
security interest in such Collateral shall not constitute a condition under this Section 4.01, but instead shall be required to be delivered after the Effective Date pursuant to arrangements and timing to be mutually agreed by the Agent and the Borrower Agent acting reasonably (and in any event within 90 days after the Effective Date or such longer period as may be reasonably agreed by the Agent).

(o) Material Adverse Effect. Since December 31, 2009, except as set forth in Section 3.6(a) of the Disclosure Schedules (as defined in the Transaction Agreement), (i) Seller Parties party to the Transaction Agreement and each of their affiliates that is transferring or contributing the Contributed Assets have conducted the businesses related to the Contributed Assets in all material respects in the ordinary course of business consistent with past practice and (ii) there has not been any effect, event, change, occurrence or circumstance that, individually or in the aggregate, has had or reasonably would be expected to have a Material Adverse Effect. As used in this paragraph, "Material Adverse Effect" means a material adverse effect on or material adverse change to the Assets, the SAF Assets, the SuperMom's Assets, the Minnesota Pipe Line Interests, the Businesses and the Equity Interests, taken as a whole, or on the liabilities, condition (financial or otherwise) or results of operations of the foregoing; provided, however, that in no event shall any effect that results from any of the following be deemed to constitute a Material Adverse Effect: (i) the Contemplated Transactions or any actions reasonably contemplated by the Contemplated Transactions, or the pendency or announcement thereof, provided that this clause (i) shall not be taken into account for purposes of Section 3.3 of the Formation Agreement, (ii) changes or conditions affecting the petroleum industry (including feedstock pricing, refining, marketing, transportation, terminaling and trading) generally, (iii) changes in general economic, capital markets, regulatory or political conditions in the United States or elsewhere (including interest rate fluctuations), (iv) changes or proposed changes in Laws or GAAP or regulatory accounting requirements or interpretations thereof, (v) fluctuations in currency exchange rates or (vi) acts of war, insurrection, sabotage or terrorism (excluding from this exception any such event resulting in damage to the Physical Assets to the extent it would otherwise constitute a Material Adverse Effect), except with respect to the exceptions in (ii), (iii), (iv), (v) and (vi), in the event, and only to the extent, that such event, circumstance, change or effect has had a disproportionate effect on the Assets, the SAF Assets, the SuperMom's Assets, the Minnesota Pipe Line Interests, the Businesses and the Equity Interests, taken as a whole, as compared to other Persons engaged in the same industry in the same geographic regions and segment. As used in the preceding definition, capitalized terms defined in the Transaction Agreement as in effect on the date hereof are so used as so defined.

(p) Transactions. (i) The Acquisition shall have been consummated, or substantially simultaneously with the Effective Date, shall be consummated, in accordance with the terms of the Transaction Agreement, without giving effect to any modifications, amendments, consents or waivers by any affiliate of the Sponsor party thereto that are material and adverse to the Lenders or the Agent as reasonably determined by the Agent, without the prior consent of the Agent (such consent not to be unreasonably withheld, delayed or conditioned), (ii) the Equity Contribution shall have been made in the amount of at least \$195,000,000, (iii) concurrently with the consummation of the Acquisition, (x) the Subsidiaries shall have received gross proceeds of at least \$247,000,000 from the Realty Income Sale-Leaseback, (y) Holdings shall have received at least \$106,000,000 of proceeds under the Seller Payable Agreement and (z) the Subsidiaries shall have received gross proceeds of at least \$138,900,000 under the Crude Oil Intermediation Agreement and (iv) Holdings shall have received, or substantially simultaneously with the Effective Date, shall receive no more than \$290,000,000 in aggregate gross cash proceeds from the issuance of the Senior Secured Notes on the terms set forth in the Senior Secured Notes Documentation. The proceeds of the transactions described in clauses (ii), (iii) and (iv) above shall have been used to finance the transactions contemplated by the Transaction Agreement and pay related fees and expenses. After giving effect to the Transactions on the Effective Date, no Default or Event of Default shall be in existence under the Loan Documents or the Senior Secured Notes Documentation.

(q) Insurance. The Agent shall have received endorsements naming the Agent (together with the Collateral Agent (as defined in the Senior Secured Note Indenture), as applicable, as an additional insured or loss payee, as applicable, subject to the terms of the Intercreditor Agreement. The Joint Lead Arrangers shall have received evidence that the Loan Parties have obtained business interruption insurance covering the businesses to be acquired in the Acquisition and such terms and insurance policies shall be reasonably satisfactory to the Joint Lead Arrangers.

(r) PATRIOT Act. The Agent shall have received not later than 10 days prior to the Effective Date (or such later date as shall be acceptable to it), all documentation and other information about the Borrowers and the other Loan Parties as had been reasonably requested in writing at least 15 days prior to the Effective Date by the Agent that it reasonably determines is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act.

The Agent shall notify the Borrower Agent and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02 Each Credit Event. The obligation of each Revolving Lender to make a Revolving Loan on the occasion of any Revolving Borrowing, and of any Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The Agent shall have received, in the case of a Revolving Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with the last paragraph of Section 2.03) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.06(b) or, in the case of a Swingline Borrowing, the Swingline Lender and the Agent shall have received a Swingline Borrowing Request as required by Section 2.05(a).

(b) The representations and warranties of the Loan Parties set forth in this Agreement and in each of the other Loan Documents shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit (other than an amendment, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date); provided that on the Effective Date, only the Specified Representations shall be required to be made.

(c) After the Effective Date, at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit (other than an amendment, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), as applicable, no Event of Default or Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (b) and (c).

ARTICLE V.
AFFIRMATIVE COVENANTS

Until the Termination Date, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the Loan Parties, with the Lenders that:

SECTION 5.01 Financial Statements; Borrowing Base and Other Information. The Borrower Agent will furnish to the Agent (which will promptly furnish such information to the Lenders):

(a) within ninety (90) days after the end of each fiscal year of Holdings (or, solely with respect to the first fiscal year ending after the Effective Date, as soon as available, but in any event within 120 days), (i) its audited consolidated balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported by independent public accountants of recognized national standing (whose opinion shall not be qualified as to scope of audit or as to the status of Holdings and its consolidated Subsidiaries as a going concern) to the effect that such consolidated financial statements present fairly, in all material respects, the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP and (ii) its unaudited consolidating balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all certified by one of the Financial Officers of Holdings as presenting fairly, in all material respects, the financial condition and results of operations of Holdings and its consolidated Subsidiaries in accordance with GAAP;

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of Holdings (or, solely with respect to the first three of such fiscal quarters ending after the Effective Date, as soon as available, but in any event within 60 days), its consolidated balance sheet and related statements of earnings, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of the Financial Officers of Holdings as presenting fairly, in all material respects, the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(c) within thirty (30) days after the end of each fiscal month of Holdings (or, solely with respect to the first eight of such fiscal months ending after the Effective Date, as soon as available, but in any event within 45 days), its consolidated balance sheet and related statements of earnings and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for (or, in the case of the balance sheet, as of the end of) the corresponding period or periods of the previous fiscal year (other than with respect to any corresponding period or periods that occurred prior to the Effective Date), all certified by one of the Financial Officers of Holdings as presenting fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a certificate of a Financial Officer of Holdings in substantially the form of Exhibit C (i)

certifying that no Event of Default or Default has occurred and, if an Event of Default or Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth, in the case of the financial statements delivered under clause (a) or (b), reasonably detailed calculations of the Fixed Charge Coverage Ratio (whether or not a Trigger Event then exists) as of the end of the period to which such financial statements relate, (iii) describing in reasonable detail such information with respect to Permitted Acquisitions and Permitted Payments consummated during the preceding fiscal quarter as the Agent may reasonably require, to the extent such information has not previously been supplied to the Agent hereunder, (iv) certifying, in the case of the financial statements delivered under clause (a) or (b), a list of names of all Immaterial Subsidiaries (if any), Unrestricted Subsidiaries (if any) and other Excluded Subsidiaries (if any), that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary, Unrestricted Subsidiary or other Excluded Subsidiary, as applicable, and that all Domestic Subsidiaries listed as Immaterial Subsidiaries in the aggregate comprise less than 10.0% of Total Assets of Holdings and the Subsidiaries at the end of the period to which such financial statements relate and represented (on a contribution basis) less than 10.0% of EBITDA for the period to which such financial statements relate and (v) setting forth, in the case of the financial statements delivered under clause (a), (b) or (c), a list of any Subsidiary that is not a Loan Party, but that Guarantees any Note and Specified Hedge Obligations.

(e) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Event of Default under Section 6.12 (which certificate may be limited to the extent required by accounting rules or guidelines);

(f) concurrently with any delivery of consolidated financial statements under clause (a) or (b) above, the related unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

(g) within ninety (90) days (or, solely with respect to the first fiscal year ending after the Effective Date, 120 days) after the beginning of each fiscal year, a detailed consolidated budget of Holdings and its Subsidiaries by month for such fiscal year (including a projected consolidated balance sheet and the related consolidated statements of projected cash flows and projected income of Holdings and its consolidated Subsidiaries for each quarter of such fiscal year);

(h) within thirty (30) days after the end of each fiscal month, (i) an Expense and Statistical Statement relating to the refinery business of the Group Members, substantially in the form of Exhibit I, adjusted to include actual pricing for crude inputs and refined products and (ii) a Retail Marketing Statement relating to the retail marketing business of the Group Members, substantially in the form of Exhibit J;

(i) as soon as available but in any event on or prior to the 20th day of each fiscal month, a Borrowing Base Certificate as of the close of business on the last day of the immediately preceding fiscal month, together with such supporting information in connection therewith as the Agent may reasonably request (collectively, "Borrowing Base Information"), and which may include, without limitation, Inventory reports by category and location, together with a reconciliation to the corresponding Borrowing Base Certificate, deliver to the Agent a reasonably detailed calculation of each component of the Borrowing Base and the value of Eligible Inventory; provided that (i) if, at any time, Excess Availability is less than 65% of the lesser of

(x) the aggregate Revolving Credit Commitment and (y) the Borrowing Base (but clause (ii) below does not apply) (the “Semi-Monthly Trigger”), then, until this clause (i) ceases to be applicable as provided below, the Borrower Agent shall deliver Borrowing Base Information on Wednesday of every other week (or if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday (it being agreed that this clause (i) shall cease to be applicable once Excess Availability has equaled or exceeded the Semi-Monthly Trigger for at least thirty (30) consecutive days) and (ii) if, at any time, (A) Excess Availability is less than the greater of (x) 25% of the lesser of (1) the aggregate Revolving Credit Commitment and (2) the Borrowing Base and (y) \$37,500,000 or (B) a Default or Event of Default is in existence (the “Weekly Trigger”), then, until this clause (ii) ceases to be applicable as provided below, the Borrower Agent shall deliver a Borrowing Base Certificate and such supporting information on Wednesday of each week (or if Wednesday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday (or, in the case of this clause (ii), more frequently as may be requested by the Agent) (it being agreed that this clause (ii) shall cease to be applicable once Excess Availability has equaled or exceeded the Weekly Trigger, and no Default or Event of Default has been in existence, in each case for at least thirty (30) consecutive days); provided, further, that notwithstanding the above, the Value of Non-Gasoline Inventory for any Borrowing Base Certificate shall be deemed to be the Value of such Non-Gasoline Inventory as of the end of the then-preceding fiscal month;

(j) at the Agent’s request, concurrently with the delivery of the Borrowing Base Certificate (or more frequently as requested by the Agent if a Collateral Report Trigger is in effect), deliver to the Agent a schedule of Inventory as of the last Business Day of the immediately preceding month, semi-monthly period or week, as applicable, of the Borrowers, itemizing and describing the kind, type and quantity of Inventory, the applicable Borrower’s Cost thereof and the location thereof;

(k) at the Agent’s request, concurrently with the delivery of the Borrowing Base Certificate (or more frequently as requested by the Agent if a Collateral Report Trigger is in effect), deliver to the Agent a schedule of Receivables which (i) shall be as of the last Business Day of the immediately preceding month, semi-monthly period or week, as applicable, (ii) shall be reconciled to the Borrowing Base Certificate as of such last Business Day, and (iii) shall set forth a detailed aged trial balance of all of the Borrowers’ then existing Receivables, specifying the names, balance due and, if an Event of Default then exists, the addresses, for each Account Debtor obligated on any Receivable so listed;

(l) deliver to the Agent, at least three (3) Business Days prior to making any Permitted Acquisition or Permitted Payment, calculations demonstrating in reasonable detail that the relevant transaction complies with the relevant definition;

(m) in addition to reporting of Eligible Cash pursuant to each Borrowing Base Certificate, on Wednesday of each week (or if Wednesday is not a Business Day, on the next succeeding Business Day), the amount of Eligible Cash as of the close of business on the immediately preceding Tuesday;

(n) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials publicly filed by Holdings or any Subsidiary with the SEC, or with any national securities exchange, or, after an initial public offering of shares of capital stock of Holdings, distributed by Holdings to its shareholders generally, as the case may be;

(o) promptly following the Agent's request therefor, all documentation and other information that the Agent reasonably requests on its behalf or on behalf of any Lender in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; and

(p) as promptly as reasonably practicable from time to time following the Agent's request therefor, such other information regarding the operations, business affairs and financial condition of Holdings or any Subsidiary, or compliance with the terms of any Loan Document, as the Agent (on behalf of any Lender) may reasonably request.

Notwithstanding the foregoing, the obligations in clauses (a) and (b) of this Section 5.01 may be satisfied with respect to financial information of Holdings and its Restricted Subsidiaries by furnishing the applicable financial statements of Holdings (or any Parent) filed with the SEC; provided that, (i) to the extent such information relates to any Parent, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent, on the one hand, and the information relating to Holdings and the Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under clause (a) of this Section 5.01, such materials are accompanied by a report and opinion of PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be qualified as to the scope of audit or as to the status of Holdings (or such Parent) and its consolidated subsidiaries as a going concern.

Documents required to be delivered pursuant to clauses (a), (b) or (n) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents, or provides a link thereto on Holdings' website on the Internet at the website address provided to the Agent from time to time in writing; or (ii) on which such documents are posted on Holdings' behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) upon written request by the Agent, Holdings shall deliver paper copies of such documents to the Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Agent and (ii) Holdings shall notify (which may be by facsimile or electronic mail) the Agent of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance Holdings shall be required to provide paper copies of the compliance certificates required by clause (d) of this Section 5.01 to the Agent.

SECTION 5.02 Notices of Material Events. The Borrower Agent will furnish to the Agent written notice of the following promptly after any Responsible Officer of Holdings or any Borrower obtains knowledge thereof:

(a) the occurrence of any Event of Default or Default;

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(c) any loss, damage or destruction to the Collateral in the amount of \$10,000,000 or more, whether or not covered by insurance;

(d) any default notice received by a Responsible Officer of Holdings or any Borrower with respect to any one or more leased locations or public warehouses that in the aggregate contain Inventory in the amount of \$2,500,000 or more;

(e) any occurrence of a payment default under the Crude Intermediation Agreement or any successor or replacement supply agreement or an event which shall result in Liens permitted by Section 7.01(ee); or

(f) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred and are continuing, would reasonably be expected to result in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Responsible Officer of the Borrower Agent setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Existence; Conduct of Business. Each Loan Party will, and will cause each Subsidiary to, do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits (except as such would otherwise reasonably expire, be abandoned, disposed or permitted to lapse in the ordinary course of business), necessary or desirable in the normal conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except (i) other than with respect to Holdings' or any Borrower's existence, to the extent such failure to do so would not reasonably be expected to have a Material Adverse Effect or (ii) pursuant to a transaction permitted by Section 6.03.

SECTION 5.04 Payment of Obligations. Each Loan Party will, and will cause each Subsidiary to, pay or discharge all material Tax liabilities, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and where such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05 Maintenance of Properties. Each Loan Party will, and will cause each Subsidiary to (a) at all times maintain and preserve all material property necessary to the normal conduct of its business in good repair, working order and condition, ordinary wear and tear excepted and casualty or condemnation excepted and (b) make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto as necessary in accordance with prudent industry practice in order that the business carried on in connection therewith, if any, may be properly conducted at all times, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06 Books and Records; Inspection Rights; Appraisals; Field Examinations. (a) Each Loan Party will, and will cause each Subsidiary to, (i) keep proper books of record and account in accordance with GAAP in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (ii) permit any representatives designated by the Agent (including employees of the Agent, any consultants, accountants, lawyers and appraisers retained by the Agent or any Lender), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, including non-privileged environmental assessment reports and Phase I or Phase II studies in the possession and control of any Loan Party or any Subsidiary, and to discuss its affairs, finances and condition with its officers and

independent accountants, all at such reasonable times during normal business hours and with representatives of the Borrower Agent present, but not more than two per fiscal year (or, during the occurrence and continuation of an Event of Default, as often as reasonably requested).

(b) At reasonable times during normal business hours and upon reasonable prior notice (except when an Event of Default exists) that the Agent requests, independently of or in connection with the visits and inspections provided for in clause (a) above, (i) the Borrowers will grant access to the Agent (including employees of the Agent, any consultants, accountants, lawyers and appraisers retained by the Agent or any Lender) to such Person's books, records, accounts and Inventory so that the Agent or an appraiser retained by the Agent may conduct an Inventory appraisal and (ii) the Agent may conduct (or engage third parties to conduct) such field examinations, verifications and evaluations as the Agent may deem necessary or appropriate; provided that (i) unless clause (ii), (iii) or (iv) below is applicable, the Agent may conduct no more than one such appraisal and one such field examination in any period of 12 consecutive months, (ii) unless clause (iii) or (iv) below is applicable, the Agent may conduct up to two such appraisals and two such field examinations in any period of 12 consecutive months following the date upon which Excess Availability for five (5) consecutive Business Days is less than 65% of the lesser of (1) the aggregate Revolving Commitments and (2) the Borrowing Base, (iii) unless clause (iv) below is applicable, the Agent may conduct up to three such appraisals and three such field examinations in any period of 12 consecutive months following any date upon which Excess Availability for five (5) consecutive Business Days is less than the greater of (x) 17.5% of the lesser of (1) the aggregate Revolving Commitments and (2) the Borrowing Base and (y) \$26,250,000, and (iv) the Agent may conduct as many appraisals and field examinations as it may request during the existence and continuance of an Event of Default. All such appraisals, field examinations and other verifications and evaluations shall be at the sole expense of the Borrowers; provided that the Agent shall provide the Borrower Agent with a reasonably detailed accounting of all such expenses. Notwithstanding the foregoing, no more than four appraisals and four field examinations may be conducted in reliance on clauses (i), (ii) and (iii) of the preceding sentence in any period of 12 consecutive months.

(c) The Loan Parties acknowledge that the Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders, and Lenders have the right to request, certain Reports pertaining to the Loan Parties' assets for internal use by the Agent and the Lenders, subject to the provisions of Section 9.12 hereof.

SECTION 5.07 Compliance with Laws. Each Loan Party will, and will cause each Subsidiary to, comply in all material respects with (a) all Anti-Terrorism Laws and (b) all other Requirements of Law applicable to it or its property, except in the case of Requirements of Law described in clause (b) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08 Use of Proceeds. The proceeds of the Revolving Loans, and the Letters of Credit, will be used for capital expenditures, and for working capital needs and general corporate purposes. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulations T, U or X.

SECTION 5.09 Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies (a) insurance in such amounts and against such risks, as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations (after giving effect to any self-insurance reasonable and customary for similarly situated companies) and (b) all insurance required pursuant to the Collateral Documents (and shall cause (i) the Agent to be listed as a loss payee (together with any other loss payee in accordance with the Intercreditor Agreement) on property and casualty policies covering

loss or damage to Collateral and (ii) the Agent and the other Secured Parties to be listed as additional insureds on liability policies). The Borrower Agent will furnish to the Agent, upon request, information in reasonable detail as to the insurance so maintained.

SECTION 5.10 Additional Loan Parties; Additional Collateral; Further Assurances. (a) Subject to applicable law and any exceptions set forth in the Security Agreement, each Borrower and each Subsidiary that is a Loan Party shall cause (i) each of its Domestic Subsidiaries (other than any Excluded Subsidiary) formed or acquired after the date of this Agreement in accordance with the terms of this Agreement and (ii) any Domestic Subsidiary that was an Excluded Subsidiary but has ceased to be an Excluded Subsidiary, to become a Loan Party as promptly thereafter as reasonably practicable by executing a Joinder Agreement in substantially the form set forth as Exhibit D hereto (the “Joinder Agreement”). Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will simultaneously therewith or as soon as practicable thereafter grant Liens to the Agent, for the benefit of the Agent and the Lenders in any property (subject to the limitations with respect to Equity Interests set forth in paragraph (b) of this Section 5.10, the limitations with respect to real property set forth in paragraph (f) of this Section 5.10, applicable law and any other limitations set forth in the Security Agreement, and excluding property with respect to which the Agent and the Borrower Agent have reasonably determined that the cost of granting Loans in such property is excessive in relation to the value of the security to be afforded by such property) of such Loan Party which constitutes Collateral, on such terms as may be required pursuant to the terms of the Collateral Documents and in such priority as may be required pursuant to the terms of the Intercreditor Agreement. Subject to the approval of the Agent, any Domestic Subsidiary that is a Loan Party may be a Borrower hereunder, subject to (A) execution of a Joinder Agreement pursuant to which such Loan Party agrees to be bound as a Borrower hereunder and such other agreements, documents or instruments as the Agent may reasonably request and (B) the completion of a field examination and appraisal with results satisfactory to the Agent.

(b) (i) Subject to the limitations set forth or referenced in this Section 5.10, applicable law and any exceptions set forth in the Security Agreement, each Borrower and each Subsidiary that is a Loan Party will cause the issued and outstanding Equity Interests (other than Excluded Equity Interests) of each Subsidiary directly owned by any Borrower or any Subsidiary that is a Loan Party to be subject at all times to a first priority (subject to the Intercreditor Agreement and to other Liens permitted by Section 6.02), perfected Lien in favor of the Agent pursuant to the terms and conditions of the Loan Documents.

(ii) Subject to the limitations set forth or referenced in this Section 5.10, applicable law and any exceptions set forth in the Security Agreement, Holdings, each Borrower and each Subsidiary that is a Loan Party will cause, except with respect to intercompany Indebtedness, all evidences of Indebtedness for borrowed money in a principal amount in excess of \$2,000,000 (individually) that is owing to Holdings, a Borrower or any Subsidiary that is a Loan Party to be evidenced by a duly executed promissory note and pledged and delivered to the Agent (or its non-fiduciary agent or designee) under the Security Agreement and accompanied by instruments of transfer with respect thereto endorsed in blank.

(iii) Each Loan Party agrees that all Indebtedness of Holdings and each of its Subsidiaries having a principal amount in excess of \$2,500,000 that is owing to any Loan Party shall be evidenced by the Intercompany Note, which promissory note shall be required to be pledged and delivered to the Agent (or its non-fiduciary agent or designee) under the Security Agreement and accompanied by instruments of transfer with respect thereto endorsed in blank.

(c) Subject to the limitations set forth or referenced in this Section 5.10, applicable law and any exceptions set forth in the Security Agreement, and without limiting the foregoing, each Loan Party will, and will cause each Subsidiary that is a Loan Party to, execute and deliver, or cause to be executed and delivered, to the Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable (including the delivery of the Real Property Collateral Requirements), which may be required by law or which the Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Loan Parties, provided, however, that no Borrower and no other Loan Party shall be required to grant any security interest or take any action to perfect any security interest under the law of any jurisdiction outside the United States of America.

(d) Subject to the limitations set forth or referred to in this Section 5.10, applicable law and any exceptions set forth in the Security Agreement, if any material assets (including any real property or improvements thereto or any interest therein) are acquired by any Borrower or any Subsidiary that is a Loan Party after the Effective Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien in favor of the Agent upon acquisition thereof), the Borrower Agent will, as soon as reasonably practicable, notify the Agent thereof, and, if requested by the Agent, the Borrowers will cause such assets to be subjected to a Lien securing the Secured Obligations and will take, and cause the Loan Parties that are Subsidiaries to take, such actions as shall be necessary or reasonably requested by the Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section (but subject to the proviso in paragraph (c) of this Section), all at the expense of the Loan Parties.

(e) If, at any time and from time to time after the Effective Date, Subsidiaries that are not Loan Parties because they are Immaterial Subsidiaries comprise in the aggregate more than 10.0% of Total Assets as of the end of the most recently ended fiscal quarter of Holdings or more than 10.0% of EBITDA for the period of four consecutive fiscal quarters as of the end of the most recently ended fiscal quarter of Holdings, then Holdings shall, not later than 45 days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement, cause one or more such Subsidiaries to become additional Loan Parties (notwithstanding that such Subsidiaries are, individually, Immaterial Subsidiaries) such that the foregoing condition ceases to be true. In addition, if at any time any Subsidiary that is not a Loan Party Guarantees any Note and Specified Hedge Obligations, Holdings shall, not later than 10 days after the date on which such Subsidiary Guarantees any Note and Specified Hedge Obligations, cause such Subsidiary to become an additional Loan Party.

(f) Notwithstanding anything to the contrary contained in this Agreement, real property required to be mortgaged under the Loan Documents shall be limited to real property located in the U.S. that is owned in fee by a Loan Party, the cost or book value of which (whichever is greater) at the time of the acquisition thereof (or, in the case of real property owned on the Effective Date), the cost or book value of which (whichever is greater) on the Effective Date is \$3,500,000 or more (provided that the cost of perfecting such Lien is not unreasonable in relation to the benefits to the Lenders of the security afforded thereby in the reasonable determination of the Agent; provided, further, in no event, shall the aggregate value of such real property excluded from mortgage under the Loan Documents exceed \$30,000,000).

(g) Notwithstanding anything to the contrary contained herein, the Loan Parties shall not be required to include as Collateral any Excluded Assets (as defined in the Security Agreement).