledges or other accessory rights which secure the Parallel Debt; to accept as its representative (*Stellvertreter*) any pledge or other creation of any accessory right made to such Lender in relation to the Finance Documents.

The Security Trustee shall be exempted from the restrictions of Section 181 of the German Civil Code.

- (c) None of the Lenders shall have any independent power to enforce any of the German Security Documents or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to any of the German Security Documents or otherwise have direct recourse to the security constituted by any of the German Security Documents except through the Security Trustee.

33.19 **Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable hereto, shall be the period of eighty years from the date of this Agreement.

34 **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

35 **SHARING AMONG THE FINANCE PARTIES**

35.1 **Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 36 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 36 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party such that it receives its appropriate Pro Rata Share thereof.

35.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with their respective Pro Rata Shares.

35.3 Recovering Finance Party's rights

- (a) On a distribution by the Agent under Clause 35.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

35.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 35.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

35.5 Exceptions

- (a) This Clause 35 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 35, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Lender any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable after having received notice and did not take separate legal or arbitration proceedings.

35.6 Ancillary Facilities

The provisions of this Clause 35 do not apply to the Ancillary Facilities.

36 PAYMENT MECHANICS

36.1 Payments by the Obligors and the Lenders

On the date on which any Finance Document requires an amount to be paid by any Obligor or any of the Lenders to the Agent, that Obligor or, as the case may be, such Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document):

- (a) where such amount is denominated in Euro, by payment in Euro and in same day funds (or in such other funds as may for the time being be customary in London for the settlement in London of banking transactions in Euro) to the Agent at Bank of America,

N.A., 5 Canada Square, London E14 5AQ, sort code 16-50-50, Attn: Loans Service (or as the Agent may otherwise specify for this purpose); or

- (b) where such amount is denominated in a Permitted Currency (other than Euro), by payment in such Permitted Currency and in immediately available, freely transferable, cleared funds to such account with such bank in the principal financial centre of the country of such Permitted Currency as the Agent may specify for this purpose; or
- (c) where such amount is denominated in Euro, such sum shall be made available to the Agent by payment in Euro and in immediately available, freely transferable, cleared funds to such account with such bank in such principal financial centre in such participating member state of the European Union or in London as the Agent shall from time to time nominate for this purpose.

36.2 **Distributions by the Agent**

- (a) Subject to (b) below, each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 36.3 (*Distributions to an Obligor*) and Clause 36.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement, to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).
- (b) Notwithstanding (a) above and with a view to minimising the transfers of funds among the Senior Lenders, the Agent may, instead of requiring each Senior Lender to provide it with immediately available funds representing its Pro Rata Share of each Utilisation, at its option elect to make available, on behalf of the Senior Lenders, the full amount of the required Utilisation. In such event, the provisions of paragraphs 3, 4, 5, 6, 7 and 8 of Schedule 4 (*Provisions applicable to Participating Lenders and the Administration of the Facilities*) shall apply with any necessary adaptations to the arrangements for accounting and settlement as between the Agent and the Senior Lenders.
- (c) Any amounts received by the Agent from any Obligor relating to the payment of any amount or sum due or payable in respect of the Senior Tranche B Loan shall be paid by the Agent to the Senior Tranche B Lenders to be applied by the Senior Tranche B Lender to the amount or sum due and payable pro rata and on a pari passu basis.

36.3 **Distributions to an Obligor**

The Agent may apply any amount received by it for an Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

36.4 **Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand

refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

36.5 Currency of account

Euro is the currency of account and payment for all sums at any time due from any Obligor under or in connection with any of the Finance Documents provided that:

- (a) each repayment of a Loan or a part thereof shall be made in the currency in which such Loan is denominated at the time of that repayment;
- (b) each payment of interest shall be made in the currency in which the sum in respect of which such interest is payable is denominated;
- (c) each payment in respect of costs and expenses shall be made in the currency in which the same were incurred; and
- (d) any amount expressed to be payable in a currency other than Euro shall be paid in that other currency.

36.6 Debit to Loan Account

The Agent is hereby authorised to debit all Swingline Loans and all Reference Rate Revolving Loans and Base Rate Revolving Loans and interest thereon to a loan account or accounts denominated in the currency denomination of each such Loan maintained with the Agent. All fees, commissions, costs, expenses and other charges under or pursuant to the Finance Documents and all payments made and out-of-pocket expenses incurred by the Agent and/or the Senior Lenders pursuant to the Finance Documents will be debited to such loan account(s) as of the date due from the relevant Borrower or the date paid or incurred by the Agent and/or the Senior Lenders, as the case may be.

37 AMENDMENTS AND WAIVERS

37.1 Required consents

- (a) Subject to Clause 37.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.
- (c) The provisions of this Clause 37 shall not apply with respect to the Ancillary Facilities, which may be modified in accordance with their terms.

37.2 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definitions of "Majority Lenders", "Required Lenders and/or "Pro Rata Share" in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents, whether by means of an amendment to Clause 12.5 (*Repayment of Term Loans*), Clause 12.6 (*Repayments and Facility Limits*), Clause 12.7 (*Final Repayment*) or otherwise howsoever;

- (iii) a reduction in either the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable (other than as result of the application of the provisions of Schedule 3 (*Reporting and Financial Undertakings; Release of Cash Collateral; Margin Adjustments*));
- (iv) an increase in or an extension of any Commitment other than in connection with an Agent Over-Advance Loan pursuant to Clause 5.7 (*Agent Over-Advance Loans*);
- (v) a change to the Borrowers or Guarantors other than in accordance with Clause 32 (*Changes to the Obligors*);
- (vi) any reduction or release of the €20,000,000 reserve contemplated by item (iii) of the definition of “Reserves”;
- (vii) any provision which expressly requires the consent or approval of all the Lenders;
- (viii) Clause 2.5 (*Finance Parties' rights and obligations*), Clause 31 (*Changes to the Lenders*) or this Clause 37;
- (ix) the release of any security created pursuant to any of the Security Documents (save to the extent permitted pursuant to the other provisions of this Agreement or the Intercreditor Agreement or to the extent necessary to enable any Obligor to dispose of any asset in a manner permitted by this Agreement); or
- (x) a change to Clause 6.6(a) if the effect of such change would be to allow a Borrower which is not also a Guarantor to borrow in reliance upon the availability of Eligible Receivables owed to, or Eligible Stock owned by, any other Borrower,

shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which has the effect of changing or which relates to:
 - (i) the definitions of “Adjusted Excess Availability”, “Cash Deposit”, “EBITDA”, “Excess Availability”, “Eligible Receivables”, “Eligible Stock”, “Financial Indebtedness”, “Fixed Charge Coverage Ratio”, “Majority Senior Tranche B Lenders”, “Material Adverse Change”, “Minimum Excess Availability”, “Net Stock Value”, “Prime Rate”, “Pro Rata Share” or “Receivables Advance Amount” (but only to the extent of an increase in the amount thereof), “Senior Debt”, “Senior Tranche B Margin”, “Total Availability”, “Total Receivables Availability”, “Total Stock Availability” or “Trading Cashflow”;
 - (ii) an increase in the Receivables Percentage or the Stock Percentage, other than as permitted by (e) below;
 - (iii) Clause 12.2 (*Order of Application*);
 - (iv) the definitions of “Enforcement Point” and “Enforcement Action” under the Intercreditor Agreement or Clause 10.1 of the Intercreditor Agreement;

- (v) a change to paragraph 12 of Part (A), Part (B), Part (C) or Part (E) of Schedule 3 (*Reporting and Financial Undertakings: Release of Cash Collateral: Margin Adjustment*) or any defined term used in association therewith, other than in accordance with the provisions of Schedule 3 (*Reporting and Financial Undertakings: Release of Cash Collateral: Margin Adjustment*);
- (vi) any provision which expressly requires the consent or approval of all the Required Lenders or the Majority Senior Tranche B Lenders;
- (vii) a change to Clause 20 (*Fees*);
- (viii) a change to the nature or structure of the Facilities as contemplated by Clause 2 (*The Facilities*);
- (ix) any reduction or release of the Reserves established pursuant to item (iv) of the definition of “**Reserves**”;
- (x) a change to Clause 4.1 (*Initial conditions precedent*), Clause 6.5(a) or (c) (*Allocation of Reserves and Adjustments*), Clause 12.6(a) or (b) (*Repayments and Facility Limits*), Clause 12.7(b) (*Final Repayment*), Clause 29.3 (*Negative Pledge*), Clause 29.4 (*Disposals*), Clause 29.5 (*Mergers and Acquisition*), Clause 29.7 (*Intra-Group Arrangements*), Clause 29.8 (*Financial Indebtedness*), Clause 29.9 (*Making Loans*), Clause 29.10 (*WW Subordinated Facility and Rosenthal Subordinated Facility*), Clause 29.34 (*Dividends by Company*), Clause 30.1 (*Non-payment*), Clause 30.2 (*Other Obligations*), Clause 30.4 (*Cross default*), Clause 30.5 (*Insolvency*), Clause 30.6 (*Insolvency Proceedings*), Clause 30.14 (*Acceleration*), Clause 30.16 (*Majority Senior Tranche B Lender's Rights*), Clause 31 (*Changes to the Lenders*), Clause 32.1 (*Assignment and transfer by Obligors*), Clause 32.2(e) (*Additional Borrowers*), Clause 32.3 (*Additional Guarantors*), Clause 37.3 (*Replacement of Lenders*) or Schedule 2 (*Conditions Precedent*);
- (xi) a change to Clause 13.6 (*Mandatory Prepayments*), other than in relation to the provisions thereof relating to a Mandatory Prepayment from Equity Proceeds;
- (xii) a change to Clause 5.7 (*Agent Over-Advance Loans*);
- (xiii) other than in connection with an Agent Over-Advance Loan pursuant to Clause 5.7 (*Agent Over-Advance Loans*), any change to the definition of “**Senior Facility Limit**”, Clause 6.3 (*Overall Facility Limits*), Clause 6.4 (*Specific Facility Limits*), any increase in the aggregate amount of the Facilities (including by way of reinstating any Senior Commitment after such Senior Commitment has been permanently cancelled, terminated or reduced in accordance with Clause 12 (*Repayment*) or Clause 13 (*Cancellation, Voluntary and Mandatory Prepayment*)), the addition of any additional borrowing tranches to this Agreement or the addition of any new class or different class of Lenders to this Agreement; or
- (xiv) a change to Clause 14 (*Breach of Senior Tranche B Loan Repayment Restrictions*),

shall not be made without the prior consent of the Required Lenders.

- (c) An amendment or waiver which relates to the rights and obligations of an Ancillary Facility Provider under Clause 12.2 (*Order of Application*) or which reduces the amount of any Reserve established with respect to the Ancillary Facilities may only be made with the consent of such Ancillary Facility Provider.
- (d) An amendment or waiver which relates to the rights or obligations of the Agent may not be effected without the consent of the Agent.
- (e) Notwithstanding any other provisions of this Agreement, the Agent may permit and make Agent Over-Advance Loans in accordance with Clause 5.7 (*Agent Over-Advance Loans*) without the consent of any Senior Lender or of any Senior Tranche B Lender.

37.3 **Replacement of a Lender**

- (a) If at any time:
 - (i) any Lender becomes a Non Consenting Lender; or
 - (ii) any Lender becomes an Increased Cost Lender

then the Company may, on ten Business Days' prior notice to the Agent and that Lender, replace that Lender by causing it to (and that Lender shall) transfer pursuant to this Clause 37.3 all of its rights and obligations under this Agreement to a Lender or other person selected by the Company and acceptable to the Agent (acting reasonably) for a purchase price equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and fees and other amounts payable under this Agreement.

- (b) The Company shall have no right to replace the Agent or Security Trustee and none of the foregoing nor any Lender shall have any obligation to the Company to find a replacement Lender or other such entity. No member of the Group may make any payment to or assume any obligation (whether by way of fees, expenses or otherwise) on behalf of the replacement Lender as an inducement for the replacement Lender to become a Lender.
- (c) No Lender replaced under this Clause 37.3 may be required to pay or surrender to that replacement Lender or other entity any of the fees received by it.
- (d) In the case of a replacement of an Increased Cost Lender then the Company shall pay the relevant additional amounts to that Increased Cost Lender prior to it being replaced and the payment of those additional amounts shall be a condition to replacement.
- (e) For the purposes of this Clause 37.3:
 - (i) an "**Increased Cost Lender**" is a Lender to whom any Obligor becomes obligated to pay additional amounts described in Clause 21 (*Tax gross-up and set off*) or Clause 22 (*Increased costs*);
 - (ii) a "**Non Consenting Lender**" is a Lender who does not agree to a consent or amendment where:
 - (A) the Company or the Agent has requested the Lenders to consent to a departure from or waiver of any provision of the Finance Documents or to agree to any amendment thereof;

- (B) the consent or amendment in question requires the agreement of the Required Lenders or all of the Lenders;
- (C) a period of not less than 14 days has elapsed from the date the consent or amendment was requested;
- (D) such consent or amendment becomes effective after giving effect to the replacement of such Lender (and other Lenders who do not agree to such consent or amendment, if applicable) with Lenders that agree to such consent or amendment; and
- (E) the Company has notified the Lender it will treat it as a Non-Consenting Lender.

38 NOTICES

38.1 Communications

Any communication, consent or other approval to be made or given under or in connection with the Finance Documents shall be made in writing, may be made by fax or letter and shall be deemed to have been received as follows:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

38.2 Address

Any notice to be given to the Company or any Obligor shall be given to the Company at the address or fax number of the Company set out on the execution pages (but in the case of Rosenthal only, to Rosenthal at the address or fax number of Rosenthal set out on the execution pages). Each Obligor (other than Rosenthal) irrevocably appoints the Company as its agent for the purpose of receiving any such notice. Any notice to be given to the Agent or a Finance Party shall be given to it at the address or fax number set out on the execution pages. Each Party may change these details by notice to the others.

38.3 Company as Agent for Borrowers

Each Obligor (other than any Rosenthal Company) irrevocably appoints the Company as its agent for the purposes of:

- (a) giving on its behalf any notice (including any Utilisation Request) required or permitted to be given by such Borrower or Obligor under any of the Finance Documents;
- (b) receiving any notice to be given to such Borrower or Obligor under any of the Finance Documents, and the Company accepts such appointment; and
- (c) agreeing to any amendments or waivers to any provision of the Finance Documents.

For the avoidance of doubt, each Rosenthal Company shall, in respect of each of the matters referred to in Sub-Clauses (a), (b) and (c) above, act for and on behalf of itself for the purpose of giving any such notice (including any Utilisation Notice), receiving any such notice or agreeing to any such amendments or waivers.

- 38.4 **Reliance**
The Agent and the Lenders may conclusively presume that any notice given by the Company and purporting to be given on behalf of an Obligor has been duly authorised by, and is binding upon, that Obligor. Likewise, where the Agent or a Lender gives a notice to the Company, it may assume that it has been duly received by the Obligor concerned.
- 39 **MISCELLANEOUS PROVISIONS**
- 39.1 **Certificates and Determinations**
Any certification or determination by the Agent of a rate or amount under any Finance Document is, in the absence of manifest error, prima facie evidence of the matters to which it relates.
- 39.2 **Partial Invalidity**
If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 39.3 **Designation**
For the purposes of the High Yield Bond Indenture:
- (a) this Agreement and the Indebtedness (as defined in the High Yield Bond Indenture) hereunder is designated as “Designated Senior Debt”; and
 - (b) the Agent is designated as “Designated Senior Agent” as both such terms are defined in the High Yield Bond Indenture.
- 39.4 **Subordination of Intercompany Debt**
Each Obligor agrees that all intercompany Financial Indebtedness among the Obligors (the “**Intercompany Debt**”) is subordinated in right of payment to the prior payment in full of all obligations owing by the Obligors under the Finance Documents. Notwithstanding any provision of this Agreement to the contrary, provided that no Event of Default has occurred and is continuing, the Obligors may make and receive payments with respect to the Intercompany Debt to the extent otherwise permitted by this Agreement; provided, that in the event of and during the continuation of any Event of Default, no payment shall be made by or on behalf of any Obligor on account of any Intercompany Debt other than by a non-Borrower Obligor or a Borrower which is not also a Guarantor to a Borrower other than a Borrower which is not also a Guarantor. In the event that any Obligor receives any payment of Intercompany Debt at a time when such payment is prohibited by this Clause 39.4, such payment shall be held by such Obligor, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to, the Agent.
- 40 **REMEDIES AND WAIVERS**
No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

41 **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

42 **GOVERNING LAW**

This Agreement is governed by English law.

43 **ENFORCEMENT**

43.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 43.1 is for the benefit of the Finance Parties only. As a result, the Finance Parties shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

43.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints Waterford Wedgwood U.K. plc as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1
THE ORIGINAL OBLIGORS**

**Part I
The Original Borrowers**

Name of Original Borrower	Registration number (or equivalent, if any)
England & Wales	
Josiah Wedgwood & Sons Limited	613288 (England & Wales)
Waterford Wedgwood Retail Limited	624489 (England & Wales)
Royal Doulton (UK) Limited	58357 (England & Wales)
Waterford Wedgwood Australia Limited	00047676
USA	
Waterford Wedgwood USA Inc.	131943058 (New York)
Royal Doulton USA Inc.	0398428 (Delaware)
Rosenthal U.S.A. Limited	13-1951854 (New York)
Ireland	
Waterford Wedgwood plc	11861 (Ireland)
Waterford Crystal Limited	78088 (Ireland)
Cash's Mail Order Limited	314484 (Ireland)
Germany	
Rosenthal AG	HR B 33 (Amtsgericht at Hof) (Germany)
Australia	
Royal Doulton Australia Pty Limited	ABN 59 000 078 562

**Part II
The Original Guarantors**

Name of Original Guarantor	Registration number (or equivalent, if any)
England & Wales	
Josiah Wedgwood & Sons Limited	613288 (England & Wales)
Josiah Wedgwood & Sons (Exports) Limited	240666 (England & Wales)
Waterford Wedgwood Retail Limited	624489 (England & Wales)
Wedgwood Limited	44052 (England & Wales)
Waterford Wedgwood U.K. plc	2058427 (England & Wales)
Waterford Wedgwood Australia Limited	47676 (England & Wales)