

# PRIMO WATER CORP /CN/

## **FORM 8-K** (Current report filing)

Filed 08/02/01 for the Period Ending 07/19/01

Address	4221 W. BOY SCOUT BLVD. SUITE 400 TAMPA, FL, 33607
Telephone	813-313-1732
CIK	0000884713
Symbol	PRMW
SIC Code	2086 - Bottled and Canned Soft Drinks and Carbonated Waters
Industry	Non-Alcoholic Beverages
Sector	Consumer Non-Cyclicals
Fiscal Year	12/02

# COTT CORP /CN/

## FORM 8-K (Unscheduled Material Events)

Filed 8/2/2001 For Period Ending 7/19/2001

Address	207 QUEENS QUAY W SUITE 340 TORONTO ONTARIO CANA, 00000
Telephone	416-203-3898
CIK	0000884713
Industry	Beverages (Non-Alcoholic)
Sector	Consumer/Non-Cyclical
Fiscal Year	12/31

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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## FORM 8-K

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

Date of Report (Date of earliest event reported): JULY 19, 2001

### COTT CORPORATION

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(Exact Name of Registrant as Specified in its Charter)

CANADA	000-19914	NONE
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(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

207 QUEEN'S QUAY WEST  
SUITE 340  
TORONTO, ONTARIO M5J 1A7

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(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (416) 203-3898

N/A

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(Former Name or Former Address, if Changed Since Last Report)

## **ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS**

Effective July 19, 2001, Cott Corporation, through its indirect wholly-owned U.S. subsidiary, BCB USA Corp. (together, the "Company"), completed an acquisition of certain assets of Royal Crown Company, Inc. ("Royal Crown") pursuant to an Asset Purchase Agreement ("Asset Purchase Agreement") dated as of June 13, 2001. The purchase price ("Purchase Price") was US \$94 million, subject to standard purchase price adjustments.

The purchased assets include intellectual property, licenses and permits, inventories and supplies, equipment, assumed contracts, accounts receivable and the facility used by Royal Crown in the production of concentrate (the "Concentrate Assets"). The Company intends to use the Concentrate Assets to produce all its concentrate requirements for its retailer brand beverages.

Under the Asset Purchase Agreement, the Company also purchased the assets of Royal Crown's international business, including intellectual property, licenses and permits, inventories and supplies, office equipment, assumed contracts and accounts receivable.

The Company funded the acquisition with proceeds from its credit facility with Lehman Commercial Paper, Inc. and certain other lenders. See Item 5 below.

The foregoing description is qualified in its entirety by reference to the Asset Purchase Agreement filed herewith as Exhibit 2.1.

## **ITEM 5. OTHER EVENTS**

On July 19, 2001, the Company executed a US \$150 million combined term and revolving credit facility ("Credit Facility") with Lehman Commercial Paper, Inc. as General Administrative Agent, First Union National Bank, as Working Capital Facility Agent, Bank of Montreal, as Canadian Administrative Agent, and the several other agents and lenders thereunder. The Credit Facility consists of a 5 1/2 year term loan facility in an aggregate principal amount of US \$100 million and a 4 1/2 year revolving credit facility in the amount of US \$50 million, both of which are subject to early termination. Borrowings under the Credit Facility are secured by certain assets of BCB USA Corp. and Cott Corporation. The foregoing description is qualified in its entirety by reference to the Credit Facility filed herewith as Exhibit 10.1.

## **ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS**

(a) Financial Statements of Business Acquired - Not Applicable.

(b) Pro Forma Financial Statements - Not Applicable.

(c) Exhibits.

2.1+ Asset Purchase Agreement by and among Royal Crown Company, Inc., Cott Corporation and BCB USA Corp. dated as of June 13, 2001.

10.1.\* Credit Agreement dated as of July 19, 2001 between BCB USA Corp., Cott Corporation and The Several Lenders from Time to Time Parties Hereto, Lehman Brothers Inc. as advisor, lead arranger and book manager, First Union National Bank as syndication agent and as working capital term loan facility agent and revolving credit facility agent, Bank of Montreal as Canadian Administrative Agent and Lehman Commercial Paper, Inc. as General Administrative Agent.

99.1. Press Release issued June 13, 2001.

99.2. Press Release issued July 23, 2001.

+ Certain portions of this document are subject to a request for confidential treatment. Also, in accordance with Item 601(b)(2) of Regulation S-K, the schedules to this Exhibit have been omitted and a list briefly describing the schedules is contained in the Exhibit. The Registrant will furnish supplementally a copy of any omitted schedule to the Commission upon request.

\* Certain portions of this document are subject to a request for confidential treatment.

**SIGNATURES**

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

**COTT CORPORATION**

*Date: August 2, 2001*

*By: /s/ Raymond P. Silcock*

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*Raymond P. Silcock*  
*Executive Vice President & Chief Financial*  
*Officer*

## EXHIBIT INDEX

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99.1. Press Release issued June 13, 2001.

99.2. Press Release issued July 23, 2001.

+ Certain portions of this document are subject to a request for confidential treatment. Also, in accordance with Item 601(b)(2) of Regulation S-K, the schedules to this Exhibit have been omitted and a list briefly describing the schedules is contained in the Exhibit. The Registrant will furnish supplementally a copy of any omitted schedule to the Commission upon request.

\* Certain portions of this document are subject to a request for confidential treatment.

**Exhibit 2.1**

**EXECUTION COPY**

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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**ROYAL CROWN COMPANY, INC.,**

**COTT CORPORATION**

**AND**

**BCB USA CORP.**

**Dated as of June 13, 2001**

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# TABLE OF CONTENTS

		PAGE
		----
Article I	PURCHASE AND SALE OF ASSETS.....	1
1.1	Purchase and Sale of Assets.....	1
1.2	Excluded Assets.....	5
1.3	Assumption of Liabilities.....	7
Article II	PAYMENT TO SELLER.....	8
2.1	Consideration for the Assets.....	8
2.2	Allocation of the Purchase Price.....	8
2.3	Adjustment to Purchase Price.....	9
2.4	Apportionments for the Owned Real Property.....	10
Article III	THE CLOSING.....	11
3.1	Closing.....	11
3.2	Delivery of Items by Seller.....	11
3.3	Delivery of Items by Buyers.....	13
3.4	Conditions to the Obligations of Buyers to Close.....	14
3.5	Conditions to the Obligations of Seller to Close.....	15
3.6	Effect of Closing.....	16
Article IV	GENERAL REPRESENTATIONS AND WARRANTIES OF SELLER.....	16
4.1	Organization; Powers and Execution.....	16
4.2	Breach of Statute.....	16
4.3	Litigation.....	17
4.4	Taxes.....	17
4.5	Brokers.....	17
4.6	Certain Inventory.....	17
4.7	Foreign Corrupt Practices Act.....	17
4.8	Employee Information.....	17
4.9	Disclosure Schedule.....	18
4.10	EXCLUSIVITY OF REPRESENTATIONS.....	18
Article V	REPRESENTATIONS AND WARRANTIES OF SELLER WITH RESPECT TO THE RC INTERNATIONAL BUSINESS.....	18
5.1	Good Standing of Seller; Powers.....	18

**TABLE OF CONTENTS**  
(continued)

	PAGE
	----
5.2	Breach of RC International Material Assumed Contracts..... 19
5.3	RC International Litigation..... 19
5.4	RC International Legal Compliance..... 19
5.5	RC International Financial Statements..... 19
5.6	Title to, Condition of and Location of the RC International Assets..... 19
5.7	RC International Material Assumed Contracts..... 20
5.8	RC International Intellectual Property..... 20
5.9	RC International Inventory..... 21
5.10	RC International Accounts Receivable..... 21
5.11	RC International Labor Matters..... 21
5.12	RC International Customers..... 22
5.13	RC International Employee Plans..... 22
5.14	RC International Insurance..... 22
Article VI	REPRESENTATIONS AND WARRANTIES OF SELLER WITH RESPECT TO THE COTT BUSINESS..... 23
6.1	Good Standing of Seller; Powers..... 23
6.2	Breach of Cott Material Assumed Contracts..... 23
6.3	Cott Litigation..... 23
6.4	Cott Legal Compliance..... 23
6.5	Material Changes..... 23
6.6	Title to, Condition of and Location of the Cott Assets..... 23
6.7	Cott Material Assumed Contracts..... 24
6.8	Cott Intellectual Property..... 24
6.9	Cott Inventory..... 25
6.10	Cott Accounts Receivable..... 25
6.11	Cott Labor Matters..... 25
6.12	Cott Employee Plans..... 26
6.13	Cott Insurance..... 26
6.14	Owned Real Property..... 26
6.15	Environmental Matters..... 27

**TABLE OF CONTENTS**  
(continued)

	PAGE
Article VII	REPRESENTATIONS AND WARRANTIES OF BUYERS..... 28
7.1	Organization and Good Standing of Buyers..... 28
7.2	Powers; Execution..... 28
7.3	Breach of Statute or Contract..... 28
7.4	No Litigation..... 28
7.5	Financial Ability..... 28
7.6	Breaches..... 28
7.7	Brokers..... 29
Article VIII	INDEMNITIES..... 29
8.1	Survival..... 29
8.2	General Indemnification by Seller..... 29
8.3	General Indemnification by Cott..... 31
8.4	Method of Asserting Claims..... 32
8.5	Exclusive Remedies..... 34
8.6	Certain Adjustments..... 34
Article IX	COVENANTS PENDING CLOSING..... 35
9.1	Access to Information..... 35
9.2	Conduct of Business Pending Closing..... 36
9.3	Reasonable Best Efforts..... 37
9.4	Public Announcements..... 38
9.5	Buyers..... 38
9.6	Remediation Agreement..... 38
Article X	TERMINATION..... 38
10.1	Termination..... 38
10.2	Effect of Termination..... 39
Article XI	FURTHER COVENANTS..... 39
11.1	Confidentiality..... 39

\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]

**TABLE OF CONTENTS**  
(continued)

	PAGE
	----
11.6	Employees..... 47
11.7	Mail and Other Communications..... 48
11.8	Further Action..... 48
11.9	Expenses and Finder's Fees..... 49
11.10	Accounts Receivable..... 50
11.11	Bulk Sales Laws..... 50
	*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]
Article XII	GENERAL..... 50
12.1	Certain Defined Terms..... 50
12.2	Waiver..... 60
12.3	Notices..... 61
12.4	No Third Party Beneficiaries..... 61
12.5	Headings..... 61
12.6	Entire Agreement..... 62
12.7	Severability..... 62
12.8	Assignability..... 62
12.9	Successors and Assigns..... 63
12.10	Governing Law..... 63
12.11	Counterparts..... 63
12.12	Consent to Jurisdiction..... 63

## LIST OF SCHEDULES

Schedule 1.1(a)(i)(A)	RC International Marks
Schedule 1.1(a)(i)(C)	RC International Websites
Schedule 1.1(a)(i)(D)	RC International Customer List
Schedule 1.1(a)(iv)	RC International Office Equipment
Schedule 1.1(a)(v)	RC International Assumed Contracts
Schedule 1.1(b)(i)(A)	Cott Marks
Schedule 1.1(b)(i)(B)	Cott US Formulas
Schedule 1.1(b)(iv)	Cott Equipment
Schedule 1.1(b)(v)	Cott Assumed Contracts
Schedule 1.1(b)(vii)	Description of Owned Real Property
Schedule 1.1(b)(viii)	Cott Financial Information
Schedule 1.2(f)	RC Domestic Formulas
Schedule 2.3(a)	Working Capital Calculation
Schedule 2.3(b)	Valuation Methods
Schedule 3.3(1)	Agreements Subject to Joinder
Schedule 4.2(c)	Consents of Governmental Authorities
Schedule 4.8	Transferred Employees
Schedule 5.2	Conflicts with RC International Material Assumed Contracts
Schedule 5.3	RC International Litigation
Schedule 5.5(a)	Division Performance Statement
Schedule 5.6(a)	Exceptions to Title to RC International Assets
Schedule 5.7	RC International Material Assumed Contracts
Schedule 5.8	RC International Intellectual Property
Schedule 5.11(b)	RC International Labor Matters
Schedule 5.12	RC International Customers
Schedule 5.13(a)	RC International Employee Plans
Schedule 5.13(c)	RC International Multiemployer Plans
Schedule 6.2	Conflicts with Cott Material Assumed Contracts
Schedule 6.3	Cott Litigation
Schedule 6.6(a)	Exceptions to Title to Cott Assets
Schedule 6.7	Cott Material Assumed Contracts
Schedule 6.11(b)	Cott Labor Matters
Schedule 6.12(a)	Cott Employee Plans
Schedule 6.12(c)	Cott Multiemployer Plans
Schedule 6.14(c)	Condition of Owned Real Property
Schedule 6.15	Environmental Matters
Schedule 9.2	Conduct of Business Pending Closing
Schedule 11.3(a)	Permitted Branded Carbonated Soft Drinks
Schedule 12.1	Permitted Encumbrances

## LIST OF EXHIBITS

Exhibit A	Bill of Sale
Exhibit B	Assumption Agreement
Exhibit C	Trademark Assignment
Exhibit D	Copyright Assignment
Exhibit E	Termination Agreement
Exhibit F	Transitional Services Agreement
Exhibit G	Settlement Termination Agreement
Exhibit H	Guaranty
Exhibit I	Remediation Agreement Summary

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of June 13, 2001, by and among Royal Crown Company, Inc., a Delaware corporation ("Seller"), and Cott Corporation, a Canada corporation ("Cott") and BCB USA Corp., a Georgia corporation ("BCB").

WHEREAS, Seller is in the business of (i) manufacturing and selling certain concentrates, and emulsions used in the production of concentrates, which are used in the manufacturing, marketing and selling in the Territory (as hereinafter defined) of certain carbonated beverages under either the RC International Current Marks (as hereinafter defined) or other bottler brand marks and (ii) marketing certain carbonated beverages under the RC International Current Marks (collectively, the "RC International Business");

WHEREAS, Seller is in the business of developing exclusively for, and manufacturing and selling exclusively to, the Cott Group certain concentrates, and emulsions used in the production of concentrates, which are used in the production of Cott Products (as hereinafter defined) and providing quality control services, including technical support, pursuant to the Cott Agreement (as hereinafter defined) (the "Cott Business");

WHEREAS, Buyers desire to purchase from Seller and Seller desires to sell to Buyers certain assets used in connection with the RC International Business and certain assets used in connection with the Cott Business, which assets are all further described below which include, in the case of the Cott Business, without limitation, the Owned Real Property, and Seller desires to transfer to Buyers and Buyers desire to assume from Seller certain liabilities in connection with such assets, all upon the terms and conditions set forth in this Agreement;

WHEREAS, Buyers desire to purchase from Seller and Seller desires to sell to Buyers the Cott Marks (as hereinafter defined), upon the terms and conditions set forth in this Agreement; and

WHEREAS, capitalized terms used herein shall have the respective meanings set forth in Section 12.1.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Seller and Buyers hereby agree as follows:

### **ARTICLE I**

#### **PURCHASE AND SALE OF ASSETS**

1.1 PURCHASE AND SALE OF ASSETS. On the terms and subject to the conditions set forth in this Agreement, Seller shall sell, convey, transfer, assign, grant and deliver to Buyers, and Buyers shall purchase, acquire and accept from Seller at the Closing, Seller's right, title and interest in and to the following specifically identified assets of Seller (collectively, the "Assets"), free and clear of all liabilities, obligations, pledges, security interests, options, rights of first refusal, rights of first

offer, liens, claims, encumbrances or charges of any nature (collectively, "Encumbrances") other than Permitted Encumbrances:

(a) RC International Assets. (All items described in this Section 1.1(a), collectively, the "RC International Assets").

(i) Intellectual Property. (All items described in this Section 1.1(a)(i), collectively, the "RC International Intellectual Property").

(A) The trademarks, trademark rights, trade dress, service marks, service mark rights, brand names, trade names and trade name rights, service names and service name rights, business and product names currently used in the RC International Business marked with an "\*" on Schedule 1.1(a)(i)(A) and all bottle designs and molds therefor currently used or developed exclusively in the RC International Business (collectively, the "RC International Current Marks"), all goodwill relating to the RC International Current Marks, all pending applications for and registrations of any of the RC International Current Marks and the right to sue for past infringement or payment, if any, in connection with the RC International Current Marks;

(B) The trademarks, trademark rights, trade dress, service marks, service mark rights, brand names, trade names and trade name rights, service names and service name rights not marked with an "\*" on Schedule 1.1(a)(i)(A) (collectively, the "RC International Additional Marks" and, with the RC International Current Marks, the "RC International Marks"), all goodwill relating to the RC International Additional Marks, all pending applications for and registrations of any of the RC International Additional Marks and the right to sue for past infringement or payment, if any, in connection with the RC International Additional Marks;

(C) Those copyrightable materials (excluding the domain name "rccola.com") contained on the websites set forth on Schedule 1.1(a)(i)(C) (the "Websites") and the personal data collected from the Websites, in each case which relate solely and exclusively to the RC International Business;

(D) A list of all current distributors, customers, bottlers, franchisees, licensees and brokers of the RC International Business as set forth on Schedule 1.1(a)(i)(D), which shall be delivered in print, magnetic medium or computer form, including names, addresses and account details, as Seller and Cott shall agree;

(E) (i) All copyrightable materials, articles, typographical arrangements, photographs, coupons and other printed materials used solely in connection with the RC International Business and (ii) all copyrights in and to the RC International Marks (the "RC International Copyrights"), all pending applications for and registrations of any RC International Copyrights and the right to sue for past infringement or payment, if any, in connection with the RC International Copyrights; and

(F) \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]



(ii) Licenses and Permits. To the extent transferable and assignable, all rights of Seller in and to permits, licenses, approvals and authorizations by or of Governmental Authorities relating solely to the RC International Business.

(iii) Inventories and Supplies.

(A) All finished inventory of RC International Branded Concentrates and RC International Non-Branded Concentrates exclusively related to the RC International Business in the possession or control of Seller wherever located;

(B) All labels, coupons, sales solicitation materials, promotional materials and items, marketing materials, sales kits, promotional publications, circulars, promotional lists, prospect lists, direct mail materials and stationery, and all disks and other media on which the foregoing are stored, in each case relating solely to the RC International Business and in the possession or control of Seller or its Affiliates or its manufacturers, agents or vendors;

(C) All raw materials, work in process and packaging materials, in each case relating solely to the RC International Business and in the possession or control of Seller wherever located; and

(D) 14% of all Common Inventory.

(iv) Office Equipment. The office equipment (excluding Information Technology) located at the RC International Business's office in Ft. Lauderdale, Florida, and used solely and exclusively in the RC International Business as set forth on Schedule 1.1(a)(iv).

(v) Assumed Contracts. All of Seller's right, title, and interest in and to the Contracts listed on Schedule 1.1(a)(v) and all other Contracts to which Seller is a party or by which Seller or the RC International Assets are bound that relate solely to the RC International Business (exclusive of those which relate to the supply of materials for the production of concentrates or emulsions by Seller) (collectively, the "RC International Assumed Contracts"), in each case, to the extent such RC International Assumed Contract is in effect as of the Closing, subject to the provisions of Section 1.3(d).

(vi) Accounts Receivable. All accounts receivable arising in the conduct of the RC International Business outstanding as of the Closing which are of the nature of the categories set forth in Schedule 2.3(a) (collectively, the "RC International Accounts Receivable").

(vii) Accounting Information. An electronic file in such format as is mutually acceptable to Seller and Cott which contains all reasonably appropriate financial account balances to the extent that they relate to the RC International Business which are reflected in the general ledger of the RC International Business and other accounting books and records of Seller, as well as all other books and records in the possession or under the control of Seller, in each case, to the extent that they relate to the RC International Business.

(viii) Memorabilia. All memorabilia materials of any nature (including artwork, paintings, signs, plaques, prints, posters and statues) relating solely to the RC International Business located at the Owned Real Property or the RC International Business's office in Ft. Lauderdale, Florida.

(b) Cott Assets. (All items described in this Section 1.1(b), collectively, the "Cott Assets").

(i) Intellectual Property. (All items described in this Section 1.1(b)(i), collectively, the "Cott Intellectual Property").

(A) The trademarks, trademark rights, trade dress, service marks, service mark rights, brand names, trade names and trade name rights, service names and service name rights, business and product names set forth on Schedule 1.1(b)(i)(A) (collectively, the "Cott Marks"), all goodwill relating to the Cott Marks, all pending applications for and registrations of any of the Cott Marks and the right to sue for past infringement or payment, if any, in connection with the Cott Marks; and

(B) (i) The formulas used in the production of the Cott Current Concentrates (the "Cott Current Formulas") and (ii) the formulas currently in Seller's possession or under its control and (x) developed for use solely pursuant to the Cott Agreement to which Seller has title to pursuant to the terms of the Cott Agreement or (y) developed by either Seller or Cott or by Seller and Cott, jointly, prior to the date of the Cott Agreement for use solely in the Cott Business to which Seller or Seller and Cott, jointly, has title to (the "Cott Additional Formulas") and (iii) the formulas set forth in Schedule 1.1(b)(i)(B) (the "Cott US Formulas," and, together with the Cott Current Formulas and the Cott Additional Formulas, the "Cott Formulas") together, in the case of (i), (ii) and (iii) above, with all inventions (whether patentable or not), processes, specifications, technologies, methodologies, technical, manufacturing or engineering information or other proprietary information and know-how exclusively related thereto (collectively, the "Cott Formula Information").

(ii) Licenses and Permits. To the extent transferable and assignable, all rights of Seller in and to permits, licenses, approvals and authorizations by or of Governmental Authorities relating solely to the Cott Business or the Owned Real Property.

(iii) Inventories and Supplies.

- (A) All finished inventory of Cott Current Concentrates in the possession or under the control of Seller wherever located;
- (B) All raw and packaging materials and work in process relating solely to the Cott Business and in the possession or under the control of Seller; and
- (C) 56% of the Common Inventory (in addition to the percentage of the Common Inventory set forth in Section 1.1(a)(iii)(D) above).
- (iv) Equipment. All equipment located at the Owned Real Property as set forth on Schedule 1.1(b)(iv), together with all manufacturing supplies, parts and accessories related thereto at the Owned Real Property.
- (v) Assumed Contracts. All of Seller's right, title, and interest in and to (A) the Lutheran License and the Contracts listed on Schedule 1.1(b)(v) and (B) all other Contracts to which Seller is a party or by which Seller or the Cott Assets are bound that relate solely to the Owned Real Property (collectively, the "Cott Assumed Contracts"), in each case, to the extent such Cott Assumed Contract is in effect as of the Closing, subject to the provisions of Section 1.3(d).
- (vi) Accounts Receivable. All accounts receivable arising in connection with the Cott Business outstanding as of the Closing other than under the Cott Agreement (collectively, the "Cott Accounts Receivable").
- (vii) Real Property. All of Seller's right, title and interest in and to the Real Property located in the City of Columbus, Muscogee County, Georgia and more fully described on Schedule 1.1(b)(vii) (the "Owned Real Property").
- (viii) Information. The financial information with respect to the Cott Business set forth in Schedule 1.1(b)(viii) and all other books and records in the possession or under the control of Seller to the extent that they relate to the Owned Real Property.

No later than fifteen (15) Business Days immediately following the Closing Date,

- (i) all tangible property constituting Assets, including, without limitation, books and records that are in the possession or under the control of Seller or its Affiliates at a location other than the Owned Real Property or at the RC International Business's office in Ft. Lauderdale shall be delivered by Seller or its Affiliates, at Seller's sole cost and expense, to Cott at the Owned Real Property or, at Cott's sole cost and expense, any location other than the Owned Real Property, and (ii) Seller shall notify in writing each of its manufacturers, agents and vendors who have possession of any tangible property constituting Assets that such tangible property has been purchased by the applicable Buyer.

**1.2 EXCLUDED ASSETS.** All assets of Seller or its Affiliates not specifically identified above, whether or not used in connection with the RC International Business or the Cott Business, are not included in the Assets and shall be retained by Seller or its Affiliates (the "Excluded Assets") which shall include, without limitation:

(a) Cash and Cash Equivalents. Cash and cash equivalents, including all bank accounts (provided that all cash assets solely related to the RC International Business or the Cott Business that come into the possession of Seller or any of its Affiliates after the Closing and that relate to events after the Closing or that are proceeds of payment of RC International Accounts Receivable or Cott Accounts Receivable shall constitute Assets and shall promptly be turned over to Cott).

(b) Contracts. All of Seller's or its Affiliate's right, title and interest in and to any Contract other than an Assumed Contract, including, without limitation, the Cott Agreement (including all amounts due thereunder), the Fort Lauderdale Lease, Contracts relating to the supply of materials for the production of concentrates or emulsions by Seller and Contracts relating solely to the RC Domestic Business.

(c) Website Data. All of Seller's or its Affiliates' right, title and interest in and to personal data collected from the Websites other than as specified in Section 1.1(a)(i)(C).

(d) Inventory.

(i) All finished concentrates not constituting RC International Branded Concentrates or RC International Non-Branded Concentrates, in each case as specified in Section 1.1(a)(iii)(A), or Cott Current Concentrates and all raw materials, work in process, manufacturing supplies, parts, packaging materials and other accessories related thereto, in each case used or held for use by or on behalf of Seller solely in connection with the RC Domestic Business, in any case, wherever located.

(ii) 30% of the Common Inventory.

(e) Information Technology. Except as set forth on Schedule 1.1(a)(iv) or Schedule 1.1(b)(iv), all of Seller's and its Affiliates' rights in any and all licensed or proprietary telephone systems, computer software, firmware, middleware, programs, development tools, data, databases and data collections, applications and files (in whatever form or medium) including all source and object code relating thereto, all computer hardware, including, without limitation, all cables, connectors, power supply units and peripheral devices (including all servers, printers, scanners) used in connection therewith and all documentation relating to any of the foregoing, however used, including, without limitation, in payroll, accounting, billing/receivables, purchasing/payables, inventory, asset tracking, customer service, human resources or e-mail systems and, in each case, whether or not used in the RC International Business or the Cott Business (collectively, "Information Technology").

(f) Intellectual Property. The formulas currently in commercial use in the RC Domestic Business (the "RC Domestic Formulas"), whether or not also used in the RC International Business (but, if used in the RC International Business, subject to Section 11.3(e)), and the formulas developed for the RC Domestic Business, with such formulas and the RC Domestic Formulas to include, without limitation, those set forth on Schedule 1.2(f), or any other business of Seller or any of its Affiliates together with all inventions (whether patentable or not), processes, specifications, technologies, methodologies, technical, manufacturing or engineering information or other proprietary information and know-how, in each case, exclusively related

thereto (such inventions and other such processes and information solely with respect to the RC Domestic Formulas being, collectively, the "RC Domestic Formula Information").

(g) Memorabilia. All memorabilia materials of any nature (including artwork, paintings, signs, plaques, prints, posters and statues) relating to the RC Domestic Business or any other business of Seller or its Affiliates wherever located, including, without limitation, those at the Owned Real Property or the RC International Business's office in Ft. Lauderdale, Florida.

(h) Agreement. All of Seller's right, title and interest in and to this Agreement.

### 1.3 ASSUMPTION OF LIABILITIES.

(a) On the terms and subject to the conditions of this Agreement, each applicable Buyer shall assume and discharge (i) the obligation for performance due by Seller after the Closing Date under the applicable Assumed Contracts (other than with respect to any breach thereof caused by any act or failure to act by Seller or any predecessor in interest of Seller prior to or on the Closing Date), (ii) any and all obligations, including, without limitation, all accounts payable, accrued liabilities and other amounts payable to third parties, related to or arising out of the RC International Business or the Cott Business and incurred in the ordinary course of business, outstanding as of the Closing Date or arising thereafter, but, solely, with respect to any of the foregoing items described in this clause (ii) outstanding as of the Closing Date, of the nature of the categories set forth in Schedule 2.3(a); provided, however, that, except as provided in Section 11.9, none of the Buyers shall be liable for any Taxes of Seller which accrued with respect to any time period on or prior to the Closing Date or income Taxes that arise from the transactions contemplated hereby and (iii) any and all liabilities or obligations of the Buyers arising out of, related to or on account of their use of the Assets after the Closing Date (collectively, the "Assumed Liabilities").

(b) Except as expressly provided in Section 1.3(a), Section 11.6 and Section 11.9, Buyers assume no liabilities or obligations relating to the RC International Business, the Cott Business or the Assets. Except for the Assumed Liabilities, Buyers shall not assume by virtue of this Agreement or the transactions contemplated hereby, and shall not have liability for, any other liabilities or obligations of Seller or any of its Affiliates of any kind, character or description whatsoever, including, without limitation, any liabilities for Taxes related to or arising out of the RC International Business or the Cott Business accruing with respect to any time period occurring on or prior to the Closing Date (the "Retained Liabilities"). Seller or its Affiliates shall discharge in a timely manner all of the Retained Liabilities, provided, however, that Seller or its Affiliates shall have the ability to contest, in good faith, any such claim or liability asserted in respect thereof by any Person other than Buyers or their Affiliates (exclusive of disputes with respect to Retained Liabilities arising out of transactions between Seller and any Buyer or its Affiliates other than those contemplated by this Agreement), so long as such party's contest of any such claim does not result in an Encumbrance against Buyers or their Affiliates or any of their respective assets and properties; provided, further, that Buyers' agreement to permit Seller to exercise the rights described in the foregoing proviso does not constitute an acknowledgement by Buyers that any such claims are not indemnifiable claims subject to Article VIII hereof.

(c) For greater certainty, none of the representations and warranties of Seller contained in this Agreement shall be referred to in any way to determine what constitutes a Retained Liability or to limit the rights of any Buyer or the rights or obligations of Seller contained in this Agreement in connection with the Retained Liabilities.

(d) Notwithstanding anything to the contrary contained herein, neither this Agreement nor any other agreement referenced herein shall constitute an assignment of any Contract or right or benefit arising thereunder included in the Assets if such assignment would constitute a breach thereunder. In the event that Seller does not obtain any consent or waiver for the transfer of any Assumed Contract to the applicable Buyer (to the extent required by the terms of any such Assumed Contract) prior to the Closing, Seller shall hold such Assumed Contract in trust for and for the benefit of such Buyer. Seller and Cott shall continue to use their respective reasonable best efforts to obtain such consent or waiver and shall use their respective reasonable best efforts after the Closing to keep such Assumed Contract in effect for the benefit of the appropriate Buyer until such consent or waiver is obtained, including enforcement by Seller of such Assumed Contract, at the cost and for the account of Cott, of any and all rights of Seller against any other party to such Assumed Contract arising out of the breach, nonfulfillment or cancellation thereof by such other party or otherwise for the benefit of the applicable Buyer.

## **ARTICLE II**

### **PAYMENT TO SELLER**

2.1 **CONSIDERATION FOR THE ASSETS.** On the terms and subject to the conditions of this Agreement, in consideration of the sale, conveyance, transfer, assignment, grant and delivery of the Assets to Buyers, Cott shall pay to Seller the sum of Ninety-Four Million Dollars (\$94,000,000) (the "Purchase Price"). The Purchase Price shall be paid and delivered to Seller at the Closing by wire transfer of immediately available funds to the account designated by Seller to Cott in writing at least two (2) Business Days prior to the Closing.

2.2 **ALLOCATION OF THE PURCHASE PRICE.** The Purchase Price, plus the amount of Assumed Liabilities required to be included in consideration received pursuant to Section 1060 of the Code, shall be allocated for all purposes (including, without limitation, Tax purposes) in accordance with the requirements of Section 1060 of the Code. The allocation of the Purchase Price shall be as mutually agreed in writing between Cott and Seller no later than five (5) Business Days prior to the Closing (the "Allocation Schedule"). Seller and Cott recognize that the Purchase Price does not include the Assumed Liabilities required to be treated as purchase consideration for U.S. federal income tax purposes and that Cott will allocate such Assumed Liabilities appropriately and shall advise Seller of such allocation and the Allocation Schedule shall be revised accordingly. The Allocation Schedule shall be subject to adjustment as provided in Sections 2.3 and 2.4 below. Seller and Buyers agree

(i) to act in accordance with the computations and allocations contained in the Allocation Schedule (including Cott's allocation of Assumed Liabilities and any modifications thereto reflecting any post-closing adjustments) in all appropriate Tax forms for the tax year in which the Closing occurs and (ii) not to take a position on any Tax return before any Governmental Authority charged with the collection of any Tax or in any judicial proceeding that is in any manner inconsistent with the terms of any such allocation (including Cott's allocation of Assumed Liabilities and any modifications thereto)

reflecting any post-closing adjustments) without the consent of Cott, in the case of Seller, and Seller, in the case of any Buyer. In the event that any Taxing authority disputes the allocation as indicated on the Allocation Schedule (including Cott's allocation of Assumed Liabilities and any modifications thereto reflecting any post-closing adjustments), the party receiving notice of the dispute shall promptly notify the other party hereto concerning resolutions of the dispute.

### 2.3 ADJUSTMENT TO PURCHASE PRICE.

(a) No later than sixty (60) calendar days following the Closing, Seller shall prepare and deliver to Cott a statement, certified by Seller's Chief Financial Officer, of the working capital of the RC International Business and the Cott Business, being Inventory, RC International Accounts Receivable and Cott Accounts Receivable net of (i) payables, (ii) accrued liabilities and (iii) other liabilities, which, in the case of (i), (ii) and (iii) are of the nature of the categories set forth in Schedule 2.3(a), and which are related to or arise out of the RC International Business or the Cott Business (the "Working Capital"), as of the close of business on the Closing Date (the "Initial Working Capital Statement"), which shall set forth in detail the amounts underlying Seller's determination of the dollar value of the Working Capital. For purposes of this Section 2.3, the value of the components comprising Working Capital shall be determined as set forth in the notes to Schedule 2.3(a) and as set forth in Schedule 2.3(b).

(b) Cott shall notify Seller in writing (the "Notice of Disagreement") within thirty (30) days after receiving the Initial Working Capital Statement if Cott disagrees with Seller's calculation of the value of the Working Capital as of the close of business on the Closing Date which Notice of Disagreement shall set forth in reasonable detail the basis for such dispute and the U.S. dollar amounts involved and Cott's good faith estimate of the value of the Working Capital as of the close of business on the Closing Date. If Cott does not deliver a Notice of Disagreement to Seller within such thirty-day period, then the Initial Working Capital Statement shall be deemed to have been accepted by Buyers, shall become final and binding upon the parties and shall be the "Final Working Capital Statement."

(c) During the fifteen (15) Business Days immediately following the delivery of a Notice of Disagreement, Seller and Cott shall seek in good faith to resolve any differences that they may have with respect to any matter specified in the Notice of Disagreement. If at the end of such fifteen (15) Business Day period Seller and Cott have been unable to agree upon the valuation of the Working Capital, then Seller and Cott shall submit to the Independent Accounting Firm for review and resolution any and all matters that remain in dispute with respect to the Notice of Disagreement. Cott and Seller shall use their reasonable efforts to cause the Independent Accounting Firm to use commercially practicable efforts to make a final determination (which determination shall be binding on the parties hereto) of the value of the Working Capital as of the close of business on the Closing Date within fifteen

(15) Business Days from such submission, and such final determination shall be the "Final Working Capital Statement." The cost of the Independent Accounting Firm's review and determination shall be split equally between Seller and Cott. During the fifteen (15) Business Day review by the Independent Accounting Firm, Cott and Seller will each make available to the Independent Accounting Firm interviews with such individuals and such information, books and records as may be reasonably required by the Independent Accounting Firm to make its final determination.

(d) If the value of the Working Capital as of the close of business on the Closing Date (as set forth in the Final Working Capital Statement) is less than \$8.7 million, Seller shall pay to Cott the amount of such shortfall plus interest at the Agreed Rate calculated from the Closing Date to the date of payment as provided in this Section 2.3. If the value of the Working Capital as of the close of business on the Closing Date (as set forth in the Final Working Capital Statement) is greater than \$8.7 million, Cott shall pay to Seller the amount of such surplus plus interest at the Agreed Rate calculated from the Closing Date to the date of payment as provided in this Section 2.3. Within five (5) Business Days after the Final Working Capital Statement becomes final and binding on the parties hereto, Cott or Seller, as applicable, shall pay to the other the amounts provided by this Section 2.3(d). The allocation set forth on the Allocation Schedule shall be adjusted to reflect any payments made pursuant to this Section 2.3.

(e) Any payment due to either Seller or Cott hereunder shall be paid as soon as practicable on the day when due in U.S. dollars by wire transfer in immediately available funds. All computations of interest shall be made assuming an annual rate of 8% (the "Agreed Rate") on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Whenever any payment hereunder shall fall on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

#### 2.4 APPORTIONMENTS FOR THE OWNED REAL PROPERTY.

(a) The following are to be apportioned between Seller and the applicable Buyer with respect to the Owned Real Property as of the Closing Date as set forth below:

- (i) Real estate Taxes and assessments on the basis of the fiscal year for which assessed;
- (ii) Water and sewer charges on the basis of the fiscal year for which assessed, unless the meters are read on the Closing Date;
- (iii) Utilities, including, without limitation, telephone, electricity (and any sales Tax thereon) and gas, on the basis of the most recently issued bills therefor; unless the meters are read on the Closing Date;
- (iv) Fees for governmental permits to the extent actually transferred; and
- (v) Fuel (including any sales Tax thereon), based on a reading and the current price therefor; and
- (vi) Any other adjustments that are customarily made in the transfer of real property.

All of the foregoing fees and assessments that relate to the period ending on the Closing Date shall be apportioned to Seller. All of the foregoing fees and assessments that relate to the period beginning after the Closing Date shall be apportioned to the applicable Buyer. Cott shall



reimburse Seller for any payments made by Seller in respect of any of the foregoing fees and assessments for the period beginning after the Closing Date.

(b) Except as otherwise provided in this Agreement, the apportionments made pursuant to this Section 2.4 shall be made in accordance with the customs in respect to title closings in the jurisdiction where the Owned Real Property is located.

(c) Any errors in calculations or apportionments made pursuant to this Section 2.4 shall be corrected or adjusted as soon as practicable after the Closing.

(d) If the Closing shall occur before the Tax rate is fixed, the apportionment of real estate Taxes made pursuant to this Section 2.4 shall be upon the basis of the Tax rate for the next preceding year applied to the latest assessed valuation, subject to further and final adjustment when the Tax rate is fixed for the year in which the Closing takes place.

(e) The allocation set forth on the Allocation Schedule shall be adjusted to reflect all allocations made pursuant to this Section 2.4.

### **ARTICLE III**

#### **THE CLOSING**

3.1 CLOSING. The closing of the purchase and sale of the Assets hereunder (the "Closing") shall take place on such date as the parties shall agree (the "Closing Date"), but in no event later than the date specified in Section 10.1(b). The Closing shall take place at the offices of Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178. The Closing shall be effective as of the close of business on the Closing Date.

3.2 DELIVERY OF ITEMS BY SELLER. Seller shall deliver to Buyers at the Closing the items listed below:

(a) a copy, certified by the Secretary of Seller, of resolutions duly adopted by the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, and a certificate of incumbency for the officers of Seller executing this Agreement and any Ancillary Agreement, duly certified by the Secretary of Seller;

(b) (i) a certificate, duly executed by an authorized officer of Seller, certifying that (A) all representations and warranties of Seller under this Agreement are true and correct in all material respects as of the Closing, except that representations and warranties made as of a specific date need only be true as of such specified date and (B) all covenants and agreements of Seller required to be performed prior to the Closing under this Agreement have been performed in all material respects and (ii) a current Certificate of Good Standing of Seller issued by the Delaware Secretary of State;

(c) a Bill of Sale and Assignment (the "Bill of Sale") for the Assets, duly executed by Seller, in the form attached hereto as Exhibit A;

- (d) an Assumption Agreement (the "Assumption Agreement") for the Assumed Liabilities, duly executed by Seller, in the form attached hereto as Exhibit B;
- (e) a Trademark Assignment (the "Trademark Assignment") for the Marks, duly executed by Seller, in the form attached hereto as Exhibit C, together with an original of the Trademark Assignment transferring the Cott Marks to Seller;
- (f) a Copyright Assignment (the "Copyright Assignment") for the RC International Copyrights, duly executed by Seller, in the form attached hereto as Exhibit D;
- (g) a Termination Agreement (the "Termination Agreement") terminating the Cott Agreement, duly executed by Seller, in the form attached hereto as Exhibit E, together with a payment by wire transfer from Seller to Cott as settlement of all payments due Cott under the Cott Agreement;
- (h) a Limited Warranty Deed (the "Deed") for the Owned Real Property, duly executed by Seller, in a form reasonably acceptable to Seller and Cott;
- (i) a properly executed and completed certification from Seller as to Seller's non-foreign status under Section 1.1445-2(b) of the Code (the "FIRPTA Certificate");
- (j) a Transitional Services Agreement (the "Transitional Services Agreement") for the supply of concentrates, raw materials and other services, duly executed by Seller, in the form attached hereto as Exhibit F; and
- (k) an opinion of Morgan Lewis & Bockius LLP, on such matters, excluding title and conveyance of title matters, as is reasonably acceptable to counsels for Seller and Cott;
- (l) a Settlement Termination Agreement (the "Settlement Termination Agreement") with respect to the Cott Settlement Agreement, duly executed by Seller and CBI Holdings, Inc., in the form attached hereto as Exhibit G;
- (m) a License Assignment Agreement (the "License Assignment Agreement") assigning the Cott USA Trademark License Agreement to the applicable Buyer, duly executed by Seller or its applicable Affiliate, in a form reasonably acceptable to Seller and Cott;
- (n) a Guaranty (the "Guaranty"), in the form attached hereto as Exhibit H, duly executed by Dr Pepper/Seven Up, Inc.;
- (o) a License Agreement (the "License Agreement"), granting the applicable Buyer a perpetual, royalty-free license, freely assignable in connection with a sale of the RC International Business, with respect to all copyrightable materials, articles, typographical arrangements, photographs, coupons and other printed materials used in connection with both the RC International Business and the RC Domestic Business (whether contained on the Websites or otherwise), in a form reasonably acceptable to Seller and Cott, and duly executed by Seller or its applicable Affiliate; and

(p) such other documents and instruments as Cott and its counsel may reasonably request.

3.3 DELIVERY OF ITEMS BY BUYERS. Buyers shall deliver to Seller at the Closing the items listed below:

(a) a copy, certified by the Secretary of each Buyer, of resolutions duly adopted by the Board of Directors of such Buyer authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, and a certificate of incumbency for the officers of each Buyer executing this Agreement and any Ancillary Agreement, duly certified by the Secretary of such Buyer;

(b) (i) a certificate, duly executed by an authorized officer of each Buyer, certifying that (A) all representations and warranties of such Buyer under this Agreement are true and correct in all material respects as of the Closing, except that representations and warranties made as of a specific date need only be true as of such specified date and (B) all covenants and agreements of such Buyer required to be performed prior to the Closing under this Agreement have been performed in all material respects and (ii) a current Certificate of Good Standing of such Buyer issued by the jurisdiction of its organization;

(c) the Assumption Agreement, duly executed by the appropriate Buyer;

(d) the Trademark Assignment, duly executed by the appropriate Buyer;

(e) the Copyright Assignment, duly executed by the appropriate Buyer;

(f) the Termination Agreement, duly executed by Cott, together with a payment by wire transfer from Cott to Seller as settlement of all outstanding payments due Seller under the Cott Agreement;

(g) the Deed, duly executed by the appropriate Buyer, if required;

(h) the Transitional Services Agreement, duly executed by the appropriate Buyer;

(i) opinions by each of Goodmans LLP and Drinker Biddle & Reath LLP, on such matters as are reasonably acceptable to each such counsel, respectively, and counsel to Seller;

(j) the Settlement Termination Agreement, duly executed by Cott and BCB USA Corp. (f/k/a Cott Beverages USA, Inc.);

(k) the License Assignment Agreement, duly executed by the applicable Buyer;

(l) joinder agreements (collectively, the "Joinder Agreements"), in such form as are reasonably acceptable to Seller and Cott, to the agreements listed on Schedule 3.3(l), duly executed by the appropriate Buyer;

(m) the License Agreement, duly executed by the applicable Buyer;

(n) a wire transfer of immediately available funds to Seller constituting payment of the Purchase Price; and

(o) such other documents and instruments as Seller and its counsel may reasonably request.

**3.4 CONDITIONS TO THE OBLIGATIONS OF BUYERS TO CLOSE.** The obligations of Buyers to close hereunder shall be subject to fulfillment prior to the Closing of the following conditions unless waived by Cott:

(a) Each of the representations and warranties of Seller made in or pursuant to this Agreement shall be true and correct in all material respects as of the Closing Date, except that such representations and warranties made as of a specific date need only be true as of such specified date, and each of the covenants and agreements of Seller to be performed on or prior to the Closing Date shall have been duly performed in all material respects;

(b) There shall be no Order by a Governmental Authority in existence that expressly prohibits any of the transactions contemplated by this Agreement;

(c) Seller shall have delivered duly executed copies of the Bill of Sale, Assumption Agreement, Trademark Assignment, Copyright Assignment, Termination Agreement, Deed, FIRPTA Certificate, Transitional Services Agreement, Settlement Termination Agreement, License Assignment Agreement, Guaranty, License Agreement, Remediation Agreement and all other Closing deliveries contemplated by Section 3.2;

(d) From June 6, 2001, through the Closing Date, there shall not have been any loss of or damage to assets at the Owned Real Property except (i) if the loss or damage is \$250,000 or less and is covered by insurance with the proceeds actually received by Seller prior to Closing from such loss or damage having been used to repair or replace such asset or having been paid to Cott or, if not received prior to Closing, having been irrevocably and unconditionally assigned to Cott or (ii) if the loss or damage is in excess of \$250,000 but equal to or less than \$1 million, and is covered by any combination of insurance or Seller's funds to the extent of the full replacement value of such assets (with the insurance proceeds from such loss received by Seller prior to Closing, together with its own funds, having been used to repair or replace such assets or having been paid to Cott or, if the insurance portion has not been received prior to the Closing, having been irrevocably and unconditionally assigned to Cott);

(e) From the date hereof through the Closing Date, there shall not have been any material loss of the employees employed at the Owned Real Property as indicated on Schedule 4.8, other than Jimmy McKinstry and Toby Polhamus;

(f) The Phase II shall have been received by Cott and the Environmental Remedial Costs shall not be in excess of \$20 million;

(g) There shall be no Order by a Governmental Authority that expressly prohibits or affects (i) the use of the RC International Assets by the applicable Buyers that has an RC International MAE or (ii) the use of the Cott Assets by the applicable Buyers that has a Cott MAE;

(h) Cott shall have obtained a survey of the Owned Real Property depicting the following items to the reasonable satisfaction of Cott: (i) the lines and corners of the Owned Real Property and a metes and bounds description of the Owned Real Property substantially similar to and consistent with the description thereof contained in Schedule 1.1(b)(vii); (ii) the location of all buildings improvements, structures, plottable easements, fences, utility poles, meters, and parking areas are within the boundaries and setbacks of the Owned Real Property, and that there are no encroachments by or upon the Owned Real Property except those which in the reasonable discretion of Cott do not materially interfere with or otherwise materially adversely affect the use and enjoyment of the Owned Real Property consistent with past practice; (iii) the location of any building setbacks or other plottable restrictive covenants affecting the location of any improvements, and any violations thereof; and (iv) access to public streets sufficient for the existing use, consistent with past practice;

(i) Cott shall have obtained a title insurance policy from any reputable title insurance company licensed in the State of Georgia insuring the applicable Buyer's fee title to the Owned Real Property free and clear of all matters other than Permitted Encumbrances for an amount that is not greater than 150% of the current fair market value of the Owned Real Property;

(j) Cott shall have obtained the Financing on substantially the terms and conditions set forth in the Commitment Letter or on terms substantially similar thereto from any other lender reasonably acceptable to Cott; provided, however, that the failure to fulfill this condition shall not have occurred as a result of or arising out of the failure by Cott or any of its Affiliates to satisfy the terms of Section 9.3 hereto in so far as they relate to the Financing; and

(k) Seller shall have either obtained a UCC-3 termination statement of the UCC-1 filed by the Bank of New York in the State of Florida against the Seller or provided Cott with evidence, reasonably satisfactory to Cott, of the release of the Encumbrances evidenced by such UCC-1.

**3.5 CONDITIONS TO THE OBLIGATIONS OF SELLER TO CLOSE.** The obligations of Seller to close hereunder shall be subject to fulfillment prior to the Closing of the following conditions unless waived by Seller:

(a) Each of the representations and warranties of Buyers made in or pursuant to this Agreement shall be true and correct in all material respects as of the Closing Date, except that such representations and warranties made as of a specific date need only be true as of such specified date, and each of the covenants and agreements of Buyers to be performed on or prior to Closing shall have been duly performed in all material respects;

(b) There shall be no Order by a Governmental Authority in existence that expressly prohibits any of the transactions contemplated by this Agreement;

(c) Buyers shall have delivered duly executed copies of the Assumption Agreement, Trademark Assignment, Copyright Assignment, Termination Agreement, Deed, Transitional Services Agreement, Settlement Termination Agreement, License Assignment Agreement, Joinder Agreements, License Agreement, Remediation Agreement and all other Closing deliveries contemplated by Section 3.3;

(d) Cott shall have obtained a title insurance policy from any reputable title insurance company licensed in the State of Georgia insuring the applicable Buyer's fee title to the Owned Real Property free and clear of all matters other than Permitted Encumbrances for an amount that is not greater than 150% of the current fair market value of the Owned Real Property; and

(e) The Phase II shall have been received by Seller and the Environmental Remedial Costs shall not be in excess of \$3 million.

3.6 EFFECT OF CLOSING. Each condition set forth in this Article III shall be deemed to have been waived or satisfied in the event the Closing occurs; provided, however, that subject to the foregoing, no party's rights or remedies hereunder, including, without limitation, in connection with any breach of any representation, warranty or covenant by the other parties hereto on or prior to the Closing Date shall be prejudiced by the occurrence of the Closing.

## **ARTICLE IV**

### **GENERAL REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Cott and, if applicable, all other Buyers as follows:

4.1 ORGANIZATION; POWERS AND EXECUTION. Seller is a corporation, duly organized, validly existing and in corporate good standing under the laws of Delaware. Seller has all requisite corporate power and authority to execute, deliver and perform this Agreement and all other Ancillary Agreements to be executed and delivered by Seller pursuant to this Agreement. The execution and delivery by Seller of this Agreement and the Ancillary Agreements have been duly and validly authorized by all necessary corporate action on the part of Seller. This Agreement is, and this Agreement and the Ancillary Agreements will be as of the Closing, validly executed and delivered, and the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

4.2 BREACH OF STATUTE. Neither the execution and delivery of this Agreement or the Ancillary Agreements by Seller nor performance by Seller of any of its obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby (a) will violate any provision of the Certificate of Incorporation or By-Laws of Seller, (b) will violate in any respect any Law applicable to Seller or the Assets or (c) except for the expiration or early termination of the waiting period under the HSR Act and except as set forth on Schedule 4.2(c), requires in respect of Seller or the Assets any approval from, consent of or notice to any Governmental Authority other than, in the case of clauses (b) and (c), any conflict, breach or violation that, individually or in the aggregate, would not (x) have an RC International MAE, (y) have a Cott MAE or (z) materially impair or delay the ability of Seller to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

4.3 LITIGATION. There is no pending or, to the Knowledge of Seller, threatened in writing, litigation, judicial, administrative or arbitral action, proceeding or claim (collectively,

"Litigation") that, individually or in the aggregate, would impair or delay the ability of Seller to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

4.4 TAXES. From and after October 25, 2000, Seller has timely filed or been included in, or will timely file or be included in, all material Tax Returns required to be filed by it or in which it is to be included with respect to Taxes for any taxable period beginning on or after October 25, 2000 and ending on or before the Closing Date. All of the information provided by Seller in any of such material Tax Returns is true, complete and correct in all material respects. All Taxes shown to be payable on such material Tax Returns have been paid or will be paid except to the extent that the same are being contested in good faith. Seller has complied in all material respects with all applicable payroll tax and withholding requirements applicable to the RC International Business and to the Cott Business. Other than Permitted Encumbrances, there are no Encumbrances existing, threatened in writing or pending on the Assets on account of Taxes for any taxable period beginning on or after October 25, 2000.

4.5 BROKERS. Except for Schroder Salomon Smith Barney or an Affiliate thereof, whose fees will be paid by Seller, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller who might be entitled to any fee or commission from Seller or any of the Buyers in connection with the transactions contemplated by this Agreement.

4.6 CERTAIN INVENTORY. The amount of Common Inventory included in the Assets is reasonably sufficient to operate the RC International Business and the Cott Business, on a combined basis, in each individual case as currently conducted by Seller and in compliance with the applicable Contracts listed on Schedule 1.1(a)(v) and the Cott Agreement, as applicable, without disruption.

4.7 FOREIGN CORRUPT PRACTICES ACT. To the Knowledge of Seller, no director, officer or employee of Seller employed in the RC International Business has (i) made any direct or indirect unlawful payment to any official or employee of a Governmental Authority from Seller's corporate funds or (ii) materially violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or the anti-boycott provisions contained in 50 USC ss. 2407, 15 CFR 760.2 or Section 999 of the Code.

4.8 EMPLOYEE INFORMATION. With respect to employees employed by Seller and located at the Owned Real Property, prior to the date hereof, Seller has provided Cott and with respect to employees employed by Seller and engaged in the RC International Business, Seller will provide Cott as soon as practicable after the date hereof, but in no event later than ten (10) Business Days prior to the Closing, with a true and complete list showing the names, titles and current annual rates of salaries and other remuneration (including sick and vacation leave that is accrued but unused and service credited for purposes of vesting and eligibility to participate under any RC International Employee Plan or Cott Employee Plan applicable to such person) of all such employees, including in each case those employees on vacation, leave of absence, disability (work-related or otherwise) or sick leave (whether or not such employees return to active employment) (collectively, the "Employees"), in each case as of the date of such list. Schedule 4.8 sets forth a true and complete list of the names of the Employees employed by

Seller in the RC International Business or at the Owned Real Property as of the date hereof, which Schedule shall be updated by Seller on the day prior to the Closing.

4.9 DISCLOSURE SCHEDULE. The Schedules attached hereto (collectively, the "Disclosure Schedule") set forth, among other things, items of disclosure relating to any or all of the representations and warranties of Seller; provided, that the mere inclusion of an item in the Disclosure Schedule shall not be deemed an admission by Seller that such item represents a material exception or fact, event or circumstance or that such item would result in an RC International MAE or a Cott MAE.

#### 4.10 EXCLUSIVITY OF REPRESENTATIONS.

(a) THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN ARTICLES IV, V AND VI OF THIS AGREEMENT ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO COTT OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

(b) Buyers acknowledge that the representations and warranties contained in Sections 5.4, 5.5(b), 5.8(c), 5.13(b), 6.4, 6.5, 6.8(c), 6.11(a) and 6.12(b) shall be deemed not to include any representation or warranty by Seller with respect to any Tax matters relating to the RC International Assets or the RC International Business or the Cott Business or the Cott Assets.

(c) Buyers acknowledge that the representations and warranties contained in Sections 5.4 and 6.4 shall be deemed not to include any representation or warranty by Seller with respect to the RC International Intellectual Property or the Cott Intellectual Property.

(d) Buyers acknowledge that the representations and warranties contained in Sections 5.4, 5.5(b), 6.4, 6.5, 6.14(b) and 6.14(c) shall be deemed not to include any representation or warranty by Seller with respect to any environmental matter or condition relating to the RC International Assets or the RC International Business or the Cott Assets or the Cott Business.

### ARTICLE V

#### REPRESENTATIONS AND WARRANTIES OF SELLER WITH RESPECT TO THE RC INTERNATIONAL BUSINESS

Seller hereby represents and warrants to Cott and, if applicable, all other Buyers as follows:

5.1 GOOD STANDING OF SELLER; POWERS. Seller is registered or qualified to do business and is in good standing in every jurisdiction in which it conducts the RC International Business, except where the failure to be so registered or qualified or in good standing would not have an



RC International MAE. Seller has all requisite corporate power and authority to conduct the RC International Business and to own and operate the RC International Assets.

5.2 BREACH OF RC INTERNATIONAL MATERIAL ASSUMED CONTRACTS. Subject to obtaining the consents and approvals set forth in Schedule 5.2, neither the execution and delivery of this Agreement or the Ancillary Agreements nor performance by Seller of any of its obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby and thereby (in the case of each of the foregoing, solely and exclusively to the extent that the provisions of this Agreement or such Ancillary Agreement relate solely to the RC International Assets), will conflict with or result in a breach of any of the terms, conditions or provisions of any RC International Material Assumed Contract or constitute a default thereunder other than any conflict, breach or violation that, individually or in the aggregate, would not have an RC International MAE.

5.3 RC INTERNATIONAL LITIGATION. Except as set forth in Schedule 5.3, there is no pending or, to the Knowledge of Seller, threatened in writing Litigation that, individually or in the aggregate, would reasonably be expected to have an RC International MAE.

5.4 RC INTERNATIONAL LEGAL COMPLIANCE. To the Knowledge of Seller, Seller is in compliance in all respects with all material Laws applicable to the RC International Business except where the failure to so comply, individually or in the aggregate, would not have an RC International MAE.

5.5 RC INTERNATIONAL FINANCIAL STATEMENTS.

(a) Attached hereto as Schedule 5.5(a) is a Division Performance Statement (the "Statement") for the RC International Business dated December 31, 2000 consisting of a summary income statement and selected balance sheet items. The information contained in the Statement has been correctly extracted from the general ledger of the RC International Business. The general ledger of the RC International Business accurately reflects the transaction of business by the RC International Business for the period ended, and the financial condition of the RC International Business at, December 31, 2000.

(b) Since December 31, 2000, Seller (i) has in all material respects conducted the RC International Business in the ordinary course and (ii) has not experienced an RC International MAE.

5.6 TITLE TO, CONDITION OF AND LOCATION OF THE RC INTERNATIONAL ASSETS.

(a) Except as set forth on Schedule 5.6(a), Seller has good and valid title to all tangible assets or properties included in the RC International Assets free and clear of all Encumbrances, except for Permitted Encumbrances, and no Affiliate of Seller has any interest in any of the RC International Assets. This Agreement and the instruments of transfer to be executed and delivered pursuant hereto (i) will vest in the appropriate Buyer good and valid title to all material tangible assets included in the RC International Assets, the RC International Current Marks, the RC International Branded Formulas and the RC International Non-Branded Formulas free and clear of all Encumbrances other than the Permitted Encumbrances and (ii) will transfer all other RC International Assets not described in clause (i) above, including, without

limitation, the RC International Assumed Contracts, to the applicable Buyer free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Other than the Excluded Assets, a supply of raw materials for the conduct of the RC International Business, the Common Inventory included in the Cott Assets and the Owned Real Property, the assets included in the RC International Assets constitute all the assets (other than people resources) necessary to conduct the RC International Business in all material respects as currently conducted.

(c) All of the tangible assets included in the RC International Assets are located at 1000 Corporate Drive, Ft. Lauderdale, Florida. All of the material tangible assets included in the RC International Assets which are currently used in the RC International Business are in good working condition and, to the Knowledge of Seller, have been maintained and repaired, consistent with customary practices of the beverage industry, in each case ordinary wear and tear excepted.

**5.7 RC INTERNATIONAL MATERIAL ASSUMED CONTRACTS.** The items listed on Schedule 5.7 constitute, as of the date hereof, all RC International Assumed Contracts to which Seller is a party or by which Seller or the RC International Assets are bound, that relate solely to the conduct of the RC International Business and that involve a term in excess of six (6) months or the receipt or expenditure of funds in excess of \$100,000 in the aggregate over the remaining term of such Contract (collectively, the "RC International Material Assumed Contracts"). Except as disclosed in Schedule 5.7, each RC International Material Assumed Contract is valid and binding on Seller and in full force and effect and Seller has not assigned any of its rights thereunder. As of the date hereof, except as set forth in Schedule 5.7 or as would not, individually or in the aggregate, have an RC International MAE, Seller is not in breach of, or default under, any RC International Material Assumed Contract which has not been cured or waived nor, to the Knowledge of Seller, is any other party to any RC International Material Assumed Contract in breach of, or default under, any such RC International Material Assumed Contract which has not been cured or waived.

**5.8 RC INTERNATIONAL INTELLECTUAL PROPERTY.** Except as set forth in Schedule 5.8,

(a) As of the Closing, Seller will have good and valid title to all of the RC International Current Marks, the RC International Branded Formulas and the RC International Non-Branded Formulas.

(b) No Person is engaging in any activity that materially infringes upon any of the RC International Current Marks. To the Knowledge of Seller, no Person is engaging in any activity that infringes upon any of the RC International Branded Formulas or the RC International Non-Branded Formulas. The consummation of the transactions contemplated by this Agreement will not result in the termination, breach or impairment in any material respect of any of the rights of Seller or the applicable Buyer, as the case may be, in any of the RC International Current Marks, the RC International Branded Formulas or the RC International Non-Branded Formulas.

(c) All licenses, registrations and applications filed with or recorded by any Governmental Authority (including patent, trademark, copyright and other licenses, registrations

and applications) with respect to the RC International Current Marks (other than any bottle designs or molds therefor) are valid and in full force and effect and all necessary registration, maintenance and renewal fees in connection therewith have been paid and all necessary licenses, statements of use, documents and certificates in connection therewith have been duly legalized as may be required for filing and have been filed with the relevant patent, copyright, trademark or other authority in the United States or foreign jurisdictions, as the case may be, for the purpose of maintaining the licenses, registrations or applications for registration of such RC International Current Marks.

(d) Prior to October 25, 2000, to the Knowledge of Seller, Seller maintained, and since October 25, 2000, Seller has maintained, reasonable security measures to protect and preserve the confidentiality and value of the RC International Branded Formulas and the RC International Non-Branded Formulas, and any of the technical data and processes used to manufacture the RC International Branded Concentrates and the RC International Non-Branded Concentrates, except to the extent that any such failure, individually or in the aggregate, would not have an RC International MAE.

(e) The use of the RC International Current Marks (other than any bottle designs or molds therefor) by Seller in the RC International Business does not materially infringe on any proprietary right, trademark, trade name or service mark of any other Person, nor has Seller received written notice of any allegation thereof. To the Knowledge of Seller, the use of the RC International Branded Formulas and the RC International Non-Branded Formulas by Seller in the RC International Business does not infringe on any proprietary right, trademark, trade name or service mark of any other Person, nor has Seller received written notice of any allegation thereof.

5.9 RC INTERNATIONAL INVENTORY. On the date hereof and as of the Closing Date, (a) the amount of finished inventory of RC International Branded Concentrates and of RC International Non-Branded Concentrates included in the RC International Assets and the amount of raw materials related exclusively to the RC International Business included in the RC International Assets is reasonably sufficient to operate the RC International Business as currently conducted by Seller and in compliance with the applicable Contracts listed on Schedule 1.1(a)(v) without disruption and (b) all finished inventory of RC International Branded Concentrates and RC International Non-Branded Concentrates included in the RC International Assets and all raw materials related exclusively to the RC International Business included in the RC International Assets are useable in accordance with the terms of the applicable Contracts listed on Schedule 1.1(a)(v).

5.10 RC INTERNATIONAL ACCOUNTS RECEIVABLE. The RC International Accounts Receivable arose from bona fide transactions in the ordinary course of business.

5.11 RC INTERNATIONAL LABOR MATTERS. (a) During the ninety-day period prior to the date of this Agreement, Seller has not terminated any employees employed in the RC International Business.

(b) Except as disclosed in Schedule 5.11(b), (i) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract in connection with the RC International Business, (ii) there is not pending or, to the Knowledge of Seller, threatened

in writing against Seller any material Litigation relating to the alleged violation of any applicable Law pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Authority with respect to employees of Seller employed in the RC International Business, (iii) to the Knowledge of Seller, currently there is no organizational activity solely with respect to employees of Seller employed in the RC International Business and (iv) to the Knowledge of Seller, no application or petition for an election of or for certification of a collective bargaining agent is pending with respect to the employees of Seller employed in the RC International Business.

**5.12 RC INTERNATIONAL CUSTOMERS.** Except as set forth in Schedule 5.12, during the twelve-month period preceding the date hereof, no material customer, bottler, franchisee, licensee, distributor or broker of the RC International Business has cancelled or otherwise terminated or, to the Knowledge of Seller, threatened in writing to cancel or otherwise terminate, its relationship with Seller or has decreased or limited materially or, to the Knowledge of Seller, threatened to decrease or limit materially, its usage of the products of the RC International Business.

**5.13 RC INTERNATIONAL EMPLOYEE PLANS.**

(a) Schedule 5.13(a) contains a complete and correct list of all the RC International Employee Plans. Seller has provided Cott with a copy of the most recent plan document, and any amendments thereto, or if such plan document is not available, a complete and correct copy of the most recent summary description of each RC International Employee Plan.

(b) No liability has been, or is expected to be, incurred by Seller with respect to any RC International Employee Plan (either directly or indirectly) under or pursuant to any Law applicable to such RC International Employee Plan that, following the Closing, is not a Retained Liability. Except with respect to any "multiemployer plan" (within the meaning of Section 3(37) of ERISA), each of the RC International Employee Plans has been maintained and operated in material compliance with its terms and all applicable Laws, except for any failure to comply that, individually or together with all other such failures, will not result in a material liability or obligation, following the Closing, on the part of Buyers.

(c) Except as set forth in Schedule 5.13(c), neither Seller nor any of its Affiliates has ever been obligated to contribute to any "multiemployer plan" (within the meaning of Section 3(37) of ERISA) with respect to the Transferred Employees in the RC International Business.

**5.14 RC INTERNATIONAL INSURANCE.** The RC International Business is covered by insurance policies or programs of self-insurance of such types and in such amounts as are reasonable and consistent in all material respects with customary practices of the beverage industry in the relevant geographic areas.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF SELLER WITH RESPECT TO THE COTT BUSINESS

Seller hereby represents and warrants to Cott and, if applicable, all other Buyers as follows:

6.1 **GOOD STANDING OF SELLER; POWERS.** Seller is registered or qualified to do business and is in good standing in the State of Georgia and in every other jurisdiction in which it conducts the Cott Business, except where the failure to be so registered or qualified or in good standing would not have a Cott MAE. Seller has all requisite corporate power and authority to conduct the Cott BUSINESS and to own and operate the Cott Assets.

6.2 **BREACH OF COTT MATERIAL ASSUMED CONTRACTS.** Subject to obtaining the consents and approvals set forth in Schedule 6.2, neither the execution and delivery of this Agreement or the Ancillary Agreements nor performance by Seller of any of its obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby and thereby (in the case of each of the foregoing, solely and exclusively to the extent that the provisions of this Agreement or such Ancillary Agreement relate solely to the Cott Assets), will conflict with or result in a breach of any of the terms, conditions or provisions of any Cott Material Assumed Contract or constitute a default thereunder other than any conflict, breach or violation that, individually or in the aggregate, would not have a Cott MAE.

6.3 **COTT LITIGATION.** Except as set forth in Schedule 6.3, there is no pending or, to the Knowledge of Seller, threatened in writing Litigation that, individually or in the aggregate, would reasonably be expected to have a Cott MAE.

6.4 **COTT LEGAL COMPLIANCE.** To the Knowledge of Seller, Seller is in compliance in all respects with all material Laws applicable to each of the Cott Business and the Owned Real Property except where the failure to so comply, individually or in the aggregate, would not have a Cott MAE.

6.5 **MATERIAL CHANGES.** Subject to the Phase II, since December 31, 2000, Seller (i) has in all material respects conducted the Cott Business and its operation at the Owned Real Property in the ordinary course and (ii) has not experienced a Cott MAE.

6.6 **TITLE TO, CONDITION OF AND LOCATION OF THE COTT ASSETS.**

(a) Except as set forth on Schedule 6.6(a), Seller has good and valid title to all tangible assets or properties included in the Cott Assets free and clear of all Encumbrances, except for Permitted Encumbrances, and no Affiliate of Seller has any interest in any of the Cott Assets. This Agreement and the instruments of transfer to be executed and delivered pursuant hereto (i) will vest in the appropriate Buyer good and valid title to all material tangible assets included in the Cott Assets, the Cott Marks, the Cott Current Formulas, the Cott US Formulas and the Owned Real Property free and clear of all Encumbrances other than the Permitted Encumbrances and (ii) will transfer all other Cott Assets not described in clause (i) above,

including, without limitation, the Cott Assumed Contracts, to the applicable Buyer free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Other than the Excluded Assets, a supply of raw materials for the conduct of the Cott Business and the Common Inventory included in the RC International Assets, the assets included in the Cott Assets constitute all the assets (other than people resources) necessary to conduct the Cott Business and to operate the Owned Real Property in all material respects as each is currently conducted or operated, as the case may be.

(c) All of the tangible assets included in the Cott Assets are located at the Owned Real Property. All of the material tangible assets included in the Cott Assets which are currently used in the Cott Business are in good working condition and, to the Knowledge of Seller, have been maintained and repaired consistent with customary practices of the beverage industry, in each case ordinary wear and tear excepted.

6.7 COTT MATERIAL ASSUMED CONTRACTS. The items listed on Schedule 6.7 constitute, as of the date hereof, all Cott Assumed Contracts to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates or the Cott Assets are bound, that relate solely to the conduct of the Cott Business and that involve a term in excess of six (6) months or the receipt or expenditure of funds in excess of \$100,000 in the aggregate over the remaining term of such Contract (collectively, the "Cott Material Assumed Contracts"). Except as disclosed in Schedule 6.7, each Cott Material Assumed Contract is valid and binding on Seller or such Affiliate and in full force and effect and neither Seller nor such Affiliate has assigned any of its rights thereunder. As of the date hereof, except as would not, individually or in the aggregate, have a Cott MAE, neither Seller nor any Affiliate of Seller is in breach of, or default under, any Cott Material Assumed Contract which has not been cured or waived nor, to the Knowledge of Seller, is any other party to any Cott Material Assumed Contract in breach of, or default under, any such Cott Material Assumed Contract which has not been cured or waived.

#### 6.8 COTT INTELLECTUAL PROPERTY.

(a) As of the Closing, Seller will have good and valid title to all of the Cott Marks, the Cott Current Formulas and the Cott US Formulas.

(b) No Person is engaging in any activity that materially infringes upon any of the Cott Marks. To the Knowledge of Seller, no Person is engaging in any activity that infringes upon any of the Cott Current Formulas or the Cott US Formulas. The consummation of the transactions contemplated by this Agreement will not result in the termination, breach or impairment in any material respect of any of the rights of Seller or the applicable Buyer, as the case may be, in any of the Cott Marks, the Cott Current Formulas or the Cott US Formulas.

(c) All licenses, registrations and applications filed with or recorded by any Governmental Authority (including patent, trademark, copyright and other licenses, registrations and applications) with respect to the Cott Marks are valid and in full force and effect and all necessary registration, maintenance and renewal fees in connection therewith have been paid and all necessary licenses, statements of use, documents and certificates in connection therewith have been duly legalized as may be required for filing and have been filed with the relevant patent,

copyright, trademark or other authority in the United States or foreign jurisdictions, as the case may be, for the purpose of maintaining the licenses, registrations or applications for registration of such Cott Marks.

(d) Prior to October 25, 2000, to the Knowledge of Seller, Seller maintained, and since October 25, 2000, Seller has maintained, reasonable security measures to protect and preserve the confidentiality and value of the Cott Current Formulas and the Cott US Formulas, and any of the technical data and processes used to manufacture the Cott Current Concentrates and the Cott US Concentrates, except to the extent that any such failure, individually or in the aggregate, would not have a Cott MAE.

(e) The use of the Cott Marks by Seller in the Cott Business does not materially infringe on any proprietary right, trademark, trade name or service mark of any other Person, nor has Seller received written notice of any allegation thereof. To the Knowledge of Seller, the use of the Cott Current Formulas and the Cott US Formulas by Seller in the Cott Business does not infringe on any proprietary right, trademark, trade name or service mark of any other Person, nor has Seller received written notice of any allegation thereof.

(f) The Lutheran License and the Cott USA Trademark License are the only licenses relating to the Cott Marks to which Seller or any of its Affiliates is a party.

6.9 COTT INVENTORY. On the date hereof and as of the Closing Date, (a) the amount of finished inventory of Cott Concentrates included in the Cott Assets and the amount of raw materials related exclusively to the Cott Business included in the Cott Assets is reasonably sufficient to operate the Cott Business as currently conducted by Seller and in compliance with the Cott Agreement without disruption and (b) all finished inventory of Cott Concentrates included in the Cott Assets and all raw materials related exclusively to the Cott Business included in the Cott Assets are useable in accordance with the terms of the Cott Agreement.

6.10 COTT ACCOUNTS RECEIVABLE. The Cott Accounts Receivable arose from bona fide transactions in the ordinary course of business.

6.11 COTT LABOR MATTERS.

(a) During the ninety-day period prior to the date of this Agreement, Seller has terminated 13 employees employed at the Owned Real Property. No liability has been, or is expected to be, incurred by Seller with respect to such terminations under or pursuant to any Law applicable to the termination of such employees (including, without limitation, the Worker Adjustment and Retraining Notification Act) that, following the Closing, is not a Retained Liability.

(b) Except as disclosed in Schedule 6.11(b), (i) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract in connection with the Cott Business, (ii) since December 31, 2000, there has not been, there is not presently existing, and to the Knowledge of Seller there is not threatened, any labor strike, slowdown, picketing or work stoppage involving employees of Seller employed in the Cott Business at the Owned Real Property, (iii) there is not pending or, to the Knowledge of Seller, threatened in writing against Seller any material Litigation relating to the alleged violation of any applicable Law pertaining to

labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Authority with respect to employees of Seller employed in the Cott Business at the Owned Real Property, (iv) to the Knowledge of Seller, currently there is no organizational activity solely with respect to employees of Seller employed in the Cott Business at the Owned Real Property and (v) to the Knowledge of Seller, no application or petition for an election of or for certification of a collective bargaining agent is pending with respect to the employees of Seller employed in the Cott Business at the Owned Real Property.

#### 6.12 COTT EMPLOYEE PLANS.

(a) Schedule 6.12(a) contains a complete and correct list of all the Cott Employee Plans. Seller has provided Cott with a copy of the most recent plan document, and any amendments thereto, or if such plan document is not available, a complete and correct copy of the most recent summary description of each Cott Employee Plan.

(b) No liability has been, or is expected to be, incurred by Seller with respect to any Cott Employee Plan (either directly or indirectly) under or pursuant to any Law applicable to such Cott Employee Plan that, following the Closing, is not a Retained Liability. Except with respect to any "multiemployer plan" (within the meaning of Section 3(37) of ERISA), each of the Cott Employee Plans has been maintained and operated in material compliance with its terms and all applicable Laws, except for any failure to comply that, individually or together with all other such failures, will not result in a material liability or obligation, following the Closing, on the part of Buyers.

(c) Except as set forth in Schedule 6.12(c), neither Seller nor any of its Affiliates has ever been obligated to contribute to any "multiemployer plan" (within the meaning of Section 3(37) of ERISA) with respect to the Transferred Employees in the Cott Business.

6.13 COTT INSURANCE. The Cott Business is covered by insurance policies or programs of self-insurance of such types and in such amounts as are reasonable or consistent in all material respects with customary practices of the beverage industry in the relevant geographic areas. Each insurance policy or program of self-insurance to which Seller is a party or a named insured as to which proceeds are required to be paid or assigned to Buyers pursuant to Section 3.4(d) is valid and binding and in full force and effect.

#### 6.14 OWNED REAL PROPERTY.

(a) Seller has good fee simple title to the Owned Real Property, free and clear of all Encumbrances, except for Permitted Encumbrances. There are no condemnation or appropriation proceedings pending or, to the Knowledge of Seller, threatened against the Owned Real Property.

(b) The Seller has all material certificates of occupancy and material permits necessary for the use and operation of the Owned Real Property as of the date hereof and true and accurate copies of all such material certificates and permits have been provided to Cott prior to the date hereof. Seller has complied in all material respects with all conditions of such material certificates and permits. Seller has not received any written notice from any



Governmental Authority to the effect that any material certificate or permit required is lacking in connection with the use or operation of the Owned Real Property as of the date hereof.

(c) To the Knowledge of Seller, except as set forth in Schedule 6.14(c), all buildings and structures comprising part of the Owned Real Property are free of material defects and have been maintained and repaired consistent with customary practices of the beverage industry, ordinary wear and tear excepted.

(d) Seller is not a party to any lease with respect to the Owned Real Property.

#### 6.15 ENVIRONMENTAL MATTERS.

(a) Except as set forth in Schedule 6.15 or as would not have a Cott MAE:

(i) Seller has obtained and holds all Environmental Permits that are necessary to own and operate the Owned Real Property as of the date hereof.

(ii) The Owned Real Property is in compliance with all terms, conditions and provisions of all applicable (x) Environmental Permits and (y) Environmental Laws.

(iii) There are no pending or threatened in writing Environmental Claims against Seller with respect to the Owned Real Property.

(iv) To the Knowledge of Seller, no Releases of Hazardous Materials have occurred at, on or under the Owned Real Property and no Hazardous Materials are present in or on the Owned Real Property that are reasonably likely to give rise to an Environmental Claim against Seller.

(v) The Owned Real Property is not a current or proposed Environmental Clean-up Site.

(vi) There are no Encumbrances (other than Permitted Encumbrances) arising under or pursuant to any Environmental Law on the Owned Real Property.

(vii) There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted during the past five years by or on behalf of Seller or which, to the Knowledge of Seller, are in the possession of Seller with respect to the Owned Real Property which have not been made available to Buyer prior to the execution of this Agreement.

(b) Seller and Buyers acknowledge and agree that Seller shall not be deemed to have breached any of its representations or warranties contained in this

Section 6.15 or any other Section of this Agreement by the existence of any Environmental Condition and that Buyers' sole and exclusive remedy with respect to any such Environmental Condition (including any Environmental Retained Liability associated therewith) is as provided in the Remediation Agreement and Section 3.4(f) hereof.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF BUYERS

Buyers hereby represent and warrant to Seller as follows:

**7.1 ORGANIZATION AND GOOD STANDING OF BUYERS.** Cott is a corporation duly organized, validly existing and in corporate good standing under the laws of Canada. BCB is a corporation duly organized, validly existing and in corporate good standing under the laws of the State of Georgia and each other Buyer is a corporation duly organized, validly existing and in corporate good standing under the laws of the jurisdiction of its incorporation.

**7.2 POWERS; EXECUTION.** Buyers have all requisite corporate power and authority (i) to conduct their respective businesses and to own and operate their respective assets and properties and (ii) to execute, deliver and perform this Agreement and all other Ancillary Agreements to be executed and delivered by Buyers pursuant to this Agreement. The execution and delivery of this Agreement and the Ancillary Agreements have been duly and validly authorized by all necessary corporate action on the part of each Buyer. This Agreement is, and this Agreement and the Ancillary Agreements will be as of the Closing, validly executed and delivered, and the valid and binding obligations of each Buyer, enforceable against each Buyer in accordance with their respective terms.

**7.3 BREACH OF STATUTE OR CONTRACT.** Neither the execution and delivery of this Agreement or the Ancillary Agreements by each Buyer nor performance by each Buyer of its obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby (a) will violate any provision of the Certificate of Incorporation or By-Laws of such Buyer, (b) will conflict with or result in a breach of any of the terms, conditions or provisions of any material Contract to which such Buyer is a party or constitute a default thereunder, (c) will violate in any material respect any Law applicable to such Buyer or any of such Buyer's assets or properties or (d) except for the expiration or early termination of the waiting period under the HSR Act, requires in respect of each Buyer any approval from, consent of or notice to any Governmental Authority or third party.

**7.4 NO LITIGATION.** There is no pending or, to the Knowledge of each Buyer, threatened in writing Litigation involving any Buyer that would impair or delay the ability of such Buyer to perform its respective obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

**7.5 FINANCIAL ABILITY.** Cott has cash or has existing borrowing facilities or binding firm commitments, subject to conditions, that are sufficient to enable it to consummate the transactions contemplated by this Agreement. The copy of the letter regarding such facilities and commitments provided by Cott to Seller is true and complete except for those items that are expressly redacted therein (the "Commitment Letter"). The financing required to consummate the transactions contemplated by this Agreement is collectively referred to as the "Financing."

**7.6 BREACHES.** To the Knowledge of Buyers, Seller has not breached any representation, warranty or covenant of Seller under this Agreement.

7.7 BROKERS. Except for Lehman Bros., whose fees will be paid by Cott, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Cott or any Affiliate of Cott who might be entitled to any fee or commission from Buyers or Seller in connection with the transactions contemplated by this Agreement.

## ARTICLE VIII

### INDEMNITIES

8.1 SURVIVAL. The representations, warranties, covenants and agreements of Seller and Buyers contained in or made pursuant to this Agreement and the Ancillary Agreements shall terminate at the Closing, except that (a) the representations and warranties made in Articles IV, V, VI and VII shall survive in full force and effect until the second anniversary of the Closing Date; provided, however, that, (i) the representations and warranties made in the first sentence of Section 5.6(a), Section 5.8(a), the first sentence of Section 6.6(a) and Section 6.8(a) shall survive in full force and effect indefinitely,

(ii) the representations and warranties made with respect to matters covered by Section 4.4 shall survive in full force and effect until the sixtieth day immediately following the expiration of all applicable statutes of limitation,

(iii) the representations and warranties made with respect to matters covered by Section 6.15 shall survive in full force and effect until the fourth anniversary of the Closing Date and (iv) the representations and warranties made in the first sentence of Section 6.14(a) shall survive in full force and effect until the third anniversary of the Closing Date; (b) the covenants and agreements made in this Agreement or any of the Ancillary Agreements that are to be performed or that relate in whole or in part to periods subsequent to the Closing Date and that do not, by their terms, expire on a date certain, shall survive in full force and effect until the sixtieth day immediately following the expiration of all applicable statute of limitations and otherwise, indefinitely; (c) the covenants and agreements made in Article II shall survive in full force and effect until such time as they are fully complied with; and (d) the covenants and agreements made in this Agreement or any of the Ancillary Agreements that are to be performed or that relate in whole or in part to periods subsequent to the Closing Date and that, by their terms, expire on a date certain, shall survive until such date certain; provided that any representation, warranty, covenant or agreement that would otherwise terminate in accordance with clauses (a), (b), (c) or (d) above will continue to survive if a notice of claim shall have been timely given under Section 8.4 on or prior to such termination date, until the related claim for indemnification has been satisfied or otherwise resolved.

#### 8.2 GENERAL INDEMNIFICATION BY SELLER.

(a) From and after the Closing, Seller shall, subject to the provisions of this Article VIII, indemnify, defend and hold harmless each Buyer and its respective employees, officers, directors, representatives, agents and Affiliates (the "Buyer Indemnified Parties") from, against and in respect of any and all damages, claims, losses, charges, actions, suits, proceedings and reasonable costs and expenses (but, other than with respect to any breach of any of the covenants contained in Article XI, not including, consequential, exemplary, special and punitive damages and lost profits, other than such damages awarded to any third party against a Buyer Indemnified Party) (collectively, the "Losses") sustained or incurred by a Buyer Indemnified

Party as a result of or in connection with: (i) the Retained Liabilities, including, without limitation, any claim for or relating to product liability or defective product arising from sales of RC International Branded Concentrates or RC International Non-Branded Concentrates prior to the Closing Date but excluding all Retained Liabilities arising out of, related to or in connection with (x) any breach by Seller of any of the representations or warranties contained in Section 6.15, (y) any Environmental Condition or (z) the environmental condition of the Owned Real Property (whether or not an Environmental Condition and whether or not the existence of such condition constitutes a breach by Seller of any of the representations or warranties contained in Section 6.15) ((x), (y) and (z) being, collectively, the "Environmental Retained Liabilities"), (ii) the Environmental Retained Liabilities, (iii) any breach of a representation or warranty made herein by Seller, (iv) the failure of Seller and Buyers to comply with any applicable bulk transfer laws or (v) any breach by Seller of any of the covenants or agreements contained in this Agreement to be performed by Seller (other than with respect to the Retained Liabilities or Environmental Retained Liabilities).

(b) Notwithstanding any other provision of this Agreement to the contrary, Seller shall not be required to indemnify, defend or hold harmless any Buyer Indemnified Party against, or reimburse any Buyer Indemnified Party for, any Losses pursuant to Section 8.2(a) above, (i) with respect to any claim under Sections 8.2(a)(ii) or (iii) unless such claim involves Losses in excess of \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] (nor shall any such claim involving Losses of \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] or less be applied to or considered for purposes of calculating the aggregate amount of the Buyer Indemnified Parties' Losses) and (ii) unless the applicable Buyer has notified Seller in writing in accordance with Section 8.4 of a pending or threatened claim with respect to such matters within the applicable survival period set forth in Section 8.1. In addition to the requirements of the first sentence of this Section 8.2(b), Seller shall not be required to indemnify, defend or hold harmless any Buyer Indemnified Party against, or reimburse any Buyer Indemnified Party for, Losses pursuant to Section 8.2(a)(ii) to the extent they relate to the RC International Assets or the RC International Business, unless and until the aggregate amount of such Buyer Indemnified Parties' Losses exceeds \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] after which Seller shall be obligated for all such Losses of the Buyer Indemnified Parties only in excess of \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED], but not to exceed, in the aggregate, \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] (the "RC International Cap"); provided, however, that if Losses of the Buyer Indemnified Parties on account of breaches of the first sentence of Section 5.6(a) or Section 5.8(a), in the aggregate, when added to all other Losses, if any, subject to the RC International Cap, are in excess of the RC International Cap, Seller shall indemnify the Buyer Indemnified Parties for the amount of such Losses in excess of the RC International Cap, provided that such excess amount shall not exceed, in the aggregate, \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]. In addition to the requirements of the first sentence of this Section 8.2(b), Seller shall not be required to indemnify, defend or hold harmless any Buyer Indemnified Party against, or reimburse any Buyer Indemnified Party for, Losses pursuant to Section 8.2(a)(ii) or (iii) to the extent that they relate to the Cott Assets or the Cott Business, unless and until the aggregate amount of such Buyer Indemnified Parties' Losses exceeds (x) \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] (in the case of Losses arising other than on account of a breach of any of the representations or warranties contained in Section 6.15 or any Environmental Retained Liability) and (y) \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] in the case of Losses arising out of a breach of any of the representations or warranties contained in Section 6.15 or any Environmental Retained Liability, after which, in either case, Seller shall be obligated for all such Losses of the Buyer Indemnified Parties only in excess of \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] (as reduced by any Environmental Remedial Costs paid by Cott pursuant to and in accordance with the Remediation Agreement) but not to exceed, for all such Losses under

Section 8.2(a)(ii) and (iii), \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] (as reduced by any Environmental Remedial Costs paid by Seller pursuant to and in accordance with the Remediation Agreement) (the "Cott Cap"); provided, however, that if Losses of the Buyer Indemnified Parties on account of breaches of the first sentence of Section 6.6(a) or Section 6.8(a) or the first sentence of Section 6.14(a), in the aggregate, when added to all other Losses subject to the Cott Cap, are in excess of the Cott Cap, Seller shall indemnify the Buyer Indemnified Parties for the amount of such Losses in excess of the Cott Cap, provided that such excess amount shall not exceed, in the aggregate, \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED].

(c) Solely for purposes of calculating the Losses that are subject to indemnification by Seller pursuant to Section 8.2(a) (and not for purposes of determining whether a breach of any representation, warranty, covenant or agreement hereunder has occurred), all qualifications as to materiality, RC International MAE and/or Cott MAE contained in any representation or warranty, covenant or agreement in this Agreement shall not be considered.

(d) All Losses sustained by any Buyer Indemnified Party on account of a claim for breach of any representation or warranty under Article V shall be subject to the RC International Cap. All Losses sustained by any Buyer Indemnified Party on account of a claim for a breach of any representation or warranty under Article VI shall be subject to the Cott Cap. The portion of any Losses sustained by any Buyer Indemnified Party on account of a claim for a breach of any representation or warranty under Article IV that is attributable to the RC International Assets or the RC International Business shall be subject to the RC International Cap. The portion of any Losses sustained by any Buyer Indemnified Party on account of a claim for a breach of representation under Article IV that is attributable to the Cott Assets or the Cott Business shall be subject to the Cott Cap.

(e) Notwithstanding anything to the contrary contained herein, and without limitation to any of Seller's rights hereunder, no Buyer Indemnified Party shall be entitled to bring any claim under Section 8.2(a) and Seller shall not be obligated for any Buyer Indemnified Parties' Losses under Section 8.2(a), for any breach of any representation, warranty or covenant by Seller hereunder of which Buyers' had Knowledge on or prior to the Closing.

**8.3 GENERAL INDEMNIFICATION BY COTT.** From and after the Closing, Cott shall, subject to the provisions of this Article VIII, indemnify, defend and hold harmless Seller, its employees, officers, directors, representatives, agents and Affiliates (the "Seller Indemnified Parties"), from, against and in respect of any and all Losses sustained or incurred by a Seller Indemnified Party as a result of or in connection with: (a) the Assumed Liabilities, (b) any breach of a representation or warranty made herein by any Buyer or any of its Affiliates, (c) any breach by any Buyer or any of its Affiliates of any of the covenants or agreements contained in this Agreement to be performed by such Buyer or any of its Affiliates or (d) any third party claim (other than by a bottler of the RC Domestic Business (exclusive of claims arising out of Article XI)) as a result of the operation of the RC International Business (including without limitation the manufacture of the RC International Branded Concentrates or the RC International Non-Branded Concentrates), the operation of the Cott Business (including without limitation the manufacture of the Cott Current Concentrates or the Cott US Concentrates) or the ownership of the Assets after the Closing. Notwithstanding any other provision of this Agreement to the contrary, Cott shall not be required to indemnify, defend or hold harmless any Seller Indemnified Party against, or reimburse any Seller Indemnified Party for, any Losses pursuant to this Section

8.3, with respect to any claim under Section 8.3(b) unless such claim involves **Losses in excess of** \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED].

8.4 METHOD OF ASSERTING CLAIMS. Subject to Section 8.1, all claims for indemnification under this Article VIII by any party claiming indemnification hereunder (an "Indemnified Party") will be asserted and resolved as follows.

(a) In the event any claim or demand in respect of which an Indemnified Party might seek indemnity under this Article VIII is asserted against or sought to be collected from such Indemnified Party by a Person other than either the parties hereto or any Affiliate of the parties hereto (a "Third Party Claim"), the Indemnified Party shall deliver a written notification of such Third Party Claim specifying the nature of and basis for such Third Party Claim, together with the amount or, if not then reasonably ascertainable, the estimated amount, determined in good faith, of such Third Party Claim (a "Claim Notice") with reasonable promptness to the party against whom a claim for indemnification is being asserted hereunder (an "Indemnifying Party"). If the Indemnified Party fails to provide the Claim Notice with reasonable promptness after the Indemnified Party receives notice of such Third Party Claim, the Indemnifying Party will be obligated to indemnify the Indemnified Party with respect to such Third Party Claim except to the extent that the Indemnifying Party's ability to defend is prejudiced by such failure of the Indemnified Party. The Indemnifying Party will notify the Indemnified Party within fifteen (15) calendar days following receipt of the Claim Notice (the "Dispute Period") whether the Indemnifying Party accepts or disputes its liability to the Indemnified Party under this Article VI and whether the Indemnifying Party desires, at its sole cost and expense, to defend the Indemnified Party against such Third Party Claim.

(i) If the Indemnifying Party notifies the Indemnified Party within the Dispute Period that the Indemnifying Party desires to defend the Indemnified Party with respect to the Third Party Claim pursuant to this Section 8.4, then the Indemnifying Party will have the right to defend, with counsel reasonably satisfactory to the Indemnified Party, at the sole cost and expense of the Indemnifying Party, such Third Party Claim by all appropriate proceedings, or, at the discretion of the Indemnifying Party, to settle such Third Party Claim (but only with the consent of the Indemnified Party, which shall not be unreasonably withheld, in the case of any settlement that provides for any relief other than the payment of monetary damages or that provides for the payment of monetary damages as to which the Indemnified Party will not be indemnified in full pursuant to this Article VIII). Subject to the foregoing, the Indemnifying Party will have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that the Indemnified Party may, at the cost and expense of the Indemnifying Party, at any time prior to the Indemnifying Party's delivery of the notice referred to in the first sentence of this Section 8.4(a)(i), file any motion, answer or other pleadings or take any other action that the Indemnified Party reasonably believes to be necessary or appropriate to protect its interests; and provided, further, that if requested by the Indemnifying Party, the Indemnified Party will, at the sole cost and expense of the Indemnifying Party, provide full cooperation to the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest. The Indemnified Party may participate in, but not control, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this Section 8.4 and, except as provided in the preceding sentence, the Indemnified Party will bear its own costs and expenses with respect to such participation. Notwithstanding

the foregoing, the Indemnified Party may take over the control of the defense or settlement of a Third Party Claim at any time if it irrevocably waives its right to indemnity under this Article VIII with respect to such Third Party Claim.

(ii) If the Indemnifying Party fails to notify the Indemnified Party within the Dispute Period that the Indemnifying Party desires to defend the Third Party Claim, or if the Indemnifying Party gives such notice but any time thereafter fails diligently to prosecute or defend or settle the Third Party Claim, or if the Indemnifying Party fails to give any notice whatsoever within the Dispute Period, then the Indemnified Party will have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnified Party in good faith or will be settled at the discretion of the Indemnified Party (but only with the consent of the Indemnifying Party, which shall not be unreasonably withheld or delayed, in the case of any settlement that provides for any relief other than the payment of monetary damages). The Indemnified Party will have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that if requested by the Indemnified Party, the Indemnifying Party will, at the sole cost and expense of the Indemnifying Party, provide reasonable cooperation to the Indemnified Party and its counsel in contesting any Third Party Claim which the Indemnified Party is contesting. Notwithstanding the foregoing provisions of this Section 8.4, if the Indemnifying Party has notified the Indemnified Party within the Dispute Period that the Indemnifying Party disputes its liability hereunder to the Indemnified Party with respect to such Third Party Claim and if such dispute is resolved in favor of the Indemnifying Party in the manner provided in clause

(iii) below, the Indemnifying Party will not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 8.4 or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party will reimburse the Indemnifying Party in full for all reasonable costs and expenses incurred by the Indemnifying Party in connection with such litigation. The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 8.4, and the Indemnifying Party will bear its own costs and expenses with respect to such participation.

(iii) Subject to Section 8.2(b), if the Indemnifying Party notifies the Indemnified Party that it accepts its indemnification liability to the Indemnified Party with respect to the Third Party Claim under this Article VIII or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party with respect to such Third Party Claim, the Losses identified in the Claim Notice, as finally determined, will be conclusively deemed a liability of the Indemnifying Party under this Article VIII and the Indemnifying Party shall pay the amount of such Losses to the Indemnified Party on demand plus interest at the Agreed Rate from the date of the receipt of the applicable Claim Notice to the date of such payment. If the Indemnifying Party timely disputes its liability with respect to such Third Party Claim, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations within the thirty (30) calendar days following receipt by an Indemnified Party of a Dispute Notice (the "Resolution Period"), such dispute shall be resolved by litigation in a court of competent jurisdiction.

(b) In the event any Indemnified Party should have a claim under this Article VIII against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall deliver a written notification of a claim for indemnity under this Article VIII specifying the nature and basis for such claim, together with the amount, or, if not then reasonably ascertainable, the estimated amount, determined in good faith, of such claim (an "Indemnity Notice") with reasonable promptness to the Indemnifying Party. The failure or delay by any Indemnified Party to give the Indemnity Notice shall not impair such party's rights hereunder except to the extent that such failure or delay prejudices an Indemnifying Party. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described in such Indemnity Notice or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes the claim described in such Indemnity Notice, the Losses indemnified in the Indemnity Notice will be conclusively deemed a liability of the Indemnifying Party under this Article VIII and the Indemnifying Party shall pay the amount of such Losses to the Indemnified Party on demand. If the Indemnifying Party has timely disputed its liability with respect to such claim, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations within the Resolution Period, such dispute shall be resolved by litigation in a court of competent jurisdiction.

**8.5 EXCLUSIVE REMEDIES.** Following the Closing, except for specific performance of the obligations set forth in Article II and Article XI and as provided in the last sentence of Section 11.5(b), Seller and Buyers acknowledge and agree that the indemnification provisions of Sections 8.2 and 8.3 shall be the sole and exclusive remedies of Seller and Buyers, respectively, for any breach of the representations or warranties herein or nonperformance of any covenants and agreements herein of the other party.

#### **8.6 CERTAIN ADJUSTMENTS.**

(a) The amount of any Losses for which indemnification is provided under this Article VIII shall be reduced by any insurance recovery by the Indemnified Party if and when actually received in respect of such Losses. Any such recovery shall be promptly repaid by the Indemnified Party to the Indemnifying Party following the time at which such recovery is received pursuant to the previous sentence, minus all reasonably allocable costs, charges and expenses incurred by the Indemnified Party in obtaining such recovery. Notwithstanding the foregoing, if (x) the amount of Losses for which the Indemnifying Party is obligated to indemnify the Indemnified Party is reduced by any insurance recovery in accordance with the provisions of the previous sentence, and (y) the Indemnified Party subsequently is required to repay the amount of any such insurance recovery or such insurance recovery is disallowed, then the obligation of the Indemnifying Party to indemnify with respect to such amounts shall be reinstated immediately and such amounts shall be paid promptly to the Indemnified Party in accordance with the provisions of this Agreement.

(b) If there is a Tax Benefit of \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] or more (or any combination of Tax Benefits that is, in the aggregate, \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] or more) for any period, the Indemnified Party shall promptly pay to the Indemnifying Party (taking into account other payments made by the Indemnified Party to the Indemnifying Party with respect to such Tax Benefit for prior periods) the lesser of (i) the amount that will leave the Indemnified Party in the same after-Tax position (taking into



account, with respect to Taxes, only actual Taxes paid and actual Tax refunds received) as if such Tax Benefit had not been realized and (ii) the amount of the indemnification payment received by the Indemnified Party as a result of such Loss. In calculating the availability and amount of any Tax Benefit that could result in a payment under this Section 8.6(b), the Indemnified Party shall act, in good faith and in the same manner in which it would calculate the availability and amount of any item of deduction, loss, credit, carryover or carryback for which it would not have a payment obligation under this Section 8.6(b) or otherwise to a third party, after applying all other items of deduction, loss, credit, carryover or carryback that are then available and that reasonably would be applied prior to such Tax Benefit under applicable Law. If such Tax Benefit is subsequently disallowed in whole or part by any relevant Taxing authority, the Indemnifying Party shall promptly pay to the Indemnified Party, following notice of such disallowance by the Indemnified Party, an amount equal to the lesser of (i) the amount that will leave the Indemnified Party in the same after-Tax position (taking into account, with respect to Taxes, only actual Taxes paid and actual Tax refunds received, after giving effect to such disallowance) as if such Tax Benefit, to the extent still realized, had not been realized, and (ii) the amount of payments previously received by the Indemnifying Party from the Indemnified Party with respect to such Tax Benefit pursuant to this Section 8.6(b), plus in the case of (ii), interest thereon at the Agreed Rate, from the date of the Indemnifying Party's receipt of such payment. At the request of the Indemnifying Party, the Indemnified Party will certify as to the amount, if any, of such Tax Benefit (or disallowance) covered by this Section for any period, which certification shall include a calculation of any such Tax Benefit and, to the extent that such Tax Benefit is not available or does not result in a payment under this Section 8.6(b) (or such disallowance results in an obligation to return any such payment under this

Section 8.6(b)), an explanation as to the reason for such result (including the extent and nature of any potential Tax Benefit for that period that could result in a payment under this Section 8.6(b) and whether such Tax Benefit is not available because of other items of deduction, loss, credit, carryover or carryback that are being applied for that period. The Indemnifying Party may also request, at its expense, that the Indemnified Party's independent accountants provide a certification that they have reviewed the Indemnified Party's certification and accompanying explanation, if any, and determined it is proper, which certification shall be final and binding on the parties hereto in the absence of manifest error; provided that if such accountants determine that such certification should properly have stated such Tax Benefit (or disallowance) to be greater by an amount in excess of 5%, the Indemnified Party shall be responsible for the expenses of such accountants and the Indemnified Party shall take into account such increased Tax Benefit in calculating its payment obligation to the Indemnifying Party under this Section 8.6(b).

## **ARTICLE IX**

### **COVENANTS PENDING CLOSING**

9.1 ACCESS TO INFORMATION. From the date hereof until the Closing (upon reasonable prior notice to and approval of Seller, which shall not be unreasonably withheld) during normal business hours with the purpose that an uninterrupted and efficient transfer of the RC International Business and the Cott Business may be accomplished, Seller shall, and shall cause its officers, directors, employees, auditors and agents engaged in the RC International Business and the Cott Business to afford the officers, employees and authorized agents, advisors, lenders, potential sources of financing and other representatives of Cott reasonable access to the offices,

properties, books and records and key personnel solely and exclusively related to the RC International Business or the Cott Business or material to the operation of the Owned Real Property; provided, however, that (a) such investigations shall not unreasonably interfere with any of the businesses or operations of Seller or any Affiliate of Seller, including the RC International Business and the Cott Business and, to the extent possible, shall be conducted concurrently so as to minimize disruption; (b) Seller shall not be required to provide any such information or access to the extent that such information or access would cause Seller to be in breach of any confidentiality restrictions applicable to it; and (c) such investigations shall not include any RC Domestic Business or confidential pricing or other terms of any supply agreements. In addition to the foregoing, Seller shall permit and assist Cott to have access to the customers of the RC International Business (including the bottlers), at such times and in such manner as is mutually acceptable to Cott and Seller.

9.2 CONDUCT OF BUSINESS PENDING CLOSING. Except as otherwise contemplated by this Agreement or as set forth in Schedule 9.2, during the period from the date hereof to the Closing, Seller shall conduct the RC International Business and the Cott Business and shall operate the Owned Real Property only in the ordinary course consistent with reasonably prudent practice in light of the current conduct of the RC International Business and the Cott Business and its operation of the Owned Real Property, as applicable, and use commercially reasonable best efforts to comply in all material respects with all applicable Laws. In addition, from and after the date hereof to the Closing Date, except as otherwise provided in this Agreement or as otherwise contemplated hereby or as set forth in Schedule 9.2, Seller shall not, without the prior written consent of Cott (which consent shall not be unreasonably withheld, conditioned or delayed):

(i) directly or indirectly sell, lease, license, sell and lease back, mortgage or otherwise encumber or subject to any Encumbrance (other than a Permitted Encumbrance) or otherwise dispose of any of the Assets or any interest therein, except (i) sales of assets (including, without limitation, distribution rights with respect to the RC International Branded Concentrates or the RC International Non-Branded Concentrates) in the ordinary course of business consistent with past practice or, with respect to the Cott Current Concentrates, as permitted under the Cott Agreement, (ii) pledges or encumbrances pursuant to existing borrowing arrangements or (iii) any such transaction not otherwise permitted by this

Section 9.2(i) with an aggregate value not to exceed \$50,000;

(ii) except in the ordinary course of business, enter into any material employment or severance agreement with any Employee;

(iii) (x) incur any indebtedness or guarantee any indebtedness of another Person, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing or (y) make any loans, advances or capital contributions to, or investments in, any other Person, except, in the cases of clauses (x) and (y) above, agreements or arrangements entered into in the ordinary course of business consistent with past practice;

(iv) solely with respect to the RC International Business or the Owned Real Property, incur or commit to incur any capital expenditures in an individual amount exceeding \$20,000 or \$100,000 in the aggregate;

(v) (A) grant to any Employee or independent contractor of the RC International Business or the Cott Business any material increase in cash compensation (except for cost of living increases or contractually mandated increases) or pay any bonus, other than in the ordinary course of business consistent with past practice or (B) grant to any Employee or independent contractor of the RC International Business or the Cott Business any increase in severance or termination pay;

(vi) transfer or license to any Person or otherwise extend, amend or modify any rights to any material Intellectual Property other than in the ordinary course of business consistent with past practice; or

(vii) terminate, modify or amend any of the Material Assumed Contracts other than in the ordinary course of business consistent with past practice.

9.3 REASONABLE BEST EFFORTS. From the date of this Agreement to the Closing Date, Seller and each Buyer shall use its respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other in doing, all things reasonably necessary to consummate the transactions contemplated by this Agreement including (i) obtaining the consent of any Governmental Authority or third party required by this Agreement, (ii) defending any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of any of the transactions contemplated by this Agreement, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed and (iii) executing and delivering any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement; provided, however, that neither Seller nor any Buyer shall be obligated with respect to such efforts (x) to expend any funds except the payment of the fees and expenses of any applicable attorneys, consultants or other advisors retained by it or (y) to take any actions with respect to its business, the RC International Business or the Cott Business which, in its reasonable judgment, is materially adverse, including, but not limited to, agreeing to any modification of a contract term; provided, further, that Buyers shall be deemed to have satisfied their obligations under this Section 9.3 with respect (A) to obtaining the Financing on substantially the terms and conditions of the Commitment Letter if they and their Affiliates have complied with all their respective material obligations contained in the Commitment Letter and (B) to obtaining the Financing on terms substantially similar to those contained in the Commitment Letter if they and their Affiliates use all commercially reasonable efforts to obtain the Financing on terms substantially similar to those contained in the Commitment Letter from any other lender reasonably acceptable to Cott and have complied with all their respective material obligations, if any, of such new commitment letter; provided, however, Buyers shall not be obligated with respect to such efforts (i) to expend any funds except the payment of the fees and expenses of any applicable attorneys, consultants or other advisors (including such lender) retained by them or (ii) to take any actions with respect to its business which, in its reasonable judgment, is materially adverse, including, but not limited to, agreeing to any modification of a contract term.

9.4 PUBLIC ANNOUNCEMENTS. All press releases and other public disclosure concerning the transactions contemplated hereby from and after the date hereof will be subject to review and approval by Seller and Cott, such approval not to be unreasonably withheld, provided that to the extent a party shall be required to make an announcement pursuant to the Laws of its home jurisdiction or any jurisdiction in which any of its securities are publicly traded or the rules of any stock exchange upon which its securities are listed or any registered securities quotation system on which such securities are traded or pursuant to judicial or administrative process, such party shall provide a copy of any such announcement to the other party prior to such announcement but shall not be obligated to obtain the consent of the other party prior to making such announcement; and provided, further, that Seller may disclose the transactions contemplated hereby to (a) The Coca-Cola Company (so long as The Coca-Cola Company has been previously advised of the terms of this Section 9.4 applicable to Seller and has agreed in writing to be bound by them and has entered into an agreement with Seller having restrictions substantially similar to those applicable to Cott in the Confidentiality Agreement regarding its disclosure of the information provided by Seller) and (b) upon prior notice to and consultation with Cott as to the general terms of such disclosure, any employee employed in the RC International Business or at the Owned Real Property.

9.5 BUYERS. Cott shall cause each entity designated in accordance with Section 12.8(a) to execute and deliver a joinder agreement to this Agreement agreeing to be bound by the terms and conditions of this Agreement in the capacity as a "Buyer" hereunder, effective as of the date of such joinder agreement, and, on the Closing Date, to make all of the representations and warranties contained in Article VII to Seller.

9.6 REMEDIATION AGREEMENT. No later than five days immediately following the date hereof, Seller and Cott shall execute and deliver a Remediation Agreement (the "Remediation Agreement") containing the terms and conditions of Exhibit I attached hereto and such other terms and conditions as the parties determine to be mutually acceptable (both acting reasonably and in good faith) and which are not inconsistent with Exhibit I.

## **ARTICLE X**

### **TERMINATION**

10.1 TERMINATION. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Cott and Seller;

(b) by either Cott or Seller, if the Closing shall not have occurred by the two-month anniversary of the date of this Agreement, provided that if the Closing has not occurred as a result of a failure of a party to fulfill any of the conditions of Closing provided herein, other than with respect to the Financing, that is within the reasonable control of such party to fulfill, then such party (or, in the case of Cott, any other Buyer) shall not be entitled to exercise such right of termination;

(c) by either Seller or Cott, upon notification to the non-terminating party by the terminating party that the satisfaction of any condition to the terminating party's obligations under this Agreement becomes impossible or impracticable with the use of commercially reasonable efforts (other than with respect to the Financing) if the failure of such condition to be satisfied is not caused by a breach hereof by the terminating party;

(d) by Cott, if the Closing shall not have occurred by the two-month anniversary of the date of this Agreement solely and exclusively on account of the failure to fulfill the condition of closing set forth in Section 3.4(j);

(e) by Seller, at any time prior to the Closing but no later than five (5) Business Days immediately following Seller's receipt of the Phase II, if the Phase II shall have been received and the Environmental Remedial Costs are in excess of \$3 million; or

(f) by Cott, at any time prior to the Closing but no later than five (5) Business Days immediately following Cott's receipt of the Phase II, if the Phase II shall have been received and the Environmental Remedial Costs are in excess of \$20 million.

10.2 EFFECT OF TERMINATION. If this Agreement is terminated pursuant to Section 10.1(a), (e) or (f), this Agreement shall forthwith become null and void and there shall be no liability on the part of any party hereto except for the provisions of \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] and 11.9 and as will be provided pursuant to the Remediation Agreement. In the event of any other termination, the parties shall retain any and all rights, claims or causes of action in existence at the time of such termination which are based upon or arose incidental to a breach of any covenant, representation or warranty made hereunder.

## **ARTICLE XI**

### **FURTHER COVENANTS**

#### **11.1 CONFIDENTIALITY.**

(a) The terms of the letter agreement dated as of December 18, 2000 (the "Confidentiality Agreement") between Seller and Cott are hereby incorporated herein by reference and shall continue in full force and effect until the Closing, at which time the obligations of Buyers under this Section 11.1(a) and the Confidentiality Agreement shall terminate except in respect of that portion of the Evaluation Material (as defined in the Confidentiality Agreement) exclusively relating to the RC Domestic Business. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall nonetheless continue in full force and effect in all respects.

(b) Except as otherwise provided in Section 11.1(c), from the date hereof and after the Closing, each party hereto will hold, and will cause its Affiliates and their respective representatives to hold, in strict confidence from any Person (other than such party and its directors, officers, employees, authorized agents and advisors, lenders and potential lenders and Affiliates) all documents and information concerning the other party furnished to it by the other party or such other party's representatives in connection with this Agreement or the transactions contemplated hereby, except to the extent that such documents or information can be shown to

have been (x) previously known by the party receiving such documents or information, (y) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving party or (z) acquired by the receiving party from another source if the receiving party is not aware that such source is under an obligation to another party hereto to keep such documents and information confidential or unless (i) compelled to disclose by judicial or administrative process (including without limitation in connection with obtaining the necessary approvals of this Agreement and the transactions contemplated hereby from Governmental Authorities) or by other requirements of Law or rules of applicable stock exchanges, (ii) disclosed in a Litigation brought by a party hereto in pursuit of its rights or in the exercise of its remedies hereunder or (iii) if such documents and information are Contracts included in the Assets, to the other parties thereto. Should either party be required to disclose any such information in response to a court order or as otherwise required by Law or administrative process, it shall inform the other party in writing of such obligation as soon as possible after it is informed of it and, if possible, before any information is disclosed, so that a protective order or other appropriate remedy may be sought by the non-disclosing party. If either party is so obligated to make such a disclosure, it shall only make the disclosure to the extent to which it is so obligated and in a manner which maintains confidentiality to the maximum extent legally permitted, but not further or otherwise. The provisions of this Section 11.1(b) shall survive the Closing.

(c) From the date hereof and continuing indefinitely after the Closing, each party hereto will keep, and will cause its Affiliates and their respective representatives to keep, confidential, in accordance with at least the same degree of care that it affords its other proprietary information of a similar nature, but in any case no less than a reasonable degree of care and consistent with good industry practice, the Formulas and the Formula Information (and, in each case, any derivations thereof). \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**



**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

11.6 EMPLOYEES.

(a) Cott shall offer employment as of the Closing Date to each Employee listed on Schedule 4.8. Each Employee who accepts Cott's offer of employment is hereinafter referred to

as a "Transferred Employee." From and after the Closing, Cott shall assume responsibility for all salary, severance, bonus obligations and employee benefits (excluding retention bonuses for any Transferred Employee listed on Schedule 4.8) with respect to the Transferred Employees that become payable after the Closing. Seller shall remain responsible for all salary, severance, bonus obligations and employee benefits (including retention bonuses for any Transferred Employees listed on Schedule 4.8) with respect to the Transferred Employees that became payable on or prior to the Closing.

(b) For the one-year period beginning on the Closing Date and ending on the first anniversary thereof, Cott shall provide each Transferred Employee with salary, severance, bonus and employee benefits that are no less favorable, in the aggregate, than those made available by Seller as of the date hereof to such Transferred Employee. Without limiting the foregoing, Cott shall cause each Transferred Employee (and his or her eligible dependents) to be covered on and following the Closing Date by a group health plan that provides health benefits (within the meaning of Section 5001(b)(1) of the Code) that does not limit or exclude coverage on the basis of any preexisting condition of such Transferred Employee or dependent. To the extent that service is relevant for eligibility and vesting (and with respect to benefit accruals, solely for purposes of calculating entitlement to severance, vacation and sick days) under any retirement plan, employee benefit plan, program or arrangement established or maintained by Cott or any of its Affiliates for the benefit of the Transferred Employees, such plan, program or arrangement shall credit such Transferred Employees (i) for service on or prior to the Closing with Seller or any Affiliate thereof or predecessor of either such entity in the same manner and to the same extent that prior service is credited for service rendered to the Seller and (ii) full credit, for the year in which the Closing Date occurs, with any deductible already incurred by a Transferred Employee under Seller's group health plan and with any other out-of-pocket expenses that count against any maximum out-of-pocket expense provision of any group health plan of Cott under which Transferred Employees are covered. Seller shall remain responsible for all claims incurred by Transferred Employees prior to the Closing Date under Seller's group health plans and Cott shall be responsible for all claims incurred on or after the Closing under its group health plans. For purposes of clarity, a claim shall be considered incurred when the treatment for a given condition is provided, and not when the condition arose.

(c) Cott shall assume responsibility for all payroll obligations (including without limitation the satisfaction of all payroll withholding tax obligations) for the Transferred Employees for all payroll periods ending after the Closing. If the Closing takes place on a day such that a payroll period begins on or prior to the Closing Date and ends after the Closing Date (such payroll period, a "Straddle Period"), then Seller shall promptly reimburse Cott for Seller's proportionate share of the salaries, wages and payroll taxes (reduced by all amounts that Seller or its Affiliates otherwise would have withheld for benefit plan coverages for Seller's portion of such Straddle Period) for the Transferred Employees for such Straddle Period, such proportionality to be determined on the basis of the number of working days occurring from the start of such Straddle Period to and including the Closing Date relative to the total number of working days in such Straddle Period. After Cott has satisfied all such payroll obligations with respect to the Straddle Period, Cott shall notify Seller of the aggregate amount of such payroll obligations. Promptly after its receipt of such notice, Seller shall pay to Cott the amount due to Buyer pursuant to this Section 11.6(c).

(d) For purposes of the COBRA health care continuation coverage provisions contained in Section 4980B of the Code and the corresponding provisions of ERISA (the "COBRA Provisions"), the Transferred Employees shall be considered to have separated from service with Seller or its Affiliates on the Closing Date. Following the Closing, Seller or its Affiliates shall timely provide the Transferred Employees with the notice required under the COBRA Provisions for employees who lose group health plan coverage due to a termination of employment. No group health plan maintained by Cott shall constitute a "successor plan" to any group health plan maintained by Seller or its Affiliates and Cott shall not be considered a "successor employer" with respect to the Employees (both within the meaning of the COBRA Provisions). Notwithstanding the foregoing, Cott shall be solely responsible for providing COBRA health care continuation coverage to any Transferred Employees who incur a "qualifying event" (within the meaning of the COBRA Provisions) after the Closing.

(e) The parties hereto agree that, if requested by Seller within sixty (60) days following the Closing, repayment of outstanding loans under the CBI Holdings Inc. Employees' Savings Incentive Plan ("Seller's 401(k) Plan") shall be facilitated by Cott withholding the appropriate loan repayment amount (which amount shall be timely provided to Cott) from the pay of each Transferred Employee who has a loan outstanding under Seller's 401(k) Plan and transferring, pursuant to instructions provided by Seller, such amount to the administrator or trustee of Seller's 401(k) Plan. Cott shall allow any Transferred Employee who elects to take an eligible rollover distribution from Seller's 401(k) Plan to make a direct rollover contribution to a defined contribution plan maintained by Cott of any promissory note distributed in conjunction with such eligible rollover distribution.

(f) Seller shall, as soon as reasonably practicable following the date hereof, but in any event not later than ten (10) Business Days prior to the Closing, deliver to Cott the information regarding the Employees that has been reasonably requested by Cott on or prior to the date hereof and not yet delivered by Seller.

11.7 MAIL AND OTHER COMMUNICATIONS. After the Closing, Seller shall promptly remit to Cott any checks, cash, payments, mail or other communications relating to the RC International Business, the Cott Business, the Assets and the Assumed Liabilities that are received by Seller after the Closing Date, except to the extent the same relates to the Excluded Assets or the Retained Liabilities, with checks, cash and payments being forwarded to Cott's bank account within five (5) Business Days after receipt and mail or other communications being forwarded to Cott within two (2) Business Days after receipt. After the Closing, Buyers shall promptly remit to Seller any checks, cash, payments, mail or other communications relating to the Excluded Assets and the Retained Liabilities that are received by Buyer after the Closing Date, except to the extent the same relates to the Assets or the Assumed Liabilities, with checks, cash and payments being forwarded to Seller's bank account within five (5) Business Days after receipt and mail or other communications being forwarded to Seller within two (2) Business Days after receipt.

#### 11.8 FURTHER ACTION.

(a) From and after the Closing Date, each of the parties hereto shall execute and deliver such documents and other papers and take such further actions as may be reasonably

required to carry out the provisions of this Agreement and the Ancillary Agreements and to give effect to the transactions contemplated hereby and thereby. Without limiting the foregoing, from and after the Closing, (i) Seller shall do all things necessary, proper or advisable under applicable Laws as reasonably requested by Cott to put the appropriate Buyer in effective possession, ownership and control of the Assets and any other assets or properties of Seller or its Affiliates that relate solely to the operation of the RC International Business or the Cott Business or the Owned Real Property that were not transferred to Buyers hereunder and each Buyer shall cooperate with Seller for that purpose, and Seller shall provide reasonable assistance to the applicable Buyer in securing the transfer or reissuance of permits and certificates of Governmental Authorities reasonably necessary to conduct the RC International Business or the Cott Business, as the case may be, and (ii) Buyers shall do all things necessary, proper or advisable under applicable Laws as reasonably requested by Seller to put Seller (or such other Person as Seller shall indicate) in effective possession, ownership and control of the Excluded Assets and Seller shall cooperate with Buyers for that purpose.

(b) Subject to Section 11.1(b), Seller shall have the right to retain copies of all books and records of the RC International Business and the Cott Business delivered by Seller to Cott relating to periods ending on or prior to the Closing Date. For a period of ten years from the date hereof, Buyers shall maintain all books and records of the RC International Business and the Cott Business delivered by Seller relating to periods ending on or prior to the Closing Date and shall make them and any other relevant books and records (subject to any confidentiality restrictions imposed on Buyers regarding such materials), and any individuals responsible for the preparation and maintenance of such books and records, available to Seller, subject to Section 11.1(b), as may be requested by Seller from time to time, including, without limitation, in connection with any action, case or proceeding by or against Seller or any of its Affiliates. If, at any time after the Closing, Seller requires a copy of any such book or record, it shall have the right to promptly obtain a copy thereof (at the Seller's cost) from Buyers. Seller shall make all relevant books and records in its possession (subject to any confidentiality restrictions imposed on Seller regarding such materials), and any individuals responsible for the preparation and maintenance of such books and records, available to Buyers, subject to Section 11.1(b), as may be requested by Buyers from time to time, in connection with any action, case or proceeding by or against any Buyer or any Affiliate of any Buyer.

(c) If, as of the date hereof, any bottle designs are used both in the RC Domestic Business and the RC International Business and are owned by Seller or any Affiliate of Seller, Seller or such Affiliate shall at the Closing grant Cott or the applicable Buyer a perpetual, royalty-free license, freely assignable in connection with a sale of the RC International Business, but with no representations as to the quality of Seller's or such Affiliate's title to such designs, registration of such designs with Governmental Authorities or infringement on the use by it or its infringement of the rights of others with respect to such designs, to use such bottle designs on such additional terms and conditions as the parties shall agree both acting reasonably and in good faith.

11.9 EXPENSES AND FINDER'S FEES. Seller, on the one hand, and Cott (with respect to all Buyers), on the other hand, shall each bear their own expenses (including without limitation legal fees and expenses, accountants' or financial advisors' fees and expenses and fees due to any broker, investment banker, finder or agent) incurred in connection with the negotiation,

execution and performance of this Agreement. Cott shall pay all transfer Taxes or other fees related to the sale of the Assets hereunder and the fees and costs of recording or filing all applicable conveyancing instruments associated with the transfer of the Assets from Seller to Buyers pursuant to this Agreement. Seller and each applicable Buyer shall cooperate in the preparation, execution and filing of all Tax Returns regarding any transfer Taxes which become payable as a result of the transfer of the Assets from Seller to a Buyer pursuant to this Agreement and/or shall cooperate to seek an available exemption from such Taxes.

11.10 ACCOUNTS RECEIVABLE. No later than the Closing Date, Seller shall provide Cott with a true and complete list of the RC International Accounts Receivable and the Cott Accounts Receivable as of a date no earlier than fifteen calendar days prior to the Closing Date, in each case indicating the name of the payor and the amount outstanding. Within five (5) Business Days immediately following the Closing Date, Seller shall provide Cott with an updated list, as of the Closing Date, of the information specified in the immediately preceding sentence.

11.11 BULK SALES LAWS. Buyers hereby waive compliance by Seller with the provisions of any bulk sales, bulk transfer or similar Laws.

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

## **ARTICLE XII**

### **GENERAL**

12.1 CERTAIN DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means, with respect to any specified Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person.

"Agreed Rate" has the meaning set forth in Section 2.3(e).

"Agreement" has the meaning set forth in the preamble hereto.

"Allocation Schedule" has the meaning set forth in Section 2.2.

"Ancillary Agreements" means the Bill of Sale, Assumption Agreement, Copyright Assignment, Trademark Assignment, Termination Agreement, Deed, FIRPTA Certificate, Transitional Services Agreement, Settlement Termination Agreement, License Assignment Agreement and all other certificates or documents to be delivered pursuant to this Agreement.



"Assets" has the meaning set forth in Section 1.1.

"Assumed Contracts" means, collectively, the RC International Assumed Contracts and the Cott Assumed Contracts.

"Assumed Liabilities" has the meaning set forth in Section 1.3(a).

"Assumption Agreement" has the meaning set forth in Section 3.2(d).

"Bill of Sale" has the meaning set forth in Section 3.2(c).

"Branded Carbonated Soft Drink" means a carbonated soft drink that is marketed, distributed and positioned in substantially the same manner as the products produced by the two major cola companies.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of New York are authorized or obligated to close.

"Buyer Indemnified Parties" has the meaning set forth in Section 8.2(a).

"Buyers" means, collectively, Cott, BCB and any entity designated by Cott prior to the Closing to be additional purchasers of any portion of the Assets and to assume any of the Assumed Liabilities in accordance with Section 12.8(a); provided, that nothing in this definition is intended to imply that Cott is or will be the actual purchaser of any of the Assets or that it will assume any of the Assumed Liabilities.

"Claim Notice" has the meaning set forth in Section 8.4(a).

"Closing Date" has the meaning set forth in Section 3.1.

"Closing" has the meaning set forth in Section 3.1.

"COBRA Provisions" has the meaning set forth in Section 11.6(d).

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder, each as amended from time to time.

"Commitment Letter" has the meaning set forth in Section 7.5.

"Common Inventory" means, collectively, finished concentrates and emulsions and raw and packaging materials and work in process, in each case which are usable in the RC International Business, the RC Domestic Business and the Cott Business (or any combination thereof) and in the possession or control of Seller.

"Confidentiality Agreement" has the meaning set forth in Section 11.1(a).

"Contract" means any agreement, lease, evidence of indebtedness, mortgage, indenture, security agreement or other contract, commitment or obligation, in each case, whether written or oral.

"Control" means, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise. The term "Controlled" shall have a correlative meaning.

"Copyright Assignment" has the meaning set forth in Section 3.2(f).

"Cott" has the meaning set forth in the preamble hereto.

"Cott Accounts Receivable" has the meaning set forth in Section 1.1(b)(vi).

"Cott Additional Formulas" has the meaning set forth in Section 1.1(b)(i)(B)(ii).

"Cott Agreement" means the letter agreement dated January 28, 1994 between Royal Crown Cola Co. and Cott, as amended or supplemented from time to time, including, without limitation, by two letter agreements dated July 26, 1996 and two letter agreements dated February 11, 1997 and the Assumption Agreement dated January 2, 2000.

"Cott Assets" has the meaning set forth in Section 1.1(b).

"Cott Assumed Contracts" has the meaning set forth in Section 1.1(b)(v).

"Cott Business" has the meaning set forth in the recitals hereto.

"Cott Cap" has the meaning set forth in Section 8.2(b).

"Cott Current Concentrates" means the cola and non-cola concentrates, and cola and non-cola emulsions used in the production of concentrates, that are currently supplied by Seller to the Cott Group pursuant to the Cott Agreement.

"Cott Current Formulas" has the meaning set forth in Section 1.1(b)(i)(B)(i).

"Cott Employee Plan" means each material "employee benefit plan" (within the meaning of Section 3(3) of ERISA) and each bonus, incentive or deferred compensation, severance, termination, retention, change of control, stock option, stock appreciation, stock purchase, phantom stock or other equity-based, performance or other employee or retiree benefit or compensation plan, program, arrangement, agreement or policy maintained by Seller that provides benefits or compensation in respect of any employee currently employed by Seller in the Cott Business.

"Cott Formula Information" has the meaning set forth in Section 1.1(b)(i)(B).

"Cott Formulas" has the meaning set forth in Section 1.1(b)(i)(B).

"Cott Group" means Cott and all of its Affiliates.

"Cott Intellectual Property" has the meaning set forth in Section 1.1(b)(i).

"Cott MAE" means any change or effect that, singly or in the aggregate, is materially adverse to the operations and conduct of the Cott Business or the Cott Assets taken as

a whole; provided, however, that a Cott MAE shall exclude any change or effect due to (i) general economic or industry-wide conditions in any country in the Territory, (ii) any change resulting from this Agreement or the public announcement thereof or the transactions contemplated hereby or (iii) any condition described in the Disclosure Schedule.

"Cott Marks" has the meaning set forth in Section 1.1(b)(i)(A).

"Cott Material Assumed Contracts" has the meaning set forth in Section 6.7.

"Cott Products" means all private label and Cott Group proprietary label carbonated soft drinks produced, bottled or sold by or on behalf of the Cott Group which are sold to retailers, wholesalers and distributors for re-sale to consumers in bottles, cans or other containers and which are produced from Cott Current Concentrates.

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

"Cott Settlement Agreement" means the agreement effective November 27, 1996 between CBI Holdings, Inc., Cott and Cott Beverages USA Inc.

"Cott US Concentrates" means the cola and non-cola concentrates, and cola and non-cola emulsions used in the production of concentrates currently in commercial use solely in connection with the Lutheran License.

"Cott US Formulas" has the meaning set forth in Section 1.1(b)(i)(B)(iii).

"Cott USA Trademark License Agreement" means the Trademark License Agreement, dated December 20, 1991, between Cott U.S.A., a division of Cadbury Beverages Inc. (inadvertently shown as being signed by Cott Beverages Inc.) and Canada Dry Bottling Company of New York.

"Deed" has the meaning set forth in Section 3.2(h).

"Disclosure Schedule" has the meaning set forth in Section 4.9.

"Dispute Period" has the meaning set forth in Section 8.4(a).

"Employees" has the meaning set forth in Section 4.8.

"Encumbrances" has the meaning set forth in Section 1.1.

"Environment" means all air, surface water, groundwater, or land, including land surface or subsurface, including all fish, wildlife, biota and all other natural resources.

"Environmental Claims" means any and all administrative or judicial actions, suits, orders, written claims, liens, written notices, written notices of violations, written complaints, written requests for information or proceedings, in each case whether criminal or civil, pursuant to or relating to any applicable Environmental Law or any common law doctrine relating to the presence of, Release of or exposure to a Hazardous Material by any Person

(including but not limited to any Governmental Authority, private person and citizens' group) based upon, alleging, asserting, or claiming any actual or potential (i) violation of or liability under any Environmental Law, (ii) violation of any Environmental Permit, or (iii) liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to the presence, Release, or threatened Release into the Environment, of any Hazardous Materials at any location, including but not limited to any location to which Hazardous Materials or materials containing Hazardous Materials were sent for handling, storage, treatment, or disposal.

"Environmental Clean-up Site" means any location which is listed or proposed for listing on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state list of sites requiring investigation or cleanup, or which is the subject of any pending or threatened action, suit, proceeding, or investigation related to or arising from any alleged violation of any Environmental Law.

"Environmental Conditions" means those matters or conditions identified in the Phase II that (i) constitute a violation of applicable Environmental Law, (ii) require remediation under applicable Environmental Law or (iii) require further investigation to determine if such matters or conditions constitute a violation of applicable Environmental Law or require remediation under applicable Environmental Law.

"Environmental Law" means any and all applicable civil and criminal laws, statutes, ordinances, orders, codes, rules, regulations, Environmental Permits, binding policies, binding guidance documents, judgments, decrees or injunctions of any Governmental Authority, relating to the protection of the Environment, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or Release of Hazardous Materials, whether now existing or subsequently amended or enacted, including but not limited to: the Clean Air Act, 42 U.S.C. ss. 7401 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. ss. 9601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. ss. 1251 et seq.; the Hazardous Material Transportation Act 49 U.S.C. ss. 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. ss. 136 et seq.; the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. ss. 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. ss. 2601 et seq.; the Occupational Safety & Health Act of 1970, 29 U.S.C. ss. 651 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. ss. 2701 et seq.; and the state analogies thereto, including the Georgia Hazardous Sites Response Act, OCGA 12-8-90 et seq., and the Georgia Asbestos Safety Act, OCGA 12-12-1 et seq., all as amended or superseded from time to time.

"Environmental Permit" means any permits, licenses, approvals, consents or authorizations required by any Governmental Authority under or in connection with any Environmental Law.

"Environmental Remedial Costs" means the total reasonable estimated costs of remediating or correcting all Environmental Conditions, as determined pursuant to and in accordance with the Remediation Agreement.

"Environmental Retained Liabilities" has the meaning set forth in Section 8.2(a)(i).

"ERISA" means the Employee Retirement Income Security Act of 1974 and the rules and regulations thereunder, each as amended from time to time.

"Excluded Assets" has the meaning set forth in Section 1.2.

"Final Working Capital Statement" has the meaning set forth in Section 2.3(b) or Section 2.3(c), as applicable.

"Financing" has the meaning set forth in Section 7.5.

"FIRPTA Certificate" has the meaning set forth in Section 3.2(i).

"Formula Information" means the RC International Formula Information and the Cott Formula Information, collectively.

"Formulas" means the RC International Formulas and the Cott Formulas, collectively.

"Ft. Lauderdale Lease" means the Commercial Office Sub-Lease, dated as of October 2000, between Arby's, Inc. and RCAC, LLC and Seller, as amended by a Sub-Lease Amendment dated March 19, 2001.

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

"Guaranty" has the meaning set forth in Section 3.2(n).

"Hazardous Material" means petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indemnified Party" has the meaning set forth in Section 8.4.

"Indemnifying Party" has the meaning set forth in Section 8.4(a).

"Indemnity Notice" has the meaning set forth in Section 8.4(b).

"Independent Accounting Firm" means (a) an independent certified public accounting firm in the United States of international recognition mutually acceptable to Seller and Cott or (b) if Seller and Cott are unable to agree upon such a firm, then each party shall select one such firm as described in (a) and those two firms shall select a third firm, in which event "Independent Accounting Firm" shall mean such third firm.

"Information Technology" has the meaning set forth in Section 1.2(e).

"Initial Working Capital Statement" has the meaning set forth in Section 2.3(a).

"Intellectual Property" means, collectively, the RC International Intellectual Property and the Cott Intellectual Property.

"Inventory" means the inventory and supplies described in Sections 1.1(a)(iii)(A), (C) and (D) and Section 1.1(b)(iii), exclusive of the inventory and supplies described in Section 1.2(d).

"Joinder Agreements" has the meaning set forth in Section 3.3(l).

"Knowledge of Buyers" or any similar phrase means, the knowledge of any of Paul Richardson, Ray Silcock and Mark Halperin, in each case after assuming that such individual has made reasonable inquiry, including of Rick King and Christopher Virostek, as appropriate, in light of the particular circumstances.

"Knowledge of Seller" or any similar phrase means, in the case of the RC International Business or the Cott Business, the knowledge of any of Hank Udow, Mark Reckitt, Bruce Futterer, Gary Lyons, Jimmy McKinstry and Jack Belsito and, in addition, in the case of the RC International Business, the knowledge of any of Jerry Smith, Don Franza and Jim Johnston, in each case after assuming that such individual has made reasonable inquiry, in light of the particular circumstances.

"Law" means any United States federal, state or local or any foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

"License Agreement" has the meaning set forth in Section 3.2(o).

"License Assignment Agreement" has the meaning set forth in Section 3.2(m).

"Litigation" has the meaning set forth in Section 4.3.

"Losses" has the meaning set forth in Section 8.2(a).

"Lutheran License" means the Cott License Agreement dated as of January 2, 1998 between Dr Pepper/Seven Up, Inc. and Beverage Management Group, Inc., as amended.

"Marks" means, collectively, the RC International Marks and the Cott Marks.

"Material Assumed Contracts" means the RC International Material Assumed Contracts and the Cott Material Assumed Contracts, collectively.

"Notice of Disagreement" has the meaning set forth in Section 2.3(b).

"Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Owned Real Property" has the meaning set forth in Section 1.1(b)(vii).

"Permitted Encumbrances" means (i) Encumbrances for inchoate mechanics' and materialmen's liens and inchoate workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of either the RC International Business or the Cott Business, (ii) Encumbrances for Taxes and other liabilities not yet due and payable or being contested in good faith, (iii) Encumbrances with respect to the Owned Real Property set forth on Schedule 12.1 hereto, (iv) imperfections of title the existence of which do not materially detract from the value of, materially interfere with, or otherwise materially adversely affect the use and enjoyment of such property, consistent with past practice, subject thereto or affected thereby, and (v) solely with respect to the Owned Real Property, (A) conditions, easements, rights of way and other similar restrictions that may be shown by a current survey, title report or physical inspection which do not in the reasonable discretion of Cott materially detract from the value of, materially interfere with, or otherwise materially adversely affect the use and enjoyment of the Owned Real Property consistent with past practice, and (B) zoning, building and other similar restrictions imposed by applicable Law.

"Person" means any natural person, general or limited partnership, corporation, limited liability company, joint venture, joint stock company, trust, firm, association, unincorporated organization or other legal entity.

"Phase II" means the final written assessment of the Phase II site assessment to be conducted at and in respect of the Owned Real Property pursuant to and in accordance with the Remediation Agreement.

"Private Label Soft Drinks" means carbonated soft drinks produced for a specific retailer and/or wholesaler or a defined group of retailers and/or wholesalers, bearing a brand name owned by, exclusively licensed to, or otherwise exclusively associated with such retailer and/or wholesaler or group of retailers and/or wholesalers.

"Purchase Price" has the meaning set forth in Section 2.1.

"RC Domestic Business" means the business conducted by Seller of manufacturing, marketing and selling, outside the Territory, certain carbonated beverage products under the RC Domestic Marks.

"RC Domestic Formula Information" has the meaning set forth in Section 1.2(f).

"RC Domestic Formulas" has the meaning set forth in Section 1.2(f).

"RC Domestic Marks" means the trademarks, trademark rights, trade dress, service marks, service mark rights, brand names, trade names and trade name rights, service names and service name rights and business and product names currently used in the RC Domestic Business or corresponding to the RC International Marks.

"RC International Accounts Receivable" has the meaning set forth in Section 1.1(a)(vi).

"RC International Additional Formulas" has the meaning set forth in Section 1.1(a)(i)(F)(iii).

"RC International Additional Marks" has the meaning set forth in Section 1.1(a)(i)(B).

"RC International Assets" has the meaning set forth in Section 1.1(a).

"RC International Assumed Contracts" has the meaning set forth in Section 1.1(a)(v).

"RC International Branded Concentrates" means the cola and non-cola concentrates, and cola and non-cola emulsions used in the production of concentrates, produced by or on behalf of Seller and currently in commercial use in the RC International Business and sold under the RC International Current Marks.

"RC International Branded Formulas" has the meaning set forth in Section 1.1(a)(i)(F)(i).

"RC International Business" has the meaning set forth in the recitals hereto.

"RC International Cap" has the meaning set forth in Section 8.2(b).

"RC International Copyrights" has the meaning set forth in Section 1.1(a)(i)(E).

"RC International Current Marks" has the meaning set forth in Section 1.1(a)(i)(A).

"RC International Employee Plan" means each material "employee benefit plan" (within the meaning of Section 3(3) of ERISA) and each bonus, incentive or deferred compensation, severance, termination, retention, change of control, stock option, stock appreciation, stock purchase, phantom stock or other equity-based, performance or other employee or retiree benefit or compensation plan, program, arrangement, agreement or policy maintained by Seller that provides benefits or compensation in respect of any employee currently employed by Seller in the RC International Business.

"RC International Formula Information" has the meaning set forth in Section 1.1(a)(i)(F).

"RC International Formulas" has the meaning set forth in Section 1.1(a)(i)(F).



"RC International Intellectual Property" has the meaning set forth in Section 1.1(a)(i).

"RC International MAE" means any change or effect that, singly or in the aggregate, is materially adverse to the operations and conduct of the RC International Business or the RC International Assets taken as a whole; provided, however, that an RC International MAE shall exclude any change or effect due to (i) general economic or industry-wide conditions in any country in the Territory, (ii) any change resulting from this Agreement or the public announcement thereof or the transactions contemplated hereby or (iii) any condition described in the Disclosure Schedule.

"RC International Material Assumed Contracts" has the meaning set forth in Section 5.7.

"RC International Marks" has the meaning set forth in Section 1.1(a)(i)(B).

"RC International Non-Branded Concentrates" means the cola and non-cola concentrates, and cola and non-cola emulsions used in the production of concentrates, produced by or on behalf of Seller and currently in commercial use in the RC International Business exclusive of the RC International Branded Concentrates.

"RC International Non-Branded Formulas" has the meaning set forth in Section 1.1(a)(i)(F)(ii).

"RC International Restricted Business" has the meaning set forth in Section 11.3(b).

"Real Property" means any land, building, plant, structure and other improvement, together with all fixtures, systems, facilities equipment and articles of personal property attached or appurtenant to the foregoing and all rights and agreements, easements, covenants, hereditaments and appurtenances which benefit or pertain to the foregoing.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Material into the Environment.

"Remediation Agreement" has the meaning set forth in Section 9.6.

"Resolution Period" has the meaning set forth in Section 8.4(a)(iii).

"Retained Liabilities" has the meaning set forth in Section 1.3(b).

"Seller" has the meaning set forth in the preamble hereto.

"Seller Indemnified Parties" has the meaning set forth in Section 8.3.

"Seller's 401(k) Plan" has the meaning set forth in Section 11.6(e).

"Settlement Termination Agreement" has the meaning set forth in Section 3.2(l).

"Statement" has the meaning set forth in Section 5.5(a).

"Straddle Period" has the meaning set forth in Section 11.6(c).

"Tax Benefit" means any decrease in income Tax liability, or increase in income Tax refund, recognized by the Indemnified Party in connection with the item of Loss giving rise to an indemnification payment, based upon the income Tax rate applicable to the Indemnified Party during the taxable year in which such Loss is recognized, net of any increase in income Tax liability resulting from the indemnification payment to the Indemnified Party with respect to such Loss.

"Tax Returns" means all returns and reports (including elections, declaration, disclosures, schedules, estimates and information returns) required to be supplied to a Tax authority relating to Taxes.

"Taxes" means all foreign and domestic federal, state, local and other income, sales, use, excise, franchise, business license, withholding, payroll (including federal, state and local unemployment and workers' compensation insurance) and property (real, personal and intangible) taxes or similar assessments and custom duties, and any interest, penalties, fees, assessments and other governmental charges of any kind imposed thereon.

"Termination Agreement" has the meaning set forth in Section 3.2(g).

"Territory" means any country or jurisdiction other than the United States of America, Puerto Rico, Canada, Mexico, the U.S. Virgin Islands (Saint Thomas, Saint John and Saint Croix Islands), American Samoa, Baker Islands, Howland Islands, Guam, Jarvis Islands, Johnston Atoll, Kingman Reef, Midway Islands, Northern Mariana Islands, Palmyra Atoll, Wake Islands, French Polynesia, New Caledonia, Wallis, Fortuna and areas under the administration of the United States of America (including military or governmental installations or agencies worldwide).

"Third Party Claim" has the meaning set forth in Section 8.4(a).

"Trademark Assignment" has the meaning set forth in Section 3.2(e).

"Transferred Employees" has the meaning set forth in Section 11.6(a).

"Transitional Services Agreement" has the meaning set forth in Section 3.2(j).

"Websites" has the meaning set forth in Section 1.1(a)(i)(C).

"Working Capital" has the meaning set forth in Section 2.3(a).

12.2 WAIVER. Any failure of any Buyer to comply with any of its obligations or agreements or to fulfill any conditions herein contained may be waived only by a written waiver from Seller. Any failure of Seller to comply with any of its obligations or agreements or to

fulfill any conditions herein contained may be waived only by a written waiver from Cott. Except as otherwise specified herein, no failure by either Seller or any Buyer to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by such party preclude any other or future exercise of that right or any other right hereunder by that party.

12.3 NOTICES. All notices, requests or other communications required or permitted hereunder shall be given in writing by hand delivery, overnight courier or registered mail or certified mail, return receipt requested, postage prepaid, to the party to receive the same at its respective address set forth below, or at such other address as may from time to time be designated by such party to the other in accordance with this Section 12.3:

If to Seller, to:	Royal Crown Company, Inc. c/o Dr Pepper/Seven Up, Inc. 5301 Legacy Drive Plano, Texas 75024 Attn: Bruce Futterer, Esq.
with a copy to:	Morgan, Lewis & Bockius LLP 101 Park Avenue New York, New York 10178-0060 Attn: Charles E. Engros, Jr., Esq.
If to any Buyer, to:	Cott Corporation 207 Queen's Quay West, Suite 340 Toronto, Ontario M5J 1A7 Canada Attn: Mark R. Halperin, Esq.
with a copy to:	Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Canada Attn: Stephen Bloom, Esq.

All such notices and communications hereunder shall be deemed given when received, as evidenced by the acknowledgment of receipt issued with respect thereto by the applicable postal authorities or the signed acknowledgment of receipt.

12.4 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies under or by reason of this Agreement, other than Persons expressly entitled to indemnification under Article VIII hereof; provided, however, that nothing in this Section 12.4 shall affect any party's obligations under Section 11.4 hereof.

12.5 HEADINGS. Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement and shall not be used in construing it.

12.6 ENTIRE AGREEMENT. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those herein expressed. This Agreement, together with the schedules, other agreements and documents referred to herein, embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof, except as specifically referenced herein. This Agreement may be amended or modified only by a written instrument signed by Seller and Cott. This Agreement supersedes and terminates all prior discussions, negotiations, understandings, arrangements and agreements between the parties relating to the subject matter hereof.

12.7 SEVERABILITY. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provision or provisions or the remaining provisions of this Agreement.

#### 12.8 ASSIGNABILITY.

(a) Prior to the Closing, none of the parties hereto may assign this Agreement; provided, however, that, subject to Section 9.5, upon written notice to Seller given no later than ten (10) Business Days prior to the Closing, and with the prior written consent of Seller which will not be unreasonably withheld or delayed, Buyers may assign their right to acquire any portion of the Assets and their obligations to assume any portion of the Assumed Liabilities to one or more direct or indirect wholly-owned subsidiaries of Cott.

(b) After the Closing, neither Seller nor Cott nor the other Buyers hereto may assign this Agreement without the prior written consent of Cott, in the case of an assignment by Seller, and Seller, in the case of an assignment by Cott or any Buyer, which consent will not be unreasonably withheld or delayed; provided, however, that the events described in (i)-(iv) below shall be deemed to be a permitted assignment and shall not require consent: (i) a change in control in or a merger by (either as the surviving or non-surviving entity) or sale of all or substantially all of the assets of either Cott or Seller, (ii) either Seller, on the one hand, and Cott and the Buyers, on the other hand, may assign all of its rights hereunder to an institutional lender (meaning a commercial bank, insurance company, reputable commercial lender, investment bank or a trustee for holders of debt securities) in connection with a financing from such institutional lender without the prior written consent of the other, (iii) Seller may assign all of its rights and obligations hereunder to the purchaser of all or substantially all of the assets of the RC Domestic Business without the prior written consent of Cott, \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] and Seller remains jointly and severally liable for its obligations under Article VIII hereof and (iv) Cott and the applicable Buyer may assign all of its rights and obligations hereunder to the extent that they relate solely to the RC International Assets to the purchaser of all or substantially all of the assets of the RC International Business without the prior written consent of Seller \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED] and Cott remains jointly and severally liable for its obligations under Article VIII hereof.

12.9 SUCCESSORS AND ASSIGNS. This Agreement and the provisions thereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.10 GOVERNING LAW. The parties hereto have agreed that the validity, construction, operation and effect of any and all of the terms and provisions of this Agreement shall be determined and enforced in accordance with the substantive laws of the State of New York without giving effect to principles of conflicts of law thereunder.

12.11 COUNTERPARTS. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

12.12 CONSENT TO JURISDICTION. Each party hereto hereby irrevocably and unconditionally (i) submits, for itself and its property, to the exclusive jurisdiction of any Federal Court sitting in New York County of the State of New York in any suit, action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment rendered in any such suit, action or proceeding, (ii) waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding in any such court, including any claim that any such suit, action or proceeding has been brought in an inconvenient forum and (iii) waives all rights to a trial by jury in any such suit, action or proceeding. Any and all service of process and any other notice and any such action or proceeding shall be effective against any party if given personally or by registered or certified mail, return receipt requested, or by any other means of mail that requires a signed receipt, postage prepaid, mailed to such party as provided herein. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have duly signed this Agreement as of the date first written above.

**ROYAL CROWN COMPANY, INC.**

*/s/ Gary D. Lyons*  
By: \_\_\_\_\_  
Name:  
Title: V.P.

**COTT CORPORATION**

*/s/ Mark Halperin*  
By: \_\_\_\_\_  
Name: M. Halperin  
Title: SVP, Legal Counsel & Secty

**BCB USA CORP.**

*/s/ Mark Halperin*  
By: \_\_\_\_\_  
Name: M. Halperin  
Title: SVP & Secretary

**EXHIBITION 10.1  
EXECUTION COPY**

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**U.S.\$150,000,000**

**CREDIT AGREEMENT**

**AMONG**

**BCB USA CORP.,**

**COTT CORPORATION,**

**THE SEVERAL LENDERS  
FROM TIME TO TIME PARTIES HERETO,**

**LEHMAN BROTHERS INC.,**

**AS ARRANGER**

**FIRST UNION NATIONAL BANK,  
AS SYNDICATION AGENT**

**FIRST UNION NATIONAL BANK,  
AS WORKING CAPITAL FACILITY AGENT,**

**BANK OF MONTREAL,  
AS CANADIAN ADMINISTRATIVE AGENT**

**AND**

**LEHMAN COMMERCIAL PAPER INC.,  
AS GENERAL ADMINISTRATIVE AGENT**

**DATED AS OF JULY 19, 2001**

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TABLE OF CONTENTS

	Page
Section 1. DEFINITIONS.....	1
1.1 Defined Terms.....	1
1.2 Other Definitional Provisions.....	30
Section 2. AMOUNT AND TERMS OF U.S. FACILITY COMMITMENTS.....	30
2.1 Term Loan Commitments.....	30
2.2 Procedure for Term Loan Borrowing.....	30
2.3 Repayment of Term Loans.....	31
2.4 U.S. Revolving Credit Commitments.....	32
2.5 Procedure for Borrowing U.S. Revolving Credit Loans.....	33
2.6 Swing Line Commitment.....	33
2.7 Procedure for Swing Line Borrowing; Refunding of Swing Line Loans.....	34
2.8 Repayment of U.S. Facility Loans; Evidence of Debt.....	35
2.9 Facility Fees.....	36
2.10 Termination or Reduction of U.S. Revolving Credit Commitments.....	37
Section 3. AMOUNT AND TERMS OF THE CANADIAN FACILITY COMMITMENTS.....	37
3.1 Canadian Revolving Credit Commitment; Canadian Supplemental Revolving Credit Commitment.....	37
3.2 Procedure for Borrowing Canadian Revolving Credit Loans; Procedure for Borrowing Canadian Supplemental Revolving Credit Loans.....	38
3.3 Repayment of Canadian Facility Loans; Evidence of Debt.....	39
3.4 Termination or Reduction of Canadian Revolving Credit Commitments.....	40
3.5 Facility Fees.....	40
3.6 Canadian Swing Line Commitment.....	40
3.7 Procedure for Canadian Swing Line Borrowing; Refunding of Canadian Swing Line Loans.....	41
Section 4. LETTERS OF CREDIT.....	43
4.1 L/C Commitments.....	43
4.2 Procedure for Issuance of Letters of Credit.....	44
4.3 Fees and Other Charges.....	45
4.4 L/C Participations.....	45
4.5 Reimbursement Obligation of the Borrowers.....	46
4.6 Obligations Absolute.....	47
4.7 Letter of Credit Payments.....	47
4.8 Applications.....	48
Section 5. GENERAL PROVISIONS APPLICABLE TO THE FACILITIES.....	48
5.1 Interest Rates and Payment Dates.....	48
5.2 Conversion and Continuation Options With Respect to Loans...	48
5.3 Minimum Amounts of Tranches.....	50
5.4 Optional Prepayments.....	50
5.5 Mandatory Prepayments; Application of Prepayments.....	51
5.6 Certain Fees.....	53
5.7 Computation of Interest and Fees.....	53



5.8	Inability to Determine Interest Rate.....	54
5.9	Pro Rata Treatment and Payments.....	54
5.10	Illegality.....	56
5.11	Requirements of Law.....	57
5.12	Indemnity.....	58
5.13	Taxes.....	58
5.14	Change of Lending Office.....	60
5.15	Replacement of Lenders.....	60
Section 6.	REPRESENTATIONS AND WARRANTIES.....	61
6.1	Financial Condition.....	61
6.2	No Change.....	62
6.3	Corporate Existence; Compliance with Law.....	62
6.4	Corporate Power; Authorization; Enforceable Obligations.....	62
6.5	No Legal Bar.....	62
6.6	No Material Litigation.....	63
6.7	No Default.....	63
6.8	Ownership of Property; Liens.....	63
6.9	Intellectual Property.....	63
6.10	Taxes.....	63
6.11	Federal Regulations.....	64
6.12	Labor Matters.....	64
6.13	ERISA.....	64
6.14	Investment Company Act; Other Regulations.....	64
6.15	Subsidiaries.....	64
6.16	Use of Proceeds.....	65
6.17	Environmental Matters.....	65
6.18	Accuracy of Information, etc.....	66
6.19	Security Documents.....	66
6.20	Solvency.....	68
6.21	Regulation H.....	68
Section 7.	CONDITIONS PRECEDENT.....	68
7.1	Conditions to Initial Extension of Credit.....	68
7.2	Conditions to Each Extension of Credit.....	72
Section 8.	AFFIRMATIVE COVENANTS.....	72
8.1	Financial Statements. Furnish each Agent and each Lender:...	72
8.2	Certificates; Other Information.....	73
8.3	Payment of Obligations.....	75
8.4	Conduct of Business and Maintenance of Existence, etc.....	75
8.5	Maintenance of Property; Insurance.....	75
8.6	Inspection of Property; Books and Records; Discussions.....	75
8.7	Notices.....	76
8.8	Environmental Laws.....	76
8.9	[Reserved].....	77
8.10	Additional Collateral, etc.....	77
8.11	Further Assurances.....	78
8.12	Indenture Calculations.....	78

Section 9.	NEGATIVE COVENANTS.....	78
9.1	Financial Condition Covenants.....	78
9.2	Limitation on Indebtedness.....	80
9.3	Limitation on Liens.....	81
9.4	Limitation on Fundamental Changes.....	82
9.5	Limitation on Disposition of Property.....	83
9.6	Limitation on Restricted Payments.....	83
9.7	Limitation on Capital Expenditures.....	84
9.8	Limitation on Investments.....	85
9.9	Limitation on Unrestricted Subsidiaries.....	86
9.10	Limitation on Transactions with Affiliates.....	87
9.11	Limitation on Sales and Leasebacks.....	87
9.12	Limitation on Changes in Fiscal Periods.....	87
9.13	Limitation on Negative Pledge Clauses.....	87
9.14	Limitation on Restrictions on Subsidiary Distributions.....	87
9.15	Limitation on Lines of Business.....	88
9.16	Limitation on Amendments to Acquisition Documentation.....	88
9.17	Limitation on Hedge Agreements.....	88
Section 10.	EVENTS OF DEFAULT.....	88
Section 11.	THE AGENTS.....	91
11.1	Appointment.....	91
11.2	Delegation of Duties.....	92
11.3	Exculpatory Provisions.....	92
11.4	Reliance by Agents.....	92
11.5	Notice of Default.....	93
11.6	Non-Reliance on Agents and Other Lenders.....	93
11.7	Indemnification.....	94
11.8	Agent in Its Individual Capacity.....	94
11.9	Successor Administrative Agent.....	94
11.10	Authorization to Release Liens and Guarantees.....	95
11.11	The Arranger; the Syndication Agent.....	95
Section 12.	MISCELLANEOUS.....	95
12.1	Amendments and Waivers.....	95
12.2	Notices.....	97
12.3	No Waiver; Cumulative Remedies.....	100
12.4	Survival of Representations and Warranties.....	100
12.5	Payment of Expenses.....	100
12.6	Successors and Assigns; Participations and Assignments.....	101
12.7	Adjustments; Set-off.....	105
12.8	Counterparts.....	106
12.9	Severability.....	106
12.10	Integration.....	106
12.11	GOVERNING LAW.....	106
12.12	Submission To Jurisdiction; Waivers.....	106
12.13	Judgment Currency.....	107
12.14	Acknowledgments.....	107

12.15	Confidentiality.....	107
12.16	Release of Collateral and Guarantee Obligations.....	108
12.17	Accounting Changes.....	109
12.18	Delivery of Lender Addenda.....	109
12.19	Limitations on Restrictions.....	109
12.20	WAIVERS OF JURY TRIAL.....	109

ANNEXES

- A Pricing Grid
- B Existing Letters of Credit

SCHEDULES:

- 1.1 Mortgaged Property
- 1.2 Canadian Security Documents
- 6.4 Consents, Authorizations, Filings and Notices
- 6.6 Certain Litigation
- 6.15 Subsidiaries
- 6.19(a)-1 UCC Filing Jurisdictions
- 6.19(a)-2 UCC Financing Statements to Remain on File
- 6.19(a)-3 UCC Financing Statements to be Terminated
- 6.19(b)-1 Canadian Filing Jurisdictions
- 6.19(b)-2 Canadian Financing Statements to Remain on File
- 6.19(b)-3 Canadian Financing Statements to be Terminated
- 6.19(c) Mortgage Filing Jurisdictions
- 9.2(d) Existing Indebtedness
- 9.3(e) Existing Liens

EXHIBITS:

- A Form of Guarantee and Collateral Agreement
- B Form of Compliance Certificate
- C-1 Form of Closing Certificate
- C-2 Form of Secretary's Certificate
- D Form of Georgia Mortgage
- E Form of Assignment and Acceptance
- F-1 Form of Legal Opinion of Drinker Biddle & Reath, LLP
- F-2 Form of Legal Opinion of Canadian Counsel
- G-1 Form of Term Note
- G-2 Form of U.S. Revolving Credit Note
- G-3 Form of Swing Line Note
- G-4 Form of Canadian Revolving Credit Note
- G-5 Form of Canadian Swing Line Note
- G-6 Form of Canadian Supplemental Revolving Credit Note
- H Form of Prepayment Option Notice
- I Form of Exemption Certificate
- J Form of Lender Addendum
- K Form of Borrowing Notice

CREDIT AGREEMENT, dated as of July 19, 2001, among BCB USA CORP., a Georgia corporation (the "U.S. Borrower"), COTT CORPORATION, a Canada corporation (the "Canadian Borrower"; together with the U.S. Borrower, the "Borrowers"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "Lenders"), LEHMAN BROTHERS INC., as advisor, lead arranger and book manager (in such capacity, the "Arranger"), FIRST UNION NATIONAL BANK, as syndication agent (in such capacity, the "Syndication Agent"), FIRST UNION NATIONAL BANK, as working capital term loan facility agent and as revolving credit facility agent (in such capacity, the "Working Capital Facility Agent"), BANK OF MONTREAL, as Canadian Administrative Agent (in such capacity, the "Canadian Administrative Agent"), and LEHMAN COMMERCIAL PAPER INC., as General Administrative Agent (in such capacity, the "General Administrative Agent").

#### **WITNESSETH:**

WHEREAS, the U.S. Borrower is a party to the Acquisition Agreement (such term and other capitalized terms used in these recitals being used with the meanings given to such terms in Section 1.1) pursuant to which the Acquisition will be consummated;

WHEREAS, to finance the Acquisition and the general corporate purposes of the Borrowers and their Subsidiaries, the Borrowers have requested the Lenders to make available the credit facilities described herein; and

WHEREAS, the Lenders are willing to make such credit facilities available upon and subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter set forth, the parties hereto hereby agree as follows:

#### **SECTION 1. DEFINITIONS**

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"Acceleration": as defined in Section 12.7.

"Accounting Change": as defined in Section 12.16.

"Acquisition": the purchase by the U.S. Borrower of certain assets of Royal Crown Company, Inc., including those assets used in connection with the concentrate business of Royal Crown Company, Inc. pursuant to the Acquisition Agreement.

"Acquisition Agreement": the Asset Purchase Agreement by and among Royal Crown Company, Inc., the Canadian Borrower and the U.S. Borrower, dated as of June 13, 2001.

"Acquisition Documentation": collectively, the Acquisition Agreement and all schedules, exhibits, annexes and amendments thereto and all side letters and agreements affecting the terms thereof or entered into in connection therewith, in each case, as amended, supplemented or otherwise modified from time to time.

"Additional Extensions of Credit": as defined in Section 12.1.

"Adjustment Date": as defined in the Pricing Grid.

"Administrative Agents": the collective reference to the General Administrative Agent, the Working Capital Facility Agent and the Canadian Administrative Agent.

"Affiliate": as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agents": the collective reference to the Syndication Agent, the Canadian Administrative Agent, the Working Capital Facility Agent and the General Administrative Agent.

"Aggregate Available Canadian Revolving Credit Commitments": as at any date of determination with respect to all Canadian Revolving Credit Lenders, the U.S. Dollar Equivalent of the Available Canadian Revolving Credit Commitments of all Canadian Revolving Credit Lenders on such date.

"Aggregate Available U.S. Revolving Credit Commitments": as at any date of determination thereof with respect to all U.S. Revolving Credit Lenders, an amount in U.S. Dollars equal to the Available U.S. Revolving Credit Commitments of all U.S. Revolving Credit Lenders on such date.

"Aggregate Canadian Revolving Extensions of Credit": as at any date of determination with respect to all Canadian Revolving Credit Lenders, an amount equal to the U.S. Dollar Equivalent of the Canadian Revolving Extensions of Credit of all Canadian Revolving Credit Lenders.

"Aggregate Canadian Outstandings": as at any date of determination with respect to any Lender, an amount in U.S. Dollars equal to the sum of (a) the Aggregate Canadian Revolving Extensions of Credit of such Lender on such date and (b) in the case of the Canadian Supplemental Revolving Credit Lender, the U.S. Dollar Equivalent of the aggregate outstanding principal amount of Canadian Supplemental Revolving Credit Loans.

"Aggregate Exposure Percentage": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's Aggregate Total Outstandings at such time to the sum of the Aggregate Total Outstandings of all Lenders at such time.

"Aggregate Total Outstandings": as at any date of determination with respect to any Lender, an amount in U.S. Dollars equal to the sum of (a) the Aggregate U.S. Outstandings of such Lender, plus (b) the Aggregate Canadian Outstandings of such Lender.

"Aggregate U.S. Outstandings": as at any date of determination with respect to any Lender, an amount in U.S. Dollars equal to the sum of (a) the Aggregate U.S. Revolving Extensions of Credit of such Lender on such date and (b) the aggregate unpaid principal amount of such U.S. Lender's Term Loans on such date.

"Aggregate U.S. Revolving Extensions of Credit": as at any date of determination with respect to all U.S. Revolving Credit Lenders, an amount in U.S. Dollars equal to the U.S. Revolving Extensions of Credit of all U.S. Revolving Credit Lenders.

"Agreement": this Credit Agreement, as amended, supplemented or otherwise modified from time to time, including any schedules and exhibits attached hereto.

"Applicable Margin": (a) with respect to Term Loans, (i) 3.00% in the case of Term Loans that are Eurodollar Loans and (ii) 1.75% in the case of Term loans that are U.S. Base Rate Loans and (b) for each Type of Loan under each other Facility, the rate per annum determined from time to time in accordance with the Pricing Grid.

"Application": an application, in such form as the relevant Issuing Lender may specify from time to time, requesting such Issuing Lender to issue a Letter of Credit.

"Arranger": as defined in the preamble hereto.

"Asset Sale": any Disposition of Property or series of related Dispositions of Property (excluding any such Disposition permitted by clause (a), (b), (c), (d), (g) or (h) of Section 9.5) which yields gross proceeds to the Canadian Borrower or any of its Restricted Subsidiaries (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of (i) U.S.\$500,000 for any individual Disposition or (ii) U.S. \$2,500,000 for all Dispositions in any fiscal year.

"Assignee": as defined in Section 12.6(c).

"Assignor": as defined in Section 12.6(c).

"Available Canadian Revolving Credit Commitment": with respect to any Canadian Revolving Credit Lender at any time, an amount in U.S. Dollars equal to the excess, if any, of (a) such Lender's Canadian Revolving Credit Commitment then in effect over (b) the sum of (A) such Lender's Canadian Revolving Extensions of Credit then outstanding plus (B) in the case of the Canadian Supplemental Revolving Credit Lender, the aggregate outstanding principal amount of the Canadian Supplemental Revolving Credit Loans.

"Available U.S. Revolving Credit Commitment": with respect to any U.S. Revolving Credit Lender at any time, an amount in U.S. Dollars equal to the excess, if any, of (a) such Lender's U.S. Revolving Credit Commitment then in effect over (b) such Lender's U.S. Revolving Extensions of Credit then outstanding.

"Bank Act (Canada)": the Bank Act (Canada), as amended from time to time.

"Benefitted Lender": as defined in Section 12.7.

"Board": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrowers": as defined in the preamble hereto.

"Borrowing Date": any Business Day specified in a notice pursuant to Section 2.2, 2.5, 2.7, 3.2 or 3.7 as a date on which a Borrower requests the Lenders to make Loans hereunder.

"Borrowing Notice": with respect to any request by the U.S. Borrower for borrowing of Term Loans or U.S. Revolving Credit Loans hereunder, a notice from the U.S. Borrower, substantially in the form of, and containing the information prescribed by, Exhibit K, delivered to the General Administrative Agent.

"Business Day": (a) when such term is used in respect of a day on which a Loan is to be made to the Canadian Borrower, a payment is to be made in respect of such Loan, an Exchange Rate is to be set in respect of Canadian Dollars or any other dealing in Canadian Dollars is to be carried out pursuant to this Agreement, or any payment or funding is to be made in respect of the Canadian Revolving Credit Facility, such term shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by law to close, (b) when such term is used to describe a day on which a borrowing, payment or interest rate determination is to be made in respect of a Eurodollar Loan, such day shall be a day which is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market and (c) when such term is used in any context in this Agreement (including as described in the foregoing clauses (a) and (b)), such term shall mean a day which, in addition to complying with any applicable requirements set forth in the foregoing clauses (a) and (b), is a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"Canadian Administrative Agent": as defined in the preamble hereto.

"Canadian Base Rate": at any day, the higher of (a) the rate of interest per annum publicly announced from time to time by the Canadian Administrative Agent (and in effect on such day) as its reference rate for U.S. Dollar commercial loans made in Canada, as adjusted automatically from time to time and without notice to any of the Borrowers upon change by the Canadian Administrative Agent and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%.

"Canadian Base Rate Loans": all Canadian Facility Loans denominated in U.S. Dollars that are bearing interest at a rate based upon the Canadian Base Rate.

"Canadian Borrower": as defined in the preamble hereto.

"Canadian Borrower Secured Obligations": collectively, the obligations of the Canadian Borrower in respect of the Canadian Revolving Credit Loans, the Canadian



Supplemental Revolving Credit Loans and the Canadian Borrower's guarantee of the U.S. Borrower Working Capital Obligations (as defined in the Guarantee and Collateral Agreement).

"Canadian Dollar Equivalent": with respect to an amount denominated in U.S. Dollars on any date, the equivalent in Canadian Dollars determined at the Exchange Rate, on such date.

"Canadian Dollar Prime Rate": at any day, the greater on such day of (a) the rate per annum announced by the Canadian Administrative Agent from time to time (and in effect on such day) as its prime rate for Canadian Dollar commercial loans made in Canada, as adjusted automatically from time to time and without notice to any of the Borrowers upon change by the Canadian Administrative Agent, and (b) 1% above the CDOR Rate from time to time (and in effect on such day), as advised by the Canadian Administrative Agent to the Canadian Borrower from time to time pursuant hereto. The Canadian Dollar Prime Rate is not intended to be the lowest rate of interest charged by the Canadian Administrative Agent in connection with extensions of credit in Canadian Dollars to debtors.

"Canadian Dollar Prime Rate Loans": all Canadian Facility Loans denominated in Canadian Dollars that are bearing interest at a rate based upon the Canadian Dollar Prime Rate.

"Canadian Dollars" and "C\$": dollars in the lawful currency of Canada.

"Canadian Facility Loans": the collective reference to the Canadian Revolving Credit Loans, the Canadian Swing Line Loans and the Canadian Supplemental Revolving Credit Loans.

"Canadian Funding Office": the office from time designated by the Canadian Administrative Agent, by notice to the Canadian Borrower and the Canadian Lenders, as its funding office.

"Canadian Issuing Lender": any Canadian Revolving Credit Lender selected by the Canadian Borrower, with the consent of such Lender and the Administrative Agents, to issue Canadian Letters of Credit.

"Canadian L/C Commitment": U.S.\$2,500,000.

"Canadian L/C Obligations": at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Canadian Letters of Credit and (b) the aggregate amount of drawings under Canadian Letters of Credit that have not then been reimbursed pursuant to Section 4.5.

"Canadian L/C Participant": with respect to each Canadian Letter of Credit, each Canadian Revolving Credit Lender other than the Canadian Issuing Lender in respect of such Letter of Credit.

"Canadian Lender": any Lender that has a Canadian Revolving Credit Commitment or to which Canadian Facility Loans are owing.

"Canadian Letter of Credit": as defined in Section 4.1.

"Canadian Payment Office": the office from time designated by the Canadian Administrative Agent, by notice to the Canadian Borrower and the Canadian Lenders, as its payment office.

"Canadian Refunding Date": as defined in Section 3.7.

"Canadian Revolving Credit Commitment": as to any Canadian Lender at any time, its obligation to make Canadian Revolving Credit Loans to the Canadian Borrower, and participate in Canadian Swing Line Loans and Canadian Letters of Credit, in an aggregate amount not to exceed at any one time outstanding the U.S. Dollar amount (or the Canadian Dollar Equivalent thereof, as the case may be) equal to the amount set forth opposite such Canadian Lender's name under the heading "Canadian Revolving Credit Commitment" on Schedule I to the Lender Addendum delivered by such Lender on the Closing Date, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as such amount may be reduced from time to time as provided herein. The aggregate amount of the Canadian Revolving Credit Commitments on the Closing Date is U.S.\$5,000,000.

"Canadian Revolving Credit Commitment Percentage": as to any Canadian Lender at any time, the percentage which such Canadian Lender's Canadian Revolving Credit Commitment then constitutes of the aggregate Canadian Revolving Credit Commitments (or, if the Canadian Revolving Credit Commitments have terminated or expired, the percentage which (a) the Canadian Revolving Extensions of Credit of such Canadian Lender at such time constitutes of (b) the Canadian Revolving Extensions of Credit of all Canadian Revolving Credit Lenders at such time).

"Canadian Revolving Credit Facility": as defined in the definition of "Facility" in this Section 1.1.

"Canadian Revolving Credit Lenders": each Lender that has a Canadian Revolving Credit Commitment.

"Canadian Revolving Credit Loan": as defined in Section 3.1.

"Canadian Revolving Credit Note": as defined in Section 3.3(e).

"Canadian Revolving Extensions of Credit": as to any Canadian Revolving Credit Lender at any time, an amount in U.S. Dollars equal to the U.S. Dollar Equivalent of the sum of (a) the aggregate principal amount of all Canadian Revolving Credit Loans made by such Lender then outstanding, (b) such Lender's Canadian Revolving Credit Percentage of the Canadian L/C Obligations then outstanding and (c) such Lender's Canadian Revolving Credit Percentage of the aggregate principal amount of Canadian Swing Line Loans then outstanding.

"Canadian Security Documents": the security documents described in Schedule 1.2.

"Canadian Supplemental Revolving Credit Commitment": the obligation of the Canadian Supplemental Revolving Credit Lender to make Canadian Supplemental Revolving Credit Loans pursuant to Section 3.2 in an aggregate principal amount at any one time outstanding not to exceed U.S. \$5,000,000.

"Canadian Supplemental Revolving Credit Facility": as defined in the definition of "Facility" in this Section 1.1.

"Canadian Supplemental Revolving Credit Lender": Bank of Montreal, in its capacity as the lender of the Canadian Supplemental Revolving Credit Loans.

"Canadian Supplemental Revolving Credit Loans": as defined in Section 3.1.

"Canadian Supplemental Revolving Credit Note": as defined in Section 3.3(e).

"Canadian Swing Line Commitment": the obligation of the Canadian Swing Line Lender to make Canadian Swing Line Loans pursuant to Section 3.6 in an aggregate principal amount at any one time outstanding not to exceed U.S.\$5,000,000.

"Canadian Swing Line Lender": Bank of Montreal, in its capacity as the lender of Canadian Swing Line Loans.

"Canadian Swing Line Loans": as defined in Section 3.6.

"Canadian Swing Line Note": as defined in Section 3.3(e).

"Canadian Swing Line Participation Amount": as defined in Section 3.7.

"Capital Expenditures": for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) which in any such case are required to be capitalized under GAAP on a balance sheet of such Person; but the term does not include expenditures constituting part of the purchase price of (i) all or substantially all of the assets of any Person, or (ii) all or substantially all of the assets constituting a division or business line of any Person (whether by way of asset purchase, stock purchase, merger, consolidation or otherwise).

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

"Capital Stock": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"Capital Stock Sale": any sale by the Canadian Borrower of its Capital Stock other than (a) any sale of such Capital Stock to any private investment fund that customarily makes similar investments, (b) any such sale consummated on any date if the Consolidated Leverage Ratio as at the end of the fiscal quarter most recently ended prior to such date was less than or equal to 2.0 to 1.0, (c) any such sale to the extent the Net Cash Proceeds thereof are used within three Business Days after the receipt thereof to refinance existing Indebtedness of either Borrower or any of their Restricted Subsidiaries (other than revolving credit or similar indebtedness not accompanied by a permanent reduction of an equal amount of the related revolving credit or similar commitment) and (d) any grant by the Canadian Borrower of stock options to employees, directors or service providers and any issuance of Capital Stock of the Canadian Borrower upon exercise thereof.

"Cash Equivalents": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canadian Government or issued by any agency thereof and backed by the full faith and credit of the United States or its equivalent in Canada, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof, Canada or any province thereof, or any country that is a member of the Organization for Economic Cooperation and Development, having combined capital and surplus of not less than U.S.\$100,000,000; (c) commercial paper of an issuer rated at least A-2 by Standard & Poor's Ratings Services ("S&P") or P-2 by Moody's Investors Service, Inc. ("Moody's"), or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth, province or territory of the United States or Canada, by any political subdivision or taxing authority of any such state, commonwealth, province or territory or by any foreign government, the securities of which state, commonwealth, province, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; and (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

"CDOR Rate": the rate per annum determined by the Canadian Administrative Agent by reference to the average rate quoted on the Reuters Monitor Screen, Page "CDOR" (or such other Page as may replace such Page on such screen for the purpose of displaying Canadian interbank bid rates for Canadian Dollar bankers' acceptances with a 30 day term as of 10:00 a.m. (Toronto time) on the first day of such 30 day term. If for any reason the Reuters Monitor Screen rates are unavailable, CDOR Rate means the rate of interest determined by the Canadian Administrative Agent's bankers' acceptance reference rate for that day.

"Change of Control": the occurrence of any of the following events: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than the Permitted Investors, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 30% of the outstanding common stock of the Canadian Borrower; (b) the board of directors of the Canadian Borrower shall cease to consist of a majority of Continuing Directors; (c) the Canadian Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of the U.S. Borrower free and clear of all Liens; or (d) a Specified Change of Control.

"Closing Date": the date on which the conditions precedent set forth in Section 7.1 shall have been satisfied, which date shall be not later than July 31, 2001.

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

"Collateral": all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

"Commitment": with respect to any Lender, each of the Purchase Money Term Loan Commitment, the Working Capital Term Loan Commitment, the U.S. Revolving Credit Commitment and the Canadian Revolving Credit Commitment of such Lender.

"Commitment Percentage": any of the U.S. Revolving Credit Percentage, the Purchase Money Term Loan Percentage, the Working Capital Term Loan Percentage or the Canadian Revolving Credit Percentage, as the case may be.

"Commonly Controlled Entity": an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

"Compliance Certificate": a certificate duly executed by a Responsible Officer, substantially in the form of Exhibit B.

"Confidential Information Memorandum": the Confidential Information Memorandum dated June 2001 and furnished to the initial Lenders in connection with the syndication of the Facilities (as supplemented prior to the date of this Agreement).

"Consolidated Current Assets": of any Person at any date, all amounts (other than cash and Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of such Person and its Subsidiaries at such date.

"Consolidated Current Liabilities": of any Person at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of such Person and its Subsidiaries at such date, but excluding, with respect to the Canadian Borrower and its consolidated Subsidiaries, (a) the

current portion of any Funded Debt of the Canadian Borrower and its Subsidiaries and (b) without duplication, all Indebtedness under this Agreement, to the extent otherwise included therein.

"Consolidated EBITDA": of any Person for any period, Consolidated Net Income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) Consolidated Interest Expense of such Person and its Subsidiaries, amortization or writeoff of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness, (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary, unusual or non-recurring expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, losses on sales of assets outside of the ordinary course of business) and (f) any other non-cash charges, and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining Consolidated Interest Expense), (b) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sales of assets outside of the ordinary course of business) and (c) any other non-cash income, all as determined on a consolidated basis; provided, that, in determining the amount of Consolidated EBITDA of the Canadian Borrower and its Subsidiaries for any period, the amount of such Consolidated EBITDA attributable to the Unrestricted Subsidiaries (other than Cott U.K.) for such period shall not exceed the sum of (1) 5% of Consolidated EBITDA of the Canadian Borrower and its Subsidiaries for such period (determined without application of this proviso) plus (2) the amount of cash dividends or other cash distributions received by the Canadian Borrower and its Restricted Subsidiaries during such period from Unrestricted Subsidiaries, and to the extent that Consolidated EBITDA of all Unrestricted Subsidiaries (other than Cott U.K.) actually does exceed the sum described in the foregoing clause (i) and (ii), such excess amount shall be deducted from the calculation of Consolidated EBITDA of the Canadian Borrower and its Consolidated Subsidiaries.

"Consolidated Fixed Charge Coverage Ratio": for any period, the ratio of (a) Consolidated EBITDA of the Canadian Borrower and its Subsidiaries for such period minus the aggregate amount actually paid by the Canadian Borrower and its Subsidiaries in cash (not including the amount of any such expenditures financed with the proceeds of the principal amount of Indebtedness incurred in connection with such expenditures, and not including the amount of any such expenditures financed with the proceeds of any Reinvestment Deferred Amount) during such period on account of Capital Expenditures to (b) Consolidated Fixed Charges for such period.

"Consolidated Fixed Charges": for any period, the sum (without duplication) of (a) Consolidated Interest Expense of the Canadian Borrower and its Subsidiaries for such period, (b) provision for cash income taxes made by the Canadian Borrower or any of its Subsidiaries on a consolidated basis in respect of such period and (c) scheduled payments made during such period on account of principal of Indebtedness of the Canadian Borrower or any of its Subsidiaries (including scheduled principal payments in respect of the Term Loans due before

September 30, 2006, but excluding (i) any other scheduled payments in respect of Indebtedness under this Agreement and (ii) any scheduled payments in respect of the Canadian Borrower's 9-3/8% Senior Notes due 2005 and the Canadian Borrower's 8-1/2% Senior Notes due 2007).

"Consolidated Interest Coverage Ratio": for any period, the ratio of (a) Consolidated EBITDA of the Canadian Borrower and its Subsidiaries for such period to (b) Consolidated Interest Expense of the Canadian Borrower and its Subsidiaries for such period.

"Consolidated Interest Expense": of any Person for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without duplication, the net costs or benefits of such Person under Hedge Agreements in respect of interest rates to the extent such net costs or benefits are allocable to such period in accordance with GAAP).

"Consolidated Leverage Ratio": as at the last day of any period of four consecutive fiscal quarters of the Canadian Borrower, the ratio of (a) Consolidated Total Funded Debt on such day to (b) Consolidated EBITDA of the Canadian Borrower and its Subsidiaries for such period; provided that for purposes of calculating Consolidated EBITDA of the Canadian Borrower and its Subsidiaries for any period, (i) the Consolidated EBITDA of any Person, division or business line acquired by the Canadian Borrower or its Subsidiaries during such period shall be included on a pro forma basis for such period (assuming the consummation of such acquisition and the incurrence or assumption of any Indebtedness in connection therewith occurred on the first day of such period) if the consolidated balance sheet of such acquired Person (and its consolidated Subsidiaries), division or business line as at the end of the period preceding the acquisition of such Person and the related consolidated statements of income and stockholders' equity and of cash flows for the period in respect of which Consolidated EBITDA is to be calculated (x) have been previously provided to the General Administrative Agent and the Lenders and (y) either (1) have been reported on without a qualification arising out of the scope of the audit by independent certified public accountants of nationally recognized standing or (2) have been found acceptable by the General Administrative Agent and (ii) the Consolidated EBITDA of any Person, division or business line Disposed of by the Canadian Borrower or its Subsidiaries during such period shall be excluded for such period (assuming the consummation of such Disposition and the repayment of any Indebtedness in connection therewith occurred on the first day of such period).

"Consolidated Net Income": for any period, the consolidated net income (or loss) of the Canadian Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Canadian Borrower and its consolidated Subsidiaries for any period, there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Canadian Borrower or is merged into or consolidated with the Canadian Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Canadian Borrower) in which the Canadian Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Canadian Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Canadian Borrower to the extent that the declaration or payment of

dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

"Consolidated Total Funded Debt": at any date, the aggregate principal amount of all Funded Debt of the Canadian Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"Consolidated Working Capital": at any date, the difference of (a) Consolidated Current Assets of the Canadian Borrower on such date less (b) Consolidated Current Liabilities of the Canadian Borrower on such date.

"Continuing Directors": the directors of the Canadian Borrower on the Closing Date, and each other director of the Canadian Borrower, if, in each case, such other director's nomination for election to the board of directors of the Canadian Borrower is recommended by at least 66-2/3% of the then Continuing Directors.

"Contractual Obligation": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

"Control Investment Affiliate": as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Cott U.K.": Cott Retail Brands Limited and its Subsidiaries.

"Credit Agreement Guarantee": as defined in the definition of "Subordinated Debt".

"Default": any of the events specified in Section 10, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Defaulting Lender": a Lender that shall have refused to make available its portion of any Loan committed to be made available by such Lender and shall not have retracted such refusal.

"Derivatives Counterparty": as defined in Section 9.6.

"Disposition": with respect to any Property, any sale, lease, sale and leaseback (except when the leaseback constitutes a Capital Lease Obligation), assignment, conveyance, transfer or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.



"ECF Percentage": with respect to any fiscal year of the Canadian Borrower, 50%; provided, that, with respect to any fiscal year of the Canadian Borrower, the ECF Percentage shall be 0% if the Consolidated Leverage Ratio on the last day of such fiscal year is less than or equal to 2.0 to 1.0.

"Eligible Assignees": banks, other financial institutions and funds that in the ordinary course of business invest in assets similar to the Loans.

"Environmental Laws": any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally enforceable requirements (including, without limitation, common law) of any international authority, foreign government, the United States, or any state, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or employee health and safety, as has been, is now, or may at any time hereafter be, in effect.

"Environmental Permits": any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurocurrency Reserve Requirements": for any day, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

"Eurodollar Base Rate": with respect to each day during each Interest Period, the rate per annum determined on the basis of the rate for deposits in U.S. Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Page 3750 of the Telerate screen as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on Page 3750 of the Telerate screen (or otherwise on such screen), the "Eurodollar Base Rate" for purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the General Administrative Agent (or the Canadian Administrative Agent, in the case of Eurodollar Loans under the Canadian Revolving Credit Facility).

"Eurodollar Loans": Loans for which the applicable rate of interest is based upon the Eurodollar Rate.

"Eurodollar Rate": with respect to each day during each Interest Period, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

**Eurodollar Base Rate**

## 1.00 - Eurocurrency Reserve Requirements

"Eurodollar Tranche": the collective reference to Eurodollar Loans under any Facility the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"Event of Default": any of the events specified in Section 10, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Excess Cash Flow": for any fiscal year of the Canadian Borrower, the difference, if any, of (a) the sum, without duplication, of (i) Consolidated Net Income for such fiscal year, (ii) the amount of all non-cash charges (including depreciation and amortization) deducted in arriving at such Consolidated Net Income, (iii) the amount of the decrease, if any, in Consolidated Working Capital for such fiscal year, (iv) the aggregate net amount of non-cash loss on the Disposition of Property by the Canadian Borrower and its Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income and (v) the net increase during such fiscal year (if any) in deferred tax accounts of the Canadian Borrower minus (b) the sum, without duplication, of (i) the amount of all non-cash credits included in arriving at such Consolidated Net Income, (ii) the aggregate amount actually paid by the Canadian Borrower and its Subsidiaries in cash during such fiscal year on account of Capital Expenditures (minus the principal amount of Indebtedness incurred in connection with such expenditures and minus the amount of any such expenditures financed with the proceeds of any Reinvestment Deferred Amount), (iii) the aggregate amount of all permanent optional reductions of the U.S. Revolving Credit Commitments during such fiscal year, (iv) the aggregate amount of all regularly scheduled principal payments of Funded Debt (including, without limitation, the Term Loans) of the Canadian Borrower and its Subsidiaries made during such fiscal year (other than in respect of any revolving credit facility to the extent there is not an equivalent permanent reduction in commitments thereunder), (v) the amount of the increase, if any, in Consolidated Working Capital for such fiscal year, (vi) the aggregate net amount of non-cash gain on the Disposition of Property by the Canadian Borrower and its Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income, and (vii) the net decrease during such fiscal year (if any) in deferred tax accounts of the Canadian Borrower.

"Excess Cash Flow Application Date": as defined in Section 5.5(c).

"Exchange Rate": on any date, the Bank of Canada noon spot rate on such date. In the event that such rate is not made available, the "Exchange Rate" shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Canadian Administrative Agent and the U.S. Borrower or, in the absence of such agreement, the "Exchange Rate" shall instead be the Canadian Administrative Agent's spot rate of exchange in the interbank market where its foreign currency exchange operations in respect of Canadian Dollars are then being conducted, at or about 10:00 A.M., local time, on such date for the purchase of U.S. Dollars with Canadian Dollars, for delivery on the same day; provided, that

if at the time of any such determination, no such spot rate can reasonably be quoted, the Canadian Administrative Agent may use any reasonable method as it deems applicable to determine such rate, and such determination shall be conclusive absent manifest error.

"Existing Credit Facility": \$40,000,000 Credit Agreement dated as of August 19, 1999 among Cott Corporation and certain of its U.S. Subsidiaries as Borrowers, the financial institutions parties thereto, First Union National Bank, as Administrative Agent, and National Bank of Canada, as Canadian Agent. "Existing Issuing Lender": First Union National Bank, as issuer of the Existing Letters of Credit.

"Existing Letters of Credit": the letters of credit described in Annex B that have been issued by the Existing Issuing Lender for the account of the U.S. Borrower.

"Extension of Credit": as to any Lender, the making of a Loan by such Lender or the issuance of any Letter of Credit. For purposes of Section 7.2, it is expressly understood and agreed that the following do not constitute Extensions of Credit for purposes of this Agreement: (a) the conversions and continuations of U.S. Facility Loans as or to Eurodollar Loans or U.S. Base Rate Loans pursuant to Section 5.2 and (b) the conversions and continuation of Canadian Facility Loans as or to Eurodollar Loans pursuant to Section 5.2.

"Facility": each of (a) the Purchase Money Commitments and the Purchase Money Term Loans made thereunder (the "Purchase Money Term Loan Facility"), (b) the Working Capital Term Loan Commitments and the Working Capital Term Loans made thereunder (the "Working Capital Term Loan Facility"), (c) the U.S. Revolving Credit Commitments and the extensions of credit made thereunder (the "U.S. Revolving Credit Facility"), (d) the Canadian Revolving Credit Commitments and the extensions of credit made thereunder (the "Canadian Revolving Credit Facility") and (e) the Canadian Supplemental Revolving Credit Facility and the Canadian Supplemental Revolving Credit Loans made thereunder (the "Canadian Supplemental Revolving Credit Facility").

"Facility Fee Rate": rate per annum determined pursuant to the Pricing Grid.

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

"Fiscal Year": the 52- or 53- week annual period, as the case may be, ending on the Saturday that falls nearest to (whether before or after) December 31.

"FQ1", "FQ2", "FQ3", and "FQ4": when used with a numerical year designation, means the first, second, third or fourth fiscal quarters, respectively, of such fiscal year of the Canadian Borrower. Currently, the Canadian Borrower's first, second and third fiscal quarters end on the Saturday nearest to the last calendar day of a period of 13 calendar weeks, 26 calendar

weeks and 39 calendar weeks, respectively, after the end of the prior Fiscal Year. (E.g., FQ1 2001 means the first fiscal quarter of the Canadian Borrower's 2001 fiscal year, which ended March 31, 2001, and FQ3 2001 means the third quarter of the Canadian Borrower's 2001 fiscal year, which will end September 29, 2001.)

"Funded Debt": with respect to any Person, all Indebtedness of such Person of the types described in clauses (a) through (e) of the definition of "Indebtedness" in this Section.

"GAAP": generally accepted accounting principles in the United States of America as in effect from time to time.

"General Administrative Agent": Lehman Commercial Paper Inc., as general administrative agent for the Lenders under this Agreement and the other Loan Documents, and any successor thereto appointed pursuant to Section 11.9.

"Georgia Facility": the real property and improvements, consisting of a manufacturing plant and other facilities, located on 10th Avenue, between 9th Street and 12th Street, in Columbus, Georgia, U.S. owned by (or after the Acquisition owned by) the U.S. Borrower, together with the fixtures, equipment and inventory located thereon, as more fully described on Schedule 1.1.

"Governmental Authority": any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Granting Lender": as defined in Section 12.6(g).

"Guarantee and Collateral Agreement": the Guarantee and Collateral Agreement to be executed and delivered by the Borrowers, substantially in the form of Exhibit A, as the same may be amended, supplemented or otherwise modified from time to time.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit), if to induce the creation of such obligation of such other Person the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any

guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Canadian Borrower in good faith.

"Hedge Agreements": all interest rate or currency swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by the Canadian Borrower or its Subsidiaries providing for protection against fluctuations in interest rates, currency exchange rates, commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies.

"Indebtedness": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under acceptance, letter of credit or similar facilities, (g) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation and (j) for the purposes of Section 10(e) only, all obligations of such Person in respect of Hedge Agreements.

"Indemnified Liabilities": as defined in Section 12.5.

"Indemnitee": as defined in Section 12.5.

"Indentures": the collective reference to (a) the Indenture, dated as of June 16 1997, between the Canadian Borrower and Marine Midland Bank, which has been succeeded by HSBC Bank USA, as trustee, and (b) the Indenture, dated as of June 27, 1995, between the Canadian Borrower and Marine Midland Bank, which has been succeeded by HSBC Bank USA, as trustee, in each case as amended, supplemented or otherwise modified from time to time.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent": pertaining to a condition of Insolvency.

"Intellectual Property": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Payment Date": (a) as to any U.S. Base Rate Loan, Canadian Base Rate Loan or Canadian Dollar Prime Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or shorter, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Term Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six or (if consented to by all Lenders under the relevant Facility) nine or twelve months thereafter, as selected by the relevant Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six or (if available to all Lenders under the relevant Facility) nine or twelve months thereafter, as selected by the relevant Borrower by irrevocable notice to the General Administrative Agent (or the Canadian Administrative Agent, in the case of Canadian Facility Loans) not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period in respect of Loans under any Facility that would otherwise extend beyond the date final payment is due on such Loans shall end on such due date; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

"Investments": as defined in Section 9.8.

"Issuing Lender": any U.S. Issuing Lender or Canadian Issuing Lender.

"L/C Fee Payment Date": the last Business Day of each March, June, September and December and the last day of the Revolving Credit Commitment Period.

"L/C Participants": the collective reference to the U.S. L/C Participants and the Canadian L/C Participants.

"Lehman Entity": any of Lehman Commercial Paper Inc. or any of its affiliates (including Syndicated Loan Funding Trust).

"Lender Addendum": with respect to any initial Lender, a Lender Addendum, substantially in the form of Exhibit J, to be executed and delivered by such Lender on the Closing Date as provided in Section 12.18.

"Lenders": as defined in the preamble hereto.

"Lesser Period": as defined in Section 5.7(a).

"Letters of Credit": as defined in Section 4.1(a).

"Lien": any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

"Loan": any loan made by any Lender pursuant to this Agreement.

"Loan Documents": this Agreement, the Security Documents, the Applications and the Notes.

"Loan Parties": the Borrowers and each Subsidiary of the Canadian Borrower that is a party to a Loan Document.

"Majority Facility Lenders": with respect to any Facility, the holders of more than 50% of the aggregate unpaid principal and/or face amount of the Extensions of Credit under such Facility (or, in the case of the U.S. Revolving Credit Facility or the Canadian Revolving Credit Facility, prior to the termination of the U.S. Revolving Credit Commitments or the Canadian Revolving Credit Commitments, respectively, the holders of more than 50% of the total U.S. Revolving Credit Commitments or the total Canadian Revolving Credit Commitments, respectively).

"Mandatory Prepayment Amount": as defined in Section 5.5(h).

"Material Adverse Effect": a material adverse effect on (a) the Acquisition (but only before the Closing Date), (b) the business, assets, property or condition (financial or otherwise) of either Borrower and its Subsidiaries taken as a whole or (c) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights or remedies of the Agents or the Lenders hereunder or thereunder.

"Materials of Environmental Concern": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, pollutants, contaminants, radioactivity, and any other substances or forces of any kind, whether or not any such substance or force is defined as hazardous or toxic under any Environmental Law, that is regulated pursuant to or could give rise to liability under any Environmental Law.

"Mortgaged Properties": the real properties listed on Schedule 1.1, as to which the General Administrative Agent for the benefit of the Lenders shall be granted a Lien pursuant to one or more Mortgages.

"Mortgages": each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the General Administrative Agent for the benefit of the Lenders, which, in the case of the Mortgage in respect of the Georgia Facility to be delivered on the Closing Date, shall be substantially in the form of Exhibit D, and in the case of any Mortgage delivered after the Closing Date shall be in form and substance reasonably acceptable to the General Administrative Agent, in each case, as the same may be amended, supplemented or otherwise modified from time to time.

"Multiemployer Plan": a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Proceeds": (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale or Recovery Event, net of attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document) and other customary fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (b) in connection with any issuance or sale of equity securities or debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith and (c) in connection with any Purchase Price Refund, the cash amount thereof, net of any expenses incurred in the collection thereof.

"Non-Excluded Taxes": as defined in Section 5.13(a).

"Non-U.S. Lender": as defined in Section 5.13(d).

"Note": any promissory note evidencing any Loan.

"Other Taxes": any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made



hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant": as defined in Section 12.6(b).

"Payment Amount": as defined in Section 4.5.

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Permitted Acquisition": any acquisition or series of related acquisitions by the Canadian Borrower or any of its Subsidiaries of all or substantially all of the Capital Stock, or substantially all of the assets, of any Person, or of all or substantially all of the assets constituting a division or business line of any Person (including any acquisition carried out by means of a merger, consolidation or similar transaction), if such acquisition complies with the following criteria:

(a) No Default or Event of Default shall be in effect after giving effect to such acquisition, and the Canadian Borrower shall have delivered to the General Administrative Agent a certificate of a Responsible Officer to such effect.

(b) After giving effect to the consummation of such acquisition and to the incurrence of any Indebtedness associated therewith, the Borrowers' shall be in pro forma compliance with the covenants in the Agreement (calculated as if such acquisition had occurred on the first day of the period of four consecutive fiscal quarters most recently ended).

(c) The Person, division or line of business acquired in such acquisition (the "Target") shall be in the same or a similar line of business as the Canadian Borrower and its Subsidiaries, or in a line of business related thereto.

(d) Prior to the consummation of such acquisition for which the consideration exceeds U.S.\$10,000,000 (i) the Lenders shall have received (x) financial projections in respect of the Target for the one-year period following the consummation of such acquisition and (y) such financial information as they shall reasonably request to demonstrate pro forma compliance with the financial criteria set forth in paragraph (b) above, (ii) the Lenders shall be reasonably satisfied with the environmental affairs of the Person, division or line of business to be acquired in such acquisition, (iii) the General Administrative Agent shall have received final copies of the documentation to be executed in connection with such acquisition, including all schedules and exhibits thereto and (iv) the General Administrative Agent (for distribution to the Lenders) shall have received notice of the closing date for such acquisition; provided, that, such notice shall be given at least five Business Days prior to such closing date unless doing so would materially interfere with, or would cause materially adverse economic consequences with respect to, the consummation of such acquisition.

(e) (i) After giving effect to any such acquisition made by the Canadian Borrower or any of its Subsidiaries, the Available U.S. Revolving Credit Commitment shall be at least U.S.\$10,000,000.

(f) (i) The aggregate fair market value of the consideration payable by the Canadian Borrower and its Subsidiaries in connection with any such acquisition shall not exceed U.S.\$35,000,000 and (ii) the aggregate fair market value of consideration payable by the Canadian Borrower and its Subsidiaries in connection with all such acquisitions shall not exceed U.S.\$60,000,000 in any fiscal year.

"Permitted Investor": any or all of THL Equity Advisors IV, LLC, Thomas H. Lee Equity Fund IV, L.P., Thomas H. Lee Foreign Fund IV, L.P., Thomas H. Lee Foreign Fund IV-B, L.P., 1997 Thomas H. Lee Nominee Trust, THL Coinvestors III-A, LLC, THL Coinvestors III-B, LLC, Thomas H. Lee Charitable Investment Partnership, L.P., Thomas H. Lee Company and THL-CCI Limited Partnership or any Affiliates of any of the foregoing, any beneficiaries of the 1997 Thomas H. Lee Nominee Trust and Paine Webber Capital and PW Partners 1997 L.P.

"Permitted Perfection Limitations": the understanding that perfection of the Lien on certain Collateral may be limited to the extent that the Collateral may constitute (a) goods in transit that are not otherwise perfected by the UCC or PPSA filings, (b) goods in the hands of third parties that are not otherwise perfected by the UCC or PPSA filings, (c) intellectual property or other assets of the U.S. Borrower that are not in the United States (except to the extent that the General Administrative Agent otherwise requests), (d) motor vehicles or (e) assets that have de minimus value.

"Person": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Plan": at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Canadian Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"PPSA": as defined in Section 6.19(b).

"Prepayment Date": as defined in Section 5.5(h).

"Prepayment Option Notice": a Prepayment Option Notice, substantially in the form of Exhibit H.

"Pricing Grid": the pricing grid attached hereto as Annex A.

"Pro Forma Balance Sheet": as defined in Section 6.1(a).

"Pro Forma Income Statements": as defined in Section 6.1(a).

"Projections": as defined in Section 8.2(c).

"Property": any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

"Purchase Money Term Loan": as defined in Section 2.1.

"Purchase Money Term Loan Commitment": as to any Lender, the obligation of such Lender, if any, to make a Purchase Money Term Loan to the U.S. Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Purchase Money Term Loan Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original aggregate amount of the Purchase Money Term Loan Commitments is U.S.\$90,000,000.

"Purchase Money Term Loan Facility": as defined in the definition of "Facility" in this Section 1.1.

"Purchase Money Term Loan Lender": each Lender that has a Purchase Money Term Loan Commitment or is the holder of a Purchase Money Term Loan.

"Purchase Money Term Loan Percentage": as to any Purchase Money Term Loan Lender at any time, the percentage which such Lender's Purchase Money Term Loan Commitment then constitutes of the aggregate Purchase Money Term Loan Commitments (or, at any time after the Closing Date, the percentage which the aggregate principal amount of such Lender's Purchase Money Term Loans then outstanding constitutes of the aggregate principal amount of the Purchase Money Term Loans then outstanding).

"Purchase Price Refund": any amount received by the Canadian Borrower or any Restricted Subsidiary as a result of a purchase price adjustment or similar event in connection with any acquisition of Property by the Canadian Borrower or any Restricted Subsidiary.

"Recovery Event": any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Canadian Borrower or any of its Restricted Subsidiaries.

"Refunded Canadian Swing Line Loans": as defined in Section 3.7.

"Refunded Swing Line Loans": as defined in Section 2.7.

"Refunding Date": as defined in Section 2.7.

"Register": as defined in Section 12.6(d).

"Regulation U": Regulation U of the Board as in effect from time to time.

"Reimbursement Obligation": the obligation of the relevant Borrower to reimburse each Issuing Lender pursuant to Section 4.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

"Reinvestment Deferred Amount": with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Canadian Borrower or any of its Restricted

Subsidiaries in connection therewith that, as a result of the delivery of a Reinvestment Notice, are not applied to prepay the Loans pursuant to Section 5.5.

"Reinvestment Event": any Asset Sale, Purchase Price Refund or Recovery Event in respect of which the Canadian Borrower has delivered a Reinvestment Notice.

"Reinvestment Notice": a written notice executed by a Responsible Officer stating that no Default or Event of Default has occurred and is continuing and that the Canadian or U.S. Borrower (directly or indirectly through one or more Restricted Subsidiaries) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale, Purchase Price Refund or Recovery Event to acquire assets useful in its business.

"Reinvestment Prepayment Amount": with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire assets useful in the Canadian or U.S. Borrower's business or that of one or more of their Restricted Subsidiaries.

"Reinvestment Prepayment Date": with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event and (b) the date on which the Canadian or U.S. Borrower shall have determined not to, or shall have otherwise ceased to, acquire assets useful in the Canadian or U.S. Borrower's business or that of one or more of their Restricted Subsidiaries with all or any portion of the relevant Reinvestment Deferred Amount.

"Related Fund": with respect to any Lender, any fund that (x) invests in commercial loans and (y) is managed or advised by the same investment advisor as such Lender, by such Lender or an Affiliate of such Lender.

"Reorganization": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg.ss. 4043.

"Required Lenders": at any time, the holders (other than Defaulting Lenders) of more than 50% of (a) until the Closing Date, the Commitments and (b) thereafter, the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding and (ii) the U.S. Revolving Credit Commitments and the Canadian Revolving Credit Commitments then in effect or, if the U.S. Revolving Credit Commitments and the Canadian Revolving Credit Commitments have been terminated, the Aggregate U.S. Revolving Extensions of Credit then outstanding, the Aggregate Canadian Revolving Extensions of Credit then outstanding and the aggregate principal amount of the Canadian Supplemental Revolving Credit Loans then outstanding.

"Required Prepayment Lenders": the Majority Facility Lenders in respect of each U.S. Facility.

"Requirement of Law": as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer": the chief executive officer, president or chief financial officer, treasurer or controller of the Canadian Borrower, but in any event, with respect to financial matters, the chief financial officer, treasurer or controller of the Canadian Borrower.

"Restricted Payments": as defined in Section 9.6.

"Restricted Subsidiary": any Subsidiary other than an Unrestricted Subsidiary.

"Revolving Credit Commitment Period": the period from and including the Closing Date to the Revolving Credit Termination Date.

"Revolving Credit Termination Date": December 31, 2005; provided, that if any amount of the Canadian Borrower's 9-3/8% Senior Notes due 2005 remains outstanding on December 31, 2004, the Revolving Credit Termination Date shall be December 31, 2004.

"SEC": the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

"Security Documents": the collective reference to the Guarantee and Collateral Agreement, the Canadian Security Documents and all other security documents hereafter delivered to the General Administrative Agent granting a Lien on any Property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

"Single Employer Plan": any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"Solvent": with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"SPC": as defined in Section 12.6(g).

**\*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]**

"Specified Change of Control": a "Change of Control", or like event, as defined in either Indenture or in any indenture or other agreement hereafter entered into by either Borrower pursuant to which Indebtedness of either Borrower is issued.

"Subordinated Debt": unsecured Indebtedness of the U.S. Borrower that (i) matures no earlier than one year after the final maturity of the Term Loans,  
(ii) is subordinated to the obligations of the U.S. Borrower under the Loan Documents pursuant to subordination terms customarily applicable to similar Indebtedness (as reasonably determined by the General Administrative Agent) and  
(iii) if such Indebtedness is guaranteed by the Canadian Borrower or any Subsidiary thereof, such Person shall also guarantee the obligations of the Borrowers hereunder (a "Credit Agreement Guarantee") and such guarantee by such Person of the Subordinated Debt shall be subordinated to the obligations of such Person under its Credit Agreement Guarantee pursuant to subordination provisions customarily applicable to similar guarantees (as reasonably determined by the General Administrative Agent).

"Subsidiary": as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Canadian Borrower.

"Swing Line Commitment": the obligation of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed U.S.\$13,000,000.

"Swing Line Lender": First Union National Bank, in its capacity as the lender of Swing Line Loans.

"Swing Line Loans": as defined in Section 2.6.

"Swing Line Note": as defined in Section 2.8(e).

"Swing Line Participation Amount": as defined in Section 2.7.

"Syndication Agent": as defined in the preamble hereto.

"Term Loan Facilities": the collective reference to the Purchase Money Term Loan Facility and the Working Capital Term Loan Facility.

"Term Loan Lenders": the collective reference to the Purchase Money Term Loan Lenders and the Working Capital Term Loan Lenders.

"Term Loans": the collective reference to the Purchase Money Term Loans and Working Capital Term Loans.

"Term Note": as defined in Section 2.8(e).

"Title Insurance Company": as defined in Section 7.1(p).

"Transferee": as defined in Section 12.14.

"Type": (a) as to any U.S. Facility Loan, its nature as a U.S. Base Rate Loan or a Eurodollar Loan and (b) as to any Canadian Facility Loan, its nature as a Eurodollar Loan, a Canadian Base Rate Loan or a Canadian Dollar Prime Rate Loan.

"Unrestricted Subsidiary": (1) Cott Investment LLC, (2) 804340 Ontario Limited, (3) each Subsidiary of the Canadian Borrower that on the date of this Agreement is organized under the laws of any jurisdiction other than those of the United States, any state thereof, Canada or any province thereof, \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED], (5) any Subsidiary designated as an Unrestricted Subsidiary by the Canadian Borrower so long as such designation does not violate Section 9.9 and (6) any Subsidiary of an Unrestricted Subsidiary.

"U.S. Base Rate": for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. For purposes hereof: "Prime Rate" shall mean the prime lending rate as set forth on the British Banking Association Telerate page 5 (or such other comparable page as may, in the opinion of Administrative Agent, replace such page for the purpose of displaying such rate). Any change in the U.S. Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening

of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"U.S. Base Rate Loans": U.S. Facility Loans for which the applicable rate of interest is based upon the U.S. Base Rate.

"U.S. Borrower": as defined in the preamble to this Agreement.

"U.S. Dollar Equivalent": with respect to an amount denominated in Canadian Dollars, the equivalent in U.S. Dollars determined at the Exchange Rate.

"U.S. Dollars" and "U.S.\$": lawful currency of the United States of America.

"U.S. Facilities": the collective reference to the Term Loan Facilities and the U.S. Revolving Credit Facility.

"U.S. Facility Loans": the collective reference to the Term Loans, the U.S. Revolving Credit Loans and the Swing Line Loans.

"U.S. Funding Office": the office specified from time to time by the General Administrative Agent as its funding office by notice to the U.S. Borrower and the U.S. Lenders.

"U.S. Issuing Lender": any U.S. Revolving Credit Lender selected by the U.S. Borrower, with the consent of such Lender and the General Administrative Agent, to issue U.S. Letters of Credit.

"U.S. L/C Commitment": U.S.\$5,000,000.

"U.S. L/C Obligations": at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding U.S. Letters of Credit and (b) the aggregate amount of drawings under U.S. Letters of Credit that have not then been reimbursed pursuant to Section 4.6.

"U.S. L/C Participant": with respect to each U.S. Letter of Credit, each U.S. Revolving Credit Lender other than the U.S. Issuing Lender in respect of such Letter of Credit.

"U.S. Letter of Credit": as defined in Section 4.1.

"U.S. Payment Office": the office specified from time to time by the General Administrative Agent as its payment office by notice to the U.S. Borrower and the U.S. Lenders.

"U.S. Revolving Credit Commitment": as to any Lender, the obligation of such Lender, if any, to make U.S. Revolving Credit Loans and participate in Swing Line Loans and U.S. Letters of Credit, in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "U.S. Revolving Credit Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender on the Closing Date, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The



aggregate amount of the U.S. Revolving Credit Commitments on the Closing Date is U.S.\$45,000,000.

"U.S. Revolving Credit Facility": as defined in the definition of "Facility" in this Section 1.1.

"U.S. Revolving Credit Lender": each Lender that has a U.S. Revolving Credit Commitment or that is the holder of U.S. Revolving Credit Loans.

"U.S. Revolving Credit Loans": as defined in Section 2.4.

"U.S. Revolving Credit Note": as defined in Section 2.8(e).

"U.S. Revolving Credit Percentage": as to any U.S. Revolving Credit Lender at any time, the percentage which such Lender's U.S. Revolving Credit Commitment then constitutes of the total of all U.S. Revolving Credit Commitments (or, at any time after the U.S. Revolving Credit Commitments shall have expired or terminated, the percentage which the aggregate amount of such Lender's U.S. Revolving Extensions of Credit then outstanding constitutes of the Aggregate U.S. Revolving Extensions of Credit of all U.S. Revolving Credit Lenders then outstanding).

"U.S. Revolving Extensions of Credit": as to any U.S. Revolving Credit Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all U.S. Revolving Credit Loans made by such Lender then outstanding, (b) such Lender's U.S. Revolving Credit Percentage of the U.S. L/C Obligations then outstanding and (c) such Lender's U.S. Revolving Credit Percentage of the aggregate principal amount of Swing Line Loans then outstanding.

"Working Capital Term Loan": as defined in Section 2.1.

"Working Capital Term Loan Commitment": as to any Lender, the obligation of such Lender, if any, to make a Working Capital Term Loan to the U.S. Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Working Capital Term Loan Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original aggregate amount of the Working Capital Term Loan Commitments is U.S.\$10,000,000.

"Working Capital Term Loan Facility": as defined in the definition of "Facility" in this Section 1.1.

"Working Capital Term Loan Lender": each Lender that has a Working Capital Term Loan Commitment or is the holder of a Working Capital Term Loan.

"Working Capital Term Loan Percentage": as to any Working Capital Term Loan Lender at any time, the percentage which such Lender's Working Capital Term Loan Commitment then constitutes of the aggregate Working Capital Term Loan Commitments (or, at

any time after the Closing Date, the percentage which the aggregate principal amount of such Lender's Working Capital Term Loans then outstanding constitutes of the aggregate principal amount of the Working Capital Term Loans then outstanding).

1.2 Other Definitional Provisions. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Canadian Borrower and its Subsidiaries not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) All calculations of financial ratios set forth in Section 9.1 and the calculation of the Consolidated Leverage Ratio for purposes of determining the Applicable Margin shall be calculated to the same number of decimal places as the relevant ratios are expressed in and shall be rounded upward if the number in the decimal place immediately following the last calculated decimal place is five or greater. For example, if the relevant ratio is to be calculated to the hundredth decimal place and the calculation of the ratio is 5.126, the ratio will be rounded up to 5.13.

## Section 2. AMOUNT AND TERMS OF U.S. FACILITY COMMITMENTS

2.1 Term Loan Commitments. Subject to the terms and conditions hereof, (a) the Term Loan Lenders severally agree to make term loans (each, a "Purchase Money Term Loan") to the U.S. Borrower on the Closing Date in an amount for each Term Loan Lender not to exceed the amount of the Purchase Money Term Loan Commitment of such Lender and (b) the Term Loan Lenders severally agree to make term loans (each, a "Working Capital Term Loan") to the U.S. Borrower on the Closing Date in an amount for each Term Loan Lender not to exceed the amount of the Working Capital Term Loan Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or U.S. Base Rate Loans, as determined by the U.S. Borrower and notified to the General Administrative Agent in accordance with Sections 2.2 and 5.2.

2.2 Procedure for Term Loan Borrowing. The U.S. Borrower shall deliver to the General Administrative Agent and the Working Capital Facility Agent a Borrowing Notice (which Borrowing Notice must be received by the General Administrative Agent prior to 10:00 A.M., New York City time, one Business Day prior to the anticipated Closing Date) requesting that the Term Loan Lenders make the Term Loans on the Closing Date. The Term Loans made

on the Closing Date shall initially be U.S. Base Rate Loans, and prior to the date which is 7 Business Days (or such lesser number of days as the General Administrative Agent shall specify to the U.S. Borrower) after the Closing Date, no Term Loan may be converted into or continued as a Eurodollar Loan having an Interest Period in excess of one month. Upon receipt of such Borrowing Notice the General Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 12:00 Noon, New York City time, on the Closing Date each Term Loan Lender shall make available to the General Administrative Agent at the U.S. Funding Office an amount in immediately available funds equal to the principal amount of the Term Loans to be made by such Lender. Not later than 1:00 p.m., New York City time, the General Administrative Agent shall make available to the U.S. Borrower the aggregate of the amounts made available to the General Administrative Agent by the Term Loan Lenders, in like funds as received by the General Administrative Agent.

2.3 Repayment of Term Loans. (a) The Purchase Money Term Loan of each Term Loan Lender shall mature in 21 consecutive quarterly installments, commencing on December 31, 2001, each of which shall be in an amount equal to such Lender's Purchase Money Term Loan Percentage multiplied by the percentage set forth below opposite such installment of the aggregate principal amount of Purchase Money Term Loans made on the Closing Date:

Installment -----	Percentage -----
December 31, 2001	3.50%
March 31, 2002	0.75%
June 30, 2002	0.75%
September 30, 2002	3.50%
December 31, 2002	3.50%
March 31, 2003	1.50%
June 30, 2003,	1.50%
September 30, 2003	3.50%
December 31, 2003	3.50%
March 31, 2004	1.50%
June 30, 2004	1.50%
September 30, 2004	3.50%
December 31, 2004	3.50%
March 31, 2005	1.50%
June 30, 2005	1.50%
September 30, 2005	3.50%
December 31, 2005	3.50%
March 31, 2006	1.50%
June 30, 2006	1.50%
September 30, 2006	19.25%
December 31, 2006	35.75%

(b) The Working Capital Term Loan of each Term Loan Lender shall mature in 21 consecutive quarterly installments, commencing on December 31, 2001, each of which shall be in an amount equal to such Lender's Working Capital Term Loan Percentage multiplied

by the percentage set forth below opposite such installment of the aggregate principal amount of Working Capital Term Loans made on the Closing Date:

Installment -----	Percentage -----
December 31, 2001	3.50%
March 31, 2002	0.75%
June 30, 2002	0.75%
September 30, 2002	3.50%
December 31, 2002	3.50%
March 31, 2003	1.50%
June 30, 2003	1.50%
September 30, 2003	3.50%
December 31, 2003	3.50%
March 31, 2004	1.50%
June 30, 2004	1.50%
September 30, 2004	3.50%
December 31, 2004	3.50%
March 31, 2005	1.50%
June 30, 2005	1.50%
September 30, 2005	3.50%
December 31, 2005	3.50%
March 31, 2006	1.50%
June 30, 2006	1.50%
September 30, 2006	19.25%
December 31, 2006	35.75%

(c) Notwithstanding the foregoing, if any amount of the Canadian Borrower's 9-3/8% Senior Notes due 2005 remains outstanding on December 31, 2004, all amounts outstanding under the Term Loans shall be due and payable on December 31, 2004.

#### 2.4 U.S. Revolving Credit Commitments

(a) Subject to the terms and conditions hereof, the U.S. Revolving Credit Lenders severally agree to make revolving credit loans ("U.S. Revolving Credit Loans") to the U.S. Borrower from time to time during the Revolving Credit Commitment Period in an aggregate principal amount at any one time outstanding for each U.S. Revolving Credit Lender which, when added to such Lender's U.S. Revolving Credit Percentage of the sum of (i) the U.S. L/C Obligations then outstanding and (ii) the aggregate principal amount of the Swing Line Loans then outstanding, does not exceed the amount of such Lender's U.S. Revolving Credit Commitment. During the Revolving Credit Commitment Period the U.S. Borrower may use the U.S. Revolving Credit Commitments by borrowing, prepaying the U.S. Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The U.S. Revolving Credit Loans may from time to time be Eurodollar Loans or U.S. Base Rate Loans, as determined by the U.S. Borrower and notified to the General Administrative Agent in accordance with Sections 2.5 and 5.2, provided that no U.S. Revolving Credit Loan shall be

made as a Eurodollar Loan after the day that is one month prior to the Revolving Credit Termination Date.

(b) The U.S. Borrower shall repay all outstanding U.S. Revolving Credit Loans on the Revolving Credit Termination Date.

2.5 Procedure for Borrowing U.S. Revolving Credit Loans. The U.S. Borrower may borrow under the U.S. Revolving Credit Commitments on any Business Day during the Revolving Credit Commitment Period, provided that the U.S. Borrower shall deliver to the General Administrative Agent and the Working Capital Facility Agent a Borrowing Notice (which Borrowing Notice must be received by the General Administrative Agent and the Working Capital Facility Agent prior to 1:00 p.m., New York City time, (i) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (ii) one Business Day prior to the requested Borrowing Date, in the case of U.S. Base Rate Loans, provided that if the Aggregate U.S. Revolving Extensions of Credit is equal to or greater than U.S. \$32,000,000, the Borrowing Notice, in the case of U.S. Base Rate Loans, must be received by the General Administrative Agent and the Working Capital Facility Agent two Business Days prior to the requested Borrowing Date). Any U.S. Revolving Credit Loans made on the Closing Date shall initially be U.S. Base Rate Loans. Each borrowing of U.S. Revolving Credit Loans under the U.S. Revolving Credit Commitments shall be in an amount equal to (x) in the case of U.S. Base Rate Loans, U.S.\$1,000,000, or a whole multiple of \$100,000 in excess thereof (or, if the then Aggregate Available U.S. Revolving Credit Commitments are less than U.S.\$1,000,000, or are more than \$1,000,000 but not a whole multiple of \$100,000, the amount of the then Aggregate Available U.S. Revolving Credit Commitments) and (y) in the case of Eurodollar Loans, U.S. \$1,000,000 or a whole multiple of U.S.\$100,000 in excess thereof (or, if the then Aggregate Available U.S. Revolving Credit Commitments are less than \$1,000,000 or are more than \$1,000,000 but not a whole multiple of \$100,000, the amount of the then Aggregate Available U.S. Revolving Credit Commitments); provided, that the Swing Line Lender may request, on behalf of the U.S. Borrower, borrowings of U.S. Base Rate Loans under the Revolving Credit Commitments in other amounts pursuant to Section 2.7. Upon receipt of any such Borrowing Notice from the U.S. Borrower, the General Administrative Agent, on behalf of the Working Capital Facility Agent, shall promptly notify each U.S. Revolving Credit Lender thereof. Each U.S. Revolving Credit Lender will make its U.S. Revolving Credit Percentage of the amount of each borrowing of U.S. Revolving Credit Loans available to the General Administrative Agent for the account of the U.S. Borrower at the U.S. Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the U.S. Borrower in funds immediately available to the General Administrative Agent. Such borrowing will then be made available to the U.S. Borrower by the General Administrative Agent, not later than 1:00 p.m., New York City time, in like funds as received by the General Administrative Agent.

2.6 Swing Line Commitment. (a) Subject to the terms and conditions hereof, the Swing Line Lender agrees that, during the Revolving Credit Commitment Period, it will make available to the U.S. Borrower in the form of swing line loans ("Swing Line Loans") a portion of the credit otherwise available to the U.S. Borrower under the U.S. Revolving Credit Commitments; provided that (i) the aggregate principal amount of Swing Line Loans outstanding at any time shall not exceed the Swing Line Commitment then in effect (notwithstanding that the Swing Line Loans outstanding at any time, when aggregated with the Swing Line Lender's other

outstanding U.S. Revolving Credit Loans hereunder, may exceed the Swing Line Commitment then in effect or such Swing Line Lender's U.S. Revolving Credit Commitment then in effect) and (ii) the U.S. Borrower shall not request, and the Swing Line Lender shall not make, any Swing Line Loan if, after giving effect to the making of such Swing Line Loan, the aggregate amount of the U.S. Revolving Extensions of Credit would exceed the aggregate amount of the U.S. Revolving Credit Commitments. During the Revolving Credit Commitment Period, the U.S. Borrower may use the Swing Line Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swing Line Loans shall be U.S. Base Rate Loans only.

(b) The U.S. Borrower shall repay all outstanding Swing Line Loans on the Revolving Credit Termination Date.

2.7 Procedure for Swing Line Borrowing; Refunding of Swing Line Loans. (a) The U.S. Borrower may borrow under the Swing Line Commitment on any Business Day during the Revolving Credit Commitment Period. The U.S. Borrower hereby authorizes the Swing Line Lender (without any further request or notices by the U.S. Borrower) to make Swing Line Loans to it on any Business Day in amounts sufficient to fund any checks drawn by the U.S. Borrower on the Swing Line Lender or any other payments that the U.S. Borrower may direct the Swing Line Lender to disburse on behalf of the U.S. Borrower.

(b) If a Default or Event of Default has occurred and is continuing, the Swing Line Lender in its sole and absolute discretion may, on behalf of the U.S. Borrower (which hereby irrevocably directs the Swing Line Lender to act on its behalf), on one Business Day's notice given by the Swing Line Lender no later than 12:00 Noon, New York City time to the General Administrative Agent and the Working Capital Facility Agent (whereupon the General Administrative Agent shall promptly transmit such notice to each U.S. Revolving Credit Lender), request each U.S. Revolving Credit Lender to make, and each U.S. Revolving Credit Lender hereby agrees to make, a U.S. Revolving Credit Loan (which shall initially be a U.S. Base Rate Loan), in an amount equal to such Lender's U.S. Revolving Credit Percentage of the aggregate amount of the Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date of such notice, to repay the Swing Line Lender. Each U.S. Revolving Credit Lender shall make the amount of such U.S. Revolving Credit Loan available to the General Administrative Agent at the U.S. Funding Office in immediately available funds, not later than 10:00 A.M., New York City time, one Business Day after the date of such notice. The proceeds of such U.S. Revolving Credit Loans shall be made immediately available by the General Administrative Agent to the Swing Line Lender for application by the Swing Line Lender to the repayment of the Refunded Swing Line Loans.

(c) If prior to the time a U.S. Revolving Credit Loan would have otherwise been made pursuant to Section 2.7(b), one of the events described in Section 10(f) shall have occurred and be continuing with respect to the U.S. Borrower, or if for any other reason, as determined by the Swing Line Lender in its sole discretion, U.S. Revolving Credit Loans may not be made as contemplated by Section 2.7(b), each U.S. Revolving Credit Lender shall, on the date such U.S. Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.7(b) (the "Refunding Date"), purchase for cash an undivided participating interest in the then outstanding Swing Line Loans by paying to the Swing Line Lender an amount (the

"Swing Line Participation Amount") equal to (i) such Lender's U.S. Revolving Credit Percentage times (ii) the sum of the aggregate principal amount of Swing Line Loans then outstanding which were to have been repaid with such U.S. Revolving Credit Loans.

(d) Whenever, at any time after the Swing Line Lender has received from any U.S. Revolving Credit Lender such Lender's Swing Line Participation Amount, the Swing Line Lender receives any payment on account of the Swing Line Loans, the Swing Line Lender will distribute to such Lender its Swing Line Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swing Line Loans then due); provided, however, that in the event that such payment received by the Swing Line Lender is required to be returned, such U.S. Revolving Credit Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.

(e) Each U.S. Revolving Credit Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such U.S. Revolving Credit Lender or the U.S. Borrower may have against the Swing Line Lender, the U.S. Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 7; (iii) any adverse change in the condition (financial or otherwise) of either Borrower; (iv) any breach of this Agreement or any other Loan Document by either Borrower, any other Loan Party or any other U.S. Revolving Credit Lender; or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swing Line Lender shall provide reports to the General Administrative agent bi-weekly of borrowings under the Swing Line Commitment, and provide such information to the General Administrative Agent between reports as the General Administrative agent may reasonably request.

2.8 Repayment of U.S. Facility Loans; Evidence of Debt. (a) The U.S. Borrower hereby unconditionally promises to pay to the General Administrative Agent for the account of the appropriate U.S. Revolving Credit Lender or Term Loan Lender, as the case may be, (i) the then unpaid principal amount of each U.S. Revolving Credit Loan of such U.S. Revolving Credit Lender on the Revolving Credit Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Section 10) and (ii) the principal amount of each Term Loan of such Term Loan Lender in installments according to the amortization schedule set forth in Section 2.3 (or on such earlier date on which the Loans become due and payable pursuant to Section 10). The U.S. Borrower hereby unconditionally promises to pay to the Swing Line Lender the then unpaid principal amount of each Swing Line Loan on the Revolving Credit Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Section 10). The U.S. Borrower hereby further agrees to pay interest on the unpaid principal amount of the U.S. Facility Loans from time to time outstanding from the date

hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 5.1.

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

(c) The General Administrative Agent, on behalf of the Working Capital Facility Agent and on behalf of the U.S. Borrower, shall maintain the Register pursuant to Section 12.6(d), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Term Loan and U.S. Revolving Credit Loan made hereunder and any Note evidencing such Loan, the Type of such Loan and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the U.S. Borrower to each Lender hereunder in respect of each Term Loan and U.S. Revolving Credit Loan and (iii) both the amount of any sum received by the General Administrative Agent hereunder from the U.S. Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 2.8(b) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the U.S. Borrower therein recorded; provided, however, that the failure of any Lender or the General Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the U.S. Borrower to repay (with applicable interest) the Loans made to the U.S. Borrower by such Lender in accordance with the terms of this Agreement. If there is any conflict between the Register and the accounts of any Lender maintained pursuant to Section 2.8(b), the Register shall control in the absence of manifest error.

(e) The U.S. Borrower agrees that, upon the request to the General Administrative Agent by any Lender, the U.S. Borrower will promptly execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans, U.S. Revolving Credit Loans or Swing Line Loans, as the case may be, of such Lender, substantially in the forms of Exhibit G-1, G-2 or G-3, respectively (a "Term Note", "U.S. Revolving Credit Note" or "Swing Line Note", respectively), with appropriate insertions as to date and principal amount; provided, that delivery of Notes shall not be a condition precedent to the occurrence of the Closing Date or the making of the Loans on the Closing Date.

2.9 Facility Fees. The U.S. Borrower agrees to pay to the General Administrative Agent for the account of each U.S. Revolving Credit Lender a facility fee for the period from and including the Closing Date to the last day of the Revolving Credit Commitment Period, computed at the Facility Fee Rate on the average daily amount of the U.S. Revolving Credit Commitment of such Lender (drawn and undrawn) during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Credit Termination Date, commencing on the first of such dates to occur after the date hereof.



2.10 Termination or Reduction of U.S. Revolving Credit Commitments. The U.S. Borrower shall have the right, upon not less than three Business Days' notice to the General Administrative Agent, to terminate the U.S. Revolving Credit Commitments or, from time to time, to reduce the aggregate amount of the U.S. Revolving Credit Commitments; provided that no such termination or reduction of U.S. Revolving Credit Commitments shall be permitted if, after giving effect thereto and to any prepayments of the U.S. Revolving Credit Loans and Swing Line Loans made on the effective date thereof, (a) the Aggregate U.S. Revolving Extensions of Credit would exceed the aggregate amount of the U.S. Revolving Credit Commitments or (b) the aggregate amount of the Canadian Revolving Credit Commitments would exceed the aggregate amount of the U.S. Revolving Credit Commitments. Any such reduction shall be in an amount equal to U.S.\$1,000,000, or a whole multiple thereof, and shall reduce permanently the U.S. Revolving Credit Commitments then in effect.

### SECTION 3. AMOUNT AND TERMS OF THE CANADIAN FACILITY COMMITMENTS

3.1 Canadian Revolving Credit Commitment; Canadian Supplemental Revolving Credit Commitment. (a) Subject to the terms and conditions hereof, each Canadian Revolving Credit Lender severally agrees to make revolving credit loans (each, a "Canadian Revolving Credit Loan") to the Canadian Borrower from time to time during the Revolving Credit Commitment Period so long as after giving effect thereto the Available Canadian Revolving Credit Commitment of each Canadian Revolving Credit Lender would be greater than or equal to zero. During the Revolving Credit Commitment Period, the Canadian Borrower may use the Canadian Revolving Credit Commitments by borrowing, repaying the Canadian Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof.

(b) The Canadian Revolving Credit Loans may be denominated in U.S. Dollars or Canadian Dollars, at the option of the Canadian Borrower. The Canadian Revolving Credit Loans denominated in Canadian Dollars shall be Canadian Dollar Prime Rate Loans, and the Canadian Revolving Credit Loans denominated in U.S. Dollars shall be Canadian Base Rate Loans or Eurodollar Loans, at the option of the Canadian Borrower.

(c) Subject to the terms and conditions hereof, the Canadian Supplemental Revolving Credit Lender agrees to make revolving credit loans ("Canadian Supplemental Revolving Credit Loans") to the Canadian Borrower from time to time during the Revolving Credit Commitment Period in an aggregate principal amount at any one time outstanding not to exceed the amount of the Canadian Supplemental Revolving Credit Commitment; provided, that the Canadian Supplemental Revolving Credit Lender shall not make a Canadian Supplemental Revolving Credit Loan if, after giving effect thereto, the Available Canadian Revolving Credit Commitment of the Canadian Supplemental Revolving Credit Lender would be less than zero. During the Revolving Credit Commitment Period the Canadian Borrower may use the Canadian Supplemental Revolving Credit Commitment by borrowing, repaying the Canadian Supplemental Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Canadian Supplemental Revolving Credit Loans shall be Canadian Dollar Prime Rate Loans or Canadian Base Rate Loans, as agreed to from time to time by the Canadian Borrower and the Canadian Supplemental Revolving Credit Lender.

(d) The Canadian Borrower shall repay all outstanding Canadian Supplemental Revolving Credit Loans on the Revolving Credit Termination Date.

3.2 Procedure for Borrowing Canadian Revolving Credit Loans; Procedure for Borrowing Canadian Supplemental Revolving Credit Loans. (a) The Canadian Borrower may borrow under the Canadian Revolving Credit Commitments during the Revolving Credit Commitment Period on any Business Day, provided that the Canadian Borrower shall give the Canadian Administrative Agent and the General Administrative Agent irrevocable notice (which notice must be received by the Canadian Administrative Agent and the General Administrative Agent prior to 2:00 P.M., Toronto time, at least one Business Day prior to the requested Borrowing Date, in the case of a borrowing of Canadian Base Rate Loans or Canadian Dollar Prime Rate Loans, or three Business Days prior to the requested Borrowing Date, in the case of a borrowing of Eurodollar Loans), specifying (i) the amount and Type of Loans to be borrowed and (ii) the requested Borrowing Date. Any Canadian Revolving Credit Loans denominated in U.S. Dollars made on the Closing Date shall be Canadian Base Rate Loans, and prior to the date which is 7 Business Days (or such lesser number of days as the General Administrative Agent shall specify to the U.S. Borrower) after the Closing Date, no such Loan may be converted into a Eurodollar Loan having an Interest Period in excess of one month. Each borrowing in Canadian Dollars under the Canadian Revolving Credit Commitments shall be in an amount equal to C\$300,000 or a whole multiple of C\$100,000 in excess thereof, and each borrowing in U.S. Dollars under the Canadian Revolving Credit Commitments shall be in an amount equal to U.S.\$300,000 or a whole multiple of U.S.\$100,000 in excess thereof (or, in each case, if the then Aggregate Available Canadian Revolving Credit Commitments are less than C\$300,000 or U.S.\$300,000, as the case may be, such lesser amount); provided, that the Canadian Swing Line Lender may request, on behalf of the Canadian Borrower, borrowings of Canadian Dollar Prime Rate Loans, in the case of Loans denominated in Canadian Dollars, and Canadian Base Rate Loans, in the case of Loans denominated in U.S. Dollars, under the Canadian Revolving Credit Commitments in other amounts pursuant to Section 3.7. Upon receipt of any such notice from the Canadian Borrower, the Canadian Administrative Agent shall promptly notify each Canadian Revolving Credit Lender thereof. The Canadian Administrative Agent shall provide reports to the General Administrative agent bi-weekly of borrowings under the Canadian Revolving Credit Commitments and Canadian Supplemental Revolving Credit Commitment, and provide such information to the General Administrative Agent between reports as the General Administrative agent may reasonably request. Not later than 12:00 Noon, Toronto time, on each requested Borrowing Date each Canadian Revolving Credit Lender shall make an amount equal to its Canadian Revolving Credit Commitment Percentage of the principal amount of Canadian Revolving Credit Loans requested to be made on such Borrowing Date available to the Canadian Administrative Agent at the Canadian Funding Office in Canadian Dollars or U.S. Dollars, as the case may be, and in immediately available funds. The Canadian Administrative Agent shall, not later than 3:00 P.M., Toronto time on such date, make such amount available to the Canadian Borrower in like funds as received by the Canadian Administrative Agent.

(b) The Canadian Borrower may borrow under the Canadian Supplemental Revolving Credit Commitment on any Business Day during the Revolving Credit Commitment Period at such times, in such amounts and on such other terms (other than final maturity and interest rates, which shall be as prescribed by this Agreement) as the Canadian Borrower and the Canadian Supplemental Revolving Credit Lender agree upon.

(c) The Canadian Borrower may, at any time and from time to time, by written notice to the Canadian Supplemental Revolving Credit Lender, the General Administrative Agent and the Canadian Administrative Agent, reduce the amount of the Canadian Supplemental Revolving Credit Commitment of the Canadian Supplemental Revolving Credit Lender and simultaneously increase the Canadian Revolving Credit Commitment of the Canadian Supplemental Revolving Credit Lender by the amount of such reduction.

3.3 Repayment of Canadian Facility Loans; Evidence of Debt. (a) The Canadian Borrower hereby unconditionally promises to pay to the Canadian Administrative Agent for the account of each Canadian Revolving Credit Lender the then unpaid principal amount of each Canadian Revolving Credit Loan of such Canadian Revolving Credit Lender on the Revolving Credit Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Section 10). The Canadian Borrower hereby unconditionally promises to pay to the Canadian Swing Line Lender the then unpaid principal amount of each Canadian Swing Line Loan on the Revolving Credit Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Section 10). The Canadian Borrower hereby unconditionally promises to pay to the Canadian Supplemental Revolving Credit Lender the then unpaid principal amount of each Canadian Supplemental Revolving Credit Loan on the Revolving Credit Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Section 10). The Canadian Borrower hereby further agrees to pay interest on the unpaid principal amount of the Canadian Facility Loans from time to time outstanding until payment thereof in full at the rates per annum, and on the dates, set forth in Section 5.1.

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

(c) The Canadian Administrative Agent (together with the General Administrative Agent), on behalf of the Canadian Borrower, shall maintain the Register pursuant to Section 12.6(d), and a subaccount therein for each Canadian Revolving Credit Lender, in which shall be recorded (i) the date and amount of each Canadian Revolving Credit Loan made hereunder, (ii) the date and amount of any principal or interest due and payable or to become due and payable from the Canadian Borrower to each Canadian Revolving Credit Lender hereunder in respect of the Canadian Revolving Credit Loans and (iii) both the date and amount of any sum received by the Canadian Administrative Agent hereunder from the Canadian Borrower in respect of the Canadian Revolving Credit Loans and each Canadian Revolving Credit Lender's share thereof.

(d) The entries made in the Register and the accounts of each Canadian Lender maintained pursuant to Section 3.3(b) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Canadian Borrower therein recorded absent manifest error; provided, however, that the failure of any Canadian Lender or the Administrative Agents to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Canadian Borrower to repay (with applicable interest) the Canadian Facility Loans made to the Canadian Borrower by such

Canadian Lender in accordance with the terms of this Agreement. If there is any conflict between the Register and the accounts of any Canadian Lender maintained pursuant to Section 2.8(b), the Register shall control in the absence of manifest error.

(e) The Canadian Borrower agrees that, upon the request to the Canadian Administrative Agent by any Canadian Revolving Credit Lender, it will execute and deliver to such Canadian Revolving Credit Lender a promissory note of the Canadian Borrower evidencing the Canadian Revolving Credit Loans of such Canadian Revolving Credit Lender, substantially in the form of Exhibit G-5 (a "Canadian Revolving Credit Note") with appropriate insertions as to date and principal amount. The Canadian Borrower agrees that, upon the request to the Canadian Administrative Agent by the Canadian Swing Line Lender, it will execute and deliver to the Canadian Swing Line Lender a promissory note of the Canadian Borrower evidencing the Canadian Swing Line Loans of the Canadian Swing Line Lender, substantially in the form of Exhibit G-5 (a "Canadian Swing Line Note") with appropriate insertions as to date and principal amount. The Canadian Borrower agrees that, upon the request to the Canadian Administrative Agent by the Canadian Supplemental Revolving Credit Lender, it will execute and deliver to the Canadian Supplemental Revolving Credit Lender a promissory note of the Canadian Borrower evidencing the Canadian Supplemental Revolving Credit Loans of the Canadian Supplemental Revolving Credit Lender, substantially in the form of Exhibit G-6 (a "Canadian Supplemental Revolving Credit Note") with appropriate insertions as to date and principal amount.

3.4 Termination or Reduction of Canadian Revolving Credit Commitments. The Canadian Borrower shall have the right, upon not less than one Business Day's notice to the Canadian Administrative Agent and the General Administrative Agent, to terminate the Canadian Revolving Credit Commitments or, from time to time, to reduce the amount of the Canadian Revolving Credit Commitments; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any prepayments of the Loans made on the effective date thereof, the Available Canadian Revolving Credit Commitments would be less than zero. Any such reduction shall be in an amount equal to U.S.\$350,000 or a whole multiple of U.S.\$100,000 in excess thereof and shall reduce permanently the Canadian Revolving Credit Commitments then in effect.

3.5 Facility Fees. The Canadian Borrower agrees to pay to the Canadian Administrative Agent for the account of each Canadian Revolving Credit Lender a facility fee, payable in U.S. Dollars, for the period from and including the Closing Date to the last day of the Revolving Credit Commitment Period, computed at the Facility Fee Rate on the average daily amount of the Canadian Revolving Credit Commitment of such Lender (drawn and undrawn) during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Credit Termination Date, commencing on the first of such dates to occur after the date hereof.

3.6 Canadian Swing Line Commitment. (a) Subject to the terms and conditions hereof, the Canadian Swing Line Lender agrees that, during the Revolving Credit Commitment Period, it will make available to the Canadian Borrower in the form of swing line loans ("Canadian Swing Line Loans") a portion of the credit otherwise available to the Canadian Borrower under the Canadian Revolving Credit Commitments; provided that (i) the aggregate principal amount of Canadian Swing Line Loans outstanding at any time shall not exceed the

Canadian Swing Line Commitment then in effect (notwithstanding that the Canadian Swing Line Loans outstanding at any time, when aggregated with the Canadian Swing Line Lender's other outstanding Canadian Revolving Credit Loans hereunder, may exceed the Canadian Swing Line Commitment then in effect or such Canadian Swing Line Lender's Canadian Revolving Credit Commitment then in effect) and (ii) the Canadian Borrower shall not request, and the Canadian Swing Line Lender shall not make, any Canadian Swing Line Loan unless, after giving effect to the making of such Canadian Swing Line Loan, the Available Canadian Revolving Credit Commitment of each Canadian Revolving Credit Lender would be equal to or greater than zero. During the Revolving Credit Commitment Period, the Canadian Borrower may use the Canadian Swing Line Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. The Canadian Swing Line Loans may be denominated in U.S. Dollars or Canadian Dollars, at the option of the Canadian Borrower. The Canadian Swing Line Loans denominated in Canadian Dollars shall be Canadian Dollar Prime Rate Loans, and the Canadian Swing Line Loans denominated in U.S. Dollars shall be Canadian Base Rate Loans.

(b) The Canadian Borrower shall repay all outstanding Canadian Swing Line Loans on the Revolving Credit Termination Date. The Canadian Borrower shall also prepay all Canadian Swing Line Loans then outstanding simultaneously with each borrowing of Canadian Revolving Credit Loans.

3.7 Procedure for Canadian Swing Line Borrowing; Refunding of Canadian Swing Line Loans. (a) The Canadian Borrower may borrow under the Canadian Swing Line Commitment on any Business Day during the Revolving Credit Commitment Period, provided, the Canadian Borrower shall give the Canadian Swing Line Lender, the General Administrative Agent and the Canadian Administrative Agent irrevocable telephonic notice confirmed promptly in writing (which telephonic notice must be received by the Canadian Swing Line Lender, the General Administrative Agent and the Canadian Administrative Agent not later than 1:30 P.M., Toronto time, on the proposed Borrowing Date), specifying (i) the amount to be borrowed and (ii) the requested Borrowing Date. Each borrowing under the Canadian Swing Line Commitment shall be in an amount equal to U.S.\$100,000 or a whole multiple of U.S.\$50,000 in excess thereof, in the case of borrowings in U.S. Dollars, or C\$100,000 or a whole multiple of C\$50,000 in excess thereof, in the case of borrowings in Canadian Dollars. Upon receipt of any such notice from the Canadian Borrower, the Canadian Swing Line Lender shall promptly notify the Canadian Administrative Agent. Not later than 3:00 P.M., Toronto time, on the Borrowing Date specified in the borrowing notice in respect of any Canadian Swing Line Loan, the Canadian Swing Line Lender shall make the proceeds of such Canadian Swing Line Loan available to the Canadian Borrower in immediately available funds.

(b) The Canadian Swing Line Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Canadian Borrower (which hereby irrevocably directs the Canadian Swing Line Lender to act on its behalf), on one Business Day's notice given by the Canadian Swing Line Lender no later than 12:00 Noon, Toronto time to the Canadian Administrative Agent (which shall promptly transmit such notice to each Canadian Revolving Credit Lender), request each Canadian Revolving Credit Lender to make, and each Canadian Revolving Credit Lender hereby agrees to make, a Canadian Revolving Credit Loan, in an amount equal to such Canadian Revolving Credit Lender's Canadian Revolving Credit Percentage of the aggregate amount of the Canadian Swing Line Loans (the "Refunded Canadian

Swing Line Loans") outstanding on the date of such notice, to repay the Canadian Swing Line Lender. Each Canadian Revolving Credit Lender shall make the amount of such Canadian Revolving Credit Loan available to the Canadian Administrative Agent at the Canadian Funding Office in immediately available funds, not later than 10:00 A.M., Toronto time, one Business Day after the date of such notice. The proceeds of such Canadian Revolving Credit Loans shall be made immediately available by the Canadian Administrative Agent to the Canadian Swing Line Lender for application by the Canadian Swing Line Lender to the repayment of the Refunded Canadian Swing Line Loans.

(c) If prior to the time a Canadian Revolving Credit Loan would have otherwise been made pursuant to Section 3.7(b), one of the events described in

Section 10(f) shall have occurred and be continuing with respect to the Canadian Borrower, or if for any other reason, as determined by the Canadian Swing Line Lender in its sole discretion, Canadian Revolving Credit Loans may not be made as contemplated by Section 3.7(b), each Canadian Revolving Credit Lender shall, on the date such Canadian Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 3.7(b) (the "Canadian Refunding Date"), purchase for cash an undivided participating interest in the then outstanding Canadian Swing Line Loans by paying to the Canadian Swing Line Lender an amount (the "Canadian Swing Line Participation Amount") equal to (i) such Canadian Revolving Credit Lender's Canadian Revolving Credit Percentage times (ii) the sum of the aggregate principal amount of Canadian Swing Line Loans then outstanding which were to have been repaid with such Canadian Revolving Credit Loans.

(d) Whenever, at any time after the Canadian Swing Line Lender has received from any Canadian Revolving Credit Lender such Lender's Canadian Swing Line Participation Amount, the Canadian Swing Line Lender receives any payment on account of the Canadian Swing Line Loans, the Canadian Swing Line Lender will distribute to such Lender its Canadian Swing Line Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Canadian Swing Line Loans then due); provided, however, that in the event that such payment received by the Canadian Swing Line Lender is required to be returned, such Canadian Revolving Credit Lender will return to the Canadian Swing Line Lender any portion thereof previously distributed to it by the Canadian Swing Line Lender.

(e) Each Canadian Revolving Credit Lender's obligation to make the Canadian Revolving Credit Loans referred to in Section 3.7(b) and to purchase participating interests pursuant to Section 3.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such Canadian Revolving Credit Lender or the Canadian Borrower may have against the Canadian Swing Line Lender, the Canadian Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 7; (iii) any adverse change in the condition (financial or otherwise) of either Borrower; (iv) any breach of this Agreement or any other Loan Document by the Canadian Borrower, any other Loan Party or any

other Lender; or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

#### Section 4. LETTERS OF CREDIT

4.1 L/C Commitments. (a) Prior to the Closing Date, the Existing Issuing Lender has issued the Existing Letters of Credit which, from and after the Closing Date, shall constitute Letters of Credit hereunder. Subject to the terms and conditions hereof, each U.S. Issuing Lender, in reliance on the agreements of the other U.S. Revolving Credit Lenders set forth in Section 4.4(a), agrees to issue letters of credit (the letters of credit issued on and after the Closing Date pursuant to this Section 4.1(a), together with the Existing Letters of Credit, collectively, the "U.S. Letters of Credit") for the account of the U.S. Borrower on any Business Day during the Revolving Credit Commitment Period in such form as may be approved from time to time by such Issuing Lender; provided, that no Issuing Lender shall have any obligation to issue any U.S. Letter of Credit if, after giving effect to such issuance, (i) the U.S. L/C Obligations would exceed the U.S. L/C Commitment or (ii) the aggregate amount of the Available U.S. Revolving Credit Commitments would be less than zero. Each U.S. Letter of Credit shall (i) be denominated in U.S. Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the date which is five Business Days prior to the Revolving Credit Termination Date, provided that any U.S. Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). Notwithstanding the foregoing, (i) if any amount of the Canadian Borrower's 9-3/8% Senior Notes due 2005 remains outstanding on December 15, 2003 and (ii) if on or after such date the U.S. Borrower requests the U.S. Issuing Lender to issue a U.S. Letter of Credit having an expiry date after the date which is five Business Days before December 31, 2004, the U.S. Issuing Lender may, in its sole discretion, issue such requested U.S. Letter of Credit; provided, that (A) unless no amount of the Canadian Borrower's 9-3/8% Senior Notes due 2005 remains outstanding on December 31, 2004 (and, accordingly, the Revolving Credit Termination Date will not occur on December 31, 2004), the obligations of the L/C Participants to make payments to the U.S. Issuing Lender in respect of such U.S. Letter of Credit shall permanently terminate on December 31, 2004 and (B) the U.S. Issuing Lender, upon its request to the U.S. Borrower, shall have entered into an agreement with the U.S. Borrower requiring the U.S. Borrower to provide cash collateral to the U.S. Issuing Lender in respect of such U.S. Letter of Credit pursuant to such terms and conditions as the U.S. Borrower and the U.S. Issuing Lender shall agree upon (it being agreed that any failure by the U.S. Borrower to provide any such cash collateral or to comply with the terms of any agreement between the U.S. Borrower and the U.S. Issuing Lender relating to such cash collateral shall not prevent the termination of the obligations of the L/C Participants in respect of such U.S. Letter of Credit as described above).

(b) Subject to the terms and conditions hereof, each Canadian Issuing Lender, in reliance on the agreements of the other Canadian Revolving Credit Lenders set forth in Section 4.4(a), agrees to issue letters of credit ("Canadian Letters of Credit"; the Canadian Letters of Credit together with the U.S. Letters of Credit, the "Letters of Credit") for the account of the Canadian Borrower on any Business Day during the Revolving Credit Commitment Period in such form as may be approved from time to time by such Issuing Lender; provided, that no Issuing Lender shall have any obligation to issue any Canadian Letter of Credit if, after giving

effect to such issuance, (i) the Canadian L/C Obligations would exceed the Canadian L/C Commitment or (ii) the amount of the Available Canadian Revolving Credit Commitment of any Canadian Lender would be less than zero. Each Canadian Letter of Credit shall (i) be denominated in U.S. Dollars or Canadian Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the date which is five Business Days prior to the Revolving Credit Termination Date, provided that any Canadian Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause

(y) above). Notwithstanding the foregoing, (i) if any amount of the Canadian Borrower's 9-3/8% Senior Notes due 2005 remains outstanding on December 15, 2003 and (ii) if on or after such date the Canadian Borrower requests the Canadian Issuing Lender to issue a Canadian Letter of Credit having an expiry date after the date which is five Business Days before December 31, 2004, the Canadian Issuing Lender may, in its sole discretion, issue such requested Canadian Letter of Credit; provided, that (A) unless no amount of the Canadian Borrower's 9-3/8% Senior Notes due 2005 remains outstanding on December 31, 2004 (and, accordingly, the Revolving Credit Termination Date will not occur on December 31, 2004), the obligations of the L/C Participants to make payments to the Canadian Issuing Lender in respect of such Canadian Letter of Credit shall permanently terminate on December 31, 2004 and (B) the Canadian Issuing Lender, upon its request to the Canadian Borrower, shall have entered into an agreement with the Canadian Borrower requiring the Canadian Borrower to provide cash collateral to the Canadian Issuing Lender in respect of such Canadian Letter of Credit pursuant to such terms and conditions as the Canadian Borrower and the Canadian Issuing Lender shall agree upon (it being agreed that any failure by the Canadian Borrower to provide any such cash collateral or to comply with the terms of any agreement between the Canadian Borrower and the Canadian Issuing Lender relating to such cash collateral shall not prevent the termination of the obligations of the L/C Participants in respect of such Canadian Letter of Credit as described above).

(c) No Issuing Lender shall issue any Letter of Credit under this Agreement having an expiration date after December 20, 2004, unless the 9-3/8% Senior Notes due 2005 have been refinanced prior to the date of such issuance.

(d) No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause such Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

4.2 Procedure for Issuance of Letters of Credit. The U.S. Borrower or the Canadian Borrower may from time to time request that a U.S. Issuing Lender or a Canadian Issuing Lender, as the case may be, issue a Letter of Credit by delivering to such Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender may request. Upon receipt of any Application, an Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by such Issuing Lender and the relevant Borrower (but in no event shall any Issuing Lender be required to issue any Letter of



Credit earlier than three Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto). Promptly after issuance by an Issuing Lender of a Letter of Credit, such Issuing Lender shall furnish a copy of such Letter of Credit to the relevant Borrower. Each Issuing Lender shall promptly furnish to the General Administrative Agent and the Working Capital Facility Agent (and, in the case of a Canadian Letter of Credit, to the Canadian Administrative Agent), notice of the issuance of each Letter of Credit issued by it (including the amount thereof) and such Administrative Agent shall promptly upon receipt of such notice notify each U.S. Revolving Credit Lender or Canadian Revolving Credit Lender, as applicable.

4.3 Fees and Other Charges. (a) Each Borrower will pay a fee on the aggregate drawable amount of all outstanding Letters of Credit issued for such Borrower's account at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the U.S. Revolving Credit Facility, shared ratably among the U.S. Revolving Credit Lenders or the Canadian Revolving Credit Lenders, as the case may be, in accordance with their respective U.S. Revolving Credit Percentages or Canadian Revolving Credit Percentages, as the case may be, and payable quarterly in arrears on each L/C Fee Payment Date after the issuance date. In addition, each Borrower shall pay to the relevant Issuing Lender for its own account a fronting fee on the aggregate drawable amount of each outstanding Letter of Credit issued by such Issuing Lender for the account of such Borrower of 1/8 of 1% per annum, payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit.

(b) In addition to the foregoing fees, each Borrower shall pay or reimburse each Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit issued for such Borrower's account.

(c) Fees payable in respect of any Letter of Credit shall be payable in the currency in which such Letter of Credit is denominated.

4.4 L/C Participations. (a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to (i) in the case of each U.S. L/C Participant, such U.S. L/C Participant's U.S. Revolving Credit Percentage in each Issuing Lender's obligations and rights under each U.S. Letter of Credit issued by such Issuing Lender hereunder and the amount of each draft paid by such Issuing Lender thereunder and (ii) in the case of each Canadian L/C Participant, such Canadian L/C Participant's Canadian Revolving Credit Percentage in each Issuing Lender's obligations and rights under each Canadian Letter of Credit issued by such Issuing Lender hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit in which such L/C Participant has a participating interest for which the relevant Issuing Lender is not reimbursed in full by the relevant Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's U.S. Revolving Credit

Percentage (in the case of U.S. Letters of Credit) or Canadian Revolving Credit Percentage (in the case of Canadian Letters of Credit) of the amount of such draft, or any part thereof, that is not so reimbursed.

(b) If any amount required to be paid by any L/C Participant to an Issuing Lender pursuant to Section 4.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit is paid to such Issuing Lender within three Business Days after the date such payment is due, such L/C Participant shall pay to such Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Effective Rate (in the case of amounts owing in U.S. Dollars) or the rate determined by the Canadian Issuing Bank to be its cost of funding the overdue amount (in the case of amounts owing in Canadian Dollars) during the period from and including the date such payment is required to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 4.4(a) is not made available to such Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, such Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to U.S. Base Rate Loans under the U.S. Revolving Credit Facility (in the case of amounts owing in U.S. Dollars) or Canadian Base Rate Loans under the Canadian Revolving Credit Facility (in the case of amounts owing in Canadian Dollars). A certificate of such Issuing Lender submitted to any L/C Participant with respect to any such amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after an Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its pro rata share of such payment in accordance with Section 4.4(a), such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the relevant Borrower or otherwise, including proceeds of collateral applied thereto by such Issuing Lender), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, however, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

4.5 Reimbursement Obligation of the Borrowers. Each Borrower agrees to reimburse each relevant Issuing Lender on each date on which such Issuing Lender notifies such Borrower of the date and amount of a draft presented under any Letter of Credit issued for the account of such Borrower and paid by such Issuing Lender for the amount of (a) such draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by such Issuing Lender in connection with such payment (the amounts described in the foregoing clauses (a) and (b) in respect of any drawing, collectively, the "Payment Amount"). Each such payment shall be made to such Issuing Lender at its address for notices specified herein in the currency in which such amount is owing and in immediately available funds. Interest shall be payable on each Payment Amount from the date of the applicable drawing until payment in full at the rate set forth in (i) until the second Business Day following the date of the applicable drawing, Section 5.1(b) (in the case of amounts outstanding in U.S. Dollars) and in Section 5.1(c) (in the case of amounts

outstanding in Canadian Dollars) and (ii) thereafter, Section 5.1(e). Each drawing under any Letter of Credit shall (unless an event of the type described in clause (i) or (ii) of Section 10(f) shall have occurred and be continuing with respect to the relevant Borrower, in which case the procedures specified in

Section 4.4 for funding by L/C Participants shall apply) constitute a request by the relevant Borrower to the relevant Administrative Agent for (x) in the case of a drawing in U.S. Dollars, a borrowing pursuant to Section 2.5 of U.S. Base Rate Loans (or, at the option of the General Administrative Agent and the Swing Line Lender in their sole discretion, a borrowing pursuant to Section 2.7 of Swing Line Loans) in the amount of such drawing or (y), in the case of a drawing in Canadian Dollars, a borrowing pursuant to Section 3.1 of Canadian Dollar Prime Rate Loans in the amount of such drawing (or, at the option of the Canadian Administrative Agent and the Canadian Swing Line Lender in their sole discretion, a borrowing pursuant to Section 3.7 of Canadian Swing Line Loans). The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of U.S. Revolving Credit Loans, Canadian Revolving Credit Loans or Swing Line Loans or Canadian Swing Line Loans, as the case may be, could be made, pursuant to Section 2.5, 3.2, 2.7 or 3.7, as the case may be, if the relevant Administrative Agent had received a notice of such borrowing at the time such Administrative Agent receives notice from the relevant Issuing Lender of such drawing under such Letter of Credit.

**4.6 Obligations Absolute.** Each Borrower's obligations under this Section 4 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that such Borrower may have or have had against any Issuing Lender, any beneficiary of a Letter of Credit or any other Person. Each Borrower also agrees with each Issuing Lender that such Issuing Lender shall not be responsible for, and such Borrower's Reimbursement Obligations under Section 4.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among such Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of such Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions resulting from the gross negligence or willful misconduct of such Issuing Lender. Each Borrower agrees that any action taken or omitted by an Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with the standards of care specified in the Uniform Commercial Code of the State of New York, shall be binding on such Borrower and shall not result in any liability of such Issuing Lender to such Borrower.

**4.7 Letter of Credit Payments.** If any draft shall be presented for payment under any Letter of Credit, the relevant Issuing Lender shall promptly notify the relevant Borrower of the date and amount thereof. The responsibility of the relevant Issuing Lender to the relevant Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit issued by such Issuing Lender, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment appear on their face to be in conformity with such Letter of Credit.

4.8 Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 4, the provisions of this Section 4 shall apply.

## SECTION 5. GENERAL PROVISIONS APPLICABLE TO THE FACILITIES

5.1 Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period plus the Applicable Margin in effect for such day.

(b) Each U.S. Base Rate Loan shall bear interest for each day on which it is outstanding at a rate per annum equal to the U.S. Base Rate for such day plus the Applicable Margin in effect for such day.

(c) Each Canadian Dollar Prime Rate Loan shall bear interest for each day on which it is outstanding at a rate per annum equal to the Canadian Dollar Prime Rate for such day plus the Applicable Margin in effect for such day.

(d) Each Canadian Base Rate Loan shall bear interest for each day on which it is outstanding at a rate per annum equal to the Canadian Base Rate for such day plus the Applicable Margin in effect for such day.

(e) If all or a portion of (i) the principal amount of any Loan, (ii) any interest payable thereon or (iii) any fee or other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall to the extent legally permitted bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this subsection plus 2%.

(f) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to paragraph (e) of this subsection shall be payable from time to time on demand.

5.2 Conversion and Continuation Options With Respect to Loans. (a) The U.S. Borrower may elect from time to time to convert outstanding Eurodollar Loans made to it under any Facility to U.S. Base Rate Loans under such Facility by giving the General Administrative Agent at least one Business Day's prior irrevocable notice of such election, provided that any such conversion of Eurodollar Loans made on a day other than the last day of an Interest Period with respect thereto shall be accompanied by payments of amounts specified in Section 5.12. The U.S. Borrower may elect from time to time to convert outstanding U.S. Base Rate Loans made to it under any Facility (other than Swing Line Loans) (in whole or in part) to Eurodollar Loans under such Facility by giving the General Administrative Agent at least three Business Days' prior irrevocable notice of such election. Any such notice of conversion to Eurodollar Loans shall specify the length of the initial Interest Period or Interest Periods therefor. Upon receipt of any such notice the General Administrative Agent shall promptly notify each applicable U.S. Lender thereof. All or any part of outstanding Eurodollar Loans and U.S. Base Rate Loans owing by the U.S. Borrower under such Facility may be converted as provided herein, provided that

(i) no U.S. Base Rate Loan under any Facility may be converted into a Eurodollar Loan when any Default or Event of Default has occurred and is continuing and the General Administrative Agent or the Majority Facility Lenders with respect to such Facility have determined that such conversion is not appropriate, (ii) any such conversion may only be made if, after giving effect thereto, Section 5.3 shall not have been violated, (iii) no U.S. Base Rate Loan may be converted into a

Eurodollar Loan when any Default or Event of Default has occurred and is continuing and the General Administrative Agent or the Majority Facility Lenders with respect to such Facility have determined that such conversion is not appropriate, (ii) any such conversion may only be made if, after giving effect thereto, Section 5.3 shall not have been violated, (iii) no U.S. Base Rate Loan may be converted into a Eurodollar Loan after the date that is one month prior to the Revolving Credit Termination Date (in the case of U.S. Revolving Credit Loans) or the scheduled maturity date therefor (in the case of Term Loans) and (iv) Swing Line Loans may not be converted to Eurodollar Loans.

(b) The Canadian Borrower may elect from time to time to convert outstanding Eurodollar Loans made to it under any Facility to Canadian Base Rate Loans under such Facility by giving the Canadian Administrative Agent at least three Business Days' prior irrevocable notice of such election, provided that any such conversion of Eurodollar Loans made on a day other than the last day of an Interest Period with respect thereto shall be accompanied by payment of amounts specified in Section 5.12. The Canadian Borrower may elect from time to time to convert outstanding Canadian Base Rate Loans made to it under any Facility (other than Canadian Swing Line Loans and Canadian Supplemental Revolving Credit Loans) to Eurodollar Loans under such Facility by giving the Canadian Administrative Agent at least three Business Days' prior irrevocable notice of such election. Any such notice of conversion to Eurodollar Loans shall specify the length of the initial Interest Period or Interest Periods therefor. Upon receipt of any such notice the Canadian Administrative Agent shall promptly notify each affected Canadian Lender thereof. All or any part of outstanding Eurodollar Loans and Canadian Base Rate Loans owing by the Canadian Borrower under such Facility may be converted as provided herein, provided that (i) no Canadian Base Rate Loan under any Facility may be converted into a Eurodollar Loan when any Default or Event of Default has occurred and is continuing and the Canadian Administrative Agent or the Majority Facility Lenders with respect to any Facility have determined that such conversion is not appropriate, (ii) any such conversion may only be made if, after giving effect thereto, Section 5.3 shall not have been violated, (iii) no Canadian Base Rate Loan may be converted into a Eurodollar Loan after the date that is one month prior to the Revolving Credit Termination Date, and (iv) Canadian Swing Line Loans and Canadian Supplemental Revolving Credit Loans may not be converted to Eurodollar Loans.

(c) Any Eurodollar Loans under any Facility may be continued as such upon the expiration of the then current Interest Period with respect thereto by the relevant Borrower giving notice to the General Administrative Agent or the Canadian Administrative Agent, as the case may be, of the length of the next Interest Period to be applicable to such Loans determined in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, provided that no Eurodollar Loan under any Facility may be continued as such (i) when any Default or Event of Default has occurred and is continuing and the General Administrative Agent (or, in the case of Canadian Facility Loans, the Canadian Administrative Agent) or the Majority Facility Lenders under such Facility have determined that such continuation is not appropriate, (ii) if, after giving effect thereto, Section 5.3 would be contravened or (iii) after the date that is one month prior to the Revolving Credit Termination Date or applicable final maturity date, as the case may be, and provided, further, that if the relevant Borrower shall fail to give such notice or if such continuation is not permitted pursuant to the preceding proviso such Eurodollar Loans shall be automatically converted to U.S. Base

Rate Loans or Canadian Base Rate Loans, as applicable, on the last day of such then expiring Interest Period.

5.3 Minimum Amounts of Tranches. All borrowings, conversions and continuations of Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, after giving effect thereto, (i) the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to U.S.\$1,000,000 or a whole multiple of U.S. \$100,000 in excess thereof, and (ii) there shall not be more than seven Eurodollar Tranches at any one time outstanding.

5.4 Optional Prepayments. (a) The U.S. Borrower may at any time and from time to time prepay U.S. Facility Loans, in whole or in part without premium or penalty upon at least three Business Days' irrevocable notice to the General Administrative Agent (in the case of Eurodollar Loans) and at least one Business Day's irrevocable notice to the General Administrative Agent (in the case of U.S. Base Rate Loans other than Swing Line Loans) specifying the date and amount of prepayment, the Facility to which such prepayment applies and the type of Loans being prepaid under each such Facility. Upon the receipt of any such notice the General Administrative Agent shall promptly notify each affected U.S. Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Partial prepayments of the U.S. Facility Loans (other than Swing Line Loans) shall be in an aggregate principal amount of U.S.\$250,000 or a whole multiple of U.S.\$100,000 in excess thereof (or in such lower amount as may be then outstanding). Prepayments of Term Loans made pursuant to this Section 5.4(a) shall be applied as specified in Sections 5.5(f).

(b) The Canadian Borrower may at any time and from time to time prepay, without premium or penalty, the Canadian Facility Loans, in whole or in part, upon at least three Business Days' irrevocable notice to the Canadian Administrative Agent (in the case of Eurodollar Loans) and at least one Business Day's irrevocable notice to the Canadian Administrative Agent (in the case of Canadian Base Rate Loans or Canadian Dollar Prime Rate Loans other than Canadian Supplemental Revolving Credit Loans and Canadian Swing Line Loans) specifying the date and amount of prepayment, the Facility to which such prepayment applies and the type of Loans being prepaid under each such Facility. Upon the receipt of any such notice, the Canadian Administrative Agent shall promptly notify each affected Canadian Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Partial prepayments of Canadian Facility Loans (other than Canadian Swing Line Loans and Canadian Supplemental Revolving Credit Loans) shall be in an aggregate principal amount of C\$300,000 or a whole multiple of C\$100,000 in excess thereof (in the case of Canadian Facility Loans denominated in Canadian Dollars), U.S.\$250,000 or a whole multiple of US\$100,000 in excess thereof (in the case of Canadian Facility Loans denominated in U.S. Dollars (or in such lower amount as may be then outstanding for either denomination).

(c) Each prepayment of Eurodollar Loans pursuant to this Section 5.4 shall be accompanied by accrued and unpaid interest on the amount prepaid to the date of prepayment and any amounts payable under Section 5.12 in connection with such prepayment.

5.5 Mandatory Prepayments; Application of Prepayments. (a) Unless the Required Prepayment Lenders shall otherwise agree, if the Canadian Borrower receives Net Cash Proceeds from any Capital Stock Sale, an amount equal to 50% of such Net Cash Proceeds shall be applied within three Business Days after the date of receipt thereof toward the prepayment of the Loans as set forth in Section 5.5(e).

(b) Unless the Required Prepayment Lenders shall otherwise agree, if after the Closing Date any Indebtedness shall be issued or incurred by the Canadian Borrower or any of its Restricted Subsidiaries (excluding any Indebtedness incurred in accordance with Section 9.2), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied within five Business Days after the date of such issuance or incurrence toward the prepayment of the Loans as set forth in Section 5.5(e). The provisions of this Section do not constitute a consent to the incurrence of Indebtedness not otherwise permitted by Section 9.2.

(c) Unless the Required Prepayment Lenders shall otherwise agree, if, for any fiscal year of the Canadian Borrower commencing with the 2002 fiscal year, the Canadian Borrower shall have Excess Cash Flow, the U.S. Borrower shall, on the relevant Excess Cash Flow Application Date, apply an amount equal to the ECF Percentage of such Excess Cash Flow toward the prepayment of the Loans as set forth in Section 5.5(e); provided, however, that the amount of any required prepayment pursuant to this paragraph in respect of Excess Cash Flow for any fiscal year shall be reduced by the aggregate amount of (i) any voluntary prepayments of the Term Loans made during such fiscal year, (ii) any mandatory prepayments made from Net Cash Proceeds of Asset Sales, Purchase Price Refunds and Recovery Events pursuant to Section 5.5(d), but only to the extent such Net Cash Proceeds constituted Consolidated Net Income, and (iii) all voluntary prepayments of U.S. and Canadian Revolving Credit Loans accompanied by permanent reductions in equal amounts in the U.S. Revolving Credit Commitments or the Canadian Revolving Credit Commitments, as the case may be, made during such fiscal year. Each such prepayment from Excess Cash Flow shall be made on a date (an "Excess Cash Flow Application Date") no later than five days after the earlier of (i) the date on which the financial statements of the Canadian Borrower referred to in Section 8.1(a), for the fiscal year with respect to which such prepayment is made, are required to be delivered to the Lenders and

(ii) the date such financial statements are actually delivered.

(d) Unless the Required Prepayment Lenders shall otherwise agree, if on any date the Canadian Borrower or any of its Restricted Subsidiaries shall receive Net Cash Proceeds from any Asset Sale, Purchase Price Refund or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, on the date of receipt by the Canadian Borrower of such Net Cash Proceeds, the Loans shall be prepaid by an amount equal to the amount of such Net Cash Proceeds, as set forth in Section 5.5(e); provided, that, notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales that may be excluded from the foregoing requirement pursuant to a Reinvestment Notice shall not exceed \$25,000,000 in any fiscal year of the Canadian Borrower, (ii) on each Reinvestment Prepayment Date the Loans shall be prepaid by an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event, as set forth in Section 5.5(e) and (iii) the Net Cash Proceeds from the sale of any Collateral (other than the sale of inventory in the ordinary course of business) cannot be reinvested and shall be applied to prepay the Loans as set forth in Section 5.5(e). The provisions

of this Section do not constitute a consent to the consummation of any Disposition not permitted by Section 9.5.

(e) Amounts to be applied in connection with prepayments made pursuant to Section 5.5(a), 5.5(b), 5.5(c) and 5.5(d) shall be applied, first, to the prepayment of the Purchase Money Term Loans, second, to the prepayment of the Working Capital Term Loans, third, to the prepayment of U.S. Revolving Credit Loans (without any mandatory reduction of the U.S. Revolving Credit Commitments unless required by the Indentures) and fourth, to the prepayment of Loans under the Canadian Supplemental Revolving Credit Facility (without any mandatory reduction of the commitments relating thereto).. The application of any such prepayment of Loans under any Facility shall be made first to U.S. Base Rate Loans under such facility and second to Eurodollar Loans under such Facility. Each such prepayment of Loans shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

(f) Amounts to be applied in connection with prepayments of Term Loans made pursuant to Section 5.4(a) shall be applied, first, to the prepayment of the Purchase Money Term Loans and, second, to the prepayment of the Working Capital Term Loans. The application of any such prepayment of Loans under any Facility shall be made first to U.S. Base Rate Loans under such Facility and second to Eurodollar Loans under such Facility. Each such prepayment of the Loans shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

(g) The amount of each prepayment of the Term Loans made pursuant to Section 5.4 or Section 5.5 shall be applied, first, to the prepayment of the next installment due under the relevant Facility, and, second, to the prepayment of the then remaining installments of the Term Loans under the relevant Facility, pro rata based upon the then remaining outstanding principal amount of such installments.

(h) (i) Notwithstanding anything to the contrary in Sections 5.5 or 5.9, each Term Loan Lender may, at its option, decline up to 50% of the portion of any mandatory payment applicable to the Term Loans of such Lender (other than any prepayment in an amount sufficient to repay in full all outstanding Term Loans); accordingly, with respect to the amount of any mandatory prepayment described in Section 5.5(a), (b), (c) or (d) that is allocated to Term Loans (such amount, the "Mandatory Prepayment Amount"), the U.S. Borrower will, on the date specified in Section 5.5(a), (b), (c) or (d), as the case may be, for such prepayment, (A) give the General Administrative Agent telephonic notice (promptly confirmed in writing) requesting that the General Administrative Agent prepare and provide to each Term Loan Lender a Prepayment Option Notice as described below and (B) deposit with the General Administrative Agent the Mandatory Prepayment Amount.

(ii) As promptly as practicable after receiving such notice from the U.S. Borrower, the General Administrative Agent will send to each Term Loan Lender a Prepayment Option Notice, which shall include an offer by the U.S. Borrower to prepay on the Prepayment Date the Term Loans of such Lender by an amount equal to the portion of the Mandatory Prepayment Amount indicated in such Lender's Prepayment Option Notice as being applicable to such Lender's Term Loans. The "Prepayment Date" in respect of any Prepayment Option



Notice shall be the date which is five Business Days after the date of such Prepayment Option Notice.

(iii) On the Prepayment Date, the General Administrative Agent shall (A) apply the Mandatory Prepayment Amount toward prepayment of the outstanding Term Loans in respect of which Lenders have accepted mandatory prepayment as described above and (B) deliver the remaining portion of the Mandatory Prepayment Amount not accepted by the Term Loan Lenders to the U.S. Borrower.

5.6 Certain Fees. (a) The U.S. Borrower shall pay (without duplication of any other fee payable under this Section 5.6) to the Arranger, for its own account, all fees separately agreed to by the U.S. Borrower and the Arranger in writing.

(b) The Canadian Borrower shall (without duplication of any other fee payable under this Section 5.6) pay to the Canadian Administrative Agent all fees separately agreed to by the Canadian Borrower and the Canadian Administrative Agent in writing.

(c) The U.S. Borrower shall (without duplication of any other fee payable under this Section 5.6) pay to the General Administrative Agent all fees separately agreed to by the U.S. Borrower and the General Administrative Agent in writing.

5.7 Computation of Interest and Fees. (a) Interest based on the Eurodollar Rate, the Canadian Base Rate, or the U.S. Base Rate when it is based upon the Federal Funds Effective Rate shall be calculated on the basis of a 360-day year for the actual days elapsed; and facility fees, letters of credit fees, interest based on the Canadian Dollar Prime Rate and other interest (other than interest based upon the Canadian Base Rate, the Eurodollar Rate or the U.S. Base Rate when it is based upon the Federal Funds Effective Rate) shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The General Administrative Agent shall as soon as practicable notify the relevant Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the U.S. Base Rate, the Canadian Base Rate or the Canadian Dollar Prime Rate shall become effective as of the opening of business on the day on which such change becomes effective. The General Administrative Agent shall as soon as practicable notify the U.S. Borrower and the Lenders of the effective date and the amount of each such change in the U.S. Base Rate, and the Canadian Administrative Agent shall as soon as practicable notify the Canadian Borrower and the Canadian Revolving Credit Lenders of each such change in the Canadian Dollar Prime Rate and the Canadian Base Rate; provided that a failure by the General Administrative Agent or the Canadian Administrative Agent to notify the U.S. Borrower or the Canadian Borrower of such respective rate changes does not affect the obligation of the U.S. Borrower or the Canadian Borrower to pay interest at the applicable rate as changed. For purposes of the Interest Act (Canada), whenever any interest or fee under this Agreement is calculated based on a period which is less than a year (the "Lesser Period"), the interest rate or fee determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (i) the applicable rate based on such Lesser Period, (ii) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable ends, and (iii) divided by the number of days in such Lesser Period. The rates of interest specified in this

Agreement are nominal rates and all interest payments and computations are to be made without allowance or deduction for deemed reinvestment of interest.

(b) Each determination of an interest rate by the General Administrative Agent or the Canadian Administrative Agent, as the case may be, pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error. Each Administrative Agent shall, at the request of a Borrower, deliver to such Borrower a statement showing in reasonable detail the calculations used by such Administrative Agent in determining any interest rate pursuant to Section 5.1(a) and any facility fee pursuant to Section 2.9 or 3.5.

5.8 Inability to Determine Interest Rate. If prior to the first day of any Interest Period:

(a) the General Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrowers absent manifest error) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the General Administrative Agent has received notice from the Majority Facility Lenders that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Eurodollar Loans during such Interest Period,

the General Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as U.S. Base Rate Loans or Canadian Base Rate Loans, as the case may be, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as U.S. Base Rate Loans or Canadian Base Rate Loans, as the case may be, and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the first day of such Interest Period, to U.S. Base Rate Loans or Canadian Base Rate Loans, as the case may be. Until such time as the Eurodollar Rate can be determined by the General Administrative Agent in the manner specified in the definitions of such terms in Section 1.1, no further Eurodollar Loans under the affected Facility shall be continued as such at the end of the then current Interest Periods or shall be made, nor shall the relevant Borrower have the right to convert outstanding Loans under such Facility into Eurodollar Loans. The relevant Administrative Agent shall withdraw (i) any such notice pursuant to clause (a) above if the relevant Administrative Agent determines that the relevant circumstances have ceased to exist and (ii) any such notice pursuant to clause (b) above upon receipt of notice from the Majority Facility Lenders in respect of the relevant Facility that the relevant circumstances described in such clause (b) have ceased to exist.

5.9 Pro Rata Treatment and Payments. (a) (i) Each borrowing from the Lenders under any Facility shall be made pro rata according to the respective Commitment Percentages of the Lenders in respect of such Facility in effect on the date of such borrowing. Each payment on account of any facility fee or letter of credit fee relating to any Facility shall be allocated by the relevant Administrative Agent among the Lenders pro rata according to the respective Commitment Percentages of the Lenders in respect of such Facility. Any reduction of the Commitments under any Facility shall be

allocated among the Lenders pro rata according to the Commitment Percentages of the Lenders in respect of such Facility. Each payment (other than any optional prepayment) by a Borrower on account of principal of the Loans shall be allocated by the relevant Administrative Agent pro rata according to the respective principal amounts thereof then due and owing to each Lender. Each payment by a Borrower on account of interest on the Loans shall be allocated by the relevant Administrative Agent pro rata according to the respective amounts of interest then due and owing to each Lender. Each optional prepayment on account of principal of or interest on the Loans under any Facility shall be allocated by the relevant Administrative Agent pro rata according to the respective principal amounts of Loans outstanding under such Facility.

(ii) All payments (including prepayments) to be made by the U.S. Borrower hereunder (other than payments on account of Swing Line Loans), whether on account of principal, interest, fees or otherwise, shall be made without set-off or counterclaim and shall be made prior to 1:00 P.M., New York City time, on the due date thereof to the General Administrative Agent, for the account of the U.S. Lenders, at the U.S. Payment Office, in U.S. Dollars and in immediately available funds. The General Administrative Agent shall distribute such payments to the U.S. Lenders entitled to receive the same promptly upon receipt in like funds as received. All payments (including prepayments) to be made by the U.S. Borrower on account of Swing Line Loans, whether on account of principal, interest, fees or otherwise, shall be made without set-off or counterclaim and shall be made directly to the Swing Line Lender in U.S. Dollars and in immediately available funds.

(iii) All payments (including prepayments) to be made by the Canadian Borrower hereunder (other than payments on account of Canadian Supplemental Revolving Credit Loans and Canadian Swing Line Loans), whether on account of principal, interest, fees or otherwise, shall be made without set-off or counterclaim and shall be made prior to 1:00 P.M., Toronto time, on the due date thereof to the Canadian Administrative Agent, for the account of the Canadian Lenders, at the Canadian Payment Office, in the currency in which the relevant amount is outstanding and in immediately available funds. The Canadian Administrative Agent shall distribute such payments to the Canadian Lenders entitled to receive the same promptly upon receipt in like funds as received. All payments (including prepayments) to be made by the Canadian Borrower (on account of Canadian Supplemental Revolving Credit Loans and Canadian Swing Line Loans), whether on account of principal, interest, fees or otherwise, shall be made without set-off or counterclaim and shall be made directly to the Canadian Swing Line Lender or the Canadian Supplemental Revolving Credit Lender, as the case may be, in the currency in which the relevant amount is outstanding and in immediately available funds.

(iv) If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day (and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate

during such extension) unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day.

(b) Unless the applicable Administrative Agent shall have been notified in writing by any Lender prior to a Borrowing Date that such Lender will not make the amount that would constitute its share of such borrowing available to such Administrative Agent, such Administrative Agent may assume that such Lender is making such amount available to such Administrative Agent, and such Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. If such amount is not made available to such Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to such Administrative Agent, on demand, such amount with interest thereon at a rate per annum equal to (i) the daily average Federal Funds Effective Rate (in the case of a borrowing of Loans in U.S. Dollars), and (ii) the Canadian Administrative Agent's reasonable estimate of its average daily cost of funds (in the case of a borrowing of Loans in Canadian Dollars), in each case for the period until such Lender makes such amount immediately available to such Administrative Agent. A certificate of such Administrative Agent submitted to any Lender with respect to any amounts owing under this subsection shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to such Administrative Agent by such Lender within three Business Days of such Borrowing Date, the applicable Borrower shall repay such Lender's share of such borrowing (together with interest thereon from the date such amount was made available to such Borrower) (i) at the rate per annum applicable to U.S. Base Rate Loans under the relevant Facility (in the case of amounts made available to the U.S. Borrower and amounts made available in U.S. Dollars to the Canadian Borrower) and (ii) at the rate per annum applicable to Canadian Dollar Prime Rate Loans under the relevant Facility (in the case of amounts made available in Canadian Dollars to the Canadian Borrower) to such Administrative Agent not later than three Business Days after receipt of written notice from such Administrative Agent specifying such Lender's share of such borrowing that was not made available to such Administrative Agent. Nothing contained in this Section 5.9(b) shall prejudice any claims otherwise available to any Borrower against any Lender as a result of such Lender's failure to make its share of any borrowing available to an Administrative Agent for the account of a Borrower.

5.10 Illegality. (a) Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, (i) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert U.S. Base Rate Loans or Canadian Base Rate Loans to Eurodollar Loans shall forthwith be cancelled until such time as it shall no longer be unlawful for such Lender to make or maintain the affected Loans and, (ii) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to U.S. Base Rate Loans or Canadian Base Rate Loans, as the case may be, on the respective last days of the then current Interest Periods with respect to such Eurodollar Loans or within such earlier period as may be required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the relevant Borrower shall not be obligated to pay to such Lender such amounts, if any, as may be required pursuant to Section 5.12.

(b) Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Canadian Lender to make or maintain Canadian Base Rate Loans, (i) the commitment of such Canadian Lender hereunder to make Canadian Base Rate Loans shall forthwith be cancelled until such time as it shall no longer be unlawful for such Canadian Lender to make or maintain Canadian Base Rate Loans and (ii) such Canadian Lender's then outstanding Canadian Base Rate Loans, if any, shall be converted automatically to Canadian Dollars at the Exchange Rate and Canadian Dollar Prime Rate Loans on the respective maturities thereof or within such earlier period as may be permitted and required by law.

5.11 Requirements of Law. (a) If the adoption of, or any change in, any Requirement of Law or in the interpretation thereof, or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Note, any Letter of Credit issued or participated in by it or any Loans made by it, or change the basis of taxation of payments to such Lender of principal, fees, interest or any other amount payable hereunder (except for taxes covered by Section 5.13 and changes in the rate of tax on the overall net income or capital of such Lender);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender which are not otherwise included in the determination of the Eurodollar Rate, including, without limitation, the imposition of any reserves with respect to eurocurrency liabilities under Regulation D of the Board; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by any amount which such Lender deems to be material, of making, renewing or maintaining advances or extensions of credit or to reduce any amount receivable hereunder, in each case in respect of its Loans or its Participating Interests, then, in any such case, the applicable Borrower shall, to the extent permitted by law, promptly pay such Lender, upon receipt of its demand setting forth in reasonable detail, any additional amounts necessary to compensate such Lender for such additional cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify the applicable Borrower in reasonable detail (with a copy to the relevant Administrative Agent) of the event by reason of which it has become so entitled. This covenant shall survive the termination of this Agreement and payment of all amounts outstanding hereunder.

(b) In the event that any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy (or in the interpretation or application thereof) or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any central bank or Governmental Authority, does or shall have the effect of reducing the

rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the U.S. Borrower (with a copy to the General Administrative Agent) of a written request therefor, setting forth in reasonable detail the basis therefor and containing a certification that such request for compensation is being made pursuant to a policy adopted by such Lender or such corporation to seek such compensation generally from customers situated similarly to the Borrowers and having provisions in their agreements with such Lender or such corporation similar to those in this Section 5.11, the U.S. Borrower shall promptly pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction.

(c) If any Lender becomes entitled to claim any additional amounts pursuant to this Section 5.11 or Section 5.13, it shall promptly notify the relevant Borrower (with a copy to the relevant Administrative Agent) of the event by reason of which it has become so entitled.

(d) The Borrowers will not be liable for any amount otherwise payable under this Section 5.11 in respect of any period more than 90 days before the date of a Lender's request for compensation, or, if earlier, any retroactive effective date of a relevant event that occurs within 90 days before a Lender's request for additional compensation.

5.12 Indemnity. Each Borrower agrees to indemnify each Lender and each Agent and to hold each Lender and each Agent harmless from any loss (excluding loss of the Applicable Margin) or expense which such Lender or such Agent, as the case may be, may sustain or incur as a consequence of (a) default by such Borrower in payment when due of the principal amount of or interest on any Loans of such Lender, (b) default by such Borrower in making a borrowing or conversion after the Borrower has given a notice of borrowing or a notice of conversion in accordance with this Agreement, (c) default by such Borrower in making any prepayment after such Borrower has given a notice in accordance with this Agreement or (d) the making of a prepayment of a Eurodollar Loan on a day which is not the last day of an Interest Period with respect thereto, including, without limitation, any such loss or expense arising from the reemployment of funds obtained by it or from fees payable to terminate the deposits from which such funds were obtained, including, without limitation, in each case, any such loss or expense arising from the reemployment of funds obtained by it to maintain its Eurodollar Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained. A certificate as to any such loss or expense submitted by such Lender, setting forth in reasonable detail the basis and method of calculation thereof, shall be prima facie evidence thereof, absent manifest error. This covenant shall survive termination of this Agreement and payment of all amounts outstanding hereunder.

5.13 Taxes. (a) All payments made by either Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on any Agent or any Lender as a result of a present or former connection

between such Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent's or such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") or any Other Taxes are required to be withheld from any amounts payable to any Agent or any Lender hereunder, the amounts so payable to such Agent or such Lender shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that the Borrowers shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender's failure to comply with the requirements of paragraph (d) or (e) of this

Section or (ii) that are United States withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrowers with respect to such Non-Excluded Taxes pursuant to Section 5.13(a).

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

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by any Borrower, as promptly as possible thereafter such Borrower shall send to the relevant Administrative Agent for the account of the relevant Agent or Lender, as the case may be, a certified copy of an original official receipt received by such Borrower showing payment thereof. If any Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the relevant Administrative Agent the required receipts or other required documentary evidence, such Borrower shall indemnify the Agents and the Lenders for any incremental taxes, interest or penalties that may become payable by any Agent or any Lender as a result of any such failure. The agreements in this Section 5.13 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(d) Each Lender or Transferee (other than a Canadian Lender) that is not a U.S. person as defined in section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to the U.S. Borrower and the General Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest" a statement substantially in the form of Exhibit I and a Form W-8BEN, or any subsequent versions thereof or successors thereto properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the U.S. Borrower under this Agreement and the other Loan Documents together with any other certificate or statement of exemption required under the Code or Regulations issued thereunder. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related

participation). In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each such Non-U.S. Lender shall promptly notify the U.S. Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the U.S. Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(e) Each Canadian Lender that is entitled to an exemption from or reduction of Canadian withholding tax with respect to payments under this Agreement shall deliver to the Canadian Borrower (with a copy to the General Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Canadian Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, provided that such Canadian Lender is legally entitled to complete, execute and deliver such documentation and in such Canadian Lender's reasonable judgment such completion, execution or submission would not materially prejudice the legal position of such Canadian Lender.

5.14 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 5.10, 5.12 or 5.13(a) with respect to such Lender, it will, if requested by the Canadian Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of any Borrower or the rights of any Lender pursuant to Section 5.10, 5.12 or 5.13(a).

5.15 Replacement of Lenders. If any Lender requests compensation pursuant to Section 5.11, or any Lender's obligation to make or maintain Loans as Eurodollar Loans shall be suspended pursuant to Section 5.10, or if either Borrower is obligated to pay or reimburse any Lender for any tax under Section 5.13, or any Lender becomes a Defaulting Lender, the Canadian Borrower, upon three Business Days' notice, may require that such Lender transfer all of its rights, title and interest under this Agreement, such Lender's Notes, if any, and the other Loan Documents to any Eligible Institution identified by the Canadian Borrower, subject to:

(a) the consent of the General Administrative Agent (which consent shall not be unreasonably withheld);

(b) satisfaction of the other conditions specified in Section 12.6;

(c) assumption by the proposed transferee of all of the obligations of such Lender hereunder and under the other Loan Documents for consideration equal to the outstanding principal amount of such Lender's Loans payable to the transferor, interest thereon to the date of such transfer, and all other amounts payable hereunder to such Lender to the date of transfer; and



(d) the relevant Borrower's payment to such transferor Lender, on or before the date of such transfer all fees and other amounts payable to such transferor hereunder including those amounts payable under said Sections 5.11 and 5.13, as applicable (and including any fees accrued hereunder and any amounts that would be payable under Section 5.12 as if all of such Lender's Loans were being prepaid in full on such date), or arrangements satisfactory to the transferor Lender shall have been made for such payments.

## Section 6. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make Extensions of Credit hereunder, the Borrowers hereby jointly and severally represent and warrant to each Agent and each Lender that:

6.1 Financial Condition. (a) The unaudited pro forma consolidated balance sheet of the Canadian Borrower and its consolidated Subsidiaries as at March 31, 2001 (including the notes thereto) (the "Pro Forma Balance Sheet"), and the unaudited pro forma income statements of the Canadian Borrower for the fiscal year ended December 30, 2000 and the four fiscal quarters ended March 31, 2001 (the "Pro Forma Income Statements"), copies of which have heretofore been furnished to each Lender, have been prepared giving effect (as if such events had occurred on such date, in the case of the Pro Forma Balance Sheet, or as if such events had occurred on the first day of the period covered thereby, in the case of the Pro Forma Income Statements) to (i) the consummation of the Acquisition, (ii) the Loans to be made on the Closing Date and the use of proceeds thereof and (iii) the payment of fees and expenses in connection with the foregoing. The Pro Forma Balance Sheet and the Pro Forma Income Statements are based upon good faith estimates and assumptions believed by management of the Borrowers to be reasonable at the time made and present fairly on a pro forma basis the estimated financial position of the Canadian Borrower and its consolidated Subsidiaries as at March 31, 2001 and the estimated income of the Canadian Borrower and its Subsidiaries for the period covered thereby, assuming that the events specified in the preceding sentence had actually occurred at such date, in the case of the Pro Forma Balance Sheet, or as if such events had occurred on the first day of the period covered thereby, in the case of the Pro Forma Income Statements.

(b) The audited consolidated balance sheets of the Canadian Borrower as at January 1, 2000 and December 30, 2000 and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers LLP, present fairly the consolidated financial condition of the Canadian Borrower as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of the Canadian Borrower as at March 31, 2001 and the related unaudited consolidated statements of income and cash flows for the three-month period ended on such date, present fairly the consolidated financial condition of the Canadian Borrower as at such date, and the consolidated results of its operations and its consolidated cash flows for the three-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the

aforementioned firm of accountants and disclosed therein). As of the date of such financial statements, the Canadian Borrower and its Subsidiaries did not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph (including notes and schedules thereto). During the period from March 31, 2001 to and including the date of this Agreement there has been no Disposition by the Canadian Borrower of any material part of its business or Property.

6.2 No Change. Since December 30, 2000 there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

6.3 Corporate Existence; Compliance with Law. Each of the Borrowers and its respective Restricted Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate or other power, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, and (d) is in compliance with all Requirements of Law except, in the case of the foregoing clauses (c) and (d), to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.4 Corporate Power; Authorization; Enforceable Obligations. Each Loan Party has the corporate or other power, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of each Borrower, to borrow hereunder. Each Loan Party has taken all necessary corporate or other action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of each Borrower, to authorize the borrowings on the terms and conditions of this Agreement. No material consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the Acquisition, the borrowings hereunder or the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) consents, authorizations, filings and notices described in Schedule 6.4, which consents, authorizations, filings and notices have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 6.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

6.5 No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the Loans and other Extensions of Credit hereunder and the use of the proceeds thereof will not violate any

Requirement of Law or any Contractual Obligation of either Borrower or any of their respective Restricted Subsidiaries and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to either Borrower or any of their respective Restricted Subsidiaries could reasonably be expected to have a Material Adverse Effect.

6.6 No Material Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of either Borrower, threatened by or against either Borrower or any of their respective Subsidiaries or against any of its respective properties or revenues (a) except as set forth on Schedule 6.6, with respect to any of the Loan Documents or (as of the Closing Date) the Acquisition, or (b) that could reasonably be expected to have a Material Adverse Effect. The litigation disclosed on Schedule 6.6 could not be reasonably expected to have a Material Adverse Effect.

6.7 No Default. Neither the Borrowers nor any of their respective Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

6.8 Ownership of Property; Liens. Each of the Borrowers and each of the Restricted Subsidiaries has title in fee simple to, or a valid leasehold interest in, all its material real property, and good title to, or a valid leasehold interest in, all its other material Property, and none of such Property is subject to any Lien except as permitted by Section 9.3.

6.9 Intellectual Property. Each of the Borrowers and the Restricted Subsidiaries owns, or is licensed to use or otherwise has a valid right to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property that could reasonably be expected to have a material adverse effect on the Intellectual Property of the Canadian Borrower and its Subsidiaries taken as a whole, nor does either Borrower know of any valid basis for any such claim. The use of Intellectual Property by the Borrowers and the Restricted Subsidiaries does not infringe on the rights of any Person in any material respect.

6.10 Taxes. Each of the Borrowers and each of the Restricted Subsidiaries has filed or caused to be filed all material Federal, state and other tax returns that are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its Property and all other material taxes, fees or other charges imposed on it or any of its Property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Borrower or Subsidiary, as the case may be); and no tax Lien has been filed, and, to the knowledge of the Borrowers, no claim is being asserted, with respect to any such tax, fee or other charge.

6.11 Federal Regulations. No part of the proceeds of any Loans will be used for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. If reasonably requested by any Lender or the General Administrative Agent, the relevant Borrower will furnish to the General Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

6.12 Labor Matters. There are no strikes or other labor disputes against either Borrower or any Subsidiary pending or, to the knowledge of the Borrowers, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Borrowers and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from either Borrower or any Subsidiary on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the relevant Borrower or the relevant Subsidiary.

6.12 ERISA. Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the U.S. Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the U.S. Borrower nor any Commonly Controlled Entity would become subject to any material liability under ERISA if the U.S. Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No such Multiemployer Plan is in Reorganization or Insolvent.

6.14 Investment Company Act; Other Regulations. No Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) which limits its ability to incur Indebtedness.

6.15 Subsidiaries. (a) The Subsidiaries listed on Schedule 6.15 constitute all the Subsidiaries of each of the Borrowers at the date hereof. Schedule 6.15 sets forth as of the Closing Date the name and jurisdiction of incorporation of each Subsidiary and, as to each

Subsidiary, the percentage of each class of Capital Stock owned by each Loan Party and whether such Subsidiary is a Restricted Subsidiary or an Unrestricted Subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to, or other employee benefit or incentive plans in favor of, employees, directors and service providers and directors' qualifying shares) of any nature relating to any Capital Stock of either Borrower or any Restricted Subsidiary, except as disclosed on Schedule 6.15, and except for any of the foregoing existing pursuant to any contract to which neither Borrower nor any of its Subsidiaries is a party.

6.16 Use of Proceeds. The proceeds of the Term Loans shall be used to finance a portion of the Acquisition and to pay related fees and expenses; and the proceeds of the other Loans and the Letters of Credit shall be used to make permitted acquisitions and investments, pay permitted dividends, refinance existing indebtedness, provide for general corporate purposes, including the working capital needs of the Borrowers and their Subsidiaries in the ordinary course of business.

6.17 Environmental Matters. Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) Each of the Borrowers and their respective Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current or intended operations or for any property owned, leased, or otherwise operated by any of them; (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; and (iv) reasonably believe that: each of their Environmental Permits will be timely renewed and complied with, without material expense; any additional Environmental Permits that may be required of any of them will be timely obtained and complied with, without material expense; and compliance with any Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained, without material expense.

(b) Materials of Environmental Concern are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by either Borrower or any of their respective Subsidiaries, or, to the knowledge of either Borrower, at any other location (including, without limitation, any location to which Materials of Environmental Concern have been sent for re-use or recycling or for treatment, storage, or disposal) which could reasonably be expected to

(i) give rise to liability of either Borrower or any of their respective Subsidiaries under any applicable Environmental Law or otherwise result in costs to either Borrower or any of their Subsidiaries, or (ii) interfere with either Borrower's or any of their Subsidiaries' continued operations, or (iii) impair the fair saleable value of any real property owned or leased by the Borrowers or any of their Subsidiaries.

(c) There is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law to which the

Borrowers or any of their Subsidiaries are, or to the knowledge of either Borrower or any of their respective Subsidiaries will be, named as a party that is pending or, to the knowledge of either Borrower or any of their respective Subsidiaries, threatened.

(d) Neither of the Borrowers nor any of their Subsidiaries have received any written request for information, or been notified that it is a potentially responsible party under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law, or with respect to any Materials of Environmental Concern.

(e) Neither of the Borrowers nor any of their Subsidiaries has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law.

(f) Neither of the Borrowers nor any of their Subsidiaries has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with respect to any Material of Environmental Concern.

6.18 Accuracy of Information, etc. No statement or information contained in this Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Administrative Agents or the Lenders or any of them, by or on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Agreement), any untrue statement of a material fact or (in the case of the Confidential Information Memorandum) omitted to state a material fact necessary in order to make the statements contained therein not misleading. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrowers to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the date of this Agreement, the representations and warranties made by the U.S. Borrower and the Canadian Borrower, and to the best knowledge of the U.S. Borrower and the Canadian Borrower, the representations and warranties made by Royal Crown Company, Inc., contained in the Acquisition Documentation are true and correct in all material respects. There is no fact known to any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and statements furnished to the Agents and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

6.19 Security Documents. (a) The Guarantee and Collateral Agreement is effective to create in favor of the General Administrative Agent, for the benefit of the Lenders, a legal, valid and enforceable security interest in the Collateral described therein and proceeds

thereof. When the financing statements in appropriate form are filed in the offices specified on Schedule 6.19(a)-1 (which financing statements have been duly completed and executed and delivered to the General Administrative Agent), the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on all right title and interest of the U.S. Borrower in the Working Capital Collateral (as defined in the Guarantee and Collateral Agreement), as security for the U.S. Borrower Working Capital Obligations (as defined in the Guarantee and Collateral Agreement), in each case prior and superior in right to any other Person, subject only to Liens permitted by Section 9.3 and Permitted Perfection Limitations. When the financing statements in appropriate form are filed in the offices specified on Schedule 6.19(a)-1 (which financing statements have been duly completed and executed and delivered to the General Administrative Agent) and when the necessary filings are made in the Patent and Trademark Office, the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on all right title and interest of the U. S. Borrower in the Purchase Money Collateral (as defined in the Guarantee and Collateral Agreement), as security for the U.S. Borrower Purchase Money Obligations (as defined in the Guarantee and Collateral Agreement), in each case prior and superior in right to any other Person, subject only to Liens permitted by Section 9.3 and Permitted Perfection Limitations.

Schedule 6.19(a)-2 lists each UCC Financing Statement that (i) names any Loan Party as debtor as of the Closing Date and (ii) will remain on file after the Closing Date. Schedule 6.19(a)-3 lists each UCC Financing Statement that (i) names any Loan Party as debtor as of the Closing Date and (ii) will be terminated on or prior to the Closing Date; and on or prior to the Closing Date, the U.S. Borrower will have delivered to the General Administrative Agent, or caused to be filed (or made provision for the delivery or filing), duly completed UCC termination statements, signed by the relevant secured party, in respect of each UCC Financing Statement listed in Schedule 6.19(a)-3.

(b) Each Canadian Security Document is effective to create in favor of the General Administrative Agent, for the benefit of the Canadian Revolving Credit Lenders, a legal, valid and enforceable security interest or hypothec in the Collateral described therein and proceeds thereof. When financing statements or other registrations specified in Schedule 6.19(b)-1 are registered in the offices specified therein, the Canadian Security Documents shall constitute a fully perfected or published Lien on, and security interest or hypothec in, all right, title and interest of the Canadian Borrower in such Collateral and the proceeds thereof, as security for the Canadian Borrower Secured Obligations in each case prior and superior in right to any other Person (except Liens permitted by Section 9.3). Schedule 6.19(b)-2 lists each registered financing statement or other registration made under the Personal Property Security Act (Ontario) ("PPSA") and similar legislation in effect in each of the other provinces of Canada and under The Bank Act (Canada) that (i) names any Loan Party as debtor as of the Closing Date and (ii) will remain on file after the Closing Date. Schedule 6.19(b)-3 lists each registered financing statement or other registration made under the PPSA and similar legislation in effect in each of the other provinces of Canada and under The Bank Act (Canada) that (i) names any Loan Party as debtor as of the Closing Date and (ii) will be discharged on or prior to the Closing Date; and on or prior to the Closing Date, the Canadian Borrower will have delivered to the Canadian Administrative Agent, or caused to be filed (or made provision for the delivery or filing), duly completed financing change statements, designated as discharges or other releases and

discharges in form satisfactory to the Canadian Administrative Agent signed by the relevant secured party, in respect of each registered financing statement listed in Schedule 6.19(b)-3.

(c) Each of the Mortgages is effective to create in favor of the relevant Administrative Agent, for the benefit of the Purchase Money Term Loan Lenders, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof; and when the Mortgages are filed in the offices specified on Schedule 6.19(c) (in the case of the Mortgages to be executed and delivered on the Closing Date) or in the recording office designated by the Borrowers (in the case of any Mortgage to be executed and delivered pursuant to Section 8.10

(a) and (b)), each Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties described therein and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person (other than Persons holding Liens or other encumbrances or rights permitted by the relevant Mortgage).

6.20 Solvency. Each Loan Party is, and after giving effect to the Acquisition and the incurrence of all Indebtedness and obligations being incurred in connection herewith and therewith will be and will continue to be, Solvent.

6.21 Regulation H. No Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (except any Mortgaged Properties as to which such flood insurance as required by Regulation H has been obtained and is in full force and effect as required by this Agreement).

## Section 7. CONDITIONS PRECEDENT

7.1 Conditions to Initial Extension of Credit. The agreement of each Lender to make the initial Extension of Credit requested to be made by it hereunder is subject to the satisfaction, prior to or concurrently with the making of such Extension of Credit on the Closing Date, of the following conditions precedent:

(a) Loan Documents. The Administrative Agents shall have received (i) this Agreement, executed and delivered by a duly authorized officer of the Canadian Borrower and the U.S. Borrower, (ii) the Guarantee and Collateral Agreement, executed and delivered by a duly authorized officer of the Canadian Borrower and the U.S. Borrower, (iii) the Canadian Security Documents, executed and delivered by a duly authorized officer of each party thereto, (iv) a Mortgage covering each of the Mortgaged Properties, executed and delivered by a duly authorized officer of each party thereto and (v) a Lender Addendum executed and delivered by each Lender and accepted by the Borrowers.

(b) Acquisition. The Canadian Borrower and the U.S. Borrower shall have consummated the Acquisition for an aggregate purchase price not exceeding U.S.\$95,000,000 (subject to customary post-closing and working capital adjustments). The Acquisition shall have been consummated pursuant to the Acquisition Documentation, and no provision thereof shall



have been waived, amended, supplemented or otherwise modified in a manner that is material and detrimental to the Borrowers without the consent of the General Administrative Agent.

(c) Pro Forma Balance Sheet; Pro Forma Income Statements; Financial Statements. The Lenders shall have received (i) the Pro Forma Balance Sheet and the Pro Forma Income Statements, (ii) audited consolidated financial statements of the Canadian Borrower for the 1999 and 2000 fiscal years and (iii) unaudited interim consolidated financial statements of the Canadian Borrower for each fiscal quarterly period ended subsequent to the date of the latest applicable financial statements delivered pursuant to clause (ii) of this paragraph as to which such financial statements are available; and such financial statements shall not, in the reasonable judgment of the Lenders, reflect any material adverse change in the consolidated financial condition of the Canadian Borrower, as reflected in the financial statements or projections contained in the Confidential Information Memorandum.

(d) Approvals. All material governmental and third party approvals necessary in connection with the Acquisition (to the extent required by the Acquisition Agreement), the continuing operations of each of the Borrowers and their respective Restricted Subsidiaries and the transactions contemplated hereby shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the Acquisition or the financing contemplated hereby.

(e) Related Agreements. The Administrative Agents shall have received (in a form reasonably satisfactory to the Administrative Agents), true and correct copies, certified as to authenticity by the Borrowers, of (i) the Acquisition Agreement and (ii) such other documents or instruments as may be reasonably requested by the Administrative Agents, including, without limitation, a copy of any debt instrument, security agreement or other material contract to which the Loan Parties may be a party.

(f) Termination of Existing Credit Facility. The General Administrative Agent shall have received evidence satisfactory to the General Administrative Agent that the Existing Credit Facility shall be simultaneously terminated, all amounts thereunder shall be simultaneously paid in full and arrangements satisfactory to the General Administrative Agent shall have been made for the termination of Liens and security interests granted in connection therewith.

(g) Fees. The Lenders, the Administrative Agents and the Arranger shall have received all fees required to be paid, and all expenses for which invoices have been presented (including reasonable fees, disbursements and other charges of counsel to the Administrative Agents and the Arranger), on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrowers to the Administrative Agents on or before the Closing Date.

(h) Business Plan. The Lenders shall have received a satisfactory business plan for fiscal years 2001-2007 and a satisfactory written analysis of the business and prospects of the Canadian Borrower and its Subsidiaries for the period from the Closing Date through the final maturity of the Term Loans.

(i) Lien Searches. The Administrative Agents shall have received the results of a recent lien search in each of the jurisdictions in which Uniform Commercial Code financing statements, PPSA financing statements or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan Parties, and such search shall reveal no liens on any of the assets of the Loan Party, except for Liens permitted by Section 9.3 and Liens being terminated in connection with the Closing Date listed on Schedule 6.19(a)-3 and 6.19(b)-3.

(j) Closing Certificate and Secretary's Certificate. The Administrative Agents shall have received a closing certificate and a secretary's certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit C-1 and Exhibit C-2, respectively, with appropriate insertions and attachments.

(k) Legal Opinions. The Administrative Agents shall have received the following executed legal opinions:

(i) the legal opinion of Drinker Biddle & Reath LLP, special financing counsel to the Borrowers and their Subsidiaries, substantially in the form of Exhibit F-1;

(ii) the legal opinion of Goodmans, Canadian counsel to the Canadian Borrower, substantially in the form of Exhibit F-2;

(iii) to the extent consented to by the relevant counsel, each legal opinion, if any, delivered in connection with the Acquisition Agreement, accompanied by a reliance letter in favor of the Lenders; and

(iv) the legal opinion of local counsel in the State of Georgia, the Province of British Columbia, the Province of Alberta, the Province of Saskatchewan, the Province of Manitoba, the Province of Quebec and the Province of New Brunswick.

Each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the General Administrative Agent may reasonably require.

(l) Filings, Registrations and Recordings. Each document (including, without limitation, any Uniform Commercial Code financing statement and PPSA financing statement) and application for registration required by the Security Documents or under law or reasonably requested by the General Administrative Agent to be filed, registered or recorded in order to create in favor of the General Administrative Agent or the Canadian Administrative Agent, as the case may be, for the benefit of the applicable Lenders, a perfected or duly published Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 9.3), shall have been filed, registered or recorded or shall have been delivered to the General Administrative Agent or the Canadian Administrative Agent, as the case may be, in proper form for filing, registration or recordation, subject to Permitted Perfection Limitations.

(m) Title Insurance; Flood Insurance. (i) If requested by the General Administrative Agent, but only to the extent the same are in the possession of the Borrowers, the General Administrative Agent shall have received, and the title insurance company issuing the policy referred to in clause (ii) below (the "Title Insurance Company") shall have received, maps or plats of an as-built survey of the sites of the Mortgaged Properties certified to the General Administrative Agent and the Title Insurance Company in a manner satisfactory to them, dated a date satisfactory to the General Administrative Agent and the Title Insurance Company by an independent professional licensed land surveyor satisfactory to the General Administrative Agent and the Title Insurance Company, which maps or plats and the surveys on which they are based shall be made in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1992, and, without limiting the generality of the foregoing, there shall be surveyed and shown on such maps, plats or surveys the following: (A) the locations on such sites of all the buildings, structures and other improvements and the established building setback lines; (B) the lines of streets abutting the sites and width thereof; (C) all access and other easements appurtenant to the sites; (D) all roadways, paths, driveways, easements, encroachments and overhanging projections and similar encumbrances affecting the site, whether recorded, apparent from a physical inspection of the sites or otherwise known to the surveyor; (E) any encroachments on any adjoining property by the building structures and improvements on the sites; (F) if the site is described as being on a filed map, a legend relating the survey to said map; and (G) the flood zone designations, if any, in which the Mortgaged Properties are located.

(ii) The General Administrative Agent shall have received in respect of each Mortgaged Property a mortgagee's title insurance policy (or policies) or marked up unconditional binder for such insurance. Each such policy shall (A) be in an amount satisfactory to the General Administrative Agent; (B) be issued at ordinary rates; (C) insure that the Mortgage insured thereby creates a valid first Lien on such Mortgaged Property free and clear of all defects and encumbrances, except as disclosed therein; (D) name the General Administrative Agent for the benefit of the Lenders as the insured thereunder; (E) be in the form of ALTA Loan Policy - 1970 (Amended 10/17/70 and 10/17/84) (or equivalent policies); (F) contain such endorsements and affirmative coverage as the General Administrative Agent may reasonably request and (G) be issued by title companies satisfactory to the General Administrative Agent (including any such title companies acting as co-insurers or reinsurers, at the option of the General Administrative Agent). The General Administrative Agent shall have received evidence satisfactory to it that all premiums in respect of each such policy, all charges for mortgage recording tax, and all related expenses, if any, have been paid.

(iii) If required by law or regulation, the General Administrative Agent shall have received (A) a policy of flood insurance that (1) covers any parcel of improved real property that is encumbered by any Mortgage (2) is written in an amount not less than the outstanding principal amount of the indebtedness secured by such Mortgage that is reasonably allocable to such real property or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less, and (3) has a term ending not later than the maturity of the indebtedness secured by such Mortgage and (B) confirmation that each of the Borrowers has received the notice required pursuant to Section 208(e)(3) of Regulation H of the Board.

(iv) If requested by the General Administrative Agent, the General Administrative Agent shall have received a copy of all recorded documents referred to, or listed as exceptions to title in, the title policy or policies referred to in clause (ii) above and a copy of all other material documents affecting the Mortgaged Properties.

(n) Insurance. The General Administrative Agent shall have received insurance certificates satisfying the requirements of Section 5.2 of the Guarantee and Collateral Agreement.

(o) Intercompany Debt. The obligations of the U.S. Borrower under a certain Subsidiary guarantee dated as of February 1, 2000 by the U.S. Borrower in favor of the Canadian Borrower, shall have been duly subordinated, in a manner reasonably satisfactory to the General Administrative Agent, to the obligations of the U.S. Borrower under the Loan Documents; and all Liens securing such guarantee shall have been released.

(p) Calgary Mortgage. The existing mortgage in respect of the Canadian Borrower's property in Calgary, Alberta, to the extent such existing mortgage relates to inventory or accounts receivable, shall have been subordinated, in a manner reasonably satisfactory to the General Administrative Agent, to the security interest in such accounts receivable and inventory created pursuant to the Canadian Security Documents.

7.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any Extension of Credit requested to be made by it hereunder on any date (including, without limitation, its initial Extension of Credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct on and as of such date as if made on and as of such date, except to the extent they relate to an earlier specified date, in which case they shall be true and correct as of such earlier specified date.

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extensions of Credit requested to be made on such date.

Each request by either Borrower for an Extension of Credit hereunder shall constitute a representation and warranty by the respective Borrower as of the date of such Extension of Credit that the conditions contained in this Section 7.2 have been satisfied.

## Section 8. AFFIRMATIVE COVENANTS

The Borrowers hereby jointly and severally agree that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or any Agent hereunder, each of the Borrowers shall and shall cause each of its Restricted Subsidiaries to:

8.1 Financial Statements. Furnish to each Agent and each Lender:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Canadian Borrower, a copy of the audited consolidated balance sheet of the Canadian Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by PricewaterhouseCoopers LLP or other independent certified public accountants of nationally recognized standing;

(b) as soon as available, but in any event not later than 45 days after the end of each of the first three quarterly periods of each fiscal year of the Canadian Borrower, the unaudited consolidated balance sheet of the Canadian Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of notes);

(c) as soon as available, but in any event within 90 days after the end of each fiscal year of the Canadian Borrower, a copy of the audited consolidated balance sheet of Cott U.K. and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by PricewaterhouseCoopers LLP or other independent certified public accountants of nationally recognized standing; and

(d) as soon as available, but in any event not later than 45 days after the end of each of the first three quarterly periods of each fiscal year of the Canadian Borrower, the unaudited consolidated balance sheet of Cott U.K. and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of notes);

all such financial statements to be complete and correct in all material respects and to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

8.2 Certificates; Other Information. Furnish to each Agent and each Lender, or, in the case of clause (h), to the relevant Lender (or, if so specified, to the General Administrative Agent):

(a) concurrently with the delivery of the financial statements referred to in Section 8.1(a), a certificate of the independent certified public accountants reporting on such financial statements stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate (it being understood that such certificate shall be limited to the items that independent certified public accountants are permitted to cover in such certificates pursuant to their professional standards and customs of the profession);

(b) concurrently with the delivery of any financial statements pursuant to Section 8.1, (i) a certificate of the Borrowers, executed on their behalf by a Responsible Officer, stating that, to the best of such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of quarterly or annual financial statements, (x) a Compliance Certificate containing all information and calculations necessary for determining compliance by the Borrowers and their Subsidiaries with the provisions of this Agreement referred to therein as of the last day of the fiscal quarter or fiscal year of the Canadian Borrower, as the case may be, (y) to the extent not previously disclosed to the relevant Administrative Agent, a listing of any county or state within the United States or any Province in Canada where any Loan Party keeps inventory and (z) any UCC financing statements or PPSA financing statements or other filings specified in such Compliance Certificate as being required to be delivered therewith;

(c) as soon as available, and in any event no later than 45 days after the end of each fiscal year of the Canadian Borrower, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Canadian Borrower and its Subsidiaries as of the end of the following fiscal year, and the related consolidated statements of projected cash flow, projected changes in financial position and projected income as well as a narrative discussion and analysis of the financial condition and results of operations of the Canadian Borrower and its Subsidiaries), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of the Borrowers, executed on their behalf by a Responsible Officer, stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each fiscal quarter of the Canadian Borrower, a narrative discussion and analysis of the financial condition and results of operations of the Canadian Borrower and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous year;

(e) to the General Administrative Agent only, no later than 10 Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment,

supplement, waiver or other modification with respect to any Indenture or the Acquisition Agreement;

(f) within five days after the same are sent, copies of all financial statements and reports that the Canadian Borrower sends to the holders of any class of its debt securities or public equity securities and, within five days after the same are filed, copies of all financial statements and reports that the Canadian Borrower may make to, or file with, the SEC;

(g) to the General Administrative Agent only, as soon as possible and in any event within 10 days of obtaining knowledge thereof: (i) any development, event, or condition that, individually or in the aggregate with other developments, events or conditions, could reasonably be expected to result in the payment by either Borrower and any Subsidiary, in the aggregate, of a Material Environmental Amount; and (ii) any notice that any governmental authority may deny any application for an Environmental Permit sought by, or revoke or refuse to renew any Environmental Permit held by, the Borrowers; and

(h) promptly, such additional financial and other information as any Lender (through the General Administrative Agent) may from time to time reasonably request.

8.3 Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Borrower and its Subsidiaries, as the case may be.

8.4 Conduct of Business and Maintenance of Existence, etc. (a) (i) Preserve, renew and keep in full force and effect its corporate or other existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in the case of clauses (i) and (ii) above, as otherwise permitted by Section 9.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Contractual Obligations and Requirements of Law, except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

8.5 Maintenance of Property; Insurance. (a) Keep all Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its Property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

8.6 Inspection of Property; Books and Records; Discussions. Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives of any Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable

time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Borrowers and their Subsidiaries with officers and employees of the Borrowers and their Subsidiaries (it being agreed that the Lenders will coordinate such visits with the General Administrative Agent such that there shall be no more than two such visits in any fiscal year in the absence of a continuing Event of Default).

8.7 Notices. Promptly give notice to the General Administrative Agent (and, in the case of clause (a), each Lender) of:

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

(b) any (i) default or event of default under any Contractual Obligation of either Borrower or any of their Restricted Subsidiaries or (ii) litigation, investigation or proceeding which may exist at any time between either Borrower or any of their Restricted Subsidiaries and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting either Borrower or any of their Restricted Subsidiaries in which the amount involved is U.S.\$1,000,000 or more and not covered by insurance or other third party indemnity agreement or in which injunctive or similar relief is sought;

(d) the following events, as soon as possible and in any event within 30 days after the U.S. Borrower knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the U.S. Borrower or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of the Borrowers executed on their behalf by a Responsible Officer, setting forth details of the occurrence referred to therein and stating what action the relevant Borrower or the relevant Subsidiary proposes to take with respect thereto.

8.8 Environmental Laws. (a) Comply with, and ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply with and maintain, and ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except to the extent that failure to do any of the above could not reasonably be expected to have a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly



comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent that failure to do any of the above could not reasonably be expected to have a Material Adverse Effect.

8.9 [Reserved]

8.10 Additional Collateral, etc. (a) If at any time, as a result of the amendment or refinancing of either Indenture, the Canadian Borrower or any of its Subsidiaries is permitted to grant to the General Administrative Agent security interests in additional Property that is not then a part of the Collateral without causing such additional Property to equally and ratably secure the securities under either Indenture, the Canadian Borrower will, at the request of the General Administrative Agent, (i) promptly take such actions as the General Administrative Agent shall reasonably request to grant to the General Administrative Agent, or to cause the relevant Restricted Subsidiaries to grant to the General Administrative Agent, perfected security interests in such additional Property to secure such portion of the obligations of the Borrowers under the Loan Documents (or to secure any guarantee obligations of the relevant grantor under the Guarantee and Collateral Agreement) as shall be permitted by the Indentures, (ii) cause to be delivered to the General Administrative Agent such evidence of corporate action and such legal opinions with respect to the actions described in the foregoing clause (i) as the General Administrative Agent shall reasonably request (and, in the case of such Property that is real property, comply with the provisions of Section 7.1(o) in respect thereof) and (iii) thereafter, if the Canadian Borrower or any of its Restricted Subsidiaries shall acquire any Property in which the Canadian Borrower or any of its Restricted Subsidiaries is permitted to grant security interests in additional Property that is not then a part of the Collateral without causing such additional Property to equally and ratably secure the securities under either Indenture, the Canadian Borrower will take the actions described in the foregoing clauses (i) and (ii) in respect of such Property.

(b) If at any time, as a result of the amendment or refinancing of either Indenture, any Restricted Subsidiary of the Canadian Borrower is permitted to guarantee any obligations of either Borrower under the Loan Documents without concurrently guaranteeing any obligations of the Canadian Borrower in respect of the securities under either Indenture, the Canadian Borrower will, at the request of the General Administrative Agent, (i) promptly take such actions as the General Administrative Agent shall reasonably request to cause the relevant Restricted Subsidiary to become a guarantor party to the Guarantee and Collateral Agreement to the extent permitted by the Indentures, (ii) cause to be delivered to the General Administrative Agent such evidence of corporate action and such legal opinions with respect to the actions described in the foregoing clause (i) as the General Administrative Agent shall reasonably request and (iii) thereafter, if the Canadian Borrower or any of its Restricted Subsidiaries shall acquire or form any Restricted Subsidiary that would be permitted to guarantee any obligations of either Borrower under the Loan Documents without concurrently guaranteeing any obligations of the Canadian Borrower in respect of the securities under either Indenture, the Canadian Borrower will take the actions described in the foregoing clauses (i) and (ii) in respect of such Restricted Subsidiary.

8.11 Further Assurances. From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take such actions, as the General Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the General Administrative Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by either Borrower or any Restricted Subsidiary which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by the General Administrative Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrowers will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the General Administrative Agent or such Lender may be required to obtain from the Borrowers or any of their Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

8.12 Indenture Calculations . Deliver to the General Administrative Agent, quarterly in concurrence with delivery of the financial statements pursuant to 8.1, a certificate setting forth calculations of the maximum amounts of indebtedness permitted by clause (i) of the second paragraph of Section 4.03 of each Indenture to be outstanding on the last day of such fiscal quarter, if applicable, and, if such calculations demonstrate that either the Aggregate Canadian Revolving Extensions of Credit or the Aggregate U.S. Revolving Extensions of Credit plus the aggregate outstanding principal amount of Working Capital Term Loans, in each case as of the last day of such fiscal quarter, exceeded the maximum amounts permitted by clause (i) of the second paragraph of Section 4.03 of either Indenture, immediately make such prepayments as shall be required to cause the Borrowers to be in compliance with such provisions of the Indentures.

## SECTION 9. NEGATIVE COVENANTS

The Borrowers hereby jointly and severally agree that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or any Agent hereunder, each of the Borrowers shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

### 9.1 Financial Condition Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Canadian Borrower (or, if less, the number of full fiscal quarters subsequent to the Closing Date) ending with any fiscal quarter set forth below to exceed the ratio set forth below opposite such fiscal quarter:

Fiscal Quarter -----	Consolidated Leverage Ratio -----
FQ3 2001	3.15 to 1.00

FQ4 2001	3.15 to 1.00
FQ1 2002	3.25 to 1.00
FQ2 2002	3.25 to 1.00
FQ3 2002	3.00 to 1.00
FQ4 2002	2.75 to 1.00
FQ1 2003	2.75 to 1.00
FQ2 2003	2.75 to 1.00
FQ3 2003	2.50 to 1.00
FQ4 2003	2.50 to 1.00
FQ1 2004	2.50 to 1.00
FQ2 2004	2.50 to 1.00
FQ3 2004	2.25 to 1.00
FQ4 2004	2.25 to 1.00
FQ1 2005	2.25 to 1.00
FQ2 2005 and thereafter	2.00 to 1.00

; provided, that for the purposes of determining the ratio described above for FQ3 2001, FQ4 2001 and FQ1 2002, Consolidated EBITDA for the relevant period shall be deemed to equal Consolidated EBITDA for such fiscal quarter (and, in the case of the latter two such determinations, each previous fiscal quarter commencing after the Closing Date) multiplied by 4, 2 and 4/3, respectively.

(b) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio for any period of four consecutive fiscal quarters of the Canadian Borrower (or, if shorter, the period commencing on the first day of FQ3 2001) ending with any fiscal quarter set forth below to be less than the ratio set forth below opposite such fiscal quarter:

Fiscal Quarter -----	Consolidated Interest Coverage Ratio -----
FQ3 2001	3.25 to 1.00
FQ4 2001	3.25 to 1.00
FQ1 2002	3.25 to 1.00
FQ2 2002	3.25 to 1.00
FQ3 2002	3.25 to 1.00
FQ4 2002	3.50 to 1.00
FQ1 2003	3.50 to 1.00
FQ2 2003	3.50 to 1.00
FQ3 2003	3.50 to 1.00
FQ4 2003	3.75 to 1.00
FQ1 2004	3.75 to 1.00
FQ2 2004	3.75 to 1.00
FQ3 2004	3.75 to 1.00
FQ4 2004	3.75 to 1.00
FQ1 2005	3.75 to 1.00

FQ2 2005	3.75 to 1.00
FQ3 2005	3.75 to 1.00
FQ4 2005 and thereafter	4.00 to 1.00

(c) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio for any period of four consecutive fiscal quarters of the Canadian Borrower (or, if shorter, the period commencing on the first day of FQ3 2001) ending with any fiscal quarter set forth below to be less than the ratio set forth below opposite such fiscal quarter:

Fiscal Quarter -----	Consolidated Fixed Charge Coverage Ratio -----
FQ3 2001	1.00 to 1.00
FQ4 2001	1.00 to 1.00
FQ1 2002	1.00 to 1.00
FQ2 2002	1.00 to 1.00
FQ3 2002	1.05 to 1.00
FQ4 2002	1.05 to 1.00
FQ1 2003	1.05 to 1.00
FQ2 2003	1.05 to 1.00
FQ3 2003	1.05 to 1.00
FQ4 2003	1.05 to 1.00
FQ1 2004	1.10 to 1.00
FQ2 2004	1.15 to 1.00
FQ3 2004	1.20 to 1.00
FQ4 2004 and thereafter	1.25 to 1.00

9.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document;

(b) (i) Indebtedness of either Borrower to the other Borrower or to any Restricted Subsidiary, (ii) Indebtedness of any Restricted Subsidiary to another Restricted Subsidiary and (iii) Subordinated Debt of either Borrower or any Restricted Subsidiary to any Unrestricted Subsidiaries in an aggregate principal amount not exceeding U.S.\$5,000,000 at any time outstanding and provided, that all Indebtedness pursuant to this Section 9.2(b) constituting an Investment by either Borrower or any Restricted Subsidiary must be permitted by Section 9.8(c).

(c) Indebtedness (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 9.3(g) in an aggregate principal amount not to exceed U.S.\$25,000,000 at any one time outstanding;

(d) (i) any refinancing of the Canadian Borrower's 9-3/8% Senior Notes due 2005 or 8-1/2% Senior Notes due 2007 (provided, that such refinancing Indebtedness shall be Indebtedness of the same obligor, shall not be in an amount exceeding the principal amount of the Indebtedness refinanced thereby, shall mature no earlier than one year after the final maturity of the Term Loans and shall have covenants no more restrictive than those applicable to the Indebtedness refinanced thereby) and (ii) Indebtedness outstanding on the date hereof and listed on Schedule 9.2(d) and any refinancings, refundings, renewals or extensions thereof (provided, that such refinancing Indebtedness shall be Indebtedness of the same Obligor, shall not be in an amount exceeding the amount of the Indebtedness refinanced thereby and shall mature no earlier than the Indebtedness refinanced thereby);

(e) (i) Guarantee Obligations made in the ordinary course of business by either Borrower or any of its Restricted Subsidiaries of obligations of either Borrower or any Subsidiary in an aggregate principal amount for both Borrowers not exceeding U.S.\$5,000,000 at any time outstanding, (ii) Guarantee Obligations incurred in the ordinary course of business by any Restricted Subsidiary of obligations of either Borrower not exceeding U.S.\$5,000,000 at any time outstanding, and (iii) Guarantee Obligations now in effect and described on Schedule 9.2(e) (and replacements thereof in an amount not exceeding the amounts of the obligations replaced); and

(f) additional Indebtedness of either Borrower or any Subsidiary in an aggregate principal amount (for the Borrowers and all Restricted Subsidiaries) not to exceed at any one time outstanding U.S. \$10,000,000.

Notwithstanding the foregoing, the provisions of this Section 9.2 are subject to the limitations in Section 12.19.

9.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Canadian Borrower or the relevant Subsidiary, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount

and which do not in any case materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of either Borrower or any Subsidiary;

(f) Liens in existence on the date hereof listed on Schedule 9.3(f), securing Indebtedness permitted by Section 9.2(d), and liens on the same Property securing a refinancing of any such Indebtedness, provided that no such Lien is spread to cover any additional Property after the Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens securing Indebtedness of either Borrower or any Restricted Subsidiary incurred pursuant to Section 9.2(c) to finance the acquisition of fixed or capital assets, provided that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the amount of Indebtedness initially secured thereby is more than 100% of the purchase price of such fixed or capital asset;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor under any lease entered into by either Borrower or any Subsidiary in the ordinary course of its business and covering only the assets so leased;

(j) Liens on cash collateral provided in connection with Section 4.1; and

(k) Liens not otherwise permitted by this Section 9.3 so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined, in the case of each such Lien, as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrowers and all Restricted Subsidiaries) at any one time U.S.\$5,000,000.

9.4 Limitation on Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that:

(a) (i) any Restricted Subsidiary of the Canadian Borrower (other than the U.S. Borrower or any of its Subsidiaries) may be merged or consolidated with or into the Canadian Borrower (provided that the Canadian Borrower shall be the continuing or surviving corporation) or with any other Subsidiary of the Canadian Borrower and (ii) any Subsidiary of the U.S. Borrower may be merged or consolidated with or into the U.S. Borrower or any other Subsidiary of the U.S. Borrower;

(b) (i) any Restricted Subsidiary of the U.S. Borrower may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the U.S. Borrower or any Restricted Subsidiary of the U.S. Borrower, and may be dissolved, and (ii) any Subsidiary of the Canadian Borrower other than the U.S. Borrower or any Subsidiary of the U.S. Borrower may (upon voluntary liquidation or otherwise) Dispose of any or all of its assets (other than Collateral) to

the Canadian Borrower or any Restricted Subsidiary of the Canadian Borrower, and may be dissolved; and

(c) any Restricted Subsidiary (other than the U.S. Borrower) may effect a Permitted Acquisition by means of a merger or consolidation.

**9.5 Limitation on Disposition of Property.** Dispose of any Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary, issue or sell any shares of such Restricted Subsidiary's Capital Stock to any Person, or Dispose of the Georgia Facility, except:

(a) the Disposition in the ordinary course of business of property not used or useful;

(b) the sale of inventory in the ordinary course of business;

(c) Dispositions permitted by Section 9.4(b);

(d) (i) the sale or issuance of the Capital Stock of any Subsidiary of the U.S. Borrower to the U.S. Borrower or any Restricted Subsidiary of the U.S. Borrower and (ii) the sale or issuance of the Capital Stock of any Subsidiary of the Canadian Borrower (other than, at any time when a Default or Event of Default under Section 10(a), or under Section 10(c) arising from a violation of Section 9.1, shall have occurred and be continuing, any Subsidiary of the U.S. Borrower) to the Canadian Borrower or any Restricted Subsidiary of the Canadian Borrower;

(e) the Disposition of other assets having a fair market value not to exceed U.S.\$10,000,000 in the aggregate for any fiscal year of the Canadian Borrower;

(f) any Recovery Event, provided, that the requirements of Section 5.5(d) are complied with in connection therewith;

(g) the Disposition of Menu Foods, Ltd. or its direct parent;

(h) any Restricted Payment permitted by Section 9.6.; and

(i) the Disposition of the Georgia Facility at any time after the Purchase Money Term Loan has been repaid in full or with the consent of the Required Lenders;

Notwithstanding the foregoing, the provision of this Section 9.5 are subject to the limitations in Section 12.19.

**9.6 Limitation on Restricted Payments.** Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Canadian Borrower, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of either Borrower or any Subsidiary, or enter into any derivatives or other transaction with any

financial institution, commodities or stock exchange or clearinghouse (a "Derivatives Counterparty") obligating either Borrower or any Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock, or redeem, purchase, or set apart any assets for a sinking fund or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any of the Canadian Borrower's outstanding 9-3/8% Senior Notes due 2005 or 8-1/2% Senior Notes due 2007, ("Redemption Restricted Payments"; collectively with the other payments listed above, "Restricted Payments") (provided, that the Canadian Borrower can refinance the entire outstanding principal amount of its 9-3/8% Senior Notes due 2005 and/or 8-1/2% Senior Notes due 2007 as permitted by Section 9.2(d)), except that:

(a) the Canadian Borrower may make Restricted Payments in the form of common stock of the Canadian Borrower and may make Restricted Payments in the form of preferred stock of the Canadian Borrower to pay in-kind dividends on its preferred stock in accordance with the terms thereof;

(b) so long as no Default or Event of Default has occurred and is continuing, the Canadian Borrower may make Restricted Payments in any fiscal quarter in an amount up to (i) 25% of Consolidated Net Income for the immediately preceding fiscal quarter for any Restricted Payments, if the Consolidated Leverage Ratio as of the last day of such immediately preceding fiscal quarter is greater than or equal to 2.00 to 1.00; (ii) 50% of Consolidated Net Income for such immediately preceding fiscal quarter, if the Consolidated Leverage Ratio as of the last day of such fiscal quarter is less than 2.00 to 1.00; (iii) at any time prior to July 1, 2002, up to an aggregate amount of \$15,000,000 of Redemption Restricted Payments; and (iv) and any time on or after July 1, 2002, up to an aggregate amount of Redemption Restricted Payments equal to the aggregate amount of optional prepayments of the Term Loans made by the U.S. Borrower after July 1, 2002.

(c) Restricted Payments by the Canadian Borrower or a Restricted Subsidiary pursuant to employee benefit plans or incentive compensation plans, in each case to the extent such Restricted Payments are compensation to executives or employees (deductible as such for purposes of income taxes of the Canadian Borrower or of the applicable Restricted Subsidiary).

Notwithstanding the foregoing, the provision of this Section 9.6 are subject to the limitations in Section 12.19.

9.7 Limitation on Capital Expenditures. Make or commit to make any Capital Expenditure, except (a) Capital Expenditures of the Canadian Borrower and its Restricted Subsidiaries in the ordinary course of business not exceeding the amount set forth below for each of the fiscal years of the Canadian Borrower set forth below:

Year ----	Maximum Capital Expenditures -----
2001	\$50,000,000
2002	\$50,000,000
2003	\$50,000,000



2004	\$50,000,000
2005 and thereafter	\$52,500,000

provided, that (i) up to 50% of any such amount referred to above, if not so expended in the fiscal year for which it is permitted, may be carried over for expenditure in the next succeeding fiscal year and (ii) Capital Expenditures made pursuant to this clause (a) during any fiscal year shall be deemed made, first, in respect of amounts permitted for such fiscal year as provided above and second, in respect of amounts carried over from the prior fiscal year pursuant to subclause (i) above and (b) Capital Expenditures made with the proceeds of any Reinvestment Deferred Amount.

9.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

- (a) extensions of trade credit in the ordinary course of business;
- (b) investments in Cash Equivalents;
- (c) Investments arising in connection with the incurrence of Indebtedness permitted by Section 9.2(b) and (e).
- (d) loans and advances to employees of the Canadian Borrower, the U.S. Borrower or any of their Subsidiaries in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount for the Canadian Borrower, the U.S. Borrower and any Subsidiaries not to exceed U.S.\$1,000,000 at any one time outstanding;
- (e) the Acquisition;
- (f) Permitted Acquisitions;
- (g) \*[CONFIDENTIAL TREATMENT HAS BEEN REQUESTED]
- (h) (i) Investments in assets useful in the U.S Borrower's business or that of its Restricted Subsidiaries made by the U.S. Borrower or any of its Restricted Subsidiaries with the proceeds of any Reinvestment Deferred Amount arising from Dispositions or Recovery Events with respect to assets of the U.S. Borrower or such Restricted Subsidiary, as the case may be, and (ii) Investments in assets useful in the Canadian Borrower's business or that of its Restricted Subsidiaries made by the Canadian Borrower or any of its Restricted Subsidiaries with the proceeds of any Reinvestment Deferred Amount arising from Dispositions or Recovery Events with respect to assets of the Canadian Borrower or such Restricted Subsidiary, as the case may be;

(i) Investments by the Canadian Borrower in Cott U.K. in an aggregate amount in any fiscal year equal to (i) if the Consolidated Leverage Ratio on the last day of the immediately preceding fiscal year was greater than or equal to 2.00 to 1.00, U.S.\$5,000,000 and (ii) if such Consolidated Leverage Ratio was less than 2.00 to 1.00, U.S.\$10,000,000; provided, that (A) Investments may be made at any time in an amount equal to the aggregate amount of cash dividends, and principal repayments in respect of Indebtedness of Cott U.K. to the Canadian Borrower outstanding on the Closing Date, in each case received by the Canadian Borrower from Cott U.K. from the Closing Date to the date of such Investment (but only to the extent such amount has not been previously invested pursuant to this clause (A)), and (B) no Investment may be made pursuant to this Section 9.8(i) at any time when a Default or an Event of Default has occurred and is continuing;

(j) loans, advances and guarantees to or in favor of co-packers and other suppliers to assist them in meeting production requirements of the Borrowers or their Subsidiaries, such as, by way of example only and not by way of limitation, by making plant improvements or purchasing materials or equipment;

(k) amounts used directly or indirectly to make capital contributions to the U.S. Borrower;

(l) Investments in the form of Indebtedness permitted by Section 9.2.

(m) in addition to Investments otherwise expressly permitted by this Section, Investments by the Borrowers or any of their Subsidiaries in an aggregate amount (valued at cost) not to exceed U.S.\$10,000,000 during the term of this Agreement.

Notwithstanding the foregoing, the provision of this Section 9.8 are subject to the limitations in Section 12.19.

9.9 Limitation on Unrestricted Subsidiaries. Designate any Subsidiary as an Unrestricted Subsidiary on any date if after giving pro forma effect to such designation as if it had occurred on the first day of the period of four fiscal quarters most recently ended prior to such date, (a) the aggregate Consolidated EBITDA of all Unrestricted Subsidiaries of the U.S. Borrower for the period of four consecutive fiscal quarters most recently ended prior to such date would constitute more than 5% of the Consolidated EBITDA of the U.S. Borrower for such period, (b) the aggregate Consolidated EBITDA of all Unrestricted Subsidiaries of the Canadian Borrower (other than Cott U.K.) for the period of four consecutive fiscal quarters most recently ended prior to such date would constitute more than 5% of the Consolidated EBITDA of the Canadian Borrower for such period (excluding Consolidated EBITDA attributable to Cott U.K.), (c) the aggregate consolidated assets of all Unrestricted Subsidiaries of the U.S. Borrower as at the last day of the fiscal quarter most recently ended prior to such date would constitute more than 5% of the consolidated assets of the U.S. Borrower as at the last day of the fiscal quarter most recently ended prior to such date, or (d) the aggregate consolidated assets of all Unrestricted Subsidiaries of the Canadian Borrower (other than Cott U.K.) as at the last day of the fiscal quarter most recently ended prior to such date would constitute more than 5% of the consolidated assets of the Canadian Borrower (excluding assets of Cott U.K.) as at the last day of the fiscal quarter most recently ended prior to such date. For purposes of determining whether

an entity may be so designated as an Unrestricted Subsidiary (the "Proposed Designated Entity") pursuant to this Section 9.9, the amount of Consolidated EBITDA and assets of such Proposed Designated Entity and each Unrestricted Subsidiary that is not (or after the designation would not be) wholly-owned directly or indirectly by the Canadian Borrower shall be deemed to be only the percentage amount of Consolidated EBITDA and assets attributable to the direct or indirect ownership interest of the Canadian Borrower (e.g., if the Canadian Borrower owns directly or indirectly 51% of the Proposed Designated Entity, then only 51% of the assets and Consolidated EBITDA of such entity shall be used in the calculation).

9.10 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than the Canadian Borrower or the U.S. Borrower) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the Canadian Borrower, the U.S. Borrower or such Subsidiary, as the case may be, and (c) upon fair and reasonable terms no less favorable to the Canadian Borrower, the U.S. Borrower or such Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

9.11 Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by the Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary (other than pursuant to a lease constituting Capital Lease Obligations) of real or personal property which has been or is to be sold or transferred by the Canadian Borrower, the U.S. Borrower or such Restricted Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of the Canadian Borrower, the U.S. Borrower or such Restricted Subsidiary.

9.12 Limitation on Changes in Fiscal Periods. Change the Canadian Borrower's method of determining fiscal year end or fiscal quarters.

9.13 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Canadian Borrower, the U.S. Borrower or any of their Restricted Subsidiaries to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any guarantor, its obligations under the Guarantee and Collateral Agreement, other than (a) this Agreement and the other Loan Documents, (b) the Indentures and (c) any agreements governing any purchase money Liens or Capital Lease Obligations or other Liens otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby or subject to such permitted Liens).

9.14 Limitation on Restrictions on Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay any Indebtedness owed to, the Canadian Borrower, the U.S. Borrower or any other Restricted Subsidiary, (b) make Investments in the Canadian Borrower, the U.S. Borrower or any other Restricted Subsidiary or (c) transfer any of its assets to

the Canadian Borrower, the U.S. Borrower or any other Restricted Subsidiary, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents or the Indentures and (ii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary.

9.15 Limitation on Lines of Business. Enter into any business, either directly or through any Restricted Subsidiary, except for those businesses in which the Canadian Borrower and its Restricted Subsidiaries are engaged on the date of this Agreement, or a similar or related line of business.

9.16 Limitation on Amendments to Acquisition Documentation. (a) Amend, supplement or otherwise modify (pursuant to a waiver or otherwise) the terms and conditions of the indemnities and licenses furnished to the Canadian Borrower, the U.S. Borrower or any of their Subsidiaries pursuant to the Acquisition Documentation such that after giving effect thereto such indemnities or licenses taken as a whole shall be materially less favorable to the interests of the Loan Parties or the Lenders with respect thereto or (b) otherwise amend, supplement or otherwise modify the terms and conditions of the Acquisition Documentation except to the extent that any such amendment, supplement or modification could not reasonably be expected to have a Material Adverse Effect.

9.17 Limitation on Hedge Agreements. Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, to protect against changes in interest rates, commodity prices or foreign exchange rates.

## Section 10. EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) Either Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or either Borrower shall fail to pay any interest on any Loan or Reimbursement Obligation, or any other amount payable hereunder or under any other Loan Document, within five days after such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in clause (i) or (ii) of Section 8.4(a) (with respect to the Borrowers only), Section 8.7(a) or Section 9 (excluding Sections 9.2, 9.3 or 9.8 unless such default shall continue unremedied for a period of 10 days), or in Section 5 of the Guarantee and Collateral Agreement or (ii) an "Event of Default" under and as defined in any Mortgage shall have occurred and be continuing; or

(d) Any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 days; or

(e) The Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary shall (i) default in making any payment of any principal of or interest on any Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Loans and Reimbursement Obligations) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (ii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to become subject to or mandatory offer to purchase by the obligor thereunder or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable, unless the default or other event or condition shall have been waived; provided, that a default, event or condition described in clause (i) or (ii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i) and (ii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate U.S.\$10,000,000; or

(f) (i) The Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts (except for fundamental changes permitted by Section 9.4), or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against the Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Canadian Borrower, the U.S. Borrower or any Restricted Subsidiary shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan, or any Lien in favor of the PBGC or a Plan shall arise on the assets of the U.S. Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) the U.S. Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders shall be likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could, in the sole judgment of the Required Lenders, reasonably be expected to have a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against the Canadian Borrower, the U.S. Borrower or any of their Subsidiaries involving the Canadian Borrower, the U.S. Borrower and their Subsidiaries taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of U.S.\$10,000,000 or more, and all such judgments or decrees shall not have been satisfied, vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof; or

(i) Any of the Security Documents shall cease, for any reason (other than by reason of the express release thereof pursuant to Section 12.15), to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority required by the Loan Documents to be created thereby; or

(j) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party or any Affiliate of any Loan Party shall so assert; or

(k) Any Change of Control shall occur;

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) above with respect to either Borrower, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all Reimbursement Obligations, regardless of whether or not such Reimbursement Obligations are then due and payable) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Lenders, the General Administrative Agent may, or upon the request of the Required Lenders, the General Administrative Agent shall, by notice to the Borrowers declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the General

Administrative Agent may, or upon the direction of the Required Lenders, the General Administrative Agent shall, by notice of default to the Borrowers, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement (including all amounts payable in respect of Letters of Credit whether or not the beneficiaries thereof shall have presented the drafts and other documents required thereunder) and the Notes to be due and payable forthwith, whereupon the same shall immediately become due and payable and (iii) the General Administrative Agent may, and upon the direction of the Required Lenders shall, exercise any and all remedies and other rights provided pursuant to this Agreement and/or the other Loan Documents.

With respect to all outstanding Reimbursement Obligations which have not matured at the time of an acceleration pursuant to the second preceding paragraph, the relevant Borrower shall at such time deposit in a cash collateral account opened by and maintained by the relevant Administrative Agent an amount equal to the aggregate amount of all such Reimbursement Obligations. Amounts held in such cash collateral account shall be applied by an Administrative Agent to the payment of Reimbursement Obligations when drawings under the related Letters of Credit are made, and any balance in such account shall be applied to repay other obligations of the relevant Borrower hereunder. After all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrowers hereunder shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the relevant Borrower.

Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

## Section 11. THE AGENTS

11.1 Appointment. (a) Each Lender hereby irrevocably designates and appoints the Agents as the agents of such Lender under this Agreement and the other Loan Documents, and each Lender irrevocably authorizes each Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent.

(b) For greater certainty, and without limiting the powers of the General Administrative Agent hereunder or under any of the other Loan Documents, each of the Lenders hereby acknowledges that the General Administrative Agent shall, for purposes of holding any security granted by the Canadian Borrower on the Canadian Borrower's property pursuant to the laws of the Province of Quebec to secure payment of the bond dated the date hereof issued by the Canadian Borrower and pledged in favor of the General Administrative Agent (the "Bond"), be the holder of an irrevocable power of attorney (*fonde de pouvoir*) (within the meaning of the Civil Code of Quebec) for all present and future Lenders and in particular for all present and

future holders of the Bond. Each of the Agents and Lenders hereby irrevocably constitutes, to the extent necessary, the General Administrative Agent as the holder of an irrevocable power of attorney (fonde de pouvoir) (within the meaning of Article 2692 of the Civil Code of Quebec) in order to hold security granted by the Canadian Borrower in the Province of Quebec to secure the Bond. Each Eligible Assignee shall be deemed to have confirmed and ratified the constitution of the General Administrative Agent as the holder of such irrevocable power of attorney (fonde de pouvoir) by execution of the relevant Assignment and Acceptance. Notwithstanding the provisions of Section 32 of the Special Corporate Powers Act (Quebec), the General Administrative Agent may acquire and be the holder of the Bond. The Canadian Borrower hereby acknowledges that the Bond constitutes a title of indebtedness, as such term is used in Article 2692 of the Civil Code of Quebec. For purposes of this Section 11(b), the term "Lenders" mean all Lenders other than Purchase Money Term Loan Lenders.

11.2 Delegation of Duties. Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

11.3 Exculpatory Provisions. Neither any Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

11.4 Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Loan Parties), independent accountants and other experts selected by such Agent. The Agents may deem and treat the payee of any Note as the owner thereof for all purposes unless such Note shall have been transferred in accordance with Section 12.6 and all actions required by such Section in connection with such transfer shall have been taken. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required



Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

11.5 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent shall have received notice from a Lender or either Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the General Administrative Agent shall receive such a notice, the General Administrative Agent shall give notice thereof to the Lenders. The General Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); provided that unless and until the General Administrative Agent shall have received such directions, the General Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

11.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither any of the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the General Administrative Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of such Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

11.7 Indemnification. The Lenders agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), for, and to save each Agent harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

11.8 Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

11.9 Successor Administrative Agent. The General Administrative Agent may resign as General Administrative Agent and the Canadian Administrative Agent may resign as Canadian Administrative Agent, in each case, upon 10 days' notice to the Lenders and the Borrowers. If either Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 10(a) or Section 10(f) with respect to the Borrowers shall have occurred and be continuing) be subject to approval by the Borrowers (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the resigning Administrative Agent, and the terms "General Administrative Agent" and "Canadian Administrative Agent", as the case may be, shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as General Administrative Agent or Canadian Administrative Agent, as the case may be, by the date that is 10 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the retiring Administrative Agent

hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. The Syndication Agent may, at any time, by notice to the Lenders and the General Administrative Agent, resign as Syndication Agent hereunder, whereupon the duties, rights, obligations and responsibilities of the Syndication Agent hereunder shall automatically be assumed by, and inure to the benefit of, the General Administrative Agent, without any further act by the Syndication Agent, the General Administrative Agent or any Lender. The Working Capital Facility Agent may, at any time, by notice to the Lenders and the General Administrative Agent, resign as Working Capital Facility Agent hereunder. If it does so, the General Administrative Agent shall appoint from among the Lenders a successor working capital agent for the Lenders, which successor agent shall be a commercial bank and shall (unless an Event of Default under Section 10(a) or Section 10(f) with respect to the Borrowers shall have occurred and be continuing) be subject to approval by the Borrowers (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the resigning Working Capital Facility Agent, and the term "Working Capital Facility Agent" shall mean such successor agent effective upon such appointment and approval, and the former Working Capital Facility Agent's rights, powers and duties as Working Capital Facility Agent shall be terminated, without any other or further act or deed on the part of such former Working Capital Facility Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Working Capital Facility Agent as the case may be, by the date that is 10 days following a retiring Working Capital Facility Agent's notice of resignation, the retiring Working Capital Facility Agent's resignation shall nevertheless thereupon become effective, and the Lenders that are commercial banks shall assume and perform all of the duties of the retiring Working Capital Facility Agent hereunder until such time, if any, as the General Administrative Agent appoints a successor agent as provided for above. After any retiring Agent's resignation as Agent, the provisions of this Section 11 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents.

11.10 Authorization to Release Liens and Guarantees. Each Administrative Agent is hereby irrevocably authorized by each of the Lenders to effect any release of Liens or guarantee obligations contemplated by Section 12.15.

11.11 The Arranger; the Syndication Agent. Neither the Arranger nor the Syndication Agent, in their respective capacities as such, shall have duties or responsibilities, and shall incur no liability, under this Agreement and the other Loan Documents.

## Section 12. MISCELLANEOUS

12.1 Amendments and Waivers. Neither this Agreement or any other Loan Document, nor any terms hereof or thereof may be amended, supplemented, modified or waived except in accordance with the provisions of this Section 12.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or (with the written consent of the Required Lenders) the Agents and each Loan Party party to the relevant Loan Document may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive,

on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall:

(i) forgive the principal amount or extend the final scheduled date of maturity of any Loan or Reimbursement Obligation, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the written consent of each Lender directly affected thereby;

(ii) amend, modify or waive any provision of this Section or reduce any percentage specified in the definition of Required Lenders or Required Prepayment Lenders, consent to the assignment or transfer by the Borrowers of any of their rights and obligations under this Agreement and the other Loan Documents, release or subordinate all or substantially all of the Collateral under the Guarantee and Collateral Agreement, or release the Canadian Borrower from all or substantially all of its guarantee obligations under Section 2 of the Guarantee and Collateral Agreement, in each case without the consent of all Lenders (other than Defaulting Lenders);

(iii) reduce the percentage specified in the definition of Majority Facility Lenders (other than Defaulting Lenders) with respect to any Facility, or extend the length of Interest Periods, without the written consent of all Lenders under such Facility;

(iv) amend, modify or waive any provision herein which affects an Agent's duties or obligations hereunder (including, but not limited to, Section 11) without the written consent of any Agent directly affected thereby;

(v) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swing Line Lender or Section 3.6 and 3.7 without the written consent of the Canadian Swing Line Lender;

(vi) amend, modify or waive any provision of Section 5.9 without written the consent of each Lender directly affected thereby;

(vii) amend, waive or modify any provision of Section 5.5(h) without the consent of each Term Loan Lender, or amend, waive or modify

any provision of Section 5.5 without the written consent of the Required Prepayment Lenders; or

(viii) amend, modify or waive any provision of Section 4 without the consent of each Issuing Lender.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section; provided, that delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

For the avoidance of doubt, this Agreement and any other Loan Document may be amended (or amended and restated) with the written consent of the Required Lenders, the General Administrative Agent and each Loan Party to each relevant Loan Document (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof (collectively, the "Additional Extensions of Credit") to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and Revolving Extensions of Credit and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Required Prepayment Lenders and Majority Facility Lenders.

12.2 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed (a) in the case of the Borrowers and the Agents, as follows and (b) in the case of the Lenders, as set forth in an administrative questionnaire delivered to the General Administrative Agent or on Schedule I to the Lender Addendum to which such Lender is a party or, in the case of a Lender which becomes a party to this Agreement pursuant to an Assignment and Acceptance, in such Assignment and Acceptance or (c) in the case of any party, to such other address as such party may hereafter notify to the other parties hereto:

The Canadian Borrower:

Cott Corporation  
207 Queen's Quay West, Suite 340  
Toronto, Ontario M5J 1A7  
Attention: V.P. Treasurer  
Telecopy: (416) 203-6209  
Telephone: (416) 203-5206

With a copy to:

Mark Halperin, General Counsel  
Cott Corporation-Legal Department  
207 Queen's Quay West  
Toronto, Ontario M5J 1A7  
Telecopy: (416) 203-5609  
Telephone: (416) 203-5604

The U.S. Borrower:

BCB USA Corp.  
5405 Cypress Center Dr. Suite 100  
Tampa, Florida 33609  
Attention: V.P. Treasurer  
Telecopy: (416) 203-6209  
Telephone: (416) 203-5206

With a copy to:

Mark Halperin, General Counsel  
Cott Corporation-Legal Department  
207 Queen's Quay West  
Toronto, Ontario M5J 1A7  
Telecopy: (416) 203-5609  
Telephone: (416) 203-5604

The Syndication Agent: First Union National Bank  
Consumer Products Group  
301 South College Street,  
DC-5, NC0760  
Charlotte, NC 28288-0760  
Attention: David Silander, Director  
Telecopy: (704) 374-4793  
Telephone: (704) 383-5124

Working Capital Facility Agent: First Union National Bank  
Consumer Products Group  
301 South College Street,  
DC-5, NC0760  
Charlotte, NC 28288-0760  
Attention: David Silander, Director  
Telecopy: (704) 374-4793  
Telephone: (704) 383-5124

With a copy to:

First Union National Bank  
201 South College Street, CP-17  
Charlette, NC 28288-1183  
Attention: Erika Myers  
Telecopy: (704) 383-7999  
Telephone: (704)-383-0296

The General Administrative Agent: Lehman Commercial Paper Inc.  
3 World Financial Center  
New York, New York 10285  
Attention: Andrew Keith  
Telecopy: (212) 526-7691  
Telephone: (212) 526-5059

The Canadian Administrative Agent: Bank of Montreal  
100 Kings Street West, 19th Floor  
1st Canadian Place  
Toronto, Ontario M5X-1A1  
Attention: Manager Global  
Distribution Canada  
Telecopy: (416) 867-5718  
Telephone: (416)-867-5612

The Canadian Supplemental Revolving Bank of Montreal

Credit Lender:

100 Kings Street West, 19th Floor  
1st Canadian Place  
Toronto, Ontario M5X-1A1  
Attention: Manager Global  
Distribution Canada  
Telecopy: (416) 867-5718  
Telephone: (416)-867-5612

provided that any notice, request or demand to or upon the any Agent, the Issuing Lender or any Lender shall not be effective until received and telecopied notice received after 4:00 P.M. New York City time on any Business Day or received on any day which is not a Business Day is deemed to have been received on the following Business Day.

12.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of any Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

12.4 Survival of Representations and Warranties. All representations and warranties made herein, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

12.5 Payment of Expenses. The Borrowers agree (a) to pay or reimburse the General Administrative Agent for all its reasonable out-of-pocket costs and expenses incurred in connection with the syndication of the Facilities and the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements and other charges of counsel to the General Administrative Agent, (b) to pay or reimburse each Lender and the General Administrative Agent for all their costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith, including, without limitation, the fees and disbursements of counsel to each Lender and of counsel to the Agents, (c) to pay, indemnify, or reimburse each Lender and the Agents for, and hold each Lender and the Agents harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, indemnify or reimburse each Lender, each Agent, their respective affiliates, and their respective officers, directors, trustees, employees, advisors, agents and controlling persons (each, an "Indemnitee") for, and hold each



Indemnitee harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents, including, without limitation, any of the foregoing relating to the use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of each of the Borrowers or any of its Subsidiaries or any of the Properties and the fees and disbursements and other charges of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrowers hereunder, but excluding costs and expenses described in clause (a) incurred by any Lender other than the General Administrative Agent (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"), provided, that the Borrowers shall have no obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrowers agree not to assert and to cause its Subsidiaries not to assert, and hereby waive and agree to cause its Subsidiaries so to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section shall be payable not later than 30 days after written demand therefor. Statements payable by each Borrower pursuant to this Section shall be submitted to Catherine M. Brennan (Telephone No. 416-203-5602) (Fax No. 416-203-6209) with a copy to Mark Halperin (Telephone No. 416-203-3604) (Fax No. 416-203-3609), at the address of such Borrower set forth in Section 12.2, or to such other Person or address as may be hereafter designated by such Borrower in a notice to the General Administrative Agent. The agreements in this Section shall survive repayment of the Loans and all other amounts payable hereunder.

12.6 Successors and Assigns; Participations and Assignments. (a) This Agreement shall be binding upon and inure to the benefit of the Borrowers, the Lenders, the Agents, all future holders of the Loans and their respective successors and assigns, except that neither Borrower may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agents and each Lender.

(b) Any Lender may, without the consent of either Borrower, in accordance with applicable law, at any time sell to one or more Eligible Assignees (each, a "Participant") participating interests in any Loan owing to such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the relevant Borrower and the Agents shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve or disapprove any amendment or waiver of any provision of any Loan Document, or any

consent to any departure by any Loan Party therefrom, or to direct the Lender granting the participation with respect to any such amendment, waiver or consent, except to the extent that such amendment, waiver or consent would require the consent of all Lenders pursuant to Section 12.1. Each Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement, provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 12.7(a) as fully as if such Participant were a Lender hereunder. Each Borrower also agrees that each Participant shall be entitled to the benefits of Sections 5.11, 5.12 and 5.13 with respect to its participation in the Commitments and the Loans outstanding from time to time as if such Participant were a Lender; provided that, in the case of Section 5.12, such Participant shall have complied with the requirements of said Section, and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

(c) Any Lender (an "Assignor") may, in accordance with applicable law and upon written notice to the General Administrative Agent, at any time and from time to time assign to any Lender or any affiliate or Control Investment Affiliate thereof or and Person, with the consent of the U.S. Borrower and the General Administrative Agent and, in the case of any assignment of Revolving Credit Commitments, the written consent of the Issuing Lender and the Swing Line Lender or Canadian Swing Line Lender, as the case may be (which, in each case, shall not be unreasonably withheld or delayed) (provided that no such consent need be obtained for an assignment (x) by the General Administrative Agent, (y) to another Lender or an affiliate or Related Fund of a Lender or (z) with respect to any assignment of funded Term Loans), to an Eligible Assignee all or any part of its rights and obligations under this Agreement pursuant to an Assignment and Acceptance, substantially in the form of Exhibit E, executed by such Assignee and such Assignor (and, where the consent of the U.S. Borrower or the General Administrative Agent or the Issuing Lender or the Swing Line Lender is required pursuant to the foregoing provisions, by the U.S. Borrower and such other Persons) and delivered to the General Administrative Agent for its acceptance and recording in the Register; provided that no such assignment to an Assignee (other than any Lender or any affiliate thereof) shall be in an aggregate principal amount of less than U.S.\$1,000,000, in the case of assignments of Term Loans (other than in the case of an assignment of all of a Lender's interests under this Agreement), and U.S.\$5,000,000, in the case of assignments under the U.S. Revolving Credit Facility or the Canadian Revolving Credit Facility (other than in the case of an assignment of all of a Lender's interests under this Agreement), unless otherwise agreed by the U.S. Borrower and the General Administrative Agent. Any assignment under the Term Loan Facility must include a ratable portion of the Purchase Money Term Loan Facility and the Working Capital Term Loan Facility. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with Commitments and/or Loans as set forth therein, and

(y) the Assignor thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto, except as to Section 5.12, 5.13 and 12.5 in respect of the period prior to such effective date). Notwithstanding any provision of this Section, (i) the consent of the U.S. Borrower shall not be required for any assignment that occurs at any time when any Event of Default shall have occurred and be continuing and (ii) so long as one Lender holds 100% of the Canadian Revolving Credit Commitment and the Canadian Supplemental Revolving Credit Commitment, such Lender may not assign any portion of either such Commitment. For purposes of the minimum assignment amounts set forth in this paragraph, multiple assignments by two or more Related Funds shall be aggregated.

(d) The General Administrative Agent (together with the Canadian Administrative Agent, in the case of Canadian Facility Loans) shall, on behalf of the relevant Borrower, maintain at its address referred to in Section 12.2 a copy of each Assignment and Acceptance delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrowers, each Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Loans and any Notes evidencing such Loans recorded therein for all purposes of this Agreement. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). Any assignment or transfer of all or part of a Loan evidenced by a Note shall be registered on the Register only upon surrender for registration of assignment or transfer of the Note evidencing such Loan, accompanied by a duly executed Assignment and Acceptance; thereupon one or more new Notes in the same aggregate principal amount shall be issued to the designated Assignee, and the old Notes shall be returned by the General Administrative Agent to the relevant Borrower marked "canceled". The Register shall be available for inspection by the Borrowers or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance executed by an Assignor and an Assignee (and, in any case where the consent of any other Person is required by Section 12.6(c), by each such other Person) together with payment to the General Administrative Agent (or the Canadian Administrative Agent for assignments of Canadian Facility Loans) of a registration and processing fee of \$3,500 (treating multiple, simultaneous assignments by or to two or more Related Funds as a single assignment) (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to a Lehman Entity or (z) in the case of an Assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender), the General Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register and give notice of such acceptance and recordation to the Borrowers. On or prior to such effective date, the relevant Borrower, at its own expense, upon request, shall execute and deliver to the General Administrative Agent (in exchange for the U.S. Revolving Credit Note, Canadian Revolving Credit Note and/or applicable Term Notes, as the case may be, of the assigning Lender) a new

U.S. Revolving Credit Note, Canadian Revolving Credit Note and/or applicable Term Notes, as the case may be, to the order of such Assignee in an amount equal to the U.S. Revolving Credit Commitment, Canadian Revolving Credit Commitment and/or applicable Term Loans, as the case may be, assumed or acquired by it pursuant to such Assignment and Acceptance and, if the Assignor has retained a U.S. Revolving Credit Commitment, Canadian Revolving Credit Commitment and/or Term Loans, as the case may be, upon request, a new U.S. Revolving Credit Note, Canadian Revolving Credit Note and/or Term Notes, as the case may be, to the order of the Assignor in an amount equal to the U.S. Revolving Credit Commitment, Canadian Revolving Credit Commitment and/or applicable Term Loans, as the case may be, retained by it hereunder. Such new Note or Notes shall be dated the Closing Date and shall otherwise be in the form of the Note or Notes replaced thereby.

(f) For avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section concerning assignments of Loans and Notes relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests in Loans and Notes, including, without limitation, any pledge or assignment by a Lender of any Loan or Note to any Federal Reserve Bank in accordance with applicable law.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the General Administrative Agent and the Borrowers, the option to provide to the Borrowers all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrowers pursuant to this Agreement; provided that

(i) nothing herein shall constitute a commitment by any SPC to make any Loan and

(ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary in this Section 12.6(g), any SPC may (A) with notice to, but without the prior written consent of, each Borrower and the General Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender, or with the prior written consent of the Borrowers and the General Administrative Agent (which consent shall not be unreasonably withheld) to any financial institutions providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans, and (B) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC; provided that non-public information with respect to the Borrowers may be disclosed only with the Borrower's consent which will not be unreasonably withheld.

This paragraph (g) may not be amended without the written consent of any SPC with Loans outstanding at the time of such proposed amendment.

12.7 Adjustments; Set-off. (a) If any Lender (for purposes of this sentence, a "Benefitted Lender") shall at any time prior to any date on which the Commitments are terminated and the Loans or Reimbursement Obligations become due and payable pursuant to Section 10 (an "Acceleration") receive any payment of all or part of the Extensions of Credit made by such Benefitted Lender to any Borrower, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Extensions of Credit made by it to such Borrower, or interest thereon (in each case except to the extent that this Agreement provides for payments to be allocated to the Lenders under a particular Facility) then such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Extensions of Credit to such Borrower, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral or proceeds with each of the Lenders ratably (based upon the respective aggregate Commitments and Extensions of Credit to such Borrower immediately prior to receipt by such Benefitted Lender of such payment or collateral); provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. If any Benefitted Lender shall at any time after an Acceleration receive any payment of all or part of the aggregate amount of the Extensions of Credit made by such Benefitted Lender to all Borrowers, or interest thereon, or receive any collateral in respect thereof (whether voluntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 10(f), or otherwise), in a greater proportion than any such payment or collateral received by any other Lender, if any, in respect by the aggregate amount of the Extensions of Credit made by such Lender to all Borrowers, or interest thereon, then such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Extensions of Credit, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral or proceeds with each of the Lenders ratably (based upon the respective Aggregate Exposure Percentages of the Lenders immediately prior to receipt by such Benefitted Lender of such payment or collateral); provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrowers, any such notice being expressly waived by the Borrowers to the extent permitted by applicable law, upon any amount becoming due and payable by the Borrowers hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or

agency thereof to or for the credit or the account of the Borrowers. Each Lender agrees promptly to notify the Borrowers and the General Administrative Agent after any such setoff and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

12.8 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement or of a Lender Addendum by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrowers and the General Administrative Agent.

12.9 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12.10 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrowers, the Agents, the Arranger and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Arranger, any Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

12.11 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

12.12 Submission To Jurisdiction; Waivers. Each of the Borrowers hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to either Borrower, as the case may be, at its address set forth in

Section 12.2 or at such other address of which the General Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this

Section any special, exemplary, punitive or consequential damages.

12.13 Judgment Currency(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to a Lender in any currency (the "Original Currency") into another currency (the "Other Currency"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, such Lender could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by applicable law, on the day on which the judgment is paid or satisfied.

(b) The obligations of the applicable Borrower in respect of any sum due in the Original Currency from it to the Lender under any of the Credit Documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in the Other Currency, the Lender may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Lender in the Original Currency, the applicable Borrower agrees, as a separate obligation and notwithstanding the judgment, to indemnify the Lender, against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender shall remit such excess to the applicable Borrower.

12.14 Acknowledgments. Each of the Borrowers hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither the Arranger, any Agent nor any Lender has any fiduciary relationship with or duty to either Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Arranger, the Agents and the Lenders, on one hand, and the Borrowers, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Arranger, the Agents and the Lenders or among Borrowers and the Lenders.

12.15 Confidentiality. Each of the Agents, the Arranger and the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Agreement; provided that nothing herein shall prevent any Agent or any Lender from disclosing

any such information (a) to the Arranger, any Agent, any other Lender, (b) to any Participant or Assignee (each, a "Transferee") or prospective Transferee that agrees to comply with the provisions of this Section or is otherwise bound by law or contract to keep such information confidential, (c) to any of its employees, directors, agents, attorneys, accountants and other professional advisors on a "need to know basis" who agree or are otherwise under a legal duty to keep such information confidential, (d) to any financial institution that is a direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section or is otherwise bound by law or contract to keep such information confidential), (e) upon the request or demand of any Governmental Authority having jurisdiction over it, (f) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (g) in connection with any litigation or similar proceeding involving any Loan Party, (h) that has been publicly disclosed other than in breach of this Section, (i) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (j) in connection with the exercise of any remedy hereunder or under any other Loan Document.

#### 12.16 Release of Collateral and Guarantee Obligations.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the relevant Borrower in connection with any Disposition of Property permitted by the Loan Documents, the relevant Administrative Agent shall take such actions as shall be required to release its security interest in any Collateral being Disposed of in such Disposition, and to release any guarantee obligations under any Loan Document of any Person being Disposed of in such Disposition, to the extent necessary to permit consummation of such Disposition in accordance with the Loan Documents.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all obligations of the Borrowers secured by the Security Documents (other than obligations in respect of any Hedge Agreement) have been paid in full, all Commitments have terminated or expired and no Extensions of Credit shall be outstanding, upon request of the relevant Borrower, the relevant Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Hedge Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations under any Loan Document, whether or not on the date of such release there may be outstanding obligations in respect of Hedge Agreements. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any Borrower or any substantial part of its property, or otherwise, all as though such payment had not been made.



12.17 Accounting Changes. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrowers and the General Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrowers' financial condition shall be the same after such Accounting Change as if such Accounting Change had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrowers, the Administrative Agents and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred. "Accounting Change" refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

12.18 Delivery of Lender Addenda. Each initial Lender shall become a party to this Agreement by delivering to the General Administrative Agent a Lender Addendum duly executed by such Lender, the Borrowers and the General Administrative Agent.

#### 12.19 Limitations on Restrictions

Notwithstanding anything in this Agreement to the contrary, for so long as the Indentures remain in effect, none of the provisions of this Agreement shall be deemed to prohibit the U.S. Borrower or any Restricted Subsidiary from paying dividends to, making loans to or transferring assets to the Canadian Borrower or any Restricted Subsidiary (as defined in the relevant Indenture) or taking any other action specifically referenced in Section 4.05 of either such Indenture for so long as it shall remain in effect, to the extent (but only to the extent) that any such prohibition is not permitted under the terms of such Indenture.

**12.20 WAIVERS OF JURY TRIAL. THE BORROWERS, THE AGENTS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**COTT CORPORATION,**

*By /s/ Catherine Brennan*

-----  
*Name:*  
*Title:*

**BCB USA CORP.,**

*By /s/ Catherine Brennan*

-----  
*Name:*  
*Title:*

**LEHMAN BROTHERS INC., as Arranger**

*By /s/ G. Andrew Keith*

-----  
*Name: G. Andrew Keith*  
*Title: Senior Vice President*

**FIRST UNION NATIONAL BANK, as Syndication Agent**

*By /s/ Edward H. Ross*

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*Name: Edward H. Ross*  
*Title: Senior Vice President*

**FIRST UNION NATIONAL BANK, as Working  
Capital Facility Agent**

*By /s/ Edward H. Ross*

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*Name: Edward H. Ross*  
*Title: Senior Vice President*

**LEHMAN COMMERCIAL PAPER INC., as  
General Administrative Agent**

*By /s/ G. Andrew Keith*

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*Name: G. Andrew Keith*  
*Title: Authorized Signatory*

*By /s/ Sid Levin*

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*Name: Sid Levin  
Title: Managing Director  
Diversified Canada  
Asset Portfolio Management*

**Annex A**

**PRICING GRID FOR U.S. REVOLVING CREDIT LOANS AND CANADIAN FACILITY LOANS\***

Level	Consolidated Leverage Ratio	Applicable Margin Eurodollar Loans*	Applicable Margin Base Rate Loans and Prime Rate Loans*	Facility Fee Rate*
-----	-----	-----	-----	-----
I	(more than or equal to) 2.25	2.50%	1.25%	0.50%
II	(more than or equal to) 1.75	2.25%	1.00%	0.50%
III	(more than or equal to) 1.25	1.75%	0.50%	0.50%
IV	(less than) 1.25	1.5%	.375%	.375%

\* Notwithstanding the foregoing grid, until the delivery to the Lenders of the Canadian Borrower's financial statements for the fourth fiscal quarter of 2001, the Applicable Margin will be 2.50% for Canadian Facility Loans and U.S. Facility Loans (other than Term Loans) that are Eurodollar Loans, and the Facility Fee Rate will be 0.50%.

**EXHIBIT 99.1**

**FOR IMMEDIATE RELEASE**

**COTT TO BUY ITS CONCENTRATE CONTRACT FROM ROYAL CROWN UNIT OF CADBURY SCHWEPPEES; CALLS MOVE AN IMPORTANT MILESTONE IN DRIVING GROWTH**

(All information in U.S. Dollars)

TORONTO, June 13, 2001: Cott Corporation (NASDAQ:COTT; TSE:BCB) announced today an agreement to purchase its retailer brand concentrate supply contract from the Royal Crown unit of Cadbury Schweppes plc (LSE:CBRY; NYSE:CSG). The purchase includes formulas and proprietary technology together with a concentrate manufacturing facility. In addition, the Company said it would also be acquiring the RC International business.

The total acquisition, which will amount to \$94 million, is expected to be accretive to earnings in the first full year and thereafter. To fund the transaction, the Company has received a commitment for a credit facility, which will be underwritten by Lehman Commercial Paper Inc., an affiliate of Lehman Brothers Inc. who is acting as Cott's advisor.

"This acquisition is our most significant ever and takes Cott to a new level. It gives us more control over our destiny," said Frank E. Weise, Cott's president and chief executive officer. "For both shareowners and employees it marks an important milestone."

The proposed transaction includes Royal Crown's concentrate manufacturing and research facilities in Columbus, Georgia, together with RC's International division, which encompasses all RC branded business outside the United States, Canada, Mexico and certain U.S. territories including Puerto Rico.

Royal Crown has supplied Cott with concentrates since 1991. The current supply contract, in effect since 1994, expires in 2014. The RC brand has been sold internationally since the 1950's and is currently available in approximately 60 countries. RC International also supplies its franchisee bottlers with concentrates used in local brands.

"Adding RC's know-how to Cott's accelerating growth is a win-win for our customers," Weise added. "Furthermore, the acquisition of RC International will provide international expertise and a bottling network to help us extend our retailer brand business with our global customers."

The acquisition is subject to certain conditions and is expected to be completed in July.

\*\*\*

Cott will hold a conference call regarding the transaction that will be available via webcast and telephone at 10:30 AM EDT today. For those who wish to listen to the presentation, there is a listen-only dial-in telephone line, which can be accessed as follows:

North America only:	877-461-2816
International:	+1 416-695-9753
Replay line	
North America only:	888-440-6869, passcode: 9253
International:	+1 416-695-9772, passcode: 9253

To access the webcast, please visit Cott's website at [www.cott.com](http://www.cott.com) at least fifteen minutes early to register, download, and install any necessary audio/video software. For those who are unable to access the live broadcasts, a replay will be available following these events.

**FOR IMMEDIATE RELEASE**

**ABOUT COTT CORPORATION**

Cott Corporation is the world's largest retailer brand soft drink supplier, with the leading take home carbonated soft drink market shares in this segment in its core markets of the U.S., Canada and the U.K.

**SAFE HARBOR STATEMENTS**

This press release contains forward-looking statements reflecting management's current expectations regarding future results of operations, economic performance, financial condition and achievements of the Company. Forward-looking statements, specifically those concerning future performance, are subject to certain risks and uncertainties, and actual results may differ materially. These risks and uncertainties are detailed from time to time in the Company's filings with the appropriate securities commissions, and include, without limitation, stability of procurement costs for raw and packaging materials, competitive activities by national, regional and retailer brand beverage manufacturers, the Company's ability to integrate acquired business into its operations, fluctuations in currency versus the U.S. dollar, the uncertainties of litigation, and retailers' continued commitment to their retailer brand beverage programs. The foregoing list of factors is not exhaustive.

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## EXHIBIT 99.2

### FOR IMMEDIATE RELEASE

## COTT COMPLETES ROYAL CROWN ACQUISITION; ANNOUNCES MANAGEMENT APPOINTMENTS

(All information in U.S. dollars)

TORONTO July 23, 2001: Cott Corporation (NASDAQ:COTT; TSE:BCB) today announced it has completed its acquisition of certain Royal Crown assets from Cadbury Schweppes plc (LSE:CBRY; NYSE:CSG) for approximately \$94 million. At the same time, Cott named two senior executives, Paul Richardson and Neil Thompson, who will lead the integration and management teams for the expanded business.

"With Paul and Neil as key leaders, I am confident that the RC acquisition will prove to be a hallmark success," said Frank E. Weise, Cott's president and chief executive officer. "This is an important milestone for Cott. We now move forward as a fully integrated beverage Company - from creating consumer-preferred formulas and making quality concentrates, to operating production plants and providing the highest levels of customer service at each point."

With this acquisition, Cott gains control of its retailer brand concentrate contract and formulas as well as proprietary technology, a concentrate manufacturing facility and the RC International business. The transaction was announced on June 13, 2001.

This is the second strategic acquisition for Cott in the last nine months. In October 2000, Cott acquired the private label soft drink and Vintage (TM) brand seltzer water assets of Concord Beverage, providing the Company with a solid base of new customers in the Northeast U.S. market and increased market share.

### MANAGEMENT APPOINTMENTS

To capitalize on the opportunities that Weise foresees, the Company has announced that two corporate officers will assume key executive roles, effective immediately. Paul Richardson, executive vice president, Global Procurement and Innovation will add responsibility for the Company's worldwide manufacturing and supply of concentrates; Neil Thompson, currently executive vice president and managing director for Cott U.K and Europe, will now also be responsible for RC International. Both Richardson, located in Tampa FL, and Thompson, in Kegworth U.K., will continue to report to Weise.

"These appointments reflect the confidence that our customers and employees have for both Paul and Neil," added Weise. "Over the last three years, each has been a forceful contributor in turning the Company around. Their experience and passion for our customers will strengthen the leadership position that Cott enjoys in our industry."

\* \* \*

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**SAFE HARBOR STATEMENTS**

This press release contains forward-looking statements reflecting management's current expectations regarding future results of operations, economic performance, financial condition and achievements of the Company. Forward-looking statements, specifically those concerning future performance, are subject to certain risks and uncertainties, and actual results may differ materially. These risks and uncertainties are detailed from time to time in the Company's filings with the appropriate securities commissions, and include, without limitation, stability of procurement costs for raw and packaging materials, competitive activities by national, regional and retailer brand beverage manufacturers, the Company's ability to integrate acquired business into its operations, fluctuations in currency versus the U.S. dollar, the uncertainties of litigation, and retailers' continued commitment to their retailer brand beverage programs. The foregoing list of factors is not exhaustive.

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