

Debt Proceeds or Excluded Equity Proceeds, as the case may be), 29.4(b)(viii) to 29.4(b)(xi), (but only that amount of such disposal proceeds falling under that paragraph 29.4(b)(xi) which does not exceed €500,000 in any period of 12 months), 29.4(b)(xii) to 29.4(b)(xv);

(C) any disposal the proceeds of which are used to acquire assets replacing those disposed of within 18 months of the completion of such disposal; in respect of the acquisition of which, the relevant member of the Group enters into a binding contract to acquire such assets within 12 months of the completion of such disposal; and pending the application thereof to such acquisition the proceeds thereof stand credited to a Blocked Account subject to fixed security in favour of the Security Trustee or the Agent under a Security Document.

(viii) “**Excluded Insurance Proceeds**” means any proceeds of an insurance claim not exceeding €50,000,000 which are applied to the replacement, reinstatement and/or repair of the assets in respect of which the relevant insurance claim was made as soon as possible (but in any event within 18 months of such proceeds being received, or such longer period as the Majority Lenders may agree) after receipt, and to which application the recipient of such proceeds is obliged or committed within 12 months of the date of receipt of such proceeds, and pending the application thereof to such purpose the proceeds of such claim stand credited to a Blocked Account subject to fixed security in favour of the Security Trustee or the Agent under a Security Document.

(ix) “**Excluded Equity Proceeds**” means, in relation to any event giving rise thereto:

(A) the Equity Proceeds deriving therefrom up to and including €50,000,000;

(B) 80% of the amount representing any Equity Proceeds in excess of €50,000,000 up to and including €60,000,000;

(C) 70% of the amount representing any Equity Proceeds in excess of €60,000,000 up to and including €75,000,000;

(D) 60% of the amount representing any Equity Proceeds in excess of €75,000,000 up to and including €90,000,000; and

(E) 50% of the amount representing any equity proceeds in excess of €90,000,000,

provided in each case that none of the amounts representing such Excluded Equity Proceeds is paid to any of the Permitted Holders.

(x) “**Insurance Proceeds**” means the proceeds of any insurance claim received by any member of the Group except for Excluded Insurance Proceeds and (after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group) other than the proceeds of any insurance claim relating to third party liability insurances and business interruption insurances.

- (xi) **“Non-Collateral Insurance Proceeds”** means Insurance Proceeds other than Collateral Insurance Proceeds.
- (c) The Company shall ensure that the Borrowers prepay Utilisations within one Business Day’s receipt of cleared funds in the following amounts at the times and in the order of application contemplated by Sub-Clause (d):
 - (i) the amount of all Disposal Proceeds in excess of €500,000 in any 12 month period, being that part of the excess of such Disposal Proceeds received from assets which were subject to a Security Interest under the Security Documents; and
 - (ii) the amount of Collateral Insurance Proceeds in excess of €500,000 in any 12 month period.
 - (d) A prepayment made under Sub-Clause (c) (and, for the avoidance of doubt, in relation to Disposal Proceeds the proceeds so subject to this application shall be those received from the disposal of assets which were subject to a Security Interest under the Security Documents) shall be applied in the following order:
 - (i) first, in prepayment of the Equipment Loans and the Property Loans pro rata to the total principal amount of those Loans and on a pari passu basis;
 - (ii) secondly, in cancellation of Available Commitments under the Receivables Facility, the Stock Finance Facility and the L/C Facility (and the Available Commitments of the Lenders under the Receivables Facility, the Stock Finance Facility and the L/C Facility will be cancelled rateably);
 - (iii) thirdly, in prepayment and cancellation of the Receivables Loans, the Stock Loans, the L/C Loans and the Swingline Loans (pro rata to the total principal amounts of those Loans and on a pari passu basis) and of the Receivables Facility, Stock Finance Facility and L/C Facility Commitments (pro rata to the total principal amounts of those Commitments and on a pari passu basis);
 - (iv) fourthly, in prepayment and cancellation of the outstandings and commitments in relation to the Ancillary Facilities; and
 - (v) finally, in prepayment of the Senior Tranche B Loan.
 - (e) The Company shall ensure that the Borrowers prepay Utilisations within one Business Day’s receipt of cleared funds in the following amounts at the times and in the order of application contemplated by Sub-Clause (f):
 - (i) the amount of Debt Proceeds;
 - (ii) the amount of Equity Proceeds;
 - (iii) the amount of Non-Collateral Insurance Proceeds in excess of €500,000 in any 12 month period; and
 - (iv) the amount of Disposal Proceeds, being that part of the excess over €500,000 in any 12 month period of such Disposal Proceeds which does not derive from assets which were subject to a Security Interest under the Security Documents.

- (f) A prepayment made under Sub-Clause (e) (and, for the avoidance of doubt, in relation to Disposal Proceeds, the proceeds so subject to this application shall be those not deriving from the disposal of assets which were subject to a Security Interest under the Security Documents) shall be applied pro rata and pari passu amongst the Senior Facility and the Senior Tranche B Facility in prepayment and cancellation of the Senior Loans and the Senior Tranche B Loan (pro rata to the total of all outstanding loans and Utilisations thereunder and on a pari passu basis) and of the Senior Commitments and the Senior Tranche B Commitment (pro rata to the Total Facility Commitments and on a pari passu basis).
- (g) Where Excluded Debt Proceeds, Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Debt Proceeds, Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Company shall ensure that those amounts are used for that purpose and shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition and the Security Trustee or the Agent shall be obliged to release the relevant amounts from the relevant Blocked Account upon the Company confirming that such amounts are to be applied for such specific purpose.

13.7 Restrictions and conditions

- (a) Any notice of cancellation or prepayment given pursuant to this Clause 13 shall be irrevocable and shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any repayment or prepayment under this Agreement shall be made together with accrued interest, and any other amounts owing in respect of the amount repaid or prepaid.
- (c) No amount of any Facility which is cancelled may subsequently be reinstated. Save as provided by Clause 5.5 (*Reutilisation*) no amount repaid or prepaid may be redrawn.
- (d) The Borrowers shall not repay, prepay or cancel the Facilities or any part of them except at the times and in the manner expressly provided for in this Agreement.

14 BREACH OF SENIOR TRANCHE B LOAN REPAYMENT RESTRICTIONS

14.1 Breach of Restrictions

In the event that any Senior Tranche B Lender receives or recovers any amount by way of prepayment of the Senior Tranche B Loan or any part thereof in breach of the restrictions in Clause 13.4(b) (*Voluntary Prepayment of Senior Tranche B Loan*) or the order of application of proceeds in Clause 13.6 (*Mandatory Prepayments*):

- (a) such Senior Tranche B Lender shall promptly notify details of the receipt or recovery to the Agent;
- (b) the Agent shall notify to each Senior Lender its Pro Rata Share in the amount of that receipt or recovery;
- (c) each Senior Lender shall assign and transfer to such Senior Tranche B Lender, and such Senior Tranche B Lender shall acquire from each such Senior Lender, that amount of the

Receivables Loans, the Stock Loans and the Revolving Loans outstanding at the time as represents that Senior Lender's Pro Rata Shares in all of the Receivables Loans, the Stock Loans and the Revolving Loans outstanding at that time which is equal to the amount so received or recovered by the Senior Tranche B Lender, and the Senior Tranche B Lender shall pay that amount to each such Senior Lender; and

- (d) the Senior Tranche B Lender shall not be entitled to any prepayment fee pursuant to Clause 20.7 (*Senior Tranche B Loan Prepayment*) if it is made in connection with any prepayment of the Senior Tranche B Loan made to it in the circumstances to which Clause 14.1 (*Breach of Restrictions*) relates.

14.2 **Transfer and Assignment to Senior Tranche B Lender**

- (a) In order to effect the transfer and assignment described in Clause 14.1 (*Breach of Restrictions*), the Senior Lenders shall execute, deliver and exchange Transfer Certificates in the manner described in Clause 31.5 (*Procedure for Transfer*) and the provisions of Clause 31.4 (*Limitation of responsibility of Existing Lenders*), Clause 31.5 (*Procedure for Transfer*), Clause 31.6 (*Copy of Transfer Certificate to Company*) and Clause 31.7 (*Disclosure of Information*) (but, for the avoidance of doubt, not Clause 31.3 (*Assignment or transfer fee*)), shall in any event apply to any such transfers and/or assignments effected pursuant to this Clause 14.2.
- (b) For the avoidance of doubt, none of the restrictions, conditions or prohibitions on the assignment or transfer by the Senior Lenders of any of their rights and obligations under the Finance Documents under Clause 31.1(a) (*Assignments and transfers by the Lenders*) shall apply in relation to any such transfer or assignment effected pursuant to this Clause 14.2.

14.3 **New Term Loans**

Upon completion of any such assignment or transfer of any part of a Receivables Loan, a Stock Loan or a Revolving Loan to the Senior Tranche B Lender pursuant to Clause 14.2:

- (a) the Senior Commitments of the Senior Lenders under the Receivables Finance Facility, the Stock Finance Facility and the Revolving Facility shall be permanently reduced and cancelled by the amount of the Receivables Loan, the Stock Loan or (as the case may be) the Revolving Loan so assigned or transferred;
- (b) the Receivables Loan, the Stock Loan and the Revolving Loan so assigned or transferred shall be deemed to be converted into term loans of the Senior Tranche B Lender to the relevant Borrowers from which they are outstanding; and
- (c) in relation to those term loans, the following shall apply:
 - (i) interest in respect thereof shall accrue at the rates provided in Clause 16.2 (*Calculation of Interest - Senior Tranche Loan B*) and otherwise be payable as described in Clause 17 (*Increase in Margin*) and Clause 18 (*Default Interest*).
 - (ii) any prepayment of such term loan shall be subject to payment of any applicable prepayment fee that would be payable pursuant to Clause 20.7 (*Senior Tranche B Prepayment*) as if such term loan was the Senior Tranche B Loan;
 - (iii) each Borrower to which such a term loan is outstanding shall repay that term loan on the Second Repayment Date; and

- (iv) the restrictions and conditions which apply in this Agreement in relation to the Senior Tranche B Loan shall apply *mutatis mutandis* to those term loans in particular, but without limitation, the restrictions of Clause 13.4(b) (*Voluntary Prepayment of Senior Tranche B Loan*) and Clause 13.6 (*Mandatory Prepayments*) as if those term loans were the Senior Tranche B Loan.

15 **INTEREST - SENIOR LOANS**

15.1 **Dates of Payment of Interest - Revolving Loans and Swingline Loans**

- (a) Each Revolving Loan and each Swingline Loan shall bear interest on its unpaid principal amount from the date made until paid in cash at a rate determined by reference to the Reference Rate, the Base Rate or LIBOR, as applicable, and the relevant Borrower shall pay accrued interest on each such Revolving Loan and each such Swingline Loan:
 - (i) in the case of each Reference Rate Revolving Loan or (as the case may be) Base Rate Revolving Loan, on the first day of each month thereafter;
 - (ii) in the case of each LIBOR Revolving Loan, on the last day of each Interest Period relating to such LIBOR Revolving Loan; and
 - (iii) in the case of each Swingline Loan, on the first day of each month thereafter.

15.2 **Rate of Interest - Revolving Loans and Swingline Loans**

- (a) The rate of interest applicable to a LIBOR Revolving Loan from time to time during an Interest Period relating to it shall be the rate per annum which is the sum of:
 - (i) the Senior Margin at such time;
 - (ii) LIBOR relating to such LIBOR Revolving Loan for such Interest Period; and
 - (iii) the Mandatory Cost, if any, applicable to that LIBOR Revolving Loan.
- (b) The rate of interest applicable to a Swingline Loan and each Reference Rate Revolving Loan or (as the case may be) Base Rate Revolving Loan shall be a fluctuating rate per annum which is the sum of (i) in the case of Swingline Loans and Reference Rate Revolving Loans, the Reference Rate and, in the case of Base Rate Revolving Loans, the Base Rate, (ii) the Senior Margin (except for the Swingline Loans) and (iii) the Mandatory Cost (except for the Swingline Loans), if any, applicable to that Loan. Each change in the Reference Rate or (as the case may be) the Base Rate shall be reflected in such interest rate as of the effective date of such change.

15.3 **Interest Periods - LIBOR Revolving Loans**

Save as otherwise provided in this Agreement, the duration of each Interest Period relating to a LIBOR Revolving Loan shall be the period selected by the Borrower in the Utilisation Request relating to that LIBOR Revolving Loan.

15.4 **Maximum number of Interest Periods - LIBOR Revolving Loans**

The Borrower may not select an Interest Period in respect of any LIBOR Revolving Loan of such a duration that there shall at any time be more than 15 Interest Periods in existence at the same time.

15.5 **Conversion and Continuation of Revolving Loans**

(a) A Borrower may upon irrevocable written notice to the Agent in accordance with Sub Clause (b):

(i) at any time after the Outstandings in respect of its Reference Rate Revolving Loans or (as the case may be) Base Rate Revolving Loans are equal to or exceed an amount equal to:

- (A) £3,000,000, if such Loans are in Sterling;
- (B) US\$5,000,000, if such Loans are in US dollars;
- (C) €5,000,000, if such Loans are in Euros;
- (D) A\$3,000,000, if such Loans are in Australian dollars;
- (E) C\$3,000,000, if such Loans are in Canadian dollars; or
- (F) Yen 600,000,000, if such Loans are in Yen,

elect, as of any Business Day, in the case of Reference Rate Revolving Loans or (as the case may be) Base Rate Revolving Loans, to convert any such Reference Rate Revolving Loans or (as the case may be) Base Rate Revolving Loans (or any part thereof) into a LIBOR Revolving Loan in the equivalent amount of that currency in which that Loan is denominated at that time;

(ii) elect, as of the last day of the applicable Interest Period, to continue any of its LIBOR Revolving Loans having Interest Periods expiring on such day (or any part thereof) in an amount or integral multiple of not less than:

- (A) £3,000,000, if such Loans are in Sterling;
- (B) US\$5,000,000, if such Loans are in US dollars;
- (C) €5,000,000, if such Loans are in Euros;
- (D) A\$3,000,000, if such Loans are in Australian dollars;
- (E) C\$3,000,000, if such Loans are in Canadian dollars; or
- (F) Yen 600,000,000, if such Loans are in Yen.

(b) If any Revolving Loans are to be converted into or continued as LIBOR Revolving Loans, the Borrower shall deliver a notice of conversion or continuation (a "**Notice of Conversion / Continuation**") to be received by the Agent not later than 11.00 a.m. at least three Business Days in advance of the proposed date of conversion or continuation specifying:

- (i) the proposed date of such conversion or continuation;
- (ii) the aggregate amount of its Revolving Loans to be converted or continued; and
- (iii) the type of Revolving Loans resulting from the proposed conversion or continuation; and

(iv) the proposed Interest Period in respect of the Revolving Loan which shall be a period of 1, 2 or 3 months (or such other period as the Agent may agree) ending on or before the First Repayment Date.

(c) If upon drawdown of any Revolving Loan or upon the expiry of any Interest Period applicable to any LIBOR Revolving Loan, the Borrower has failed to select a new Interest Period to be applicable thereto or if any Event of Default then exists, the Borrower shall be deemed to have elected to convert such LIBOR Revolving Loan into a Reference Rate Revolving Loan (in the case of any LIBOR Revolving Loan outstanding to a UK Borrower, an Irish Borrower or a German Borrower) or (as the case may be) into a Base Rate Revolving Loan (in the case of any LIBOR Revolving Loan outstanding to a US Borrower) as of the expiry date of such Interest Period.

(d) While an Event of Default is continuing, a Borrower may not elect to have a Revolving Loan converted into or continued as a LIBOR Revolving Loan.

15.6 Dates of Payment of Interest - Property Loan and Equipment Loan

Each of the Property Loan and the Equipment Loan shall bear interest on its unpaid principal amount from the date made until paid in cash at a rate determined by reference to LIBOR and the Borrowers shall pay accrued interest on each such Loan on the last day of each Interest Period relating to it.

15.7 Rate of Interest - Property Loan and Equipment Loan

The rate of interest applicable to the Property Loan and the Equipment Loan from time to time during an Interest Period relating to it shall be the rate per annum which is the sum of (1) the Senior Margin at such time, (2) LIBOR relating to such Loan for such Interest Period and (3) the Mandatory Cost, if any, applicable to that Loan.

15.8 Interest Periods - Property Loan and Equipment Loan

Save as otherwise provided in this Agreement, the period for which each of the Property Loan and the Equipment Loan is outstanding shall be divided into successive periods each of which, other than the first which shall begin on the proposed date of advance of that Loan, shall start on the last day of the preceding such period. The duration of each Interest Period shall, save as otherwise provided in this Agreement or otherwise agreed with the Agent, be one month provided that any Interest Period which would otherwise end during the month preceding, or extend beyond, a repayment date relating to that Loan shall be of such duration that it shall end on that repayment date.

16 INTEREST - SENIOR TRANCHE B LOAN

16.1 Date of Payment of Interest

A Borrower to which the Senior Tranche B Loan has been made shall pay accrued interest on the Senior Tranche B Loan on the last Business Day of each month.

16.2 Calculation of Interest - Senior Tranche B Loan

(a) The rate of interest on the Senior Tranche B Loan shall be the percentage rate per annum which is the aggregate of:

(i) the Senior Tranche B Margin; and

(ii) STB LIBOR or the Prime Rate (as selected in accordance with this Clause 16.2).

- (b) Not less than one Business Day before the Utilisation Date of the Senior Tranche B Facility and not less than one Business Day before the last Business Day of each month, the Company shall notify the Senior Tranche B Lender whether it wishes interest in respect of the ensuing month to accrue by reference to STB LIBOR or the Prime Rate. Any such selection shall take effect in accordance with its terms.
- (c) If the Company elects that interest shall accrue by reference to STB LIBOR, then it may select the 30, 60 or 90 day rate for those purposes, but any such election shall remain binding for the period concerned.
- (d) If no valid election has been made or is in force for the purposes of the foregoing provisions of this Clause 16.2, interest shall accrue by reference to the Prime Rate.

17 **INCREASE IN MARGIN**

If an Event of Default has occurred and so long as the same is continuing, interest shall accrue on all amounts owing under the Finance Documents at a rate which is two per cent higher than the rate ascertained pursuant to Clause 15 (*Calculation of Interest - Senior Loans*) in the case of the Senior Loans or Clause 16 (*Calculation of Interest - Senior Tranche B Loan*) in the case of the Senior Tranche B Loan. The provisions of this Clause 17 shall not apply to the Ancillary Facilities.

18 **DEFAULT INTEREST**

18.1 **Interest on Unpaid Sums**

If any relevant Obligor does not pay any sum payable by it under this Agreement on its due date in accordance with the provisions of Clause 36 (*Payment Mechanics*) or if any sum due and payable by any relevant Obligor under any judgement of any court in connection with this Agreement is not paid on the date of such judgment, it shall pay interest on the balance for the time being outstanding (such balance being referred to in this Agreement as the “**unpaid sum**”) for the period beginning on such due date or, as the case may be, the date of such judgment, in accordance with the provisions of this Clause 18 (*Default Interest*).

18.2 **Default Interest Periods**

Interest under this Clause 18 (*Default Interest*) shall be calculated by reference to successive periods, each of which (other than the first, which shall begin on the due date for payment or, as the case may be, the date of judgment as referred to in Clause 18.1 (*Interest on Unpaid Sums*)) shall begin on the last day of the preceding period. Each such period shall be of such duration as the Agent may select.

18.3 **Default Interest Rates**

The rate of interest applicable to an unpaid sum from time to time during each period relating to that unpaid sum shall be the rate per annum which is the sum of:

- (a) two per cent (2%);
- (b) the Senior Margin (in the case of the Senior Loans) and the Senior Tranche B Margin (in the case of the Senior Tranche B Loan);
- (c) in the case of any Senior Loans, LIBOR relative to such period (but, in respect of any Swingline Loans or Reference Rate Revolving Loans, the Reference Rate, and in the case of any Base Rate Revolving Loans, the Base Rate) and in the case of the Senior

Tranche B Loan, STB LIBOR or the Prime Rate (as applying at that time in accordance with Clause 16.2); and

- (d) the Mandatory Cost, if any, applicable to that unpaid sum provided that (in the case of the Senior Loans):
 - (i) if, at or about 11.00 a.m. on the Quotation Date in respect of such unpaid sum, it is not possible to determine LIBOR in accordance with the definition of LIBOR there shall be substituted for LIBOR the rate determined by the Agent notified to the Company to be the weighted average of the rates (as notified to the Agent by the Lenders prior to the first day of the relevant Interest Period) which represents the cost to each Senior Lender of funding its portion of such unpaid sum during such period from whatever sources and in whatever manner it may select; and
 - (ii) if the unpaid sum is of the principal amount of a Senior Loan at a time when interest in respect thereof is determined by reference to LIBOR, and which became due and payable other than on the last day of any Interest Period relating to it, the first default period applicable to that unpaid sum shall be of a duration equal to the unexpired portion of that Interest Period and the rate of interest applicable to it during that Interest Period shall be the rate per annum equal to the sum of two per cent (2%) and the rate applicable to it immediately before it became due.

18.4 Payment and Compounding of Default Interest

Any interest accrued under Clause 18.3 (*Default Interest Rate*) in respect of an unpaid sum shall be due and payable and shall be paid by the relevant Obligor at the end of the period by reference to which it is calculated or on such other date as the Agent may specify by written notice to the Company. If not paid on the due date, the interest shall be added to and form part of the unpaid sum on which interest shall accrue and be payable in accordance with the provisions of this Clause 18 (*Default Interest*).

19 MARKET DISRUPTION

19.1 Circumstances

If at or about 11.00 a.m. on the Quotation Date for an Interest Period in respect of any Senior Loan interest in respect of which is determined by LIBOR the Agent (in consultation with the Senior Lenders) determines it is not possible by reasons of circumstances affecting the London Interbank Market generally:

- (a) to determine LIBOR in accordance with its definition; or
- (b) for the Senior Lenders to obtain requisite matching deposits in the required currency in the London Interbank Market at the relevant time to fund their respective shares during such Interest Period; or
- (c) for Senior Lenders having Pro Rata Shares aggregating at least 33 $\frac{1}{3}$ per cent to obtain such deposits for such period at a cost less than or equal to the rate offered to the Agent in accordance with the definition of LIBOR,

then the Agent shall forthwith notify the Company and the Senior Lenders and notwithstanding the provisions of Clause 15 (*Interest - Senior Loans*), the Interest Period in respect of that Senior Loan and the amount of interest payable in respect of that Senior Loan during its Interest Period

shall be determined in accordance with the following provisions of this Clause 19 (*Market Disruption*).

19.2 Applicable Interest Rate

If Clause 19.1 (*Circumstance*) applies in relation to a Senior Loan interest in respect of which is determined by reference to LIBOR the duration of the Interest Period relating to that Senior Loan shall be one month or, if less, such that it shall end on the First Repayment Date and the rate of interest applicable to that Senior Loan during its Interest Period shall be the rate per annum which is the sum of:

- (a) the Senior Margin;
- (b) the Mandatory Cost, if any; and
- (c) the rate determined by the Agent (and notified to the Company) to be that which expresses as a percentage rate per annum the weighted average of the cost to each of the Senior Lenders of funding its share of such Senior Loan during such Interest Period from whatever sources and in whatever manner each such Senior Lender may reasonably select.

19.3 Review of Circumstances

So long as any alternative basis for the calculation of interest as provided in Clause 19.2 (*Applicable Interest Rate*) is in force the Agent shall from time to time review whether or not the circumstances referred to in Clause 19.1 (*Circumstances*) still prevail with a view to returning to the normal provisions of this Agreement relating to the determination of the rates of interest applicable to any Loan interest in respect of which is determined by reference to LIBOR.

19.4 Distribution of Interest

Interest on a Senior Loan during an Interest Period relating to it calculated at the rates specified in Clause 19.2 (*Applicable Interest Rate*) shall be distributed by the Agent to the Senior Lenders in proportion to the amounts which represent the cost to each Senior Lender of funding its Pro Rata Share of such Senior Loan during such Interest Period provided that any such interest which is attributable to the Senior Margin shall be distributed by the Agent to the Senior Lenders in proportion to their Pro Rata Share of such Senior Loan.

19.5 Senior Tranche B Loan

In the event that the Senior Tranche B Lender determines at or about 11.00 a.m. on the Quotation Date for an Interest Period in respect of the Senior Tranche B Loan that it is not possible for it to determine STB LIBOR in accordance with paragraph (a) of the definition thereof, the rate of interest applicable to the Senior Tranche B Loan during that Interest Period shall be the rate per annum which is the sum of:

- (a) the Senior Tranche B Margin; and
- (b) the Senior Tranche B Lender's cost of funds from whatever source it may reasonably select.

20 FEES

20.1 Commitment Fee

The Company shall pay to the Senior Lenders a commitment fee computed from the date of this Agreement at the rate of 0.50 per cent. per annum of the daily undrawn/unutilised amount of the

Senior Facility Limit. The accrued commitment fee is payable on the last day of each calendar month which ends during the relevant Availability Period, on the last day of the Availability Period and, if the Senior Facility are cancelled in full, on the effective date of such cancellation.

20.2 Closing, Syndication and Facility Fees

The Company shall pay to the Agent on the date of this Agreement and/or on the other dates set out in the Fee Letter the closing, syndication and facility fees, and the other costs and expenses set out in the Fee Letter.

20.3 Agency Fees

The Company shall pay to the Agent on the date of this Agreement and on the other dates set out in the Fee Letter the agency fees set out in the Fee Letter.

20.4 Security Trustee and other Expenses

The Company shall pay to the Agent other fees, expenses and amounts at the times and in accordance with the terms specified in the Fee Letter.

20.5 L/C Fees

(a) Each Borrower shall pay to the Agent (for the account of the Senior Lenders pro rata to their participations) a fee equal to 3 per cent per annum on the available amount of each L/C issued at the request of that Borrower in respect of the period from the date of issue until the expiry of such L/C (which fee shall be increased by 2 per cent per annum for such period if at that time any unpaid sum is outstanding under this Agreement). Such fee shall be paid monthly in arrear and on the Expiry Date of such L/C.

(b) Each Borrower shall pay to the Agent (for the account of the Senior Lender issuing the L/C (and not in any event to be shared with the Senior Tranche B Lender)) a fee equal to 0.25% on the available amount of each L/C issued at the request of the Borrower on the date of issue of that L/C.

(c) Each Borrower shall pay to the Agent the other fees, expenses and other amounts in relation to the L/Cs at the times and in accordance with the terms specified in the Fee Letter.

20.6 Fronting Fee; Participation Fee

(a) When and as the Agent collects interest on behalf of itself (to the extent that the Agent is providing funding on behalf of Participating Lenders) or a Funding Lender (to the extent that such Funding Lender is providing funding on behalf of Participating Lenders) prior to the Participation Settlement Date (as defined in Schedule 4 (*Provisions Applicable to Participating Lenders and the Administration of the Senior Facility*)), the Agent shall retain for its account and the account of Funding Lenders interest at the applicable interest rate, any Mandatory Costs incurred and an amount equal to the Fronting Fee (as defined in Clause 20.6(b) below) and shall promptly thereafter distribute to each Participating Lender such Participating Lender's share of the remaining Margin as a participation fee (the "**Participation Fee**"). Such share shall be based on the fraction, expressed as a percentage, the numerator of which is the Senior Commitment of such Participating Lender and the denominator of which is the total of the Senior Commitments of all Participating Lenders. If a Borrower pays less than all of the interest then due and owing by it for any period, that portion of the interest equal to the Participation Fee shall be deemed to be the last portion of interest paid or to be paid. For the avoidance of doubt, from and after the Participation Settlement Date (assuming each

Participating Lender has paid all amounts required to be paid by it on and after such date), interest shall be distributed by the Agent for the rateable benefit of all Senior Lenders.

- (b) When and as the Agent collects interest on behalf of itself or a Funding Lender prior to the Participation Settlement Date, the Agent shall retain for the account of the Funding Lenders, an amount equal to interest at a rate of 0.50 per cent. per annum on all Utilisations funded by such Funding Lender (the “**Fronting Fee**”).

20.7 **Senior Tranche B Prepayment**

- (a) If the whole or any part of the Senior Tranche B Loan Facility is prepaid or required to be prepaid for any reason, including, without limitation as a result of the exercise of remedies then and in each such case the Company shall pay to the Senior Tranche B Lender on the effective date of such prepayment a prepayment fee calculated as a percentage of the amount of the Senior Tranche B Loan so prepaid, as follows:

(1) Number of Months from date of this Agreement	(2) Applicable Percentage
0 - 12	3 per cent
12 - 24	2 per cent
24 - 36	1 per cent

- (b) For the avoidance of doubt, the prepayment fees described in Sub-Clause (a) shall also be payable in the event that the Senior Tranche B Lender is replaced as a Lender pursuant to Clause 37.3 (*Replacement of a Lender*) within any of the timeframes set forth above and in connection with the prepayment within any of the timeframes set forth above of any term loans held by any Senior Tranche B Lender as the result of any assignment and conversion of any Receivables Loan, Stock Loan or L/C Loan pursuant to and in accordance with Clause 14 (*Breach of Senior Tranche B Loan Repayment Restrictions*).

20.8 **Senior Tranche B Fees**

The Company shall pay to the Senior Tranche B Lender on the date of this Agreement and/or on the other dates set out in the Senior Tranche B Fee Letter, the fees, costs and expenses set out in the Senior Tranche B Fee Letter.

21 **TAX GROSS-UP AND SET OFF**

21.1 **Definitions**

- (a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment or suffer any deduction or withholding, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Qualifying Lender**” means:

(i) in respect of a payment made by an Obligor incorporated in the United Kingdom, a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(A) a Lender:

- (1) which is a bank (as defined for the purpose of section 349 of the Taxes Act) making an advance under a Finance Document; or
- (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 349 of the Taxes Act) at the time that that advance was made,

and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

(B) a Lender which is:

- (1) a company resident in the United Kingdom for United Kingdom tax purposes;
- (2) a partnership each member of which is a company resident in the United Kingdom for United Kingdom tax purposes; or
- (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a United Kingdom permanent establishment and which brings interest payable in respect of that advance in computing the chargeable profits (within the meaning given by section 11(2) of the Taxes Act; or

(C) a Treaty Lender with respect to the United Kingdom; or

(ii) in respect of a payment which is treated under the Code as United States source interest, a Lender which is:

(A) a **“United States person”** within the meaning of Section 7701(a)(30) of the Code, provided such Lender timely has delivered to the Agent for transmission to the Obligor making such payment two original copies of IRS Form W-9 (or any successor form) either directly or under cover of IRS Form W-8IMY (or any successor form) certifying its status as a **“United States person”**; or

(B) a Treaty Lender with respect to the United States of America that is entitled to receive payments under the Finance Documents without deduction or withholding of any United States federal income Taxes, provided such Lender timely has delivered to the Agent for transmission to the Obligor making such payment two original copies of IRS Form W-8BEN (or any successor form) either directly or under cover of IRS Form W-8IMY (or any successor form) certifying its entitlement to receive such payments without any such deduction or withholding under a double taxation treaty; or

- (C) entitled to receive payments under the Finance Documents without deduction or withholding of any United States federal income Taxes either as a result of such payments being effectively connected with the conduct by such Lender of a trade or business within the United States or under the portfolio interest exemption, provided such Lender timely has delivered to the Agent for transmission to the Obligor making such payment two original copies of either (1) IRS Form W-8ECI (or any successor form) either directly or under cover of IRS Form W-8IMY (or any successor form) certifying that the payments made pursuant to the Finance Documents are effectively connected with the conduct by that Lender of a trade or business within the United States or (2) IRS Form W-8BEN (or any successor form) either directly or under cover of IRS Form W-8IMY (or any successor form) claiming exemption from withholding in respect of payments made pursuant to the Finance Documents under the portfolio interest exemption and a statement certifying that such Lender is not a person described in Section 871(h)(3)(B) or Section 881(c)(3) of the Code or (3) such other applicable form prescribed by the IRS certifying as to such Lender's entitlement to exemption from United States withholding tax with respect to all payments to be made to such Lender under the Finance Documents.

For the purposes of this paragraph (ii), in the case of a Lender that is not treated as the beneficial owner of the payment (or a portion thereof) under Chapter 3 and related provisions (including Sections 871, 881, 3406, 6041, 6045 and 6049) of the Code, the term "Lender" shall mean the person who is so treated as the beneficial owner of the payment (or portion thereof); or

- (iii) in respect of a payment which is treated for Irish tax purposes as Irish source interest, a Lender which is:
 - (A) a person which is, pursuant to Section 9 of the Central Bank Act, 1971 of Ireland licensed to carry on banking business in Ireland and whose Facility Office is located in Ireland and which is carrying on a bona fide banking business in Ireland; or
 - (B) an authorized credit institution under the terms of the Codified Banking Directive that has duly established a branch in Ireland or has made all necessary notifications to its home state competent authorities required thereunder in relation to its intention to carry on banking business in Ireland and carries on a bona fide banking business in Ireland and has its Facility Office located in Ireland; or
 - (C) a body corporate which is a resident of a territory with which Ireland has a double taxation treaty under the terms of that treaty or which is resident in a Member State of the European Communities (other than Ireland) under the laws of that Member State, provided such company does not provide its commitment through or in connection with a branch or agency in Ireland, provided that where the recipient is:

- (1) a U.S. corporation, the U.S. corporation is incorporated in the U.S. and subject to tax in the U.S. on its worldwide income or;
- (2) a U.S. limited liability company, the ultimate recipients of the interest are resident in and under the laws of a country with which Ireland has a double tax treaty or resident in and under the laws of a member state of the European Communities (other than Ireland) and the business conducted through the limited liability company is so structured for market reasons and not for tax avoidance purposes; or
- (D) a qualifying company within the meaning of Section 110 of the Taxes Consolidation Act, 1997 of Ireland as amended; or
- (E) a Lender which is a Treaty Lender with respect to Ireland; or
- (F) a body corporate;
 - (1) which advances money in the ordinary course of a trade which includes the lending of money;
 - (2) in whose hands any interest payable in respect of monies so advanced is taken into account in computing the trading income of such company;
 - (3) which has made the appropriate notifications under Section 246(5)(a) of the Taxes Consolidation Act, 1997 as amended to the Irish Revenue Commissioners and the Borrower; or
- (iv) in respect of a payment made by an Obligor incorporated in Germany, a Lender which is:
 - (A) a body corporate resident in Germany;
 - (B) a body corporate not resident in Germany but acting through a branch in Germany; or
 - (C) a Treaty Lender with respect to Germany;
- (v) in respect of a payment by an Obligor resident in Australia for Australian taxation purposes, a Lender that is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is a Lender that is:
 - (A) resident in Australia for Australian taxation purposes;
 - (B) not resident in Australia for Australian taxation purposes, but is entitled to receive the interest payable in the course of carrying on business at or through a permanent establishment in Australia for Australian taxation purposes due to the application of Australian domestic law or the operation of a double-taxation treaty between Australia and the country in which the Lender is resident; or

(C) a Treaty Lender with respect to Australia.

“Tax Confirmation” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (i) a company resident in the United Kingdom for United Kingdom tax purposes;
- (ii) a partnership each member of which is:
 - (A) a company not so resident in the United Kingdom; or
 - (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act; or
- (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (for the purposes of section 11(2) of the Taxes Act) of that company.

“Tax Credit” means a credit against, relief or remission for, or repayment of any Tax.

“Tax Deduction” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“Tax Payment” means either the increase in a payment made by an Obligor to a Finance Party under Clause 21.2 (*Tax gross-up*) or a payment under Clause 21.3 (*Tax indemnity*).

“Treaty Lender” means in respect of a jurisdiction, a Lender entitled under the provisions of a double taxation treaty or other applicable legislation to receive payments of interest from a person resident in such jurisdiction without a Tax Deduction (subject to the completion of any necessary procedural formalities).

“UK Non-Bank Lender” means:

- (a) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed on the execution pages of this Agreement; and
- (b) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Transfer Certificate which it executes on becoming a Party.

Unless a contrary indication appears, in this Clause 21 a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

21.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Company and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) An Obligor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of tax imposed by the United Kingdom, the United States, the Republic of Ireland, Germany or Australia from a payment of interest on a Loan, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority;
 - (ii)
 - (A) the relevant Lender is a Qualifying Lender solely under sub-paragraph (i)(B) of the definition of Qualifying Lender;
 - (B) the Board of the Inland Revenue has given (and not revoked) a direction (a “**Direction**”) under section 349C of the Taxes Act (as that provision has effect on the date on which the relevant Lender became a Party) which relates to that payment and that Lender has received from that Obligor or the Company a certified copy of that Direction; and
 - (C) the payment could have been made to the Lender without any Tax Deduction in the absence of that Direction;
 - (iii) the relevant Lender is a Qualifying Lender solely under sub-paragraph (i)(B) of the definition of Qualifying Lender and it has not, other than by reason of any change after the date of this Agreement in (or in the interpretation, administration, or application of) any law, or any published practice or concession of any relevant taxing authority, given a Tax Confirmation to the Company;
 - (iv) the relevant Lender is a Treaty Lender, the Obligor making the payment is incorporated in the United Kingdom and the United Kingdom Inland Revenue has not received an application from such Lender under the relevant double tax treaty in relation to that Obligor's payments to that Lender;
 - (v) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below;

- (vi) the relevant Lender is a Qualifying Lender pursuant to Clause (ii)(B) or Clause (ii)(C) of the definition of Qualifying Lender and either (A) such Lender has failed to deliver, maintain or update the certificates and documents required by Clause (ii)(B) or Clause (ii)(C), as applicable, and requested by a US Group Company or (B) the US Group Company making the payment is able to demonstrate that the Tax Deduction is required to be made as a result of the failure of such Lender to comply with paragraph (g), below;
 - (vii) the relevant Lender is a Qualifying Lender pursuant to Clause (v) (A) or Clause (v) (B) of the definition of Qualifying Lender and the Lender has not quoted its Australian tax file number or Australian business number to the Obligor in connection with the investment before the time when the payment became payable or before the time when the Lender had to be registered with the Obligor as the Investor to be entitled to the payment;
 - (viii) the Obligor receives a written notice from the Australian Commissioner of Taxation under section 260-5 of Schedule 1 to the Taxation Administration Act 1953 (Commonwealth of Australia), or section 255 of the Income Tax Assessment Act 1936 (Commonwealth of Australia), requiring the Obligor to pay an amount not in excess of the Tax Deduction to the Australian Commissioner of Taxation in respect of a debt owed by the relevant Lender to the Commonwealth of Australia.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
 - (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (g) A Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction. Each Treaty Lender shall notify the Company of any correspondence received by that Treaty Lender from any tax authority concerning the progress of such procedural formalities. The Company shall notify a Treaty Lender of any correspondence received by the Company or any Obligor from any tax authority concerning the progress of procedural formalities relating to that Treaty Lender.
 - (h) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Company by entering into this Agreement.
 - (i) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.

21.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party

determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document or the transactions occurring under such Finance Document.

- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 21.2 (*Tax gross-up*); or
 - (B) would have been compensated for by an increased payment under Clause 21.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 21.2 (*Tax gross-up*) applied.
- (c) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax imposed as a consequence of the source-deeming provision of section 25(2) of the Income Tax Assessment Act 1936 (Commonwealth of Australia), other than in the case of a Lender which is either resident in Australia or not resident in Australia but operating at or through a permanent establishment in Australia.
- (d) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.
- (e) A Protected Party shall, on receiving a payment from an Obligor under this Clause 21.3, notify the Agent.

21.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

21.5 **Stamp taxes**

The Company shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration, exercise and other similar Taxes payable in respect of any Finance Document or the transactions occurring under any of them.

21.6 **Tax Shelter**

Notwithstanding anything to the contrary, it is hereby agreed that from the commencement of discussions with respect to transactions contemplated by this Agreement (the “**Transactions**”), any party to this Agreement (and any employee, representative or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transactions and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

21.7 **Value added tax**

- (a) All amounts set out, or expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply, and accordingly, subject to paragraph (c) below, if VAT is chargeable on any supply made by any Finance Party to any Party under a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).
- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

21.8 **PTR Scheme**

- (a) Each Treaty Lender:
 - (i) irrevocably appoints the Agent to act as syndicate manager under, and authorises the Agent to operate, and take action necessary or desirable under, the PTR Scheme in connection with the Senior Facility;
 - (ii) shall co-operate with the Agent in completing any procedural formalities necessary under the PTR Scheme, and shall promptly supply to the Agent such information as the Agent may request in connection with the operation of the PTR Scheme;
 - (iii) without limiting the liability of any Obligor under this Agreement, shall, within 5 Business Days of demand, indemnify the Agent for any liability or loss incurred by the Agent as a result of the Agent acting as syndicate manager under the PTR Scheme in connection with the Treaty Lender’s participation in any

Loan (except to the extent that the liability or loss arises directly from the Agent's gross negligence or wilful misconduct); and

- (iv) shall, within 5 Business Days of demand, indemnify each Obligor for any Tax which such Obligor becomes liable to pay in respect of any payments made to such Treaty Lender arising as a result of any incorrect information supplied by such Treaty Lender under paragraph (ii) above which results in a provisional authority issued by the UK Inland Revenue under the PTR Scheme being withdrawn.
- (b) Each Obligor acknowledges that it is fully aware of its contingent obligations under the PTR Scheme and shall:
 - (i) promptly supply to the Agent such information as the Agent may request in connection with the operation of the PTR Scheme; and
 - (ii) act in accordance with any provisional notice issued by the UK Inland Revenue under the PTR Scheme.
- (c) The Agent agrees to provide, as soon as reasonably practicable, a copy of any provisional authority issued to it under the PTR Scheme in connection with any Senior Loan to those Obligors specified in such provisional authority.
- (d) All parties acknowledge that the Agent:
 - (i) is entitled to rely completely upon information provided to it in connection with Sub-Clause (a) and (b) above;
 - (ii) is not obliged to undertake any enquiry into the accuracy of such information, nor into the status of the Treaty Lender or, as the case may be, Obligor providing such information; and
 - (iii) shall have no liability to any person for the accuracy of any information it submits in connection with Sub-Clause (a)(i) above.

In this Clause "PTR Scheme" means the Provisional Treaty Relief Scheme as described in Inland Revenue Guidelines dated January 2003 and administered by the Inland Revenue's Centre for Non-Residents.

21.9 Set-off

All payments to be made by an Obligor under the Finance Documents shall be calculated and made without (and free and clear of any deduction for) any set-off or counterclaim under a Finance Document.

21.10 Ancillary Facilities

The provisions of this Clause 21 do not apply with respect to the Ancillary Facilities.

21.11 Authorized Foreign Banks

In addition to the provisions of this Clause 21, in respect of amounts paid or credited by an Obligor that is resident in Canada for purposes of the Income Tax Act (Canada) (the "ITA") to or for the benefit of a particular Lender that is an "authorized foreign bank" for purposes of the ITA, the obligations under this Clause 21 to pay an additional amount shall apply where the particular Lender is liable for Tax under Part XIII of the ITA in respect of such payment, even if

the Obligor is not required under the ITA to deduct or withhold an amount in respect of Taxes on such payment and this Clause 21 shall apply, *mutatis mutandis*, as if the Obligor was required to withhold an amount in respect of such Taxes. The notification provisions of this Clause 21 shall apply when the relevant person becomes aware of the liability of the Lender for tax under Part XIII of the ITA.

22 INCREASED COSTS

22.1 Increased costs

(a) Subject to Clause 22.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party, the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or any change in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(b) In this Agreement “**Increased Costs**” means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into this Agreement or funding or performing its obligations under any Finance Document.

22.2 Increased cost claims

(a) To make a claim pursuant to Clause 22.1 (*Increased costs*) the relevant Finance Party shall notify the Agent by furnishing reasonable details of the event giving rise to the claim, following which the Agent shall promptly notify the Company.

(b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

22.3 Exceptions

Clause 22.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (i) attributable to a Tax Deduction required by law to be made by an Obligor;
- (ii) compensated for by Clause 21.3 (*Tax indemnity*) (or would have been compensated for under Clause 21.3 (*Tax indemnity*) but was not so compensated solely because the exclusion in paragraph (b) of Clause 21.3 (*Tax indemnity*) applied);
- (iii) compensated for by the payment of the Mandatory Cost; or
- (iv) attributable to the wilful breach by the relevant Lender or its Affiliates of any law or regulation.

22.4 **Ancillary Facilities**

The provisions of this Clause 22 do not apply with respect to the Ancillary Facilities.

23 **OTHER INDEMNITIES**

23.1 **Currency indemnity**

If any sum due from an Obligor under the Finance Documents (a “Sum”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “First Currency”) in which that Sum is payable into another currency (the “Second Currency”) for the purpose of:

- (a) making or filing a claim or proof against that Obligor;
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against (i) any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum and (ii) the costs involved in effecting any such currency conversion.

23.2 **Other indemnities**

The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability (including loss of Margin and redeployment costs) incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (but this Sub-Clause shall not apply if such Utilisation is not made as the result of any default by a Finance Party);
- (d) the receipt or recovery by it (or the Agent on its behalf) of all or part of its share of any Loan or unpaid sum other than on the last day of any Interest Period relating to that Loan or unpaid sum; or
- (e) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

23.3 **Break Costs**

Each Obligor’s liability under Clause 23.2 (*Other Indemnities*) shall include the amount (if any) by which:

- (a) the additional interest which would have been payable under this Agreement on the amount so received or recovered had it been received or recovered by the relevant party on the last day of the relevant Interest Period exceeds;

- (b) the amount of interest which, in the opinion of the person entitled thereto concerned, would have been payable to such person on the last day of that Interest Period in respect of a deposit denominated in the currency of the Loan or unpaid sum in question equal to the amount so received or recovered placed by it with a prime bank in London for a period starting on the second Business Day following the date of such receipt or recovery and ending on the last day of that Interest Period.

23.4 Ancillary Facilities

The provisions of this Clause 23 do not apply with respect to the Ancillary Facilities.

24 MITIGATION BY THE LENDERS

24.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 13.1 (*Illegality*) or Clause 21.2 (*Tax gross-up*) and 21.3 (*Tax indemnity*), Clause 22 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office, or to another Lender or other institution approved by the Company.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

24.2 Limitation of liability

- (a) The Company shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 24.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 24.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

25 COSTS AND EXPENSES

25.1 Transaction expenses

The Company shall, upon demand, following notice, pay the Agent and the Senior Tranche B Lender the amount of all costs and expenses (including legal and valuation fees) incurred by such person in connection with the negotiation, preparation, printing and execution of:

- (a) this Agreement and any other documents referred to in this Agreement;
- (b) any other Finance Documents executed after the date of this Agreement; and
- (c) any Property Valuation or Equipment Valuation delivered pursuant to the terms of any Finance Document (to the extent to which the Agent has paid, or has assumed responsibility for the payment of, such costs).

25.2 Amendment costs

If an Obligor requests an amendment, waiver or consent, the Company shall, upon demand, following notice, reimburse the Agent and any Senior Tranche B Lender for the amount of all costs and expenses (including legal fees) incurred by such person in responding to, evaluating, negotiating or complying with that request or requirement.

25.3 **Collection Costs**

The Company shall on demand pay the Agent and each Finance Party the amount of all costs and expenses (including legal fees) reasonably incurred by them in connection with:

- (a) the remission of loan proceeds (including the cost of receiving funds from, and remitting funds to, the Lenders), collection of cheques and other items, the issue, maintenance and renewal of L/Cs, establishing and maintaining Charged Accounts, together with the Agent's or such Finance Party's reasonable associated and customary fees in connection with the foregoing; and
- (b) all out of pocket expenses and costs from time to time (including those incurred prior to the date of this Agreement) during the course of periodic field examinations and appraisals of the Obligor's assets and operations plus a daily charge at the rate separately agreed with the Agent for the Agent's examinations in the field and office for up to three such specific field examinations in any 12 month period prior to an Event of Default and for any other or additional such examinations following an Event of Default.

25.4 **Enforcement and other costs**

The Company shall, upon demand, following notice, pay to each Finance Party the amount of all costs and expenses (including legal fees) reasonably incurred by that Finance Party in connection with the exercise or enforcement of, or the preservation of any rights or discretions under, any Finance Document (including, without limitation, any payments made to third parties in accordance with the terms of the Finance Documents to preserve, protect or enhance any Security Interest granted to the Agent or any Finance Party).

26 **GUARANTEE AND INDEMNITY**

26.1 **Guarantee and indemnity**

In consideration of the Lenders making the Facilities available to the Borrowers, each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal including without limitation the payment of fees and expenses arising before or after the commencement of any insolvency case or proceeding (including any case under the United States Bankruptcy Code) even if the Borrower's liability for such amounts does not, or ceases to, exist by operation of law. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

26.2 **Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part. The obligations of the Guarantors under this Agreement are those of a primary obligor (and not merely those of a surety).

26.3 Reinstatement

If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

26.4 Waiver of defences

The obligations of each Guarantor under this Clause 26 and under each Finance Document will not be affected by an act, omission, matter or thing which, but for this Clause 26, would reduce, release or prejudice any of its obligations under this Clause 26 (without limitation and whether or not known to it or any Finance Party) including (and each Guarantor hereby waives and consents to):

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) failure of the Agent to give any notice to which any Guarantor is entitled, including, but not limited to, notice of acceptance of this guarantee, the making of loans and advances, demand, protest, notice of protest, notice of non-payment or default;
- (c) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor including, without limitation, the surrender or release by the Agent of any Guarantor hereunder;
- (d) the taking, variation, compromise, surrender, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (f) any amendment (however fundamental), modification, supplement, extension, renewal, reinstatement or replacement of a Finance Document or any other document or security including, but not limited to, extensions of time for payment of or increase or decrease in any amount of any of the guaranteed obligations, the interest rate, fees, other charges or any collateral;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (h) any insolvency or similar proceedings including, but not limited to, any such insolvency proceedings of the nature described in Clause 30.6 (*Insolvency Proceedings*) and any financing by the Finance Parties of the Borrowers under Section 364 of the United States

Bankruptcy Code or the consent to the use of cash collateral by the Agent under Section 363 of the United States Bankruptcy Code; or

- (i) the exercise or refraining from the exercise of any right against the Obligor or its assets.

No invalidity, irregularity or unenforceability of all or any part of the guaranteed obligations shall affect, impair or be a defence to this guarantee, nor shall any other circumstance which might otherwise constitute a defence available to a legal or equitable discharge of the Borrower in respect of any of the guaranteed obligations of any one Guarantor in respect of this guarantee affect, impair or be a defence to this guarantee.

As to interest, fees and expenses, whether arising before or after the commencement of any case with respect to any Borrower under the United States Bankruptcy Code or any similar statute, Guarantors shall be liable therefor, even if such Borrower's liability for such amounts does not, or ceases to, exist by operation of law. Each Guarantor acknowledges that no Finance Party has made any representations to any Guarantor with respect to any Borrower or otherwise in connection with the execution and delivery by Guarantors of this guarantee and Guarantors are not in any respect relying upon any Finance Party or any statements by any Finance Party in connection with this guarantee.

26.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 26.5 or before enforcing any rights which they may have under any of the other Finance Documents. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary. This guarantee is guarantee of payment and not of collection.

26.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 26.6.

26.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents or any other benefit to which any Guarantor might directly or

indirectly receive or be entitled by reason of any amount paid or collected or due from Guarantors or any Obligor upon the guaranteed obligations or realised from their assets; and/or

- (c) to take the benefit (in whole or in part and whether by way of subrogation reimbursement, exoneration, contribution, set off or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by Finance Parties.

26.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

26.9 Excluded Obligors and Other Limitations

The guarantee contained in this Clause 26 shall be restricted as follows:

- (a) notwithstanding anything to the contrary contained herein or in any of the other Finance Documents (including any provision that provides that it applies notwithstanding contrary provisions), in no event shall any provision hereof or of any of the other Finance Documents be construed to provide that (a) any foreign Subsidiary of a US Borrower incorporated under the laws of a jurisdiction outside the United States of America that is a “controlled foreign corporation” (as such term is defined in Section 957(a) of the Code), referred to herein as a “non US Subsidiary”, has any obligation to make any payments for or on behalf of a Borrower or Guarantor to the extent that any such obligation would increase the amount of taxes otherwise payable by such Borrower or Guarantor pursuant to the Code; (b) more than sixty five (65%) percent of the voting power of all classes of Capital Stock of a non US Subsidiary are pledged or hypothecated to support any Obligations of a Borrower or Guarantor hereunder or under any of the other Finance Documents; (c) a security interest or lien upon any assets of a non US Subsidiary have been granted to Agent under this Agreement or any of the other Finance Documents to secure any Obligations of a Borrower or Guarantor and (d) any non US subsidiary has entered into any agreement to guarantee or support the Obligations of a Borrower or Guarantor hereunder or under any of the other Finance Documents;
- (b) notwithstanding anything to the contrary contained herein and notwithstanding any terms of any of the Finance Documents to the contrary, the liability of the Canadian Guarantors in respect of any of the obligations and liabilities of the other Obligors shall be as a guarantor and surety only and not as a principal or joint and several Obligor;
- (c) the amount payable by any Guarantor under this Clause 26 shall be the aggregate of all amounts owing under the Finance Documents, unless a court of competent jurisdiction finds that such Guarantor's obligations are invalid, unenforceable or capable of avoidance for any reason (whether on grounds of applicable State or Federal law relating to fraudulent conveyances or transfers, or on any other ground whatsoever) in which case the amount payable by such Guarantor under this Clause 26 shall be limited to the maximum amount which can be paid without rendering such Guarantor's obligations invalid, ineffective or capable of avoidance;
- (d) any Guarantor incorporated in Canada (a “Canadian Guarantor”) acknowledges that certain of the rates of interest applicable to the obligations of the Borrowers guaranteed

under this Clause 26 may be computed on the basis of a year of 360 days or 365 days, as the case may be, and paid for the actual number of days elapsed. For purposes of the Interest Act (Canada), whenever any interest is calculated using a rate based on a year of 360 days or 365 days, as the case may be, such rate determined pursuant to such calculation, when expressed as an annual rate is equivalent to (i) the applicable rate based on a year of 360 days or 365 days, as the case may be, (ii) multiplied by the actual number of days in the calendar year in which the period for such interest is payable (or compounded) ends, and (iii) divided by 360 or 365, as the case may be. Further, the principle of deemed reinvestment of interest does not apply to any interest calculation under any Finance Document and the rates of interest stipulated in any Finance Document are intended to be nominal rates and not effective rates or yields;

- (e) each Canadian Guarantor acknowledges that it has or will receive direct and indirect benefits from the transactions contemplated by the Finance Documents and that the guarantee and each of the waivers provided by it in this Clause 26 is knowingly made in contemplation of such benefits;
- (f) in relation to any Guarantor whose jurisdiction of incorporation is Germany (each a “**German Guarantor**” and, together, the “**German Guarantors**”) the Finance Parties agree not to enforce any guarantee granted hereunder by any German Guarantor in the form of a GmbH if and to the extent that such guarantee secures liabilities of an affiliated company (Verbundenes Unternehmen) within the meaning of Section 15 et seq. of the German Stock Corporation Act (Aktiengesetz) of the German Guarantor (other than the German Guarantor's Subsidiaries) and if and to the extent that such enforcement would result in personal liability of a managing director or lead to the situation in which the German Guarantor's assets (the calculation of which shall take into account the captions reflected in Section 266 subsection (2) A, B and C of the German Commercial Code (HGB Handelsgesetzbuch) and which shall be made in accordance with applicable case law) less the sum of (A) the liabilities of the German Guarantor (the calculation of which shall take into account the captions reflected in Section 266 sub-section (3) B, C and D of the German Commercial Code), and (B) the stated share capital (Stammkapital) of the German Guarantor (the “**Net Assets**”) are less than zero;
- (g) for the purposes of the calculation of the Net Assets in Sub-Clause (f) above the following balance sheet items shall be adjusted as follows:
 - (i) the amount of any increase of the stated share capital after the date hereof (excluding any such increase of stated share capital permitted pursuant to any other agreement to which the Finance Parties and the German Guarantor are a party) (aa) that has been effected without the prior written consent of the Finance Parties, (bb) that has been effected out of retained earnings (Kapitalerhöhung aus Gesellschaftsmitteln) or (cc) to the extent that it is not fully paid up, shall be deducted from the stated share capital; and
 - (ii) loans and other contractual liabilities incurred in grossly negligent or wilful violation of the provisions of the Finance Documents shall be disregarded;
- (h) in addition, each German Guarantor shall realise, to the extent legally permitted and commercially justifiable, in a situation where such German Guarantor's Net Assets are or become as a result of enforcement less than zero, any and all of its assets that are shown in the balance sheet with a book value (Buchwert) that is significantly lower than the

market value of the assets if the asset is not necessary for such German Guarantor's business (betriebsnotwendig);

- (i) for the purpose of the calculation of the Net Assets in Sub-Clause (f) above and thus the enforceable amount, the relevant German Guarantor will deliver (A) within 7 Business Days following the demand against the relevant German Guarantor under the guarantee by the Agent, to the Agent an up to date (unaudited) balance sheet and determination of the Net Assets prepared by the relevant German Guarantor's management and based on the same principles that were applied when establishing the previous year's balance sheet and (B) upon request of the Agent within a further 23 days following provision of the unaudited balance sheet, to the Agent an up to date balance sheet drawn-up by a firm of auditors of international standard and repute together with a determination of the Net Assets of such German Guarantor. Such audited balance sheet and determination of Net Assets shall be prepared in accordance with accounting principles pursuant to the German Commercial Code and be based on the same principles that were applied when establishing the previous year's balance sheet;
- (j) the determination by the auditors (as set forth above, the "**Auditors' Determination**") pertaining to the German Guarantor shall be up to date and in any event such Auditors' Determination shall have been prepared as of a date no earlier than 15 Business Days prior to the date of the enforcement of the guarantee; and
- (k) should the relevant German Guarantor fail to deliver an unaudited or audited (as the case may be) balance sheet and/or determination of the Net Assets within the periods stated in Sub-Clause (i) above, the Finance Parties shall be entitled to enforce the guarantee in this Clause 26, without limitation, but agree to release proceeds from such enforcement to the extent required to ensure that the Net Assets shall not be less than zero. Should the relevant German Guarantor's management provide the Agent with an unaudited balance sheet and/or determination of the Net Assets within the period stated in Sub-Clause (i) (A) above, the Agent shall only be entitled to enforce amounts up to the Net Assets determined by the relevant German Guarantor's management until the auditors have drawn up the audited balance sheet, in which case the audited balance sheet and the determination of the Net Assets therein shall prevail.

26.10 **Resolution of Conflicts**

In the event of any conflict between the provisions of Clause 26.9 (*Excluded Obligors and Other Limitations*) and any corresponding or similar provisions of any other Finance Document, the provisions of Clause 26.9 shall prevail, unless and to the extent that such prevalence would vitiate any of the Security Interests created or intended to be created pursuant to such Finance Document.

27 **REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 27 to each Finance Party on the date of this Agreement.

27.1 **Status**

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

27.2 Binding obligations

- (a) The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations (subject to any limitation on their enforcement by virtue of any general principles of law).
- (b) Subject to any reservation or qualification in this respect in the legal opinions obtained by the Agent as a condition precedent to the first Utilisation, each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective, and have been perfected.
- (c) It is not entitled to assert, in any legal proceedings relating to the Finance Documents, any immunity from suit, execution, attachment or other legal process in the jurisdiction of its incorporation.

27.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any material agreement or instrument binding upon it or any of its assets.

27.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

27.5 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

27.6 Governing law and enforcement

Subject to any reservation or qualification in this respect in the legal opinions obtained by the Agent as a condition precedent to the first Utilisation:

- (a) the choice of English law as the governing law of any of the Finance Documents so governed by English law will be recognised and enforced in its jurisdiction of incorporation; and
- (b) any judgement obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation (or, in the case of US Obligors, New York).

27.7 Insolvency

No:

- (a) Corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 30.6 (*Insolvency proceedings*); or
- (b) Creditor's process described in Clause 30.8 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in relation to a member of the Group; and none of the circumstances described in Clause 30.5 (*Insolvency*) applies to an Obligor.

27.8 No filing or stamp taxes

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents (save to the extent stated in any legal opinion delivered to the Agent for the purposes of this Agreement).

27.9 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or its Subsidiaries') assets are subject which might reasonably be expected to have a Material Adverse Effect.
- (c) The proceeds of each Utilisation made by it of any Facility shall only be applied by it for the purposes described in Clause 3.1 (*Purposes*).

27.10 Intellectual Property

All registered trade marks, design rights and domain names material to the Group's business as at the date of this Agreement are listed in a letter from the Company delivered to the Agent prior to the date of this Agreement.

27.11 No misleading information

- (a) Any factual information contained in the Information Memorandum was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.
- (b) Any financial projection or forecast contained in the Information Memorandum has been prepared on the basis of recent historical information (as at the date it was given to the Agent or dated) and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.
- (c) The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum were (as at the date of the Information Memorandum) made after careful consideration and were fair and based on reasonable grounds (as at the date of the Information Memorandum).

- (d) No event or circumstance has occurred or arisen since the date of the Information Memorandum which has not been disclosed by the Company to the Agent and since the date of the Information Memorandum no information has been withheld that would result in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum being untrue or misleading in any material respect.
- (e) As at the date of this Agreement, no information has been withheld that would result in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum being untrue or misleading in any material respect.
- (f) Any written information provided by the Company or any of its Subsidiaries (i) in connection with the negotiation of the Facilities and the Finance Documents and (ii) in connection with any valuations or reports required to be prepared for the purposes of this Agreement was (in each case) true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is dated.
- (g) Nothing has occurred since the date on which such information was provided by the Company or any of its Subsidiaries to the Agent, which has not been disclosed to the Agent by the Company, which would render it untrue or misleading in any material respect.

27.12 Financial statements

- (a) Its latest audited financial statements were prepared in accordance with GAAP (and, for periods prior to 31 March 2005, generally accepted accounting principles in Ireland unless otherwise set forth prior to the date hereof in any management reports) consistently applied.
- (b) Its latest audited financial statements fairly represent its financial condition and operations (consolidated in the case of the Company) during the relevant financial year.
- (c) There has been no material adverse change in its business or financial condition (consolidated in the case of the Company) since the date to which its audited financial statements for the year ended 31 March 2005 were made up, (other than as disclosed in the management accounts as of and through 31 August 2005).

27.13 Pari passu ranking

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

27.14 No proceedings pending or threatened

Save as disclosed to the Agent in writing prior to the date of this Agreement, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Affiliates.

27.15 Retention of Title

To the best of the Company's knowledge after due and careful enquiry, any list provided to the Agent either prior to the date of this Agreement or after the date of this Agreement and which provides details of those suppliers whose terms of business include retention of title provisions is complete and accurate in all material respects as at the date it was so provided and (apart from

those named in any such list) there are no material suppliers which impose such provisions as at the date of that list.

27.16 Bank Accounts

Other than those accounts referred to as the “**excluded bank accounts**” in Clause 29.19(a) (*Group Bank Accounts*), all the accounts maintained or used by any Obligor at any bank or financial institution have been included within the definition of Charged Accounts or Feeder Accounts.

27.17 Material Subsidiaries

Every Material Subsidiary of the Company is party to this Agreement as a Guarantor or, in the case of Rosenthal, as a Borrower (unless the requirement for such a Material Subsidiary to become a Guarantor is specifically excluded pursuant to one of the other provisions of this Agreement).

27.18 No ERISA Event

Except as could not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) the current value of each Plan's assets (determined in accordance with the assumptions used for funding such Plan pursuant to Section 412 of the Code or other applicable laws) are not less than such Plan's liabilities; (iii) each Obligor, and their ERISA Affiliates, as applicable, have not incurred and do not reasonably expect to incur, any liability (and to the knowledge of each Obligor no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan or under other applicable laws in respect of a Plan; and (iv) each Obligor, and, to their knowledge, their ERISA Affiliates, as applicable, have not engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA or contrary to the provisions of other similar laws.

27.19 No breach of laws

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

27.20 Taxation

- (a) Except as disclosed in writing to the Agent in that certain disclosure letter dated the date of this Agreement, it is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of €100,000 (or its equivalent in any other currency) or more.
- (b) Except as disclosed in writing to the Agent in that certain disclosure letter dated the date of this Agreement, no claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of €100,000 (or its equivalent in any other currency) or more is reasonably likely to arise.
- (c) Other than Waterford Wedgwood Australia Limited, it is resident for tax purposes only in the jurisdiction of its incorporation.

- (d) Other than Waterford Wedgwood Australia Limited, it is not entering into, or performing its obligations under the Finance Documents in the course of carrying on business at or through a permanent establishment in a country other than the country in which it is resident for tax purposes.

27.21 Security and Financial Indebtedness

- (a) No Security Interest exists over all or any of the present or future assets of any member of the Group other than as expressly permitted by this Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding other than as expressly permitted by this Agreement.

27.22 Good title to assets

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

27.23 Legal and beneficial ownership

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant any Security Interest to the Agent or the Security Trustee.

27.24 Environmental laws

- (a) Each member of the Group is in compliance with Clause 29.21 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

27.25 Centre of main interests and establishments

In the case of each Obligor incorporated in a member state of the European Union, for the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), to the reasonable knowledge, information and belief of such Obligor, its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation or, in the case of Stuart & Sons Limited, either in its jurisdiction of incorporation or Ireland.

27.26 Margin Regulations

The proceeds of any Loan, this Agreement and the transactions contemplated hereby will not result in a violation of or be inconsistent with any provision of Regulation U or X of the Board of Governors of the Federal Reserve System

27.27 Irish Pensions

The draft funding proposal dated 11 March 2005 in respect of the Waterford Crystal Limited Contributory Pension Scheme for Factory Employees, the draft funding proposal dated 7 March 2005 in respect of the Waterford Crystal Limited Contributory Pension Scheme for Staff and the draft funding proposal dated 3 March 2005 in respect of the Waterford Wedgwood plc Supplementary Benefits Scheme (save for any change made as permitted by Clause 29.20(f)(i)

(Pensions)) comprise the basis agreed between the trustees and the Principal Employer under each of the said pension schemes for calculating employer contributions to each of the said pension schemes.

27.28 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request (provided that in the case of Clause 27.7 (*Insolvency*) any such repetition shall exclude reference to any action, proceeding, procedure or step so described therein having been threatened in relation to a member of the Group).

28 INFORMATION AND FINANCIAL UNDERTAKINGS

The undertakings in this Clause 28 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Facility remains available for utilisation.

28.1 Notification of default

Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence, unless that Obligor is aware that a notification has already been provided by another Obligor.

28.2 Reporting and Financial Undertakings

Each Obligor will comply with each of the undertakings set out in Schedule 3 (*Reporting and Financial Undertakings; Release of Cash Collateral; Margin Adjustments*).

28.3 Interpretation of Financial and Accounting Terms

All accounting terms not specifically or completely defined in this Agreement shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis.

28.4 Changes in GAAP

If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Finance Document, and either the Company or the Majority Lenders shall so request, the Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

29 GENERAL UNDERTAKINGS

The undertakings in this Clause 29 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Facility remains available for utilisation.

29.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

29.2 Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

29.3 Negative pledge

- (a) No Obligor shall create or permit to subsist any Security Interest over any of its assets.
- (b) No Obligor shall:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
 - (ii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iii) enter into any other preferential arrangement having a similar effect,in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to:
 - (i) any Security Interest constituted by any Finance Document, the Intra-Group Security Documents or otherwise granted by way of security for the obligations arising under this Agreement;
 - (ii) any Security Interest arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business;
 - (iii) any Security Interest created with the prior written consent of the Required Lenders;
 - (iv) any Security Interest over bank accounts approved by the Agent for this purpose and created by virtue of any cash-pooling arrangements for members of the Group with their bankers providing for the setting-off or netting of debit and credit balances on bank accounts of those members of the Group;
 - (v) any pledge of goods, their related documents of title and/or other related documents arising or created in the ordinary course of its business as security to a bank or financial institution only for indebtedness directly relating to the goods or documents on or over which that pledge exists under arrangements approved by the Agent for this purpose;

- (vi) any Security Interest arising out of title retention provisions in a supplier's standard conditions of supply of goods acquired by the relevant person in the ordinary course of its business (provided that such retention of title provisions have previously been disclosed to the Agent);
- (vii) any Security Interest created by WC Designs over its receivables and its stock as security for the CIT Facility or any Security Interest of equivalent ambit and similar type created by WC Designs as security for any Replacement Facility;
- (viii) any Security Interest created over any bank account in connection with (i) the provision of cash cover for any L/C, as contemplated by this Agreement and (ii) cash cover for the available amount of any other documentary or standby credits or customs guarantees up to a maximum of £2,500,000;
- (ix) the Security Interests in respect of the Existing Group Indebtedness, provided that the same are fully discharged out of the proceeds of loans made on the date of the first Utilisations;
- (x) the existing and any new Security Interests in favour of the trustee under the High Yield Bond Indenture and the holders of the High Yield Bonds (as replaced or to be replaced or put in place pursuant to the Security Documents), provided such Security Interests rank second to those of the Lenders pursuant to the provisions of the Intercreditor Agreement or otherwise;
- (xi) cash collateral in favour of Mizuho Corporate Bank, Limited with respect to the customs guarantee issued by Mizuho Corporate Bank, Limited in Japan for a member of the Group;
- (xii) Security Interests of PT Doulton and/or any Subsidiary incorporated in Japan in respect of, and securing only, the Financial Indebtedness of PT Doulton and/or such Subsidiary incorporated in Japan permitted under Sub-Clause 29.8(a)(xvii);
or
- (xiii) Security Interests granted over cash deposits as referred to in Clause 29.8(b)(ii);
or
- (xiv) any other Security Interest created or outstanding on or over assets of any member of the Group provided that (A) such Security Interest is not over any Stock or Receivables of any member of the Group, and (B) the aggregate outstanding principal, capital or nominal amount secured by all Security Interests created or outstanding under this sub-paragraph (xiii) on or over assets of the Group must not at any time exceed €1,000,000 (or its equivalent in other currencies).

29.4 Disposals

- (a) No Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Subject to the terms of Clause 13.6 (*Mandatory Prepayments*), paragraph (a) above does not apply to:

- (i) any sale, lease, transfer or other disposal relating to the disposal of Stock to any person on arm's length terms or better for the disposing company and made in the ordinary course of trading;
- (ii) any sale, lease, transfer or other disposal relating to the application of cash to any person on arm's length terms or better for the disposing company in the acquisition of goods and services in the ordinary course of trading and in a manner consistent with the Finance Documents;
- (iii) any sale, lease, transfer or other disposal relating to the disposal of worn out or obsolete assets where any proceeds of sale are paid into a Blocked Account;
- (iv) any sales, leases, transfers and other disposals of any asset (other than Eligible Equipment) to any person provided that (A) the higher of the market value or consideration receivable for all such transactions consummated during any financial year does not exceed €150,000 (or its equivalent in another currency or currencies) and (B) the proceeds of which are paid into a Blocked Account;
- (v) any sale, lease, transfer or other disposal which has been approved in writing by the Agent on the instructions of the Required Lenders;
- (vi) any transfer, licensing or other disposal of Intellectual Property Rights (A) as between Obligors (other than any transaction involving a Borrower which is not also a Guarantor as the recipient party, other than as is permitted under Sub-Clause (ix) below), (B) as permitted under sub-clause (x) below or (C) with the prior approval of the Required Lenders;
- (vii) the application of the proceeds of an issue of securities (whether equity or debt) for the purpose stated in the prospectus or other offering document relating to that issue (provided that such stated purpose is not inconsistent with the terms of this Agreement) and for the avoidance of doubt such proceeds shall be subject to Clause 13.6 (*Mandatory Prepayments*);
- (viii) the granting of licences in respect of its Intellectual Property Rights to other members of the Group provided that any such licence shall terminate on any such person ceasing to be a member of the Group or upon the insolvency of either party thereto;
- (ix) the granting of licences on an arm's length basis to use any Intellectual Property Rights, whether registered or unregistered provided that such licence is expressed to be subject to the security created under the Finance Documents and the proceeds of such licences are paid into a Blocked Account;
- (x) disposals of any income shares of £0.01 each in Waterford Wedgwood U.K. plc ("**Income Shares**") for the purpose of combining those Income Shares with the ordinary shares of €0.06 each in the Company ("**Ordinary Shares**") which have not been combined with Income Shares to form stock units (each comprising one Ordinary Share and one Income Share);
- (xi) planned disposals listed in Schedule 8 (*Permitted Disposals*) provided that the proceeds thereof are paid into a Blocked Account and for the avoidance of doubt

the amount of such proceeds in excess of €500,000 in any period of 12 months shall be subject to Clause 13.6 (*Mandatory Prepayments*);

- (xii) disposals of cash or cash equivalents where such disposal is not otherwise prohibited by the terms of this Agreement;
 - (xiii) disposals arising as a result of any Security Interest permitted by Clause 29.3 (*Negative Pledge*);
 - (xiv) the termination or modification of any swap, forward, option or other agreement entered into pursuant to the Ancillary Facilities;
 - (xv) the granting of a 99 year lease by Josiah Wedgwood & Sons Limited to Wedgwood Museum Trust for zero consideration for the building of the museum (the "**Wedgwood Museum**") to be partly funded by the Heritage Lottery Fund and Advantage West Midlands; and
 - (xvi) any other disposal of assets otherwise than to any member of the Group during any financial year of the Company provided that the aggregate book value of all such assets does not exceed €1,000,000 (or its equivalent in other currencies).
- (c) Notwithstanding Sub-Clause (b) above, no Obligor shall in any event, except in the ordinary cause of trading:
- (i) make any transfer of any asset to any Australian Obligor or to any Swiss company whose shares are the subject of any Security Document unless:
 - (A) that Obligor has notified the Agent not later than 5 Business Days in advance of that transfer taking effect of its intention to make that transfer; and
 - (B) the Company or that Obligor procures that such additional stamp or equivalent tax in relation to the Security Documents of that Australian Obligor relating to that asset or (as the case may be) of the Security Document relating to the shares in that Swiss company is paid which correlates to the value of the asset so transferred; or
 - (ii) transfer assets to PT Doulton or any Subsidiary incorporated in Japan which is not a Borrower having an aggregate value of more than €500,000 for all of such transfers in any calendar year.

29.5 **Mergers and Acquisitions**

- (a) No Obligor shall enter into any amalgamation, demerger, merger or corporate reconstruction (except an amalgamation or merger on a solvent basis between existing members of the Group which does not prejudice the security position of the Lenders, provided that this exception shall not in any event apply to any amalgamation, demerger, merger or corporate reconstruction involving a Borrower which is not also a Guarantor) or acquire any business, undertaking or (except in the ordinary course of business) other assets of any kind, without the prior written consent of the Agent acting on the instructions of the Required Lenders.
- (b) Paragraph (a) does not apply to acquisitions or investments:

- (i) made by one Obligor in another Obligor (other than a Borrower which is not also a Guarantor), other than the exercise of the EI Pre-emption Right; or
 - (ii) made by an Obligor in a non-Obligor which is a Subsidiary of the Company provided that the aggregate amount of such investments made after the date of this Agreement does not exceed €1,000,000 (or €3,000,000 when aggregated with loans made or credit provided pursuant to Clause 29.9 (*Making Loans*)) and they are made on arm's length terms.
- (c) Each Obligor will do and cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, provided that the foregoing shall not prohibit any amalgamation, demerger, merger or corporate reconstruction permitted under Sub-Clause (a) above.

29.6 **Change of business**

The Company shall procure that:

- (a) no substantial change is made to the general nature of the business of the Company or any of its Subsidiaries from that carried on at the date of this Agreement; and
- (b) neither the Company nor any of its Affiliates shall change its centre of main interests for the purposes the Regulation.

29.7 **Intra-Group Arrangements**

- (a) No Obligor will:
 - (i) pay any dividend or make any other distribution of its assets, except (A) in favour of another Obligor (including indirectly through a non-Obligor shareholder provided that the proceeds of that dividend are, within 24 hours, in turn paid or distributed to that other Obligor) other than a Borrower which is not also a Guarantor; or (B) for dividends and distributions made by any Rosenthal Company to the holders of its Capital Stock rateably;
 - (ii) pay any other moneys, whether by way of interest, management fees or otherwise howsoever, to a Borrower which is not also a Guarantor or any Affiliate or Subsidiary which is not an Obligor (a "relevant non-Obligor") other than (A) the purchase price of Stock the purchase of which by that Obligor from such a relevant non-Obligor is permitted by this Agreement and is made on arm's length terms and (B) the payment of interest and principal on Financial Indebtedness and other indebtedness permitted under this Agreement outstanding from such Obligor to such a relevant non-Obligor provided that such payment is permitted under this Agreement; or
 - (iii) redeem any of its ordinary or preference share capital, except for (A) the redemption of the EI Preference Shares on the stipulated maturity date, (B) exclusively on a non-cash basis, the reduction of the paid in share capital of Ballygunner Holdings and (C) exclusively on a non-cash basis, any redemption in connection with the winding up of Ballytruckle Holdings.
- (b) Waterford Wedgwood GmbH will not vote in favour of the declaration or payment of a dividend by Rosenthal without the prior written consent of the Required Lenders.

29.8 **Financial Indebtedness**

- (a) No Obligor will incur or allow to be outstanding any Financial Indebtedness other than:
- (i) under the Finance Documents;
 - (ii) normal trade credit granted to it in the ordinary course of trading or, in the case of trade credit granted to Rosenthal, trade credit in respect of the sale and purchase of Stock granted to it by the Obligor in the ordinary course of trading between the Obligor and Rosenthal and on terms, and in no greater an amount than is, consistent with the practice followed by those companies at the date of this Agreement;
 - (iii) equipment leases and hire purchase transactions entered into in the ordinary course of trading where the total annual Financial Indebtedness for such leases and transactions for the Obligors as a whole does not exceed €50,000 at any one time;
 - (iv) operating leases entered into in the ordinary course of trading where the total annual Financial Indebtedness for such operating leases for the Obligors as a whole does not exceed €1,000,000 at any one time;
 - (v) Financial Indebtedness owing by one Obligor to another Obligor other than a Borrower which is not also a Guarantor;
 - (vi) Financial Indebtedness owing by one non-Obligor to another non-Obligor;
 - (vii) Financial Indebtedness owing by any Obligor to a non-Obligor, not exceeding in aggregate the sum of €500,000;
 - (viii) Financial Indebtedness of WC Designs under the CIT Facility or any Replacement Facility not exceeding US\$10,000,000;
 - (ix) the High Yield Bonds, so long as the interest rate is no greater than 11 per cent. per annum;
 - (x) the Existing Group Indebtedness, provided that it is repaid in accordance with the terms of this Agreement;
 - (xi) Financial Indebtedness with respect to (i) a customs guarantee issued for a member of the Group by Mizuho Corporate Bank, Limited in Japan, provided that the amount of the liability of the Group with respect to that guarantee is not increased above its current liability (being no more than Yen 152,000,000) and (ii) a customs guarantee of £400,000 with Wachovia Bank, National Association or a replacement thereof;
 - (xii) the granting of guarantees and indemnities permitted by paragraph (b) below;
 - (xiii) Financial Indebtedness outstanding under an Additional Subordinated Facility (a) provided that the amount of such Financial Indebtedness, when aggregated with all other Financial Indebtedness outstanding at that time under all other Additional Subordinated Facilities, does not exceed €10,000,000 (or its equivalent in any other currency) and (b) only in any event to the extent

permitted under the High Yield Bond Indenture and which the Company has demonstrated is so permitted to the satisfaction of the Agent;

- (xiv) the Ancillary Facilities;
 - (xv) under the Rosenthal Subordinated Facility or the WW Subordinated Facility;
 - (xvi) any other unsecured Financial Indebtedness outstanding at any time which in aggregate does not exceed €5,000,000 (or its equivalent in any other currency), but only to the extent permitted under the High Yield Bond Indenture and which the Company has demonstrated is so permitted to the satisfaction of the Agent;
 - (xvii) Financial Indebtedness (being no more than €25,000,000) secured on the assets, properties or undertaking of PT Doulton or of any Subsidiary of the Company incorporated in Japan which is not a Borrower, and in respect of which any security provided by those companies pursuant to this Agreement in relation to such assets, properties or undertaking shall be released (and the Agent or the Security Trustee shall release that security) at the time such Financial Indebtedness is incurred, but only to the extent permitted under the High Yield Bond Indenture and which the Company has demonstrated is so permitted to the satisfaction of the Agent;
 - (xviii) leases treated at the date hereof for the purposes of generally accepted accounting principles in Ireland as operating leases, but which are treated as finance or capital leases under GAAP, provided that the total Financial Indebtedness outstanding at any time under such leases for the Obligors as a whole (without double counting) does not exceed €40,000,000;
 - (xix) any other Financial Indebtedness incurred with the prior written consent of the Required Lenders;
 - (xx) any Existing Financial Indebtedness to the extent covered by an L/C;
 - (xxi) Financial Indebtedness owing by Obligors to non-Obligors as at the date hereof which is not otherwise permitted by any other paragraph of this paragraph (a); and
 - (xxii) Financial Indebtedness permitted under Clause 29.9 (*Making Loans*).
- (b) The Company shall not, and shall procure that no member of the Group shall, grant any guarantee or indemnity or similar assurance against financial loss (**guarantees**) without the prior written consent of the Required Lenders. This paragraph (b) shall not prevent:
- (i) the granting of unsecured guarantees to customs and excise or similar authorities in the ordinary course of trading;
 - (ii) the granting of indemnities to banks in respect of guarantees issued by such banks securing obligations of a member of the Group in relation to retail premises in the ordinary course of business on an unsecured basis but with cash deposits in aggregate not exceeding €100,000 of such indemnities;
 - (iii) a letter of comfort by Waterford Wedgwood plc in an aggregate amount not to exceed €400,000 in relation to Rosenthal's lease of its vehicle fleet;

- (iv) the granting of any other guarantees in the ordinary course of business, which are not in respect of Financial Indebtedness and which, in the aggregate, do not exceed €2,500,000 at any time;
- (v) the granting of guarantees in accordance with or under the Finance Documents;
- (vi) the granting of any guarantee under the High Yield Bonds (subordinated on the terms of the High Yield Indenture and the Intercreditor Agreement), provided a guarantee is granted hereunder in favour of the Finance Parties in respect of the Obligors' obligations under the Finance Documents or in respect of the Ancillary Facilities;
- (vii) the issue by an Obligor of a Solvency Undertaking with respect to another Obligor;
- (viii) any unsecured guarantees by the Company and/or Ashling Corporation in respect of the CIT Facility or any Replacement Facility, in any case not exceeding US\$2,000,000 in aggregate; or
- (ix) a counter-indemnity by the Company in favour of Glandore Limited in relation to the Cash Deposit.

29.9 Making Loans

No Obligor will be a creditor with respect to any Financial Indebtedness except for:

- (a) the grant of normal trade credit in the ordinary course of its trade;
- (b) loans made by it to another Obligor, other than a Borrower which is not also a Guarantor, which Financial Indebtedness shall in any event be subordinated on the terms set out in Clause 39.4 (*Subordination of Intercompany Debt*);
- (c) trade credit extended by any member of the Group on normal commercial terms and in the ordinary course of its trading, and in the case of trade credit extended by any member of the Group to Rosenthal, such trade credit shall be provided in the ordinary course of trading between those companies and on terms, and in no greater an amount than is, consistent with the practice followed by those companies at the date of this Agreement;
- (d) loans made by it to a member of the Group which is not an Obligor which, when aggregated with other such loans made by other Obligors to members of the Group which are not Obligors, do not exceed €5,000,000 in aggregate outstanding at any time;
- (e) loans up to £500,000 in aggregate outstanding at any time made by Josiah Wedgwood & Sons Limited to the Wedgwood Museum Trust to bridge any shortfall in funding for the Wedgwood Museum;
- (f) a subordinated loan of up to €750,000 owing by Quality TableWare (SA) Limited to Waterford Wedgwood Retail Limited;
- (g) secured loans made by it to a Rosenthal Company (including under any of the Rosenthal Intra-Group Facilities) which, when aggregated with loans made by any other Obligor to a Rosenthal Company (other than loans made by any Rosenthal Company to another Rosenthal Company), do not exceed €40,000,000 (less the amount of such loans which is

forgiven or waived from time to time as contemplated by Clause 29.12(b) (*Intra-Group Security and Rosenthal Intra-Group Facilities*)) at any time outstanding;

- (h) loans made by a Rosenthal Company to another Rosenthal Company;
- (i) loans made by Obligors to non-Obligors prior to, and in the principal amount outstanding as at, the date hereof; and
- (j) Financial Indebtedness permitted under Clause 29.8 (*Financial Indebtedness*).

Nothing in this Clause 29.9 shall prevent any non-Obligor from entering into a loan transaction with another non-Obligor.

29.10 WW Subordinated Facility and Rosenthal Subordinated Facility

The Company shall procure that:

- (a) neither the WW Subordinated Facility nor the Rosenthal Subordinated Facility is repaid or prepaid; and
- (b) the agreements documenting the WW Subordinated Facility and the Rosenthal Subordinated Facility and the arrangements for those facilities are not amended in any way, in particular, but without limitation, that there is no increase in the amount available to be borrowed by all of the Rosenthal Companies thereunder in excess of €40,000,000.

29.11 Bank Accounts

No Obligor will open or maintain any account of any type with any bank or financial institution providing like services other than the Charged Accounts and the Feeder Accounts.

29.12 Intra-Group Security and Rosenthal Intra-Group Facilities

- (a) No Obligor shall take any step to enforce any of the Intra-Group Security Documents without the prior written consent of the Majority Lenders.
- (b) Other than under a Security Document, neither Statum Limited nor Waterford Wedgwood GmbH shall (i) assign, transfer or otherwise dispose of its rights, benefit and interest, or obligations, under and in respect of the Rosenthal Intra-Group Facilities or any loans outstanding thereunder to any other person, nor (ii) forgive any of the indebtedness outstanding to it under either of the Rosenthal Intra-Group Facilities or waive any obligation of Rosenthal to make payment in respect thereof, save to the extent required to satisfy the auditors of Rosenthal as to its solvency (as a matter of German law), but so that such forgiveness or waiver shall result pro tanto in a corresponding cancellation of availability for utilisation or drawing by Rosenthal under the Rosenthal Intra-Group Facilities.
- (c) Save for any forgiveness permitted under Sub-Clause (b) above, none of Rosenthal, Statum Limited nor Waterford Wedgwood GmbH shall make any amendment to, or variation of, the Rosenthal Intra-Group Facilities without the prior written consent of the Majority Lenders.

29.13 Cash Sweep

Each Obligor will procure that all credit balances in the Feeder Accounts are transferred to a Blocked Account on a weekly basis (or at such shorter intervals as the Agent may require).