UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Form 10-Q

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **September 30, 2007**

OR

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

For the transition period from _____________to______________

Commission file number 1-7677

LSB Industries, Inc.

Exact name of Registrant as specified in its charter

Delaware	**73-1015226**
State or other jurisdiction of incorporation or organization	I.R.S. Employer Identification No.
16 South Pennsylvania Avenue, Oklahoma City, Oklahoma	**73107**
Address of principal executive offices	(Zip Code)

(405) 235-4546

Registrant's telephone number, including area code

None

Former name, former address and former fiscal year, if changed since last report.

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes _X_ No___

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer [ ] Accelerated filer [ ] Non-accelerated filer [X]

The aggregate market value of the Registrant’s voting common equity held by non-affiliates of the Registrant, computed by reference to the price at which the voting common stock was last sold as of June 29, 2007, exceeded the $75 million threshold. As a result, the Registrant will become an accelerated filer on December 31, 2007.

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). [ ] Yes [X] No

The number of shares outstanding of the Registrant's voting common stock, as of November 1, 2007 was 20,827,088 shares, excluding 3,448,518 shares held as treasury stock.

FORM 10-Q OF LSB INDUSTRIES, INC.

TABLE OF CONTENTS

	PART I – Financial Information	Page
Item 1.	Financial Statements	4
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	44
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	73
Item 4.	Controls and Procedures	74
	Special Note Regarding Forward-Looking Statements	75
	PART II – Other Information	
Item 1.	Legal Proceedings	77
Item 1A.	Risk Factors	77
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	79
Item 3.	Defaults Upon Senior Securities	80
Item 4.	Submission of Matters to a Vote of Security Holders	80
Item 5.	Other Information	80
Item 6.	Exhibits	80

PART I
FINANCIAL INFORMATION

Item 1. Financial Statements

LSB INDUSTRIES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Information at September 30, 2007 is unaudited)

	September 30, 2007	December 31, 2006
	(In Thousands)	
Assets		
Current assets:		
Cash and cash equivalents	$ 40,869	$ 2,255
Restricted cash	30	2,479
Accounts receivable, net	86,869	67,571
Inventories:		
Finished goods	23,265	20,252
Work in process	3,136	3,205
Raw materials	20,995	21,992
Total inventories	47,396	45,449
Supplies, prepaid items and other:		
Prepaid insurance	842	3,443
Precious metals	10,533	6,406
Supplies	3,810	3,424
Other	2,230	1,468
Total supplies, prepaid items and other	17,415	14,741
Deferred income taxes	9,700	-
Total current assets	202,279	132,495
Property, plant and equipment, net	78,696	76,404
Other assets:		
Noncurrent restricted cash	-	1,202
Debt issuance and other debt-related costs, net	4,884	2,221
Investment in affiliate	3,398	3,314
Goodwill	1,724	1,724
Other, net	2,488	2,567
Total other assets	12,494	11,028
	$ 293,469	$ 219,927

(Continued on following page)

LSB INDUSTRIES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS (continued)
(Information at September 30, 2007 is unaudited)

	September 30, 2007	December 31, 2006
	(In Thousands)	
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 40,587	$ 42,870
Short-term financing and drafts payable	133	2,986
Accrued and other liabilities	30,272	26,816
Current portion of long-term debt	2,703	11,579
Total current liabilities	73,695	84,251
Long-term debt	119,720	86,113
Noncurrent accrued and other liabilities:		
Deferred income taxes	6,550	-
Other	6,576	5,929
	13,126	5,929
Contingencies (Note 13)		
Stockholders' equity:		
Series B 12% cumulative, convertible preferred stock, $100 par value; 20,000 shares issued and outstanding	2,000	2,000
Series 2 $3.25 convertible, exchangeable Class C preferred stock, $50 stated value; 517,402 shares issued in 2006	-	25,870
Series D 6% cumulative, convertible Class C preferred stock, no par value; 1,000,000 shares issued	1,000	1,000
Common stock, $.10 par value; 75,000,000 shares authorized, 24,063,106 shares issued (20,215,339 in 2006)	2,406	2,022
Capital in excess of par value	120,641	79,838
Accumulated other comprehensive loss	(483)	(701)
Accumulated deficit	(20,984)	(47,962)
	104,580	62,067
Less treasury stock at cost:		
Series 2 Preferred, 18,300 shares in 2006	-	797
Common stock, 3,448,518 shares (3,447,754 in 2006)	17,652	17,636
Total stockholders' equity	86,928	43,634
	$ 293,469	$ 219,927

(See accompanying notes)

Table of Contents

LSB INDUSTRIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
Nine and Three Months Ended September 30, 2007 and 2006
(As adjusted for 2006, see Note 2)

	Nine Months		Three Months	
	2007	2006	2007	2006
	(In Thousands, Except Per Share Amounts)			
Net sales	$ 451,754	$ 368,216	$ 147,613	$ 123,968
Cost of sales	349,873	299,179	112,441	99,905
Gross profit	101,881	69,037	35,172	24,063
Selling, general and administrative expense	55,821	46,756	18,827	17,034
Provisions for losses on accounts receivable	874	599	253	317
Other expense	853	706	335	15
Other income	(3,440)	(231)	(3,340)	(83)
Operating income	47,773	21,207	19,097	6,780
Interest expense	8,062	8,957	3,482	3,196
Non-operating other income, net	(605)	(565)	(532)	(68)
Income from continuing operations before provisions (benefits) for income taxes and equity in earnings of affiliate	40,316	12,815	16,147	3,652
Provisions (benefits) for income taxes	(1,017)	408	(1,549)	208
Equity in earnings of affiliate	(654)	(611)	(223)	(206)
Income from continuing operations	41,987	13,018	17,919	3,650
Net loss (income) from discontinued operations	(348)	244	(377)	113
Net income	42,335	12,774	18,296	3,537
Dividend requirements and stock dividends on preferred stock exchanged in March 2007	4,971	746	-	249
Other preferred stock dividends and dividend requirements	637	909	203	302
Net income applicable to common stock	$ 36,727	$ 11,119	$ 18,093	$ 2,986
Weighted average common shares:				
Basic	19,150	13,839	20,220	13,979
Diluted	22,990	21,058	25,072	21,346
Income (loss) per common share:				
Basic:				
Income from continuing operations	$ 1.90	$ .82	$ .87	$ .22
Net income (loss) from discontinued operations	.02	(.02)	.02	(.01)
Net income	$ 1.92	$ .80	$ .89	$ .21
Diluted:				
Income from continuing operations	$ 1.65	$ .66	$ .75	$ .19
Net income (loss) from discontinued operations	.02	(.01)	.02	(.01)
Net income	$ 1.67	$ .65	$ .77	$ .18

(See accompanying notes)

[Table of Contents]

LSB INDUSTRIES, INC.
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(Unaudited)
Nine Months Ended September 30, 2007
(In Thousands)

	Common Stock Shares	Non-Redeemable Preferred Stock	Common Stock Par Value	Capital in Excess of Par Value	Accumulated Other Comprehensive Loss	Accumulated Deficit	Treasury Stock-Preferred	Treasury Stock-Common	Total
Balance at December 31, 2006	20,215	$ 28,870	$ 2,022	$ 79,838	$ (701)	$ (47,962)	$ (797)	$ (17,636)	$43,634
Net income						42,335			42,335
Amortization of cash flow hedge					218				218
Total comprehensive income									42,553
Cumulative effect adjustment in accordance with FIN 48						(120)			(120)
Stock-based compensation				228					228
Conversion of debentures to common stock	565		57	3,681					3,738
Exercise of stock options	291		29	1,099				(16)	1,112
Dividends paid on preferred stock						(2,934)			(2,934)
Exchange of 305,807 shares of non-redeemable preferred stock for 2,262,965 shares of common stock	2,263	(15,290)	226	27,367		(12,303)			-
Conversion of 167,475 shares of non-redeemable preferred stock for 724,993 shares of common stock	725	(8,374)	72	8,301					(1)
Redemption of 25,820 shares of non-redeemable preferred stock		(1,291)							(1,291)
Cancellation of 18,300 shares of non-redeemable preferred stock (1)		(915)		118			797		-
Conversion of 98 shares of redeemable preferred stock to common stock	4			9					9
Balance at September 30, 2007	24,063	$ 3,000	$ 2,406	$ 120,641	$ (483)	$ (20,984)	$ -	$ (17,652)	$86,928

(1) These shares represent the shares of Series 2 Preferred previously held as treasury stock. As the result of the cancellation, no shares of Series 2 Preferred were issued and outstanding at September 30, 2007.

(See accompanying notes)

LSB INDUSTRIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
Nine Months Ended September 30, 2007 and 2006
(As adjusted for 2006, see Note 2)

	2007	2006
	(In Thousands)	
Cash flows from continuing operating activities:		
Net income	$ 42,335	$ 12,774
Adjustments to reconcile net income to net cash provided by continuing operating activities:		
Net loss (income) from discontinued operations	(348)	244
Deferred income taxes	(3,150)	-
Loss (gain) on sales and disposals of property and equipment	446	(10)
Depreciation of property, plant and equipment	9,201	8,428
Amortization	841	911
Stock-based compensation	228	-
Provisions for losses on accounts receivable	874	599
Realization of losses on inventory	(360)	(905)
Provision for impairment on long-lived assets	250	286
Provision for (realization and reversal of) losses on firm sales commitments	(328)	500
Equity in earnings of affiliate	(654)	(611)
Distributions received from affiliate	570	700
Change in fair value of interest rate caps	241	11
Other	(8)	-
Cash provided (used) by changes in assets and liabilities:		
Accounts receivable	(20,656)	(25,858)
Inventories	(1,587)	(3,153)
Other supplies and prepaid items	(2,674)	(395)
Accounts payable	(3,849)	4,387
Customer deposits	(233)	1,894
Deferred rent expense	(2,423)	(550)
Other current and noncurrent liabilities	7,889	4,634
Net cash provided by continuing operating activities	26,605	3,886
Cash flows from continuing investing activities:		
Capital expenditures	(10,300)	(8,036)
Proceeds from sales of property and equipment	192	120
Proceeds from (deposits of) restricted cash	3,651	(387)
Purchase of interest rate cap contracts	(621)	-
Other assets	(70)	(221)
Net cash used by continuing investing activities	(7,148)	(8,524)

(Continued on following page)

Table of Contents

LSB INDUSTRIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)
(Unaudited)
Nine Months Ended September 30, 2007 and 2006
(As adjusted for 2006, see Note 2)

	2007	2006
	(In Thousands)	
Cash flows from continuing financing activities:		
Proceeds from revolving debt facilities	$ 381,835	$ 343,633
Payments on revolving debt facilities	(408,242)	(341,462)
Proceeds from 5.5% convertible debentures, net of fees	56,985	-
Proceeds from 7% convertible debentures, net of fees	-	16,876
Acquisition of 10-3/4% Senior Unsecured Notes	-	(13,300)
Proceeds from other long-term debt, net of fees	2,424	-
Payments on other long-term debt	(7,629)	(2,153)
Payments of debt issuance costs	(143)	(356)
Proceeds from short-term financing and drafts payable	56	610
Payments on short-term financing and drafts payable	(2,909)	(3,036)
Proceeds from exercise of stock options	1,112	131
Acquisition of non-redeemable preferred stock	(1,292)	(95)
Dividends paid on preferred stock	(2,934)	(204)
Net cash provided by continuing financing activities	19,263	644
Cash flows of discontinued operations:		
Operating cash flows	(106)	(179)
Net increase (decrease) in cash and cash equivalents	38,614	(4,173)
Cash and cash equivalents at beginning of period	2,255	4,653
Cash and cash equivalents at end of period	$ 40,869	$ 480
Supplemental cash flow information:		
Noncash investing and financing activities:		
Debt issuance costs	$ 3,026	$ 1,124
Accounts payable and other long-term debt associated with purchases of property, plant and equipment	$ 2,203	$ 19
Debt issuance costs associated with 7% convertible debentures converted to common stock	$ 266	$ 275
7% convertible debentures converted to common stock	$ 4,000	$ 3,750
Series 2 preferred stock converted to common stock of which $12,303,000 was charged to accumulated deficit	$ 27,593	$ -

(See accompanying notes)

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1: Basis of Presentation The accompanying condensed consolidated financial statements include the accounts of LSB Industries, Inc. (the "Company", “LSB”, "We", "Us", or "Our") and its subsidiaries. We are a manufacturing, marketing and engineering company which is primarily engaged, through our wholly-owned subsidiary ThermaClime, Inc. (“ThermaClime”) and its subsidiaries, in the manufacture and sale of geothermal and water source heat pumps and air handling products (the "Climate Control Business") and the manufacture and sale of chemical products (the "Chemical Business"). The Company and ThermaClime are holding companies with no significant assets or operations other than cash and cash equivalents and our investments in our subsidiaries. Entities that are 20% to 50% owned and for which we have significant influence are accounted for on the equity method. All material intercompany accounts and transactions have been eliminated.

In the opinion of management, the unaudited condensed consolidated financial statements of the Company as of September 30, 2007 and for the nine and three month periods ended September 30, 2007 and 2006 include all adjustments and accruals, consisting only of normal, recurring accrual adjustments which are necessary for a fair presentation of the results for the interim periods except for the cumulative effect adjustment as discussed in Note 19-Income Taxes. These interim results are not necessarily indicative of results for a full year due, in part, to the seasonality of our sales of agricultural products, the accounting for major plant maintenance costs as discussed in Note 2 and the changes in accounting estimates as discussed in Note 3. Our selling seasons for agricultural products are primarily during the spring and fall planting seasons, which typically extend from March through June and from September through November.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted in this Form 10-Q pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). These condensed consolidated financial statements should be read in connection with the consolidated financial statements and notes thereto included in our Form 10-K, as amended by our Form 10-K/A, Amendment No.1, for the year ended December 31, 2006 (“Form 10-K, as amended”).

Certain reclassifications have been made in our condensed consolidated financial statements for 2006 to conform to our condensed consolidated financial statement presentation for 2007.

Note 2: Change in Accounting for Plant Turnaround Costs and Classification Changes As previously disclosed in our Form 10-Q for the quarter ended March 31, 2007 and in our Form 10-K, as amended by our Form 10-K/A, Amendment No. 1, the Financial Accounting Standards Board (“FASB”) completed a project, in September 2006, to clarify guidance on the accounting for planned major maintenance activities (“Turnarounds”). The FASB issued FASB Staff Position No. AUG AIR-1 (“FSP”) which eliminated the accrue-in-advance method of accounting for Turnarounds which was the method we were using. In addition, the adoption of the provisions in the FSP is to be considered a change in accounting principle with retrospective application as described in SFAS 154-Accounting Changes and Error Corrections (“SFAS 154”), if practical. The FSP became effective for us on January 1, 2007. There were three acceptable accounting methods for Turnarounds that we could adopt of which we adopted the direct expensing method which requires us to expense Turnaround costs as they are incurred.

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 2: Change in Accounting for Plant Turnaround Costs and Classification Changes (continued)

For the nine months ended September 30, 2007 and 2006, Turnaround costs for the Chemical Business totaled $870,000 and $1,788,000 respectively. Based on our current plan for Turnarounds to be performed during the remainder of 2007, we estimate that we will incur Turnaround costs of approximately $2.4 million during the fourth quarter of 2007. However, it is possible that these Turnarounds could be performed during a different quarter and/or the actual costs could be significantly different than our estimates.

As previously disclosed in our Form 10-K, as amended, we made classification changes relating to extended warranty contracts and warranty expense.

The following condensed consolidated financial statement line items and income per common share were affected by the change in accounting for Turnarounds. The effect by the classification changes for extended warranty contracts and warranty expense are also included but they did not impact operating income, net income, or income per common share:

Condensed Consolidated Statement of Income for the Nine Months Ended September 30, 2006 (in thousands):

	As Originally Reported	As Adjusted	Effect of Changes
Net sales	$ 367,864	$ 368,216	$ 352
Cost of sales	$ 299,787	$ 299,179	$ (608)
Gross profit	$ 68,077	$ 69,037	$ 960
Selling, general and administrative expense	$ 46,028	$ 46,756	$ 728
Operating income	$ 20,975	$ 21,207	$ 232
Income from continuing operations before provision for income taxes and equity in earnings of affiliate	$ 12,583	$ 12,815	$ 232
Income from continuing operations	$ 12,786	$ 13,018	$ 232
Net income	$ 12,542	$ 12,774	$ 232
Net income applicable to common stock	$ 10,887	$ 11,119	$ 232

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 2: Change in Accounting for Plant Turnaround Costs and Classification Changes (continued)

Condensed Consolidated Statement of Income for the Three Months Ended September 30, 2006 (in thousands):

	As Originally Reported	As Adjusted	Effect of Changes
Net sales	$ 123,847	$ 123,968	$ 121
Cost of sales	$ 100,280	$ 99,905	$ (375)
Gross profit	$ 23,567	$ 24,063	$ 496
Selling, general and administrative expense	$ 16,735	$ 17,034	$ 299
Operating income	$ 6,583	$ 6,780	$ 197
Income from continuing operations before provision for income taxes and equity in earnings of affiliate	$ 3,455	$ 3,652	$ 197
Income from continuing operations	$ 3,453	$ 3,650	$ 197
Net income	$ 3,340	$ 3,537	$ 197
Net income applicable to common stock	$ 2,789	$ 2,986	$ 197

Income Per Common Share for the Nine Months Ended September 30, 2006:

	As Originally Reported	As Adjusted	Effect of Change
Income per common share:			
Basic	$ .79	$ .80	$ .01
Diluted	$ .64	$ .65	$ .01

Income Per Common Share for the Three Months Ended September 30, 2006:

	As Originally Reported	As Adjusted	Effect of Change
Income per common share:			
Basic	$ .20	$ .21	$ .01
Diluted	$ .17	$ .18	$ .01

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 2: Change in Accounting for Plant Turnaround Costs and Classification Changes (continued)

Condensed Consolidated Statement of Cash Flows for the Nine Months Ended September 30, 2006 (in thousands):

	As Originally Reported	As Adjusted	Effect of Change
Net income	$ 12,542	$ 12,774	$ 232
Cash provided by change in other current and noncurrent liabilities	$ 4,866	$ 4,634	$ (232)
Net cash provided by continuing operations activities	$ 3,886	$ 3,886	$ -

Note 3: Changes in Accounting Estimates During the third quarter of 2007, we had the following changes in accounting estimates:

- the recognition of a benefit of $3,150,000 relating to deferred income taxes included in benefits for income taxes as discussed in Note 19 – Income Taxes and
- the recognition of a provision of $735,000 relating to additional alternative minimum tax (“AMT”) included in benefits for income taxes as also discussed in Note 19.

The net effect of these changes in accounting estimates increased income from continuing operations by $2,415,000 and net income by $2,415,000 for the nine and three months ended September 30, 2007. In addition, these changes in accounting estimates increased basic and diluted net income per share by $.13 and $.11, respectively, for the nine months ended September 30, 2007 and $.12 and $.10, respectively, for the three months ended September 30, 2007.

Note 4: Cash and Cash Equivalents Short-term investments, which consist of highly liquid investments with average original maturities of three months or less, are considered cash equivalents. We primarily utilize a cash management system with a series of separate accounts consisting of several “zero-balance” disbursement accounts for funding of payroll and accounts payable. As a result of our cash management system, checks issued, but not presented to the banks for payment, may create negative book cash balances. These negative book cash balances are included in current portion of long-term debt since these accounts are funded primarily by our Working Capital Revolver Loan. Outstanding checks in excess of related book cash balances were $5,849,000 at December 31, 2006 (none at September 30, 2007).

Table of Contents

Note 5: Accounts Receivable

	September 30, 2007	December 31, 2006
	(In Thousands)	
Trade receivables	$ 88,217	$ 68,165
Other	1,289	1,675
	89,506	69,840
Allowance for doubtful accounts	(2,637)	(2,269)
	$ 86,869	$ 67,571

Note 6: Inventories Inventories are priced at the lower of cost or market, with cost being determined using the first-in, first-out ("FIFO") basis. Finished goods and work-in-process inventories include material, labor, and manufacturing overhead costs. At September 30, 2007 and December 31, 2006, inventory reserves for certain slow-moving inventory items (primarily Climate Control products) were $549,000 and $829,000, respectively. In addition, inventory reserves for certain nitrogen-based inventories provided by our Chemical Business were $19,000 and $426,000, at September 30, 2007 and December 31, 2006, respectively, because cost exceeded the net realizable value.

Changes in our inventory reserves are as follows:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Balance at beginning of period	$ 1,255	$ 2,423	$ 847	$ 1,556
Deduct: Realization of losses	(360)	(905)	(15)	(366)
Deduct: Write-offs/disposals	(327)	(328)	(264)	-
Balance at end of period	$ 568	$ 1,190	$ 568	$ 1,190

The realization of losses is a reduction to cost of sales in the accompanying condensed consolidated statements of income.

Note 7: Precious Metals Precious metals are used as a catalyst in the Chemical Business manufacturing process. Precious metals are carried at cost, with cost being determined using the FIFO basis. Because some of the catalyst consumed in the production process cannot be readily recovered and the amount and timing of recoveries are not predictable, we follow the practice of expensing precious metals as they are consumed. For nine months ended September 30, 2007 and 2006, the amounts expensed for precious metals were approximately $4,779,000 and $3,729,000, respectively. For the three months ended September 30, 2007 and 2006, the amounts expensed were approximately $1,665,000and $1,173,000, respectively. These precious metals expenses are included in cost of sales in the accompanying condensed consolidated statements of income. Occasionally, during major maintenance and/or capital projects, we may be able to perform procedures to recover precious metals (previously expensed) which have accumulated over time within the manufacturing equipment. For the nine months ended September 30, 2007

Note 7: Precious Metals (continued)

and 2006, we recognized recoveries of precious metals at historical FIFO costs of approximately $1,233,000 and $2,082,000, respectively. For the three months ended September 30, 2006, we recognized recoveries of precious metals at historical FIFO costs of approximately $1,077,000. (none in the third quarter of 2007), respectively. When we accumulate precious metals in excess of our production requirements, we may sell a portion of the excess metals. We recognized gains of $1,876,000 and $1,387,000 for the nine and three months ended September 30, 2007 (none in 2006) from the sale of excess precious metals. These recoveries and gains are reductions to cost of sales.

Note 8: Debt Issuance and Other Debt-Related Costs, net During the nine months ended September 30, 2007, we incurred debt issuance costs of $3,169,000 relating primarily to the 5.5% Convertible Senior Subordinated Debentures due 2012 (the “2007 Debentures”). In addition, the remaining portion of the 7% Convertible Senior Subordinated Debentures due 2011 (the “2006 Debentures”) was converted into our common stock as discussed in Note 12 - Long-Term Debt. As a result of the conversions, approximately $266,000 of the remaining debt issuance costs, net of amortization, associated with the 2006 Debentures were charged against capital in excess of par value during the nine months ended September 30, 2007. Also see discussion in Note 17 - Derivatives, Hedges and Financial Instruments concerning our interest rate cap contracts. Also see Note 23 - Subsequent Event for a discussion concerning certain debt-related costs associated with a loan to be repaid.

Note 9: Investment in Affiliate Cepolk Holding, Inc. (“CHI”), a subsidiary of the Company, is a limited partner and has a 50% equity interest in Cepolk Limited Partnership (“Partnership”) which is accounted for on the equity method. The Partnership owns an energy savings project located at the Ft. Polk Army base in Louisiana (“Project”). As of September 30, 2007, the Partnership and general partner to the Partnership is indebted to a term lender (“Term Lender”) of the Project. CHI has pledged its limited partnership interest in the Partnership to the Term Lender as part of the Term Lender’s collateral securing all obligations under the loan. This guarantee and pledge is limited to CHI’s limited partnership interest and does not expose CHI or the Company to a liability in excess of CHI’s limited partnership interest. No liability has been established for this pledge since it was entered into prior to adoption of FASB Interpretation No. 45 (“FIN 45”). CHI has no recourse provisions or available collateral that would enable CHI to recover its partnership interest should the Term Lender be required to perform under this pledge.

Note 10: Product Warranty Our Climate Control Business sells equipment that has an expected life, under normal circumstances and use that extends over several years. As such, we provide warranties after equipment shipment/start-up covering defects in materials and workmanship.

Generally, the base warranty coverage for most of the manufactured equipment in the Climate Control Business is limited to eighteen months from the date of shipment or twelve months from the date of start-up, whichever is shorter, and to ninety days for spare parts. The warranty provides that most equipment is required to be returned to the factory or an authorized representative and the warranty is limited to the repair and replacement of the defective product, with a maximum warranty of the refund of the purchase price. Furthermore, companies within the Climate Control Business generally disclaim and exclude warranties related to merchantability or fitness for any particular purpose and disclaim and exclude any liability for

Note 10: Product Warranty (continued)

consequential or incidental damages. In some cases, the customer may purchase or a specific product may be sold with an extended warranty. The above discussion is generally applicable to such extended warranties, but variations do occur depending upon specific contractual obligations, certain system components, and local laws.
Our accounting policy and methodology for warranty arrangements is to periodically measure and recognize the expense and liability for such warranty obligations using a percentage of net sales, based upon our historical warranty costs. It is possible that future warranty costs could exceed our estimates.

Changes in our product warranty obligation are as follows:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Balance at beginning of period	$ 1,251	$ 861	$ 1,521	$ 980
Add: Charged to expenses	2,097	1,362	762	656
Deduct: Expenses incurred	(1,838)	(1,005)	(773)	(418)
Balance at end of period	$ 1,510	$ 1,218	$ 1,510	$ 1,218

Note 11: Accrued and Other Liabilities

	September 30, 2007	December 31, 2006
	(In Thousands)	
Deferred income taxes	$ 6,550	$ -
Accrued payroll and benefits	6,452	4,170
Accrued property and income taxes	3,152	1,217
Deferred revenue on extended warranty contracts	3,233	2,426
Accrued commissions	2,809	2,565
Deferred rent expense	2,808	5,231
Customer deposits	2,705	2,938
Accrued insurance	2,385	1,646
Accrued contractual manufacturing obligations	1,946	1,801
Accrued death benefits	1,897	1,446
Accrued precious metals costs	1,659	1,068
Accrued warranty costs	1,510	1,251
Accrued interest	1,059	422
Accrued environmental remediation costs	525	1,432
Other	4,708	5,132
	43,398	32,745
Less noncurrent portion	13,126	5,929
Current portion of accrued and other liabilities	$ 30,272	$ 26,816

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 12: Long-Term Debt

	September 30, 2007	December 31, 2006
	(In Thousands)	
Senior Secured Loan due 2009 (A)	$ 50,000	$ 50,000
Working Capital Revolver Loan due 2009 - ThermaClime (B)	-	26,048
7% Convertible Senior Subordinated Notes due 2011 (C)	-	4,000
5.5% Convertible Senior Subordinated Notes due 2012 (D)	60,000	-
Other, with interest at rates of 4.25% to 9.36% most of which is secured by machinery, equipment and real estate	12,423	17,644
	122,423	97,692
Less current portion of long-term debt	2,703	11,579
Long-term debt due after one year	$ 119,720	$ 86,113

(A) ThermaClime and certain of its subsidiaries (the “Borrowers”) are parties of a $50 million term loan (“Senior Secured Loan”) with a certain lender (the “Lender”). The Senior Secured Loan is to be repaid as follows:

- quarterly interest payments which began September 30, 2004;
- quarterly principal payments of $312,500 which began October 1, 2007;
- a final payment of the remaining outstanding principal of $47.5 million and accrued interest on September 16, 2009.

The Senior Secured Loan accrues interest at a defined LIBOR rate plus a defined LIBOR margin or, at the election of the Borrowers, an alternative defined base rate plus a defined base rate margin with the annual interest rate not to exceed 11% or 11.5% depending on the leverage ratio. At September 30, 2007, the effective interest rate was 11%. See Note 23 - Subsequent Event for discussion of the negotiated new $50 million term loan (“Replacement Term Loan”) of which, the proceeds are to repay the Senior Secured Loan.
The Borrowers are subject to numerous covenants under the Senior Secured Loan agreement including, but not limited to, limitation on the incurrence of certain additional indebtedness and liens, limitations on mergers, acquisitions, dissolution and sale of assets, and limitations on declaration of dividends and distributions to us, all with certain exceptions. The Borrowers are also subject to a minimum fixed charge coverage ratio, measured quarterly on a trailing twelve-month basis. The Borrowers’ fixed charge coverage ratio exceeded the required minimum ratio for the twelve-month period ended September 30, 2007.

The maturity date of the Senior Secured Loan can be accelerated by the Lender upon the occurrence of a continuing event of default, as defined.

Under the terms of the Senior Secured Loan agreement, the prepayment fee of 1% was eliminated as of September 15, 2007.

Note 12: Long-Term Debt (continued)

The Senior Secured Loan is secured by a first lien on

- certain real property and equipment located at the El Dorado, Arkansas facility (“El Dorado Facility”),
- certain real property and equipment located at the Cherokee, Alabama facility (“Cherokee Facility”),
- certain equipment of the Climate Control Business, and
- the equity stock of certain of ThermaClime’s subsidiaries.

The Senior Secured Loan is also secured by a second lien on the assets upon which ThermaClime’s revolving credit facility lender has a first lien. The carrying value of the pledged assets is approximately $228 million at September 30, 2007. The Senior Secured Loan is guaranteed by the Company and is also secured with the stock of ThermaClime.

(B) ThermaClime and its subsidiaries ("the Borrowers") are parties of a $50 million revolving credit facility (the "Working Capital Revolver Loan") that provides for advances based on specified percentages of eligible accounts receivable and inventories for ThermaClime, and its subsidiaries. The Working Capital Revolver Loan, as amended, matures in April 2009. The Working Capital Revolver Loan accrues interest at a base rate (generally equivalent to the prime rate) plus .75% or LIBOR plus 2%. The interest rate at September 30, 2007 was 6.59% considering the impact of the interest rate cap contracts which set a maximum three-month LIBOR base rate of 4.59% on $30 million and mature on June 30, 2009. Interest is paid monthly. The facility provides for up to $8.5 million of letters of credit. All letters of credit outstanding reduce availability under the facility. As a result of using a portion of the proceeds from the 2007 Debentures to pay down the Working Capital Revolver Loan,
amounts available for additional borrowing under the Working Capital Revolver Loan at September 30, 2007 were $49 million. Under the Working Capital Revolver Loan, as amended, the lender also requires the borrowers to pay a letter of credit fee equal to 1% per annum of the undrawn amount of all outstanding letters of credit, an unused line fee equal to .5% per annum for the excess amount available under the facility not drawn and various other audit, appraisal and valuation charges. As discussed in Note 23 – Subsequent Event, the lenders to the Working Capital Revolver Loan agreed to modify certain conditions to the agreement in connection with the negotiated Replacement Term Loan.

The lender may, upon an event of default, as defined, terminate the Working Capital Revolver Loan and make the balance outstanding due and payable in full. The Working Capital Revolver Loan is secured by receivables, inventories and intangibles of all the ThermaClime entities other than DSN Corporation and El Dorado Nitric Company and its subsidiaries ("EDNC") and a second lien on certain real property and equipment. EDNC is neither a borrower nor guarantor of the Working Capital Revolver Loan. The carrying value of the pledged assets is approximately $213 million at September 30, 2007.

Note 12: Long-Term Debt (continued)

A prepayment premium equal to 1% of the facility is due to the lender should the borrowers elect to prepay the facility prior to April 13, 2008 and is eliminated thereafter.

The Working Capital Revolver Loan, as amended, requires ThermaClime and its Climate Control Business to meet certain financial covenants measured quarterly. ThermaClime and its Climate Control Business were in compliance with those covenants for the quarter ended September 30, 2007. The Working Capital Revolver Loan also contains covenants that, among other things, limit the Borrowers' (which does not include the Company) ability to:

- incur additional indebtedness,
- incur liens,
- make restricted payments or loans to affiliates who are not Borrowers,
- engage in mergers, consolidations or other forms of recapitalization,
- dispose assets, or
- repurchase ThermaClime's 10-3/4% Senior Unsecured Notes (the “Notes”).

The Working Capital Revolver Loan also requires all collections on accounts receivable be made through a bank account in the name of the lender or their agent.

In connection with the redemption of the Notes in July 2006, the lenders of the Working Capital Revolver Loan and the Senior Secured Loan provided consents to permit ThermaClime to borrow $6.4 million from the Company for the purpose of redeeming the Notes.

(C) On March 14, 2006, we completed a private placement to six qualified institutional buyers (“QIBs”) pursuant to which we sold $18 million aggregate principal amount of the 2006 Debentures. We used a placement agent for this transaction which we paid a fee of 6% of the aggregate gross proceeds received in the financing. Other offering expenses in connection with the transaction were $.4 million. As a result, the total debt issuance costs related to this transaction were $1.5 million.

During September through December 2006, $14 million of the 2006 Debentures were converted into 1,977,499 shares of our common stock at the conversion price of $7.08 per share. During the first four months of 2007, the remaining $4 million of the 2006 Debentures (which includes $1 million that was held by Jayhawk Capital Management and other Jayhawk entities, through their manager, Kent McCarthy (the “Jayhawk Group”), were converted into 564,790 shares of our common stock at the average conversion price of $7.082 per share.

(D) On June 28, 2007, we entered into a purchase agreement with each of twenty two QIBs, pursuant to which we sold $60 million aggregate principal amount of the 2007 Debentures in a private placement to the QIBs pursuant to the exemptions from the registration requirements of the Securities Act of 1933, as amended (the “Act”), afforded by Section 4(2) of the Act and Regulation D promulgated under the Act. The 2007 Debentures are eligible for resale by the investors under Rule144A under the Act. We received net proceeds of approximately $57 million, after discounts and commissions. In connection with

Note 12: Long-Term Debt (continued)

the closing, we entered into an indenture (the "Indenture") with UMB Bank, as trustee (the "Trustee"), governing the 2007 Debentures. The Trustee receives customary compensation from us for such services.

The 2007 Debentures bear interest at the rate of 5.5% per year and mature on July 1, 2012. Interest is payable in arrears on January 1 and July 1 of each year, beginning on January 1, 2008.

The 2007 Debentures are unsecured obligations and are subordinated in right of payment to all of our existing and future senior indebtedness, including indebtedness under our revolving debt facilities. The 2007 Debentures are effectively subordinated to all present and future liabilities, including trade payables, of our subsidiaries.

The 2007 Debentures are convertible by the holders in whole or in part into shares of our common stock prior to their maturity. The conversion rate of the 2007 Debentures for the holders electing to convert all or any portion of a debenture is 36.4 shares of our common stock per $1,000 principal amount of debentures (representing a conversion price of $27.47 per share of common stock), subject to adjustment under certain conditions as set forth in the Indenture.

We may redeem some or all of the 2007 Debentures at any time on or after July 2, 2010, at a price equal to 100% of the principal amount of the 2007 Debentures, plus accrued and unpaid interest, all as set forth in the Indenture. The redemption price will be payable at our option in cash or, subject to certain conditions, shares of our common stock (valued at 95% of the weighted average of the closing sale prices of the common stock for the 20 consecutive trading days ending on the fifth trading day prior to the redemption date), subject to certain conditions being met on the date we mail the notice of redemption.

If a designated event (as defined in the Indenture) occurs prior to maturity, holders of the 2007 Debentures may require us to repurchase all or a portion of their 2007 Debentures for cash at a repurchase price equal to 101% of the principal amount of the 2007 Debentures plus any accrued and unpaid interest, as set forth in the Indenture. If a fundamental change (as defined in the Indenture) occurs on or prior to June 30, 2010, under certain circumstances, we will pay, in addition to the repurchase price, a make-whole premium on the 2007 Debentures converted in connection with, or tendered for repurchase upon, the fundamental change. The make-whole premium will be payable in our common stock or the same form of consideration into which our common stock has been exchanged or converted in the fundamental change. The amount of the make-whole premium, if any, will be based on our stock price on the effective date of the fundamental change. No make-whole premium will be paid if our stock price in connection with the fundamental change is less than or equal to $23.00 per share.

At maturity, we may elect, subject to certain conditions as set forth in the Indenture, to pay up to 50% of the principal amount of the outstanding 2007 Debentures, plus all accrued and unpaid interest thereon to, but excluding, the maturity date, in shares of our common stock

Table of Contents

Note 12: Long-Term Debt (continued)

(valued at 95% of the weighted average of the closing sale prices of the common stock for the 20 consecutive trading days ending on the fifth trading day prior to the maturity date), if the common stock is then listed on an eligible market, the shares used to pay the 2007 Debentures and any interest thereon are freely tradable, and certain required opinions of counsel are received.

We have currently invested a portion of the net proceeds in money market investments and have used a portion of the net proceeds to redeem our outstanding shares of $3.25 Convertible Exchangeable Class C Preferred Stock, Series 2 (“Series 2 Preferred”); to repay certain outstanding mortgages and equipment loans; to pay accrued and unpaid dividends on our outstanding shares of Series B 12% Cumulative Convertible Preferred Stock (“Series B Preferred”) and Series D 6% Cumulative Convertible Class C Preferred Stock (“Series D Preferred”) all of which were owned by an affiliate; and the balance to initially reduce the outstanding borrowings under the Working Capital Revolver Loan. See Note 22 -Related Party Transactions for a discussion of amounts paid to affiliates and former affiliates in connection with the redemption and the dividends. In addition, we intend to use the remaining portion of the net proceeds for certain discretionary capital expenditures, repay higher interest-bearing debt and general working capital purposes.

In connection with using a portion of the net proceeds of the 2007 Debentures to initially reduce the outstanding borrowings under the Working Capital Revolver Loan, ThermaClime entered into a $25 million demand promissory note (“Demand Note”) with the Company. In addition, the Company, ThermaClime, and certain of its subsidiaries entered into a subordination agreement with the lender of the Senior Secured Loan which, among other things, states that the Demand Note is unsecured and subordinated to the Senior Secured Loan and allows for payments on the Demand Note by ThermaClime to the Company provided there is no potential default or event of default, as defined in the Senior Secured Loan.

In conjunction with the 2007 Debentures, we entered into a Registration Rights Agreement (the “5.5% Registration Rights Agreement”) with the QIBs. The term of the 5.5% Registration Rights Agreement ends on the earlier of the date that all registrable securities, as defined in the agreement, have ceased to be registrable securities and July 1, 2010.

We are required to use commercially reasonable efforts to cause the registration statement (“5.5% Registration Statement”) covering the 2007 Debentures to be declared effective by the SEC as promptly as is practicable, but in any event, no later than November 26, 2007. If the 5.5% Registration Statement is not declared effective by this date, the following liquidated damages, shall accrue for each day thereafter until the 5.5% Registration Statement is declared effective:

- 0.25% – Damages shall accrue at an annual percentage rate equal to 0.25% of the aggregate principal amount of each debenture, from the first day of the accrual period up to and including the 90th day (approximately $411 per day or a total of $36,900 at the end of 90 days); and

Note 12: Long-Term Debt (continued)

- 0.5% – Damages shall accrue at an annual percentage rate equal to 0.5% of the aggregate principal amount of each debenture, from and after the 91st day of the accrual period (approximately $822 per day), until the 5.5% Registration Statement is declared effective. The terms of the 5.5% Registration Rights Agreement provide no limitation to the maximum amount of liquidation damages. The terms of the 5.5% Registration Rights Agreement do not require us to issue shares of our equity securities relating to liquidated damages.

Liquidated damages are payable with respect to debentures that are outstanding as of the beginning of a liquidated damages accrual period. If a debenture has been converted into common stock prior to the beginning of a liquidated damages accrual period, no liquidated damages are payable with respect to the common stock issued upon such conversion.

In addition, we are obligated to update the 5.5% Registration Statement by filing a post-effective amendment. The filing of a post-effective amendment is required upon the filing of a Form 10-K or upon a "fundamental change" in the information described in the 5.5% Registration Statement. Pursuant to the terms of the 5.5% Registration Rights Agreement, the deadline for filing a post-effective amendment is determined by the event that triggers the obligation to file the post-effective amendment, as follows:

- within 10 business days after filing a Form 10-K with the SEC;
- within 10 business days after filing such report or reports disclosing a fundamental change to the SEC.

We are required to use commercially reasonable efforts to cause the post-effective amendment to be declared effective as promptly as is practicable, but in any event, no later than 60 days (90 days if the post-effective amendment is reviewed by the SEC) after such post-effective amendment is required to be filed. If, in spite of our commercially reasonable efforts, a post-effective amendment is not declared effective within the number of days required, the liquidated damages will accrue under the 5.5% Rights Agreement as described above, beginning on the first day after the post-effective amendment is required to be effective. However, we are permitted to suspend the availability of the 5.5% Registration Statement or prospectus for purposes of updating the information therein (a "Deferral Period") without incurring or accruing any liquidated damages, unless the Deferral Period exceeds (a) 30 days in any 90 day period, or (b) 90 days in any 12 month period, in which case, beginning on the first day following the last permissible day of the Deferral Period, liquidated damages at the rates of 0.25% and 0.5% shall apply, as described above, until the termination of the Deferral Period.

Because we currently estimate that we will not incur any liquidated damages relating to the 5.5% Registration Rights Agreement, no liability has been established as of September 30, 2007. We have filed the 5.5% Registration Statement, but as of the date of this report, it has not been declared effective by the SEC.

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 13: Contingencies We accrue for contingent losses when such losses are probable and reasonably estimable. In addition, we recognize contingent gains when such gains are realizable.

Following is a summary of certain legal matters involving the Company.

A. Environmental Matters

Our operations are subject to numerous environmental laws ("Environmental Laws") and to other federal, state and local laws regarding health and safety matters ("Health Laws"). In particular, the manufacture and distribution of chemical products are activities which entail environmental risks and impose obligations under the Environmental Laws and the Health Laws, many of which provide for certain performance obligations, substantial fines and criminal sanctions for violations. There can be no assurance that material costs or liabilities will not be incurred by us in complying with such laws or in paying fines or penalties for violation of such laws. The Environmental Laws and Health Laws and enforcement policies thereunder relating to our Chemical Business have in the past resulted, and could in the future result, in compliance expenses, cleanup costs, penalties or other liabilities relating to the handling, manufacture, use, emission, discharge or disposal of pollutants or other substances at or from our facilities or the use or disposal of certain of its chemical products. Historically, significant expenditures have been incurred by subsidiaries within our Chemical Business in order to comply with the Environmental Laws and Health Laws and are reasonably expected to be incurred in the future.

We are required to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be reasonably estimated in accordance with FIN 47. We have a legal obligation to monitor certain discharge water outlets at our Chemical Business facilities should we discontinue the operations of a facility. We also have certain facilities in our Chemical Business that contain asbestos insulation around certain piping and heated surfaces which we plan to maintain in an adequate condition to prevent leakage through our standard repair and maintenance activities. Since we currently have no plans to discontinue the use of these facilities and the remaining life of the facilities is indeterminable, an asset retirement liability has not been recognized. Currently, there is insufficient information to estimate the fair value of the asset retirement obligations. However, we will continue to review these obligations and record a liability when a reasonable estimate of the fair value can be made.

1. Discharge Water Matters

The El Dorado Facility within our Chemical Business generates process wastewater. The process water discharge and storm-water run off are governed by a state National Pollutant Discharge Elimination System ("NPDES") water discharge permit issued by the Arkansas Department of Environmental Quality ("ADEQ"), which permit is to be renewed every five years. The ADEQ issued to the El Dorado Facility a NPDES water discharge permit in 2004, and the El Dorado Facility had until June 1, 2007 to meet the compliance deadline for the more restrictive limits under the 2004 NPDES permit. In order to meet the El Dorado Facility's June 2007 limits, the El Dorado Facility has significantly reduced the effluent levels of its wastewater.

Note 13: Contingencies (continued)

In order to directly discharge its wastewater from the El Dorado Facility into the creek and to meet the June 2007 permit limits, the El Dorado Facility has conducted a study of the adjacent stream to determine whether a permit modification is appropriate. On September 22, 2006, the

Arkansas Pollution Control and Ecology Commission approved the results of the study that showed that the proposed permit modification is appropriate. A public hearing was held on the matter on November 13, 2006 with minimal opposition.

The El Dorado Facility has demonstrated its ability to comply with the more restrictive permit limits, and the rules which support the more restrictive dissolved minerals rules have been revised to authorize a permit modification to adopt achievable dissolved minerals permit limits. The ADEQ has orally agreed to issue a consent administrative order to authorize the El Dorado Facility to continue operations without incurring permit violations pending the modification of the permit to implement the revised rule and to allow the El Dorado Facility to continue to discharge its wastewater into the creek from and after June 1, 2007.

In addition, the El Dorado Facility has entered into a consent administrative order ("CAO") that recognizes the presence of nitrate contamination in the shallow groundwater at the El Dorado Facility. A new CAO to address the shallow groundwater contamination became effective on November 16, 2006 and requires the evaluation of the current conditions and remediation based upon a risk assessment. The CAO requires the El Dorado Facility to continue semi-annual groundwater monitoring, to continue operation of a groundwater recovery system and to submit a human health and ecological risk assessment to the ADEQ. The final remedy for shallow groundwater contamination, should any remediation be required, will be selected pursuant to the new CAO and based upon the risk assessment. As an interim measure, the El Dorado Facility has installed two recovery wells to recycle groundwater and to recover nitrates. The cost of any additional remediation that may be required will be determined based on the results of the investigation and risk assessment and cannot currently be reasonably estimated. Therefore, no liability has been established at September 30, 2007.

2. Air Matters

Under the terms of a consent administrative order relating to air matters ("AirCAO"), which became effective in February 2004, resolving certain air regulatory alleged violations associated with the El Dorado Facility's sulfuric acid plant and certain other alleged air emission violations, the El Dorado Facility is required to implement additional air emission controls at the El Dorado Facility no later than February 2010. We have decided to accelerate this capital expenditure and currently estimate the environmental compliance related expenditures to be between $6.0 and $6.5 million, to be expended through the third quarter of 2008.

In December 2006, the El Dorado Facility entered into a new CAO ("2006 CAO") with the ADEQ to resolve a problem with ammonia emissions from the East and West Nitric Acid Units. The catalyst suppliers had represented the volume of ammonia emissions anticipated. The representation was the basis for the permitted emission limit, but the representation of the catalyst suppliers was not accurate. The ADEQ allowed the El Dorado Facility to re-evaluate the

Note 13: Contingencies (continued)

catalyst performance. Until the permit is modified, the 2006 CAO authorizes the El Dorado Facility to continue to operate the East and West Nitric Acid Units (even though the El Dorado Facility is running out of compliance with the permitted emission limit for ammonia), provided that during this period of time, the El Dorado Facility is required to monitor and report the ammonia under the 2006 CAO on a monthly basis.

3. Other Environmental Matters

In April 2002, Slurry Explosive Corporation (“Slurry”), later renamed Chemex I Corp., a subsidiary within our Chemical Business, entered into a Consent Administrative Order (“Slurry Consent Order”) with the Kansas Department of Health and Environment (“KDHE”), regarding Slurry’s Hallowell, Kansas manufacturing facility (“Hallowell Facility”). The Slurry Consent Order addressed the release of contaminants from the facility into the soils and groundwater and surface water at the Hallowell Facility. There are no known users of the groundwater in the area. The adjacent strip pit is used for fishing. Under the terms of the Slurry Consent Order, Slurry is required to, among other things, submit an environmental assessment work plan to the KDHE for review and approval, and agree with the KDHE as to any required corrective actions to be performed at the Hallowell Facility.

In connection with the sale of substantially all of the operating assets of Slurry and Universal Tech Corporation (“UTeC”) in December 2002, which was accounted for as discontinued operations, both subsidiaries within our Chemical Business, UTeC leased the Hallowell Facility to the buyer under a triple net long-term lease agreement. However, Slurry retained the obligation to be responsible for, and perform the activities under, the Slurry Consent Order. In addition, certain of our subsidiaries agreed to indemnify the buyer of such assets for these environmental matters. The successor (“Chevron”) of the prior owner of the Hallowell Facility has agreed, within certain limitations, to pay and has been paying one-half of the costs of certain interim remediation measures at the site approved by the KDHE, subject to reallocation.

Based on additional modeling of the site, Slurry and Chevron are pursuing a course with the KDHE of long-term surface and ground water monitoring to track the natural decline in contamination, instead of the soil excavation proposed previously. On September 12, 2007, the KDHE approved our proposal to perform two years of surface and groundwater monitoring and to implement a Mitigation Work Plan to acquire additional field data in order to more accurately characterize the nature and extent of contaminant migration off-site. The two-year monitoring program will terminate in February 2009. As a result of receiving approval from the KDHE for our proposal, we recognized a reduction in our share of the estimated costs associated with this remediation by $377,000. This reduction is included in the net income from discontinued operations of $348,000 and $377,000 for the nine and three months ended September 30, 2007, respectively (in accordance with SFAS 144 – Accounting for the Impairment or Disposal of Long-Lived Assets).

At September 30, 2007, the total estimated liability (which is included in current and noncurrent accrued and other liabilities) in connection with this remediation matter is approximately $492,000 and Chevron’s share for one-half of these costs (which is included in accounts receivable and other assets) is approximately $246,000. These amounts are not discounted to

Note 13: Contingencies (continued)

their present value. It is reasonably possible that a change in estimate of our liability and receivable will occur in the near term.

B. Other Pending, Threatened or Settled Litigation

1. Chemical Business

In 2005, El Dorado Company ("EDC") sued the general partners of Dresser Rand Company, Ingersoll-Rand Company and DR Holdings Corp., and an individual employee of Dresser Rand Company, in connection with its faulty repair of a hot gas expander of one of EDC's nitric acid plants. As a result of defects in the repair, on October 8, 2004, the hot gas expander failed, leading to a fire at the nitric acid plant. The lawsuit is styled El Dorado Chemical Company, et al v. Ingersoll-Rand Company (NJ), et al. in the Union County Arkansas Circuit Court. A trial was held in October 2006 resulting in a jury verdict awarding EDC approximately $9.8 million in damages. The Defendants filed a Notice to Appeal and filed a $10.7 million bond. EDC will pay attorneys fees equal to approximately 32% of any recovery. We will recognize the jury award if and when realized.

The Company and its subsidiary, Cherokee Nitrogen Company ("CNC"), entered into a Settlement Agreement and Release on September 24, 2007, with Dynegy, Inc. ("Dynegy"), Dynegy's subsidiary, Dynegy Marketing and Trade ("DMT"), and Nelson Brothers, LLC ("Nelson"), to settle the lawsuit previously reported, titled Nelson Brothers, LLC v. Cherokee Nitrogen v. Dynegy Marketing, which was pending in Alabama state court in Colbert County, Alabama (the "Lawsuit"). Dynegy had filed a counterclaim against CNC for $580,000 allegedly owed on account, which had been recorded by CNC. The settlement resulted in the dismissal with prejudice of all matters in the Lawsuit and the net payment (after payments to Nelson and legal fees and expenses) received by CNC of approximately $2,692,000, as well as allow CNC to retain the disputed $580,000 account payable. As previously disclosed, Nelson agreed to settle its portion of the lawsuit with CNC by CNC agreeing to pay Nelson 25% of the net proceeds (after costs) that are received by CNC from Dynegy in connection with a settlement or resolution of this lawsuit.

As a result of this settlement, for the nine and three months ended September 30, 2007, we recognized income of $3,272,000 which is included in other income in the accompanying statements of income.

CNC has filed suit against Meecorp Capital Markets, LLC ("Meecorp") and Lending Solutions, Inc. in Alabama State Court, in Etowah County, Alabama, for recovery of actual damages of $140,000 plus punitive damages, relating to a loan transaction. Meecorp counterclaimed for the balance of an alleged commitment fee of $100,000, an alleged equity kicker of $200,000 and $3,420,000 for loss of opportunity. CNC is vigorously pursuing this matter, and counsel for CNC has advised that they believe there is a good likelihood CNC will recover from the defendants and that the likelihood of Meecorp recovering from CNC is remote.

Note 13: Contingencies (continued)

2. Other

Zeller Pension Plan

In February 2000, the Company's Board of Directors authorized management to proceed with the sale of the automotive products business, since the automotive products business was no longer a "core business" of the Company. In May 2000, the Company sold substantially all of its assets in its automotive products business. After the authorization by the board, but prior to the sale, the automotive products business purchased the assets and assumed certain liabilities of Zeller Corporation ("Zeller"). The liabilities of Zeller assumed by the automotive products business included Zeller's pension plan, which is not a multi-employer pension plan. In June 2003, the principal owner ("Owner") of the buyer of the automotive products business was contacted by a representative of the Pension Benefit Guaranty Corporation ("PBGC") regarding the plan. The Owner was informed by the PBGC of a possible under-funding of the plan and a possible takeover of the plan by the PBGC. The PBGC previously advised the Company that the PBGC may consider the Company to be potentially liable for the under-funding of the Zeller Plan in the event that the plan is taken over by the PBGC and alleged that the under-funding is approximately $600,000. The Company's ERISA counsel was verbally informed by a PBGC representative that he would probably recommend no further action by the PBGC with respect to the Company's involvement with the Zeller plan. However, because we have received no written confirmation from the PBGC, there are no assurances that the PBGC will not assert a claim against the Company with respect to the Zeller plan.

MEI Drafts

Masinexportimport Foreign Trade Company ("MEI") has given notice to the Company and a subsidiary of the Company alleging that it was owed $1,533,000 in connection with MEI's attempted collection of ten non-negotiable bank drafts payable to the order of MEI. The bank drafts were issued by Aerobit Ltd. ("Aerobit"), a non-U.S. company, which at the time of issuance of the bank drafts, was a subsidiary of the Company. Each of the bank drafts has a face value of $153,300, for an aggregate principal face value of $1,533,000. The bank drafts were issued in September 1992, and had a maturity date of December 31, 2001. Each bank draft was endorsed by LSB Corp., which at the time of endorsement, was a subsidiary of the Company.

On October 22, 1990, a settlement agreement between the Company, its subsidiary Summit Machine Tool Manufacturing Corp. ("Summit"), and MEI (the "Settlement Agreement"), was entered into, and in connection with the Settlement Agreement, Summit issued to MEI obligations totaling $1,533,000. On May 16, 1992, the Settlement Agreement was rescinded by the Company, Summit, and MEI at the request of MEI, and replaced with an agreement purportedly substantially similar to the Settlement Agreement between MEI and Aerobit, pursuant to which MEI agreed to replace the original $1,533,000 of Summit's obligations with Aerobit bank drafts totaling $1,533,000, endorsed by LSB Corp. Aerobit previously advised us that MEI has not fulfilled the requirements under the bank drafts for payment thereof. All of the Company's ownership interest in LSB Corp. was sold to an unrelated third party in September 2002. Further, all of the Company's interest in Aerobit was sold to a separate unrelated third party, in a transaction completed on or before November 2002. Accordingly, neither Aerobit,

Note 13: Contingencies (continued)

which was the issuer of the bank drafts, nor LSB Corp., which was the endorser of the bank drafts, are currently subsidiaries of the Company.

The Company has received a letter from an attorney purporting to represent an entity which is purportedly the assignee of claims of MEI demanding payment of the drafts and threatening litigation.

Neither the Company nor any of its currently owned subsidiaries are makers or endorsers of the bank drafts in question. The Company intends to vigorously defend itself in connection with this matter. No liability has been established relating to these bank drafts as of September 30, 2007.

Dividends on Series 2 Preferred

As discussed in Note 15 – Completion of Redemption of Series 2 Preferred, during July 2007, we mailed to all holders of record of our Series 2 Preferred a notice of redemption of all of the outstanding shares of Series 2 Preferred. The redemption of our Series 2 Preferred was completed on August 27, 2007, the redemption date. The terms of the Series 2 Preferred required that for each share of Series 2 Preferred so redeemed, we would pay, in cash, a redemption price equal to $50.00 plus $26.25 representing accrued and unpaid dividends thereon pro-rata to the date of redemption. There were 193,295 shares of Series 2 Preferred outstanding, net of treasury stock, as of the date the notice of redemption was mailed. Pursuant to the terms of the Series 2 Preferred, the holders of the Series 2 Preferred could convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. If a holder of the Series 2 Preferred elected to convert his, her or its shares into our common stock pursuant to its terms, the Certificate of Designations for the Series 2 Preferred provided, and it is our position, that the holder that so converts would not be entitled to receive payment of any accrued and unpaid dividends on the shares so converted. The Jayhawk Group, one of our largest stockholders and former affiliate of ours, converted 155,012 shares of Series 2 Preferred into 671,046 shares of common stock. As of September 30, 2007, the Jayhawk Group beneficially owned 3,002,584 shares of our common stock. The Jayhawk Group has advised us that it may bring legal action against us for all accrued and unpaid dividends on the shares of Series 2 Preferred that it converted after receipt of the notice of redemption.

C. Other Claims and Legal Actions

Short-Swing Profit Claim

We received a letter dated May 23, 2007 from a law firm representing a stockholder of ours demanding that we investigate potential short-swing profit liability under Section 16(b) of the Exchange Act of the Jayhawk Group. The stockholder alleges that the surrender by the Jayhawk Group of 180,450 shares of our Series 2 Preferred in our issuer exchange tender offer in March 2007 was a sale which was subject to Section 16 and matchable against prior purchases of Series 2 Preferred by the Jayhawk Group. The Jayhawk Group advised us that they do not believe that they are liable for short-swing profits under Section 16(b). The provisions of Section 16(b) provide that if we do not file a lawsuit against the Jayhawk Group in connection with these

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 13: Contingencies (continued)

Section 16(b) allegations within 60 days from the date of the stockholder's notice to us, then the stockholder may pursue a Section 16(b) short-swing profit claim on our behalf. We engaged our outside corporate/securities counsel to investigate this matter. After completion of this investigation, we attempted to settle the matter with the Jayhawk Group but were unable to reach a resolution satisfactory to all parties. On October 9, 2007, the law firm representing the stockholder initiated a lawsuit against the Jayhawk Group pursuing a Section 16(b) short-swing profit claim on our behalf up to approximately $819,000.

Business Interruption and Property Insurance Claims

1. El Dorado Facility

Beginning in October 2004 and continuing into June 2005, the Chemical Business' results were adversely affected as a result of the loss of production due to a mechanical failure of one of the four nitric acid plants at the El Dorado, Arkansas plant. The plant was restored to normal production in June 2005. We filed a property damage insurance claim for $3.8 million, net of a $1 million deductible. We also filed a business interruption claim for $5 million, net of the forty-five day waiting period. The insurers paid claims totaling $5.5 million; however, the insurers are contesting our remaining claims. For the nine and three months ended September 30, 2006, we realized insurance recoveries of $882,000 and $287,000, respectively, relating to this business interruption claim which is recorded as a reduction to cost of sales.

2. Cherokee Facility

As a result of damage caused by Hurricane Katrina, the natural gas pipeline servicing the Cherokee Facility suffered damage and the owner of the pipeline declared an event of Force Majeure. This event of Force Majeure caused curtailments and interruption in the delivery of natural gas to the Cherokee Facility. CNC's insurer was promptly put on notice of a claim, but the quantification of the claim amount took time and involved the retention of a gas market expert and a business interruption consultant.

On September 25, 2006, CNC filed a contingent business interruption claim. CNC is in discussions with, and providing additional documentation to, the forensic accountant hired by CNC's insurers to examine the claim. For the nine and three months ended September 30, 2007, we received insurance recoveries of $1,500,000 relating to this business interruption claim which are recorded as a reduction to cost of sales. Additional recoveries relating to this claim, if any, will be recognized when realized.

Securities and Exchange Commission Inquiry

The Securities and Exchange Commission ("SEC") made an informal inquiry to the Company by letter dated August 15, 2006. The inquiry relates to the restatement of the Company's consolidated financial statements for the year ended December 31, 2004 and accounting matters relating to the change in inventory accounting from LIFO to FIFO. The Company has responded to the inquiry. At the present time, the informal inquiry is not a pending proceeding nor does it

Note 13: Contingencies (continued)

rise to the level of a government investigation. Until further communication and clarification with the SEC, if any, the Company is unable to determine:

- if the inquiry will ever rise to the level of an investigation or proceeding, or
- the materiality to the Company's financial position with respect to enforcement actions, if any, the SEC may have available to it.

Other

We are also involved in various other claims and legal actions which in the opinion of management, after consultation with legal counsel, if determined adversely to us, would not have a material effect on our business, financial condition or results of operations.

Note 14: Completion of Tender Offer On November 10, 2006, the Company entered into an agreement ("Jayhawk Agreement") with the Jayhawk Group. Under the Jayhawk Agreement, the Jayhawk Group agreed to tender (discussed below) 180,450 shares of the 346,662 shares of the Series 2 Preferred, if the Company made an exchange or tender offer for the Series 2 Preferred. In addition, as a condition to the Jayhawk Group's obligation to tender such shares of Series 2 Preferred in an exchange/tender offer, the Jayhawk Agreement further provided that Jack E. Golsen (Chairman of the Board and CEO of the Company), his wife, children (including Barry H. Golsen, our President) and certain entities controlled by them (the "Golsen Group") would exchange only 26,467 of the 49,550 shares of Series 2 Preferred beneficially owned by them. As a result, only 309,807 of the 499,102 shares of Series 2 Preferred outstanding would be eligible to participate in an exchange/tender offer, with the remaining 189,295 being held by the Jayhawk Group and the Golsen Group.

On January 26, 2007, our Board of Directors approved and on February 9, 2007, we began a tender offer to exchange shares of our common stock for up to 309,807 of the 499,102 outstanding shares of the Series 2 Preferred. The tender offer expired on March 12, 2007 and our Board of Directors accepted the shares tendered on March 13, 2007. The terms of the tender offer provided for the issuance by the Company of 7.4 shares of common stock in exchange for each share of Series 2 Preferred tendered in the tender offer and the waiver of all rights to accrued and unpaid dividends on the Series 2 Preferred tendered. As a result of this tender offer, we issued 2,262,965 shares of our common stock for 305,807 shares of Series 2 Preferred that were tendered. In addition, the total amount of accrued and unpaid dividends waived on the Series 2 Preferred tendered was approximately $7.3 million ($23.975 per share).

Because the exchanges under the tender offer were pursuant to terms other than the original terms, the transactions were considered extinguishments of the preferred stock. Also the transactions qualified as induced conversions under SFAS 84 – Induced Conversions of Convertible Debt. Accordingly, we recorded a charge (stock dividend) to accumulated deficit of approximately $12.3 million which equaled the excess of the fair value of the common stock issued over the fair value of the common stock issuable pursuant to the original conversion terms. To measure fair value, we used the closing price of our common stock on March 13, 2007. For purposes of computing income per common share for the nine months ended September 30, 2007, net income was reduced by approximately $5 million relating to the tender offer which

Note 14: Completion of Tender Offer (continued)

represents the total amount of stock dividends recorded less the total amount of unpaid dividends waived.

Included in the amounts discussed above and pursuant to the Jayhawk Agreement and the terms of the tender offer, the Jayhawk Group and the Golsen Group tendered 180,450 and 26,467 shares, respectively, of Series 2 Preferred for 1,335,330 and 195,855 shares, respectively, of our common stock. In addition, the total amount of accrued and unpaid dividends waived on these shares of Series 2 Preferred tendered was approximately $4.96 million with the Jayhawk Group waiving a total of $4.33 million and the Golsen Group waiving a total of $0.63 million.

No fractional shares were issued so cash was paid in lieu of any additional shares in an amount equal to the fraction of a share times the closing price per share of our common stock on the last business day immediately preceding the expiration date of the tender offer.

Note 15: Completion of Redemption of Series 2 Preferred On July 11, 2007, our Board of Directors approved the redemption of all of our outstanding Series 2 Preferred. We mailed a notice of redemption to all holders of record of our Series 2 Preferred on July 12, 2007. The redemption date was August 27, 2007, and each share of Series 2 Preferred that was redeemed received a redemption price of $50.00 plus $26.25 per share in accrued and unpaid dividends pro-rata to the date of redemption.

The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. If a holder converted its shares of Series 2 Preferred, the holder was not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted. As a result, 167,475 shares of Series 2 Preferred were converted (of which 155,012 shares were converted by the Jayhawk Group) into 724,993 shares of our common stock (of which 671,046 shares were issued to the Jayhawk Group).

As a result of the conversions, only 25,820 shares of Series 2 Preferred were redeemed (of which 23,083 shares were held by the Golsen Group) for a total redemption price of $1,291,000 (of which approximately $1,154,000 was paid to the Golsen Group). In addition, we paid approximately $678,000 in accrued and unpaid dividends (of which approximately $606,000 was paid to the Golsen Group). The shares of the Series 2 Preferred were redeemed using a portion of the net proceeds of the 2007 Debentures.

No fractional shares were issued so cash was paid in lieu of any additional shares in an amount equal to the fraction of a share times the closing price per share of our common stock on the day the respective shares were converted.

Note 16: Stock Options Receiving Stockholders' Approval We account for stock options in accordance with SFAS 123 (revised 2004), Share-Based Payment ("SFAS 123(R)") using the modified prospective method. On June 19, 2006, the Compensation and Stock Option Committee of our Board of Directors granted 450,000 shares of non-qualified stock options (the "Options") to certain Climate Control Business employees which were subject to shareholders' approval.

Note 16: Stock Options Receiving Stockholders' Approval (continued)

The option price of the Options is $8.01 per share which is based on the market value of our common stock at the date the Board of Directors granted the shares (June 19, 2006). The Options vest over a ten-year period at a rate of 10% per year and expire on September 16, 2016 with certain restrictions. Under SFAS 123(R), the fair value for the Options was estimated, using an option pricing model, as of the date we received shareholders' approval which occurred during our 2007 annual shareholders' meeting on June 14, 2007. Under SFAS 123(R) for accounting purposes, the grant date and service inception date is June 14, 2007.

The total fair value for the Options was estimated to be $6,924,000, or $15.39 per share, using a Black-Scholes-Merton option pricing model with the following assumptions:

- risk-free interest rate of 5.16% based on an U.S. Treasury zero-coupon issue with a term approximating the estimated expected life as of the grant date;
- a dividend yield of 0 based on historical data;
- volatility factors of the expected market price of our common stock of 24.7% based on historical volatility of our common stock since it has been traded on the American Stock Exchange, and;
- a weighted average expected life of the options of 5.76 years based on the historical exercise behavior of these employees.

As of June 14, 2007, we began amortizing the total estimated fair value of the Options to selling, general, and administrative expense ("SG&A") which will continue through June 2016 (the remaining vesting period). As a result, we incurred stock-based compensation expense of $228,000 and $192,000 (related tax effects were minimal) for the nine and three months ended September 30, 2007, respectively. As of September 30, 2007, 25,000 shares of the Options had been exercised and 20,000 shares of the Options were exercisable. For the nine months ended September 30, 2007, the total fair value of the Options vested was $692,000.

Note 17: Derivatives, Hedges and Financial Instruments We account for derivatives in accordance with SFAS No. 133 which requires the recognition of derivatives in the balance sheet and the measurement of these instruments at fair value. Changes in fair value of derivatives are recorded in results of operations unless the normal purchase or sale exceptions apply or hedge accounting is elected.

In 1997, we entered into an interest rate forward agreement to effectively fix the interest rate of a long-term lease commitment (not for trading purposes). In 1999, we executed a long-term lease agreement (initial lease term of ten years) and terminated the forward agreement at a net cost of $2.8 million. We historically accounted for this cash flow hedge under the deferral method (as an adjustment of the initial term lease rentals). Upon adoption of SFAS No. 133 in 2001, the remaining deferred cost amount was reclassified from other assets to accumulated other comprehensive loss and is being amortized to operations over the term of the lease arrangement. At September 30, 2007 and December 31, 2006, accumulated other comprehensive loss consisted of the remaining deferred cost of $483,000 and $701,000, respectively. The amount amortized to operations was $218,000 and $73,000 for the nine and three-month periods ended September 30, 2007, respectively, and $217,000 and $72,000 for the nine and three months

Note 17: Derivatives, Hedges and Financial Instruments (continued)

ended September 30, 2006, respectively. There were no income tax benefits related to these expenses.

In 2005, we purchased two interest rate cap contracts for a cost of $590,000 on $30 million of debt which mature in March 2009. In April 2007, we purchased two interest rate cap contracts for a cost of $621,000 on $50 million of debt which mature in April 2012. These contracts are free-standing derivatives and are accounted for on a mark-to-market basis in accordance with SFAS No.133. At September 30, 2007 and December 31, 2006, the market values of these contracts were $765,000 and $385,000, respectively, and are included in other assets in the accompanying condensed consolidated balance sheets. For the nine and three months ended September 30, 2007, the fair value of these contracts decreased $241,000 and $548,000, respectively. For the nine and three months ended September 30, 2006, the fair value decreased $11,000 and $348,000, respectively. The changes in the value of these contracts are included in interest expense. For the nine months ended September 30, 2007, cash used to purchase the 2007 contracts is included in cash used by continuing investing activities in the accompanying consolidated statement of cash flows.

Raw materials for use in our manufacturing processes include copper used by our Climate Control Business and natural gas used by our Chemical Business. As part of our raw material price risk management, we periodically enter into exchange-traded futures contracts for these materials, which contracts are generally accounted for on a mark-to-market basis in accordance with SFAS No. 133. At September 30, 2007, the unrealized gains were $133,000 and are included in supplies, prepaid items and other. At December 31, 2006, the unrealized losses were $408,000 and are included in accrued and other liabilities. The unrealized gains and losses are classified as current in the accompanying condensed consolidated balance sheets as the terms of these contracts are for periods of twelve months or less. For the nine and three months ended September 30, 2007, we incurred losses of $456,000 and $480,000, respectively, on such contracts. For the nine and three months ended September 30, 2006, we incurred losses of $992,000 and $233,000, respectively. These losses are included in cost of sales. In addition, the cash flows relating to these contracts are included in cash flows from continuing operating activities.

Note 18: Income Per Common Share Net income applicable to common stock is computed by adjusting net income by the amount of preferred stock dividend requirements and stock dividends. Basic income per common share is based upon net income applicable to common stock and the weighted average number of common shares outstanding during each period.

Diluted income per share is based on net income applicable to common stock plus preferred stock dividend requirements on preferred stock assumed to be converted, if dilutive, and interest expense including amortization of debt issuance costs, net of income taxes, on convertible debt assumed to be converted, if dilutive, and the weighted average number of common shares and dilutive common equivalent shares outstanding, and the assumed conversion of dilutive convertible securities outstanding.

Note 18: Income Per Common Share (continued)

On June 28, 2007, we sold $60 million of convertible debt. In addition, we received shareholders' approval in granting 450,000 shares of non-qualified stock options on June 14, 2007.

During the nine months ended September 30, 2007, the remaining $4,000,000 of the 2006 Debentures was converted into 564,790 shares of common stock. In addition, we issued 2,262,965 shares of common stock for 305,807 shares of our Series 2 Preferred that were tendered pursuant to a tender offer. Also during the nine and three months ended September 30, 2007, pursuant to our notice of redemption, we redeemed 25,820 shares of our Series 2 Preferred and issued 724,993 shares of common stock for 167,475 shares of our Series 2 Preferred.

During the nine and three months ended September 30, 2007, we paid cash dividends of approximately $678,000 on the shares of Series 2 Preferred which we redeemed. In addition, our board of directors declared and we paid dividends on the Series B Preferred, Series D Preferred and noncumulative redeemable preferred stock totaling approximately $1,890,000, $360,000 and $6,000, respectively. As a result, there were no unpaid dividends in arrears at September 30, 2007.

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 18: Income Per Common Share (continued)

The following table sets forth the computation of basic and diluted net income per common share:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(Dollars In Thousands, Except Per Share Amounts)			
Numerator:				
Numerator for basic net income per common share - net income applicable to common stock	$ 36,727	$ 11,119	$ 18,093	$ 2,986
Preferred stock dividend requirements on preferred stock assumed to be converted, if dilutive	637	1,655	203	551
Interest expense including amortization of debt issuance costs, net of income taxes, on convertible debt assumed to be converted	1,007	858	924	373
Numerator for diluted net income per common share	$ 38,371	$ 13,632	$ 19,220	$ 3,910
Denominator:				
Denominator for basic net income per common share - weighted-average shares	19,150,030	13,838,989	20,220,419	13,979,342
Effect of dilutive securities:				
Convertible preferred stock	1,657,335	3,567,700	1,414,784	3,564,832
Stock options	1,222,133	1,272,219	1,154,480	1,289,617
Convertible notes payable	870,725	2,317,041	2,188,000	2,443,122
Warrants	90,241	62,029	94,209	69,053
Dilutive potential common shares	3,840,434	7,218,989	4,851,473	7,366,624
Denominator for diluted net income per common share - adjusted weighted-average shares and assumed conversions	22,990,464	21,057,978	25,071,892	21,345,966
Basic net income per common share	$ 1.92	$ .80	$ .89	$ .21
Diluted net income per common share	$ 1.67	$ .65	$ .77	$ .18

Note 18: Income Per Common Share (continued)

The following weighted-average shares of securities were not included in the computation of diluted net income per common share as their effect would have been antidilutive:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
Convertible preferred stock	348,120	-	-	-
Stock options	177,747	-	444,293	-
	525,867	-	444,293	-

Note 19: Income Taxes We and certain of our subsidiaries file income tax returns in the U.S. federal jurisdiction and various state jurisdictions. The federal tax returns for 1994 through 2002 remain subject to examination for the purpose of determining the amount of remaining tax net operating loss ("NOL") and other carryforwards. With few exceptions, the 2004-2007 years remain open for all purposes of examination by the IRS and other major tax jurisdictions.

At December 31, 2006, we had regular NOL carryforwards of approximately $49.9 million that begin expiring in 2019 and alternative minimum tax NOL carryforwards of approximately $31.9 million. We account for income taxes under the provision of SFAS No. 109 - Accounting for Income Taxes ("SFAS 109") which requires recognition of future tax benefits (NOL carryforwards and other temporary differences), subject to a valuation allowance if it is determined that it is more-likely-than-not that such asset will not be realized. In determining whether it is more-likely-than-not that we will not realize such tax asset, SFAS 109 requires that all negative and positive evidence be considered (with more weight given to evidence that is "objective and verifiable") in making the determination. Prior to September 30, 2007, we had valuation allowances in place against the net deferred tax assets arising from the NOLs and other temporary differences. However, as the result of improving financial results including some unusual transactions (settlement of pending litigation and insurance recovery of business interruption claim) in the quarter ended September 30, 2007 and our current expectation of generating taxable income in the future, we reversed valuation allowances of approximately $3.2 million as a benefit for income taxes and recognized a deferred tax asset of approximately $9.7 million and a deferred tax liability of approximately $6.5 million.

Provisions (benefits) for income taxes are as follows:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Federal AMT provision	$ 1,550	$ 264	$ 1,104	$ 89
State income tax provision	583	144	497	119
Deferred tax benefit from reversal of valuation allowance	(3,150)	-	(3,150)	-
Provisions (benefits) for income taxes	$ (1,017)	$ 408	$ (1,549)	$ 208

Note 19: Income Taxes (continued)

Due to regular tax NOL carryforwards, the only provisions for income taxes for the nine and three-month periods of 2007 and 2006 were for federal AMT and for state income taxes as shown above. We anticipate fully utilizing the regular NOL carryforwards in 2008 at which time we will begin recognizing and paying federal income taxes at regular corporate tax rates.

APB Opinion No. 28 - Interim Financial Reporting ("APB 28") provides guidance on accounting for income taxes in interim periods. The accounting requirements of APB 28 are based on a view that each interim period is primarily an integral part of the annual period. Tax expense for interim periods is measured using an estimated annual effective tax rate for the annual period. The effective tax rate is then used for computing the interim tax provision.

In calculating AMT for 2007, we also have AMT NOL carryforwards that reduce the effective tax rate. Through the second quarter of 2007, we estimated that the AMT NOL carryforwards would not be fully utilized in 2007. However, because of the better than estimated results for the third quarter including some unusual transactions (settlement of pending litigation and insurance recovery of business interruption claim), we now estimate that the AMT NOL carryforwards will be fully utilized in 2007. This resulted in a change in the effective tax rate for 2007. The effect of the change in effective tax rate increased the provision for federal AMT by approximately $735,000. Previously the deferred tax asset related to the AMT credit carryforwards was subject to a valuation allowance which was released as of September 30, 2007 as discussed above.

When non-qualified stock options (NSOs) are exercised, the granter of the options is permitted to deduct the spread between the fair market value and the exercise price of the NSOs as compensation expense in determining taxable income. SFAS 123(R) specifies that if the grantor of NSOs will not benefit from the excess tax benefit deduction taken at the time of the taxable event (option exercised) because it has a NOL carryforward that is increased by the excess tax benefit, then the tax benefit should not be recognized until the deduction actually reduces current taxes payable. As of September 30, 2007, we have approximately $1,300,000 in unrecognized tax benefit resulting from the exercise of NSOs since the effective date of SFAS 123(R) on January 1, 2006. We estimate this benefit will be realized in 2008 when we utilize the remaining NOLs.

In July 2006, the FASB issued FASB Interpretation No. 48 - Accounting for Uncertainty in Income Taxes ("FIN 48"). FIN 48 requires that realization of an uncertain income tax position must be "more likely than not" (i.e. greater than 50% likelihood) the position will be sustained upon examination by taxing authorities before it can be recognized in the financial statements. Further, FIN 48 prescribes the amount to be recorded in the financial statements as the amount most likely to be realized assuming a review by tax authorities having all relevant information and applying current conventions. FIN 48 also clarifies the financial statement classification of tax-related penalties and interest and sets forth new disclosures regarding unrecognized tax benefits. On January 1, 2007, we adopted FIN 48. As a result of the implementation of FIN 48, we recognized a liability of $120,000 for uncertain tax positions, which was accounted for as an increase to the January 1, 2007 accumulated deficit balance. We do not expect the adoption of FIN 48 to impact our effective tax rate in 2007. We recognize accrued interest related to tax matters in interest expense and recognize penalties as other expense.

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 20: Other Expense, Other Income and Non-Operating Other Income, net

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Other expense:				
Losses on sales and disposals of property and equipment	$ 446	$ -	$ 15	$ -
Settlement of potential litigation	-	300	-	-
Impairments on long-lived assets (1)	250	286	250	-
Other miscellaneous expense (2)	157	120	70	15
Total other expense	$ 853	$ 706	$ 335	$ 15
Other income:				
Settlement of pending litigation	$ 3,272	$ -	$ 3,272	$ -
Other miscellaneous income (2)	168	231	68	83
Total other expense	$ 3,440	$ 231	$ 3,340	$ 83
Non-operating other income, net:				
Interest income	$ 607	$ 464	$ 549	$ 68
Miscellaneous income (2)	73	174	8	25
Miscellaneous expense (2)	(75)	(73)	(25)	(25)
Total non-operating other income, net	$ 605	$ 565	$ 532	$ 68

(1) Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable. During the nine and three months ended September 30, 2007, we recognized an impairment of $250,000 relating to certain equipment associated with our Chemical Business. Due to a change in plans in the manufacturing process of a potential new product, the capitalized cost of this equipment was reduced to its current fair value. During the nine months ended September 30, 2006, we recognized impairments of $286,000 which includes $230,000 relating to the wastewater projects. Due to the significant wastewater quality progress at the El Dorado Facility and meetings with the ADEQ, certain capitalized costs relating to the wastewater projects are no longer believed to be recoverable.

(2) Amounts represent numerous unrelated transactions, none of which are individually significant requiring separate disclosure.

Table of Contents

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 21: Segment Information

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Net sales:				
Climate Control	$ 221,464	$ 160,245	$ 75,641	$ 61,210
Chemical	222,394	201,461	69,252	60,764
Other	7,896	6,510	2,720	1,994
	$ 451,754	$ 368,216	$ 147,613	$ 123,968
Gross profit: (1)				
Climate Control	$ 65,061	$ 48,362	$ 22,433	$ 17,853
Chemical (2) (3)	33,980	18,430	11,738	5,531
Other	2,840	2,245	1,001	679
	$ 101,881	$ 69,037	$ 35,172	$ 24,063
Operating income (loss): (4)				
Climate Control	$ 27,875	$ 18,480	$ 9,750	$ 6,903
Chemical (2) (3) (5)	27,123	9,019	11,477	2,393
General corporate expenses and other business operations, net (6)	(7,225)	(6,292)	(2,130)	(2,516)
	47,773	21,207	19,097	6,780
Interest expense	(8,062)	(8,957)	(3,482)	(3,196)
Non-operating other income (expense), net:				
Climate Control	2	1	-	1
Chemical	92	261	10	25
Corporate and other business operations	511	303	522	42
Benefits (provisions) for income taxes	1,017	(408)	1,549	(208)
Equity in earnings of affiliate-Climate Control	654	611	223	206
Income from continuing operations	$ 41,987	$ 13,018	$ 17,919	$ 3,650

(1) Gross profit by industry segment represents net sales less cost of sales. Gross profit classified as “Other” relates to the sales of industrial machinery and related components.

(2) For the nine months ended September 30, 2007 and 2006, Turnaround costs for the Chemical Business totaled $870,000 and $1,788,000, respectively.

(3) During the nine and three months ended September 30, 2007, we recorded the realization for losses on certain nitrogen-based inventories of $407,000 and $53,000, respectively. For the same periods in 2006, we recorded the realization of losses of $1,110,000 and $328,000, respectively. During the nine and three months ended September 30, 2007, we realized insurance recoveries of $1,500,000 relating to a business interruption claim

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 21: Segment Information (continued)

associated with the Cherokee Facility. During the nine and three months ended September 30, 2006, we realized insurance recoveries of $882,000 and $287,000, respectively, relating to a business interruption claim associated with the El Dorado Facility. The above transactions contributed to an increase in gross profit.

(4) Our chief operating decision makers use operating income by industry segment for purposes of making decisions which include resource allocations and performance evaluations. Operating income by industry segment represents gross profit by industry segment less SG&A incurred by each industry segment plus other income and other expense earned/incurred by each industry segment before general corporate expenses and other business operations, net. General corporate expenses and other business operations, net, consist of unallocated portions of gross profit, SG&A, other income and other expense.

(5) During the nine and three months ended September 30, 2007, we recognized income of $3,272,000 relating to a settlement of a pending litigation. During the nine months ended September 30, 2007 and 2006, we recognized impairments on long-lived assets of $250,000 and $286,000, respectively ($250,000 for the three months ended September 30, 2007).

(6) The amounts included are not allocated to our Climate Control and Chemical Businesses since these items are not included in the operating results reviewed by our chief operating decision makers for purposes of making decisions as discussed above. A detail of these amounts are as follows:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Gross profit-Other	$ 2,840	$ 2,245	$ 1,001	$ 679
Selling, general and administrative:				
Personnel	(5,121)	(4,346)	(1,569)	(1,521)
Professional fees	(2,708)	(2,146)	(941)	(893)
Office overhead	(510)	(460)	(134)	(149)
Property, franchise and other taxes	(232)	(232)	(76)	(91)
Advertising	(189)	(143)	(49)	(38)
Shareholders relations	(147)	(31)	(17)	(15)
All other (A)	(1,121)	(888)	(293)	(464)
Total selling, general and administrative	(10,028)	(8,246)	(3,079)	(3,171)
Other income	47	19	15	(14)
Other expense (B)	(84)	(310)	(67)	(10)
Total general corporate expenses and other business operations, net	$ (7,225)	$ (6,292)	$ (2,130)	$ (2,516)

(A) For the nine months ended September 30, 2006, a refund of $350,000 was recognized relating to insurance brokerage fees.

(B) For the nine months ended September 30, 2006, we recognized settlement of a potential litigation of $300,000 relating to an asserted financing fee.

LSB INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Note 21: Segment Information (continued)

Information about our total assets by industry segment is as follows:

	September 30, 2007	December 31, 2006
	(In Thousands)	
Climate Control	$ 111,676	$ 97,166
Chemical	118,041	109,122
Corporate assets and other	63,752	13,639
Total assets	$ 293,469	$ 219,927

Note 22: Related Party Transactions

Jayhawk

During 2006, a member of the Jayhawk Group purchased $1.0 million principal amount of the 2006 Debentures. In April 2007, the Jayhawk Group converted all of such 2006 Debentures into 141,040 shares of our common stock, at the conversion rate of 141.04 shares per $1,000 principal amount of 2006 Debentures (representing a conversion price of $7.09 per share). In addition, we purchased $1.0 million principal amount of our 10 3/4% Senior Unsecured Notes held by Jayhawk. Jayhawk earned interest of $117,000 relating to these debt instruments in 2006. During the nine months ended September 30, 2007, we paid the Jayhawk Group $70,000 of which $46,000 relates to interest earned on the 2006 Debentures and $24,000 relates to additional consideration paid to convert the 2006 Debentures.

On March 25, 2003, the Jayhawk Group purchased from us in a private placement pursuant to Rule 506 of Regulation D under the Securities Act, 450,000 shares of common stock and warrants for the purchase of up to 112,500 shares of common stock at an exercise price of $3.49 per share. The warrants expire on March 28, 2008. In connection with such sale, we entered into a Registration Rights Agreement with the Jayhawk Group, dated March 23, 2003.

During November 2006, we entered into an agreement (the “Jayhawk Agreement”) with the Jayhawk Group. Under the Jayhawk Agreement, the Jayhawk Group agreed, that if we made an exchange or tender offer for the Series 2 Preferred, to tender 180,450 shares of the 346,662 shares of Series 2 Preferred owned by the Jayhawk Group upon certain conditions being met. The Jayhawk Agreement further provided that the Golsen Group would exchange or tender 26,467 shares of Series 2 Preferred beneficially owned by them, as a condition to the Jayhawk Group’s tender of 180,450 of its shares of Series 2 Preferred. Pursuant to the Jayhawk Agreement and the terms of our exchange tender offer, during March 2007, the Jayhawk Group and members of the Golsen Group tendered 180,450 and 26,467 shares, respectively, of Series 2 Preferred for 1,335,330 and 195,855 shares, respectively, of our common stock in our tender offer and waived a total of approximately $4.96 million in accrued and unpaid dividends, with the Jayhawk Group waiving a total of $4.33 million and the Golsen Group waiving a total of $0.63 million.

Note 22: Related Party Transactions (continued)

We received a letter, dated May 23, 2007, from a law firm representing a stockholder of ours demanding that we investigate potential short-swing profit liability under Section 16(b) of the Exchange Act of the Jayhawk Group. The stockholder alleges that the surrender by the Jayhawk Group of 180,450 shares of our Series 2 Preferred in our issuer exchange tender offer in March 2007 was a sale which was subject to Section 16 and matchable against prior purchases of Series 2 Preferred by the Jayhawk Group. The Jayhawk Group advised us that they do not believe that they are liable for short-swing profits under Section 16(b). The provisions of Section 16(b) provide that if we do not file a lawsuit against the Jayhawk Group in connection with these Section 16(b) allegations within 60 days from the date of the stockholder's notice to us, then the stockholder may pursue a Section 16(b) short-swing profit claim on our behalf. After completion of the investigation of this matter by our outside corporate/securities counsel, we attempted to settle this matter with the Jayhawk Group, but were unable to reach a resolution satisfactory to all parties. On October 9, 2007, the law firm representing the stockholder has initiated a lawsuit against the Jayhawk Group pursing a Section 16(b) short-swing profit claim on our behalf up to approximately $819,000.

The redemption of all of our outstanding Series 2 Preferred date was completed on August 27, 2007. The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. The Certificate of Designations for the Series 2 Preferred provided, and it is our position, that the holders of Series 2 Preferred that elected to convert shares of Series 2 Preferred into our common stock prior to the scheduled redemption date were not entitled to receive payment of any accrued and unpaid dividends on the shares so converted. As a result, holders that elected to convert shares of Series 2 Preferred are not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted. On or about August 16, 2007, the Jayhawk Group elected to convert the 155,012 shares of Series 2 Preferred held by it, and as of September 30, 2007, we have issued to the Jayhawk Group 671,046 shares of our common stock as a result of such conversion.

The Company has been advised by the Jayhawk Group, in connection with the Jayhawk Group's conversion of its holdings of Series 2 Preferred, the Jayhawk Group may bring legal proceedings against us for all accrued and unpaid dividends on the Series 2 Preferred that the Jayhawk Group converted after receiving a notice of redemption. The 155,012 shares of Series 2 Preferred converted by the Jayhawk Group after we issued the notice of redemption for the Series 2 Preferred would have been entitled to receive approximately $4.0 million of accrued and unpaid dividends on the August 27, 2007 redemption date, if such shares were outstanding on the redemption date and had not been converted and into common stock.

As a holder of Series 2 Preferred, the Jayhawk Group participated in the nomination and election of two individuals to serve on our Board of Directors in accordance with the terms of the Series 2 Preferred. As of September 30, 2007, the number of outstanding shares of Series 2 Preferred was less than 140,000. As a result, the right of the holders of Series 2 Preferred to nominate and elect two individuals to serve on our Board of Directors terminated pursuant to the terms of the Series 2 Preferred, and as of such date, the two independent directors elected by the holders of our Series 2 Preferred no longer serve as directors on our Board of Directors.

Note 22: Related Party Transactions (continued)

Golsen Group

In connection with the completion of our March 2007 tender offer for our outstanding shares of our Series 2 Preferred, members of the Golsen Group (a) tendered 26,467 shares of Series 2 Preferred in exchange for our issuance to them of 195,855 shares of our common stock and (b) waived approximately $0.63 million in accrued and unpaid dividends on the shares of Series 2 Preferred tendered. Such tender by the Golsen Group was a condition to Jayhawk's Agreement to tender shares of Series 2 Preferred in the tender offer. See discussion above under "Jayhawk."

As of August 27, 2007, the Golsen Group redeemed 23,083 shares of Series 2 Preferred and received the cash redemption amount of approximately $1.76 million pursuant to the terms of our redemption of all of our outstanding Series 2 Preferred. The redemption price was $50.00 per share of Series 2 Preferred, plus $26.25 per share in accrued and unpaid dividends pro-rata to the date of redemption. The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. Holders that converted shares of Series 2 Preferred were not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted.

On September 7, 2007, we paid the accrued and unpaid dividends on our outstanding preferred stock utilizing a portion of the net proceeds of the sale of the 2007 Debentures and working capital, including approximately $2.25 million of accrued and unpaid dividends on our Series B Preferred and our Series D Preferred, all of the outstanding shares of which are owned by the Golsen Group.

A subsidiary within our Climate Control Business remodeled their offices, including the replacement of carpet and flooring throughout the office area. In connection with the remodeling, the subsidiary made payments for the purchase of carpeting totaling $69,000 and $13,000 during 2006 and the first nine months of 2007, respectively, to Designer Rugs, a company owned by Linda Golsen Rappaport, the daughter of Jack E. Golsen, our Chairman and Chief Executive Officer, and sister of Barry H. Golsen, our President.

Former Significant Shareholders

In October 2006, we issued 773,655 shares of our common stock to certain holders of our Series 2 Preferred in exchange for 104,548 shares of Series 2 Preferred. The shares of common stock issued included 303,400 and 262,167 shares issued in exchange for 41,000 and 35,428 shares of Series 2 Preferred stock to Paul J. Denby and James W. Sight (the "Former Significant Shareholders"), respectively, or to entities controlled by the Former Significant Shareholders. In connection with such exchange, the Former Significant Shareholders waived a total of approximately $1.78 million in accrued and unpaid dividends. Each of the Former Significant Shareholders, either individually or together with entities controlled by them, beneficially owned more than 5% of our issued and outstanding stock as of January 1, 2006. We have been advised that, as of September 30, 2007, neither of the Former Significant Shareholders owned more than 5% of our issued and outstanding stock.

Note 22: Related Party Transactions (continued)

Cash Dividends

During 2006, we paid nominal cash dividends to holders of certain series of our preferred stock. These dividend payments included $91,000 and $133,000 to the Golsen Group and the Jayhawk Group, respectively. Additionally, the dividend payments included $23,000 collectively to the Former Significant Shareholders. See "Golsen Group" above for a discussion of dividends paid in 2007 with respect to our securities held by members of the Golsen Group.

Northwest

Northwest Internal Medicine Associates ("Northwest"), a division of Plaza Medical Group, P.C., has an agreement with the Company to perform medical examinations of the management and supervisory personnel of the Company and its subsidiaries. Under such agreement, Northwest is paid $2,000 a month to perform all such examinations. Dr. Robert C. Brown (a director of the Company) is Vice President and Treasurer of Plaza Medical Group, P.C.

Quail Creek Bank

Bernard Ille, a member of our board of directors, is a director of Quail Creek Bank, N.A. (the "Bank"). The Bank is a lender to one of our subsidiaries. During 2006, the subsidiary made interest and principal payments on outstanding debt owed to the Bank in the amount of $.3 million and $1.6 million, respectively. During the nine months ended September 30, 2007, the subsidiary made interest and principal payments on outstanding debt owed to the Bank in the amount of $.1 million and $3.3 million, respectively. At December 31, 2006, the subsidiary's loan payable to the Bank was approximately $3.3 million, (none at September 30, 2007) with an annual interest rate of 8.25%. The loan was secured by certain of the subsidiary's property, plant and equipment. This loan was paid in full in June 2007 utilizing a portion of the net proceeds of our sale of the 2007 Debentures.

Note 23: Subsequent Event As of the date of this report, we have negotiated a new $50 million term loan ("Replacement Term Loan") and have executed a Term Loan Agreement in connection with the Replacement Term Loan ("Replacement Term Loan Agreement"), with funding under the Replacement Term Loan not to occur until certain conditions precedent are satisfied. We anticipate that all of the conditions precedent to funding under the Replacement Term Loan will occur on or prior to November 8, 2007. Proceeds under the Replacement Term Loan, when received, will be used to repay the existing Senior Secured Loan. The Replacement Term Loan is for a term of five years, and it is to be guaranteed by us. Certain other terms and conditions of the Replacement Term Loan are as follows:

- Interest will accrue at a defined LIBOR rate plus a defined LIBOR margin, resulting in a pro-forma borrowing rate at November 1, 2007 of 7.91%, approximately 3.1% lower than the rate on the Senior Secured Loan being replaced;
- will require only quarterly interest payments, with final payment of interest and principal payable at maturity on the fifth anniversary of funding;

Table of Contents

Note 23: Subsequent Event (continued)

- the collateral securing the Replacement Term Loan is limited to:
  - the real property and equipment located at our chemical plant facility in El Dorado, Arkansas,
  - the real property and equipment located at our chemical plant facility in Cherokee, Alabama; and
- subject to a minimum Fixed Charge Coverage Ratio and a maximum Leverage Ratio, both as defined in the Replacement Term Loan Agreement, measured quarterly on a trailing twelve-month basis. On a pro-forma basis, the Replacement Term Loan borrowers' Fixed Charge Coverage Ratio exceeded the required minimum ratio for the twelve-month period ended September 30, 2007 and the pro-forma Leverage Ratio at September 30, 2007 was less than the maximum permitted in the Replacement Term Loan.

The borrowers under the Replacement Term Loan are subject to other covenants under the Replacement Term Loan Agreement, which are substantially similar to the Senior Secured Loan, including, but not limited to, limitation on the incurrence of certain additional indebtedness and liens, limitations on mergers, acquisitions, dissolution and sale of assets, and limitations on declaration of dividends and distributions to us, all with certain exceptions.

In connection with the Replacement Term Loan, the lenders of the our Working Capital Revolver Loan will be releasing their second position security liens to the assets which collateralize the Replacement Term Loan and agreed to certain other modifications to the terms of the Working Capital Revolver, including among other things, an interest rate reduction of .25%, effective upon closing of the Replacement Term Loan.

At September 30, 2007, there remains approximately $960,000 of deferred debt-related costs associated with the Senior Secured Loan, which is currently being amortized over the term of the loan. These deferred debt-related costs will be expensed when the Senior Secured Loan is repaid.

Table of Contents

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with our September 30, 2007 condensed consolidated financial statements. Certain statements contained in this MD&A may be deemed forward-looking statements. See "Special Note Regarding Forward-Looking Statements".

Overview

General

We are a manufacturing, marketing and engineering company. Our wholly-owned subsidiary, ThermaClime, through its subsidiaries, owns substantially all of our core businesses consisting of the:

- Climate Control Business engaged in the manufacturing and selling of a broad range of air conditioning and heating products in the niche markets we serve consisting of geothermal and water source heat pumps, hydronic fan coils, large custom air handlers and other products used in commercial and residential new building construction, renovation of existing buildings and replacement of existing systems.
- Chemical Business engaged in the manufacturing and selling of chemical products produced from plants located in Arkansas, Alabama and Texas for the industrial, mining and agricultural markets.

Third Quarter of 2007

LSB's third quarter of 2007 net sales were $147.6 million compared to $124.0 million in the same quarter of 2006, operating income was $19.1 million compared to $6.8 million in 2006 and net income was $18.3 million compared to $3.5 million for 2006.

Included in net income for the third quarter of 2007 are the following items:

	Operating Income			
	Gross Profit	Other Income	Income Taxes	Net Income
		(In Millions)		
Chemical Business:				
Settlement of pending litigation	$ -	$ 3.3	$ -	$ 3.3
Insurance recoveries of business interruption claims	1.5	-	-	1.5
Benefit for income taxes:				
Reversal of deferred tax valuation allowance	-	-	3.2	3.2
Additional provision for alternative minimum tax	-	-	(0.7)	(0.7)
Total	$ 1.5	$ 3.3	$ 2.5	$ 7.3

The litigation settlement of $3.3 million and the insurance recovery of $1.5 million are described more fully below under Chemical Business.

The reversal of deferred tax valuation allowance of $3.2 million is related to regular net operating loss ("NOL") carryforwards. Prior to September 30, 2007, we had valuation allowances in place against the net deferred tax assets arising from the NOL carryforwards and other temporary differences. However, as the result of improving financial results including the unusual transactions shown above in the quarter ended September 30, 2007 and our current expectation of generating taxable income in the future, we reversed valuation allowances and recognized a deferred tax benefit of $3.2 million for the nine months and three months ended September 30, 2007.

The additional provision of $0.7 million is the amount of current alternative minimum tax ("AMT") provision in the third quarter of 2007 resulting from a change in the estimated effective tax rate for 2007.

Due to regular tax NOL carryforwards, the only provisions for income taxes for the nine and three-month periods of 2007 and 2006 were for federal alternative minimum taxes and state income taxes. We anticipate fully utilizing the NOL carryforwards during 2008. After the NOL carryforwards are fully utilized, we will begin recognizing and paying federal income taxes at regular corporate tax rates.

Our Climate Control Business continued to report strong sales and operating results due to beginning backlogs and strong new order flow for the quarter. Our Climate Control Business had 2007 third quarter net sales of $75.6 million compared to $61.2 million in 2006, a 24% increase. Operating income before allocation of corporate overhead was $9.8 million, a 41% increase over the $6.9 million in 2006.

Our Chemical Business reported improved results in the third quarter of 2007 with net sales of $69.3 million compared to $60.8 million in 2006. Operating income before allocation of corporate overhead was $11.5 million, a 380% increase over the $2.4 million in 2006. The increase in the third quarter 2007 operating income included certain non-recurring income items that are discussed below.

ThermaClime and certain of its' subsidiaries are parties of a $50.0 million Senior Secured Loan due 2009 ("Senior Secured Loan") bearing interest at 11%, secured by a first lien on the majority of the chemical plant assets in El Dorado, Arkansas and Cherokee, Alabama, certain equipment of the Climate Control Business, the stock of ThermaClime, the equity stock of certain ThermaClime subsidiaries and a second lien on the assets securing the Working Capital Revolver Loan.

The Senior Secured Loan requires quarterly principal payments of $312,500 which began October 1, 2007, with a final payment due on September 15, 2009. As of the date of this report, the current principal balance was $49.7 million.

As of the date of this report, we have negotiated a new $50 million term loan ("Replacement Term Loan") and have executed a Term Loan Agreement in connection with the Replacement Term Loan ("Replacement Term Loan Agreement"), with funding under the Replacement Term

Loan not to occur until certain conditions precedent are satisfied. We anticipate that all of the conditions precedent to funding under the Replacement Term Loan will occur on or prior to November 8, 2007. Proceeds under the Replacement Term Loan, when received, will be used to repay the existing Senior Secured Loan. There will be no prepayment fee associated with the prepayment.

However, at September 30, 2007, there remains approximately $960,000 of deferred debt-related costs associated with the Senior Secured Loan, which is currently being amortized over the term of the loan. These deferred debt-related costs will be expensed when the Senior Secured Loan is repaid.

Climate Control Business

Our Climate Control Business has historically generated consistent annual profits and positive cash flows and continues to do so. As indicated above, Climate Control's net sales and operating income for the third quarter of 2007 were higher than in the same quarter of 2006. The third quarter increase in sales and operating income as compared to 2006 is attributable to strong demand for the geothermal and water source heat pumps which reported a sales increase of $7.8 million and hydronic fan coils that reported a sales increase of $6.8 million.

Most of the products of our Climate Control Business are produced to customer orders that are placed well in advance of required delivery dates. As a result, our Climate Control Business maintains a significant backlog that eliminates the necessity to carry substantial inventories other than for firm customer orders. As a result of strong order flow in the recent past, our Climate Control backlog of confirmed orders had increased to high levels and our lead times had pushed out beyond levels that we consider to be optimum for good customer service. In order to work the backlog down and to improve product lead times, we have increased production capacity. We invested $7.7 million in 2006, an additional $5.1 million through the first nine months of 2007 and have committed approximately $0.9 million for additional plant and equipment capacity. At September 30, 2007, the backlog of confirmed orders was approximately $62 million compared to $66 million at June 30, 2007 and $80 million at December 31, 2006. We expect to ship substantially all the orders in the backlog within the next twelve months.

Our Climate Control Business will continue to launch new products and product upgrades in an effort to maintain our current market position and to establish presence in new markets. Climate Control Business's profitability over the last few years has been affected by operating losses of certain new product lines being developed during that time frame. Our emphasis has been to increase the sales levels of these operations above the breakeven point. During the first nine months of 2007, the results for these new products did not improve significantly, although we continue to believe that the prospects for these new products are improving.

Management continues to focus on the following objectives for Climate Control:

- increasing the sales and operating margins of all products,
- developing and introducing new and energy efficient products, and
- increasing production to meet customer demand.

Chemical Business

Our Chemical Business has production facilities in Baytown, Texas (the “Baytown” facility), El Dorado, Arkansas (the “El Dorado” facility) and Cherokee, Alabama (the “Cherokee” facility). Baytown and El Dorado produce nitrogen products from anhydrous ammonia that is delivered by pipeline. Cherokee produces anhydrous ammonia and nitrogen products from natural gas that is delivered by pipeline.

As indicated above, for the 2007 third quarter, our Chemical Business reported net sales of $69.3 million or an increase of $8.5 million from 2006. In addition, our Chemical Business reported operating income of $11.5 million, or 17% of net sales, compared to $2.4 million, or 4% of net sales in 2006. As discussed above, operating income for the third quarter of 2007 included the following unusual income items:

	Three Months Ended September	
	2007	2006
	(In Millions)	
Settlement of pending litigation	$ 3.3	$ -
Insurance recoveries of business interruption claims	1.5	0.3
Total	$ 4.8	$ 0.3

The $3.3 million reflects the net proceeds of $2.7 million received by Cherokee and the retention by Cherokee of a disputed $0.6 million accounts payable as a result of the settlement agreement with Dynegy, Inc. and one of its subsidiaries to settle a previously reported lawsuit.

The $1.5 million is a result of an advance payment received during the third quarter of 2007 against a business interruption claim filed by Cherokee with their insurers. Any additional recoveries relating to this claim will be recognized if and when realized.

The increase in operating income relative to sales (excluding the unusual income items noted above) is primarily a result of increased demand and gross profit margins, resulting from higher nitrogen fertilizer demand in our agricultural markets. Low wheat and corn stocks-to-use ratios, as well as low inventories of other crops, have caused the margins for nitrogen fertilizer to improve in 2007 which have had a positive effect on the approximate one-third of our sales which is sold in the agricultural markets. We have also experienced substantial demand and improved gross profit margins in our industrial markets.

Our primary raw material feedstocks, anhydrous ammonia and natural gas, are commodities subject to significant price fluctuations, and are generally purchased at prices in effect at the time of purchase. Due to the uncertainty of these commodity markets, we have developed customers that purchase our products pursuant to agreements and/or pricing formulas that provide for the pass through of raw material and other variable costs and certain fixed costs. Approximately 63% percent of our Chemical Business’ products sold in the third quarter of 2007 were to those customers.

Our Chemical Business continues to focus on growing our non-seasonal industrial customer base with an emphasis on customers accepting the risk inherent with raw material costs, while maintaining a strong presence in the seasonal agricultural sector. The operations strategy is to

maximize production efficiency of the facilities, thereby lowering the fixed cost of each ton produced.

Liquidity and Capital Resources

Our total interest bearing debt outstanding at September 30, 2007 was $122.4 million as follows:

	(In Millions)
Senior Secured Loan due 2009	$ 50.0
5.5% Convertible Senior Subordinated Notes due 2012	60.0
Other	12.4
	$ 122.4

ThermaClime's $50.0 million Senior Secured Loan due 2009 ("Senior Secured Loan") bears interest at 11%, secured by a first lien on the majority of the chemical plant assets in El Dorado, Arkansas and Cherokee, Alabama, certain equipment of the Climate Control Business, the stock of ThermaClime , the equity stock of certain ThermaClime subsidiaries and a second lien on the assets securing the Working Capital Revolver Loan. As of the date of this report, we have negotiated the Replacement Term Loan and have executed the Replacement Term Loan Agreement in connection with the Replacement Term Loan, with funding under the Replacement Term Loan not to occur until certain conditions precedent are satisfied. We anticipate that all of the conditions precedent to funding under the Replacement Term Loan will occur on or prior to November 8, 2007. Proceeds under the Replacement Term Loan, when received, will be used to repay the existing Senior Secured Loan.

On June 28, 2007, we completed a private placement of our five-year 5.5% Convertible Senior Subordinated Debentures due 2012 (the "2007 Debentures") pursuant to which we sold $60.0 million aggregate principal amount to twenty-two qualified institutional buyers. We received net proceeds of approximately $57.0 million, after discounts and commissions. In connection with the closing, we entered into an indenture governing the 2007 Debentures. The terms of the 2007 Debentures are discussed below under "Loan Agreements – Terms and Conditions".

As of September 30, 2007, we have used the net proceeds from the 2007 Debentures for the following:

- $2.0 million to redeem 25,820 outstanding shares of our Series 2 Preferred (including accrued and unpaid dividends;
- $3.9 million to repay certain outstanding mortgages and equipment loans;
- $2.1 million to pay accrued and unpaid dividends on our outstanding shares of Series B Preferred and Series D Preferred, all of which are owned by Jack E. Golsen, our CEO and Board Chairman, and Barry H. Golsen, our President, members of all their immediate family and entities controlled by them (all of which we considered as our affiliates) (the "Golsen Group");
- $25.0 million has been loaned to ThermaClime to reduce the outstanding borrowing under the Working Capital Revolver Loan; and
- the remaining balance of approximately $24.0 million has temporarily been invested in money market investments, earning approximately 5.0% interest.

The Working Capital Revolver Loan is a $50.0 million credit facility that provides for advances to ThermaClime and its subsidiaries based upon specified percentages of eligible accounts receivable and inventories. At September 30, 2007, there were no borrowings outstanding under this loan and approximately $1.0 million of the line was being used for issued and outstanding letters of credit. Historically, ThermaClime's primary cash needs have been for working capital and capital expenditures. ThermaClime and its subsidiaries depend upon their Working Capital Revolver Loan, internally generated cash flows, and secured property and equipment financing in order to fund operations and pay obligations. At September 30, 2007, our cash on hand invested in overnight money market investments at 5.0% was $40.9 million. In connection with the Replacement Term Loan, the lenders of the Working Capital Revolver Loan released their second position security liens to the assets which collateralize the Replacement Term Loan and agreed to certain other modifications to the Working Capital Revolver Loan agreement, including, among other things, a .25% reduction to the interest rate.

The Senior Secured Loan and the Working Capital Revolver Loan have financial covenants that are discussed below under "Loan Agreements – Terms and Conditions". The Replacement Term Loan has financial covenants substantially similar to the Senior Secured Loan.

ThermaClime's ability to maintain borrowing availability under its Working Capital Revolver Loan depends on its ability to comply with the terms and conditions of its loan agreements and its ability to generate cash flow from operations. ThermaClime is restricted under its credit agreements as to the funds it may transfer to the Company and its non-ThermaClime affiliates and certain ThermaClime subsidiaries. This limitation does not prohibit payment to the Company of amounts due under a Services Agreement, Management Agreement and a Tax Sharing Agreement.

At June 30, 2007, there remained outstanding 193,295 shares of Series 2 Preferred (of which the Jayhawk Group held 155,012 shares and the Golsen Group held 23,083 shares) with a stated value of $50.00 and cumulative dividends of $25.60 per share. On July 11, 2007, our Board of Directors approved the redemption of all of our outstanding Series 2 Preferred. We mailed a notice of redemption to all holders of record of our Series 2 Preferred on July 12, 2007. The redemption date was August 27, 2007.

The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. If a holder converted its shares of Series 2 Preferred, the holder was not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted. As a result, 167,475 shares of Series 2 Preferred were converted (of which 155,012 shares were converted by the Jayhawk Group) into 724,993 shares of common stock (of which 671,046 shares were issued to the Jayhawk Group).

On August 27, 2007, we completed the redemption of all of our remaining outstanding Series 2 Preferred. The redemption price was $50.00 per share of Series 2 Preferred, plus $26.25 per share in accrued and unpaid dividends pro-rata to the date of redemption. A total of 25,820 shares of Series 2 Preferred were redeemed (of which 23,083 shares were held by the Golsen Group) for approximately $1,969,000 (of which approximately $1,760,000 was paid to the Golsen Group), including accrued and unpaid dividends.

Filing Requirements Pursuant to Sarbanes Oxley

As of June 29, 2007, our public float held by non-affiliates exceeded the $75 million threshold. As a result, we will become an accelerated filer on December 31, 2007. Therefore we will be required to provide a report by management and a report by our independent auditors on our internal control over financial reporting in our Form 10-K for the year ending December 31, 2007. In addition, we have been and will continue to incur additional costs to meet the requirements as an accelerated filer for the year ending December 31, 2007 and future periods.

Capital Expenditures

General

Capital expenditures in the first nine months of 2007 were $10.3 million, including $5.1 million primarily for additional capacity in our Climate Control Business and $5.1 million for our Chemical Business, primarily for process and reliability improvements of existing facilities. As discussed below, our current commitment for the remainder of 2007 includes spending for production equipment in our Climate Control Business and spending for production equipment, safety and environmental related projects, and capacity expansion in our Chemical Business.

Other capital expenditures for the remainder of 2007 are believed to be discretionary and are dependent upon an adequate amount of liquidity and/or obtaining acceptable funding. We have carefully managed those expenditures to projects necessary to execute our business plans and those for environmental and safety compliance.

Current Commitments

As of the date of this report, we have committed capital expenditures of approximately $8.4 million for the remainder of 2007. The expenditures include $7.5 million for our Chemical Business and $0.9 million for our Climate Control Business. We plan to fund these expenditures from working capital, including our Working Capital Revolver Loan and a portion of the net proceeds from the 2007 Debentures.

The committed capital expenditures for our Chemical Business includes approximately $1.2 million for certain capital expenditures required to bring El Dorado's sulfuric acid plant air emissions to lower limits. The total cost of this project is currently estimated to be between $6.0 and $6.5 million, to be expended through the third quarter of 2008. These expenditures will increase our production capacity which can be sold in our markets.

Dividends

We have not paid cash dividends on our outstanding common stock in many years. Pursuant to our exchange tender offer in March 2007, we issued approximately 2.3 million shares of our common stock in exchange for approximately 0.3 million shares of the Series 2 Preferred in accordance with the terms of the Series 2 Preferred. In addition, a total of approximately $7.3 million in accrued and unpaid dividends were waived as a result of this tender offer. Based on the terms of the tender offer, we recorded a charge (stock dividend) to accumulated deficit of approximately $12.3 million which equaled the excess of the fair value of the common stock issued over the fair value of the common stock issuable pursuant to the original conversion terms of the Series 2 Preferred.

During the three months ended September 30, 2007, we paid cash dividends of approximately $678,000 on the 25,820 shares of Series 2 Preferred which we redeemed pursuant to the notice of redemption we mailed to all holders of record of our Series 2 Preferred on July 12, 2007. The holders of 167,475 shares of our Series 2 Preferred exercised their right to convert each share into 4.329 shares of our common stock. For the holders that converted the shares of Series 2 Preferred into common stock, it is our position that the holders were not entitled to any accrued and unpaid dividends on those shares so converted. See “Related Party Transactions” of this MD&A as to certain claims made by the Jayhawk Group relating to our redemption and amounts paid to the Golsen Group as a result of the redemption and shares issued to the Jayhawk Group as a result of conversions of its Series 2 Preferred.

In addition, our board of directors declared and we paid dividends on the Series B Preferred, Series D Preferred and noncumulative redeemable preferred stock totaling approximately $1,890,000, $360,000 and $6,000, respectively. These dividends were paid with a portion of the net proceeds of the 2007 Debentures and working capital. As a result, there were no unpaid dividends in arrears at September 30, 2007. See “Related Party Transactions” of this MD&A for a discussion as to the Golsen Group’s ownership of the Series B Preferred and Series D Preferred.

We do not anticipate paying cash dividends on our outstanding common stock in the near future.

Compliance with Long-Term Debt Covenants

As discussed below under “Loan Agreements - Terms and Conditions”, the Senior Secured Loan and Working Capital Revolver Loan, as amended, of ThermaClime and its subsidiaries require, among other things, that ThermaClime meet certain financial covenants. ThermaClime's forecasts for the remainder of 2007 indicate that ThermaClime will be able to meet all required financial covenant tests for the year ending December 31, 2007, including covenants applicable to the Replacement Term Loan.

Summary

Since December 31, 2006 and through September 30, 2007, our stockholders’ equity has increased from $43.6 million to $86.9 million; we have, through a series of exchanges, redemptions and conversions, eliminated the Series 2 Preferred and we have paid or eliminated all dividends in arrears on our preferred stocks. In addition, there were no outstanding borrowings against the $50 million Working Capital Revolver Loan and cash on hand was $40.9 million. We are in a liquidity position to fund the growth for the foreseeable future and meet all current commitments.

Loan Agreements - Terms and Conditions

5.5% Convertible Senior Subordinated Debentures – As previously reported and as discussed above under “Liquidity and Capital Resources,” on June 28, 2007, we completed a private placement to twenty-two qualified institutional buyers, pursuant to which we sold $60.0 million aggregate principal amount of the 2007 Debentures. We received net proceeds of approximately $57 million, after discounts and commissions.

The 2007 Debentures bear interest at the rate of 5.5% per year and mature on July 1, 2012. Interest is payable in arrears on January 1 and July 1 of each year, beginning on January 1, 2008. In addition, the 2007 Debentures are unsecured obligations and are subordinated in right of payment to all of our existing and future senior indebtedness, including indebtedness under our revolving debt facilities. The 2007 Debentures are effectively subordinated to all present and future liabilities, including trade payables, of our subsidiaries.

The 2007 Debentures are convertible by the holders in whole or in part into shares of our common stock prior to their maturity. The conversion rate of the 2007 Debentures for the holders electing to convert all or any portion of a debenture is 36.4 shares of our common stock per $1,000 principal amount of debentures (representing a conversion price of $27.47 per share of common stock), subject to adjustment under certain conditions as set forth in the Indenture.

Working Capital Revolver Loan - ThermaClime finances its working capital requirements through borrowings under a Working Capital Revolver Loan. Under the Working Capital Revolver Loan, ThermaClime and its subsidiaries may borrow on a revolving basis up to $50.0 million based on specific percentages of eligible accounts receivable and inventories. The Working Capital Revolver Loan matures in April 2009. As a result of using a portion of the proceeds from the 2007 Debentures to pay down the Working Capital Revolver Loan, at September 30, 2007, there were no outstanding borrowings and the net credit available for additional borrowings was $49.0 million. The Working Capital Revolver Loan requires that ThermaClime and its Climate Control Business meet certain financial covenants measured quarterly. ThermaClime and its Climate Control Business were in compliance with those covenants for the twelve-month period ended September 30, 2007. In connection with the Replacement Term Loan, the lenders of the our Working Capital Revolver Loan will be releasing their second position security liens to the assets which collateralize the Replacement Term Loan and agreed to certain other modifications to the terms of the Working Capital Revolver, including among other things, an interest rate reduction of .25%, effective upon closing of the Replacement Term Loan.

Senior Secured Loan - In 2004, ThermaClime and certain of its subsidiaries (the “Borrowers”) completed a $50.0 million term loan (“Senior Secured Loan”) with a certain lender (the “Lender”). As of September 30, 2007, the outstanding balance was $50.0 million. The Senior Secured Loan is to be repaid as follows:

- quarterly interest payments which began September 30, 2004;
- quarterly principal payments of $312,500 which began October 1, 2007;
- a final payment of the remaining outstanding principal of $47.5 million and accrued interest on September 16, 2009.

The Senior Secured Loan accrues interest at a defined LIBOR rate plus a defined LIBOR margin or, at the election of the Borrowers, a defined alternative base rate plus a defined alternative base rate margin, with the annual interest rate not to exceed 11% or 11.5% depending on the leverage ratio. At September 30, 2007, the annual interest rate was 11%.

The Borrowers are subject to numerous affirmative and negative covenants under the Senior Secured Loan agreement including, but not limited to, limitation on the incurrence of certain additional indebtedness and liens, limitations on mergers, acquisitions, dissolution and sale of assets, and limitations on declaration of dividends and distributions to us, all with certain

exceptions. The Borrowers are also subject to a minimum fixed charge coverage ratio, measured quarterly on a trailing twelve-month basis. The Borrowers were in compliance with the required minimum ratio for the twelve-month period ended September 30, 2007 and the coverage ratio is considered to be achievable for the remainder of 2007. The maturity date of the Senior Secured Loan can be accelerated by the Lender upon the occurrence of a continuing event of default, as defined.

As of the date of this report, we have negotiated the new $50 million Replacement Term Loan and have executed a Replacement Term Loan Agreement in connection with the Replacement Term Loan, with funding under the Replacement Term Loan not to occur until certain conditions precedent are satisfied. We anticipate that all of the conditions precedent to funding under the Replacement Term Loan will occur on or prior to November 8, 2007. Proceeds under the Replacement Term Loan, when received, will be used to repay the existing Senior Secured Loan. The Replacement Term Loan is for a term of five years, and it is to be guaranteed by us. Certain other terms and conditions of the Replacement Term Loan are as follows:

- Interest will accrue at a defined LIBOR rate plus a defined LIBOR margin, resulting in a pro-forma borrowing rate at November 1, 2007 of 7.91%, approximately 3.1% lower than the rate on the Senior Secured Loan being replaced;
- will require only quarterly interest payments, with final payment of interest and principal payable at maturity on the fifth anniversary of funding;
- the collateral securing the Replacement Term Loan is limited to:
  - the real property and equipment located at our chemical plant facility in El Dorado, Arkansas,
  - the real property and equipment located at our chemical plant facility in Cherokee, Alabama; and
- subject to a minimum Fixed Charge Coverage Ratio and a maximum Leverage Ratio, both as defined in the Replacement Term Loan Agreement, measured quarterly on a trailing twelve-month basis. On a pro-forma basis, the Replacement Term Loan borrowers' Fixed Charge Coverage Ratio exceeded the required minimum ratio for the twelve-month period ended September 30, 2007 and the pro-forma Leverage Ratio at September 30, 2007 was less than the maximum permitted in the Replacement Term Loan.

The borrowers under the Replacement Term Loan are subject to other covenants under the Replacement Term Loan Agreement, which are substantially similar to the Senior Secured Loan, including, but not limited to, limitation on the incurrence of certain additional indebtedness and liens, limitations on mergers, acquisitions, dissolution and sale of assets, and limitations on declaration of dividends and distributions to us, all with certain exceptions.

Cross - Default Provisions - The Working Capital Revolver Loan agreement and the Senior Secured Loan contain cross-default provisions. If ThermaClime fails to meet the financial covenants of the Senior Secured Loan, the lender may declare an event of default, making the debt due on demand. If this should occur, there are no assurances that we would have funds available to pay such amount or that alternative borrowing arrangements would be available. Accordingly, ThermaClime could be required to curtail operations and/or sell key assets. These actions could result in the recognition of losses that may be material. It is anticipated that the Replacement Term Loan agreement when closed, will contain similar cross default provisions.

Table of Contents

Stock Options Receiving Stockholders' Approval

We account for stock options in accordance with SFAS 123 (revised 2004), Share-Based Payment ("SFAS 123(R)") using the modified prospective method. As previously reported, on June 19, 2006, the Compensation and Stock Option Committee of our Board of Directors granted 450,000 shares of non-qualified stock options (the "Options") to certain Climate Control Business employees which were subject to shareholders' approval. The option price of the Options is $8.01 per share which is based on the market value of our common stock at the date the Board of Directors granted the shares (June 19, 2006). The Options vest over a ten-year period at a rate of 10% per year and expire on September 16, 2016 with certain restrictions. Under SFAS 123(R), the fair value for the Options was estimated, using an option pricing model, as of the date we received shareholders' approval which occurred during our 2007 annual shareholders' meeting on June 14, 2007. Under SFAS 123(R) for accounting purposes, the grant date and service inception date is June 14, 2007.

As previously reported, the total fair value for the Options was estimated to be approximately $6.9 million, or $15.39 per share, using a Black-Scholes-Merton option pricing model. As of June 14, 2007, we began amortizing the total estimated fair value of the Options to selling, general, and administrative expense ("SG&A") which will continue through June 2016 (the remaining vesting period). As a result, we incurred stock-based compensation expense of $228,000 and $192,000 (related tax effects were minimal) for the nine and three months ended September 30, 2007, respectively. As of September 30, 2007, 25,000 shares of the Options had been exercised and 20,000 shares of the Options were exercisable. For the nine months ended September 30, 2007, the total fair value of the Options vested was approximately $0.7 million.

Income Taxes

At December 31, 2006, we had regular NOL carryforwards of approximately $49.9 million that begin expiring in 2019 and alternative minimum tax NOL carryforwards of approximately $31.9 million. We account for income taxes under the provision of SFAS No. 109 - Accounting for Income Taxes ("SFAS 109") which requires recognition of future tax benefits (NOL carryforwards and other temporary differences), subject to a valuation allowance if it is determined that it is more-likely-than-not that such asset will not be realized. In determining whether it is more-likely-than-not that we will not realize such tax asset, SFAS 109 requires that all negative and positive evidence be considered (with more weight given to evidence that is "objective and verifiable") in making the determination. Prior to September 30, 2007, we had valuation allowances in place against the net deferred tax assets arising from the NOL carryforwards and other temporary differences. However, as the result of improving financial results including some unusual transactions (settlement of pending litigation and insurance recovery of business interruption claim) in the quarter ended September 30, 2007 and our current expectation of generating taxable income in the future, we reversed valuation allowances of approximately $3.2 million as a benefit for income taxes and recognized a deferred tax asset of approximately $9.7 million and a deferred tax liability of approximately $6.5 million.

Table of Contents

Provisions (benefits) for income taxes are as follows:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2007	2006	2007	2006
	(In Thousands)			
Federal AMT provision	$ 1,550	$ 264	$ 1,104	$ 89
State income tax provision	583	144	497	119
Deferred tax benefit from reversal of valuation allowance	(3,150)	-	(3,150)	-
Provisions (benefits) for income taxes	$ (1,017)	$ 408	$ (1,549)	$ 208

Due to regular tax NOL carryforwards, the only provisions for income taxes for the nine and three-month periods of 2007 and 2006 were for federal AMT and for state income taxes as shown above. We anticipate fully utilizing the regular NOL carryforwards in 2008 at which time we will begin recognizing and paying federal income taxes at regular corporate tax rates.

APB Opinion No. 28 - Interim Financial Reporting ("APB 28") provides guidance on accounting for income taxes in interim periods. The accounting requirements of APB 28 are based on a view that each interim period is primarily an integral part of the annual period. Tax expense for interim periods is measured using an estimated annual effective tax rate for the annual period. The effective tax rate is then used for computing the interim tax provision.

In calculating for 2007 AMT, we also have AMT NOL carryforwards that reduce the effective tax rate. Through the second quarter of 2007, we estimated that the AMT NOL carryforwards would not be fully utilized in 2007. However, because of the better than estimated results for the third quarter including some unusual transactions (settlement of pending litigation and insurance recovery of business interruption claim), we now estimate that the AMT NOL carryforwards will be fully utilized in 2007. This resulted in a change in the effective tax rate for 2007. The effect of the change in effective tax increased the provision for federal AMT by approximately $735,000. Previously the deferred tax asset related to the AMT credit carryforwards was subject to a valuation allowance which was released as of September 30, 2007 as discussed above.

When non-qualified stock options (NSOs) are exercised, the granter of the options is permitted to deduct the spread between the fair market value and the exercise price of the NSOs as compensation expense in determining taxable income. SFAS 123(R) specifies that if the grantor of NSOs will not benefit from the excess tax benefit deduction taken at the time of the taxable event (option exercised) because it has a NOL carryforward that is increased by the excess tax benefit, then the tax benefit should not be recognized until the deduction actually reduces current taxes payable. As of September 30, 2007, we have approximately $1,300,000 in unrecognized tax benefit resulting from the exercise of NSOs since the effective date of SFAS 123(R) on January 1, 2006. We estimate this benefit will be realized in 2008 when we utilize the remaining NOLs.

Seasonality

We believe that our only seasonal products are fertilizer and related chemical products sold by our Chemical Business to the agricultural industry. The selling seasons for those products are primarily during the spring and fall planting seasons, which typically extend from March through June and from September through November in the geographical markets in which the majority of our agricultural products are distributed. As a result, our Chemical Business increases its inventory of agricultural products prior to the beginning of each planting season. In addition, the amount and timing of sales to the agricultural markets depend upon weather conditions and other circumstances beyond our control.

Related Party Transactions

Jayhawk

During 2006, a member of the Jayhawk Group purchased $1.0 million principal amount of the 2006 Debentures. In April 2007, the Jayhawk Group converted all of such 2006 Debentures into 141,040 shares of our common stock, at the conversion rate of 141.04 shares per $1,000 principal amount of 2006 Debentures (representing a conversion price of $7.09 per share). In addition, we purchased $1.0 million principal amount of our 10 3/4% Senior Unsecured Notes held by Jayhawk. Jayhawk earned interest of $117,000 relating to these debt instruments in 2006. During the nine months ended September 30, 2007, we paid the Jayhawk Group $70,000 of which $46,000 relates to interest earned on the 2006 Debentures and $24,000 relates to additional consideration paid to convert the 2006 Debentures.

On March 25, 2003, the Jayhawk Group purchased from us in a private placement pursuant to Rule 506 of Regulation D under the Securities Act, 450,000 shares of common stock and warrants for the purchase of up to 112,500 shares of common stock at an exercise price of $3.49 per share. The warrants expire on March 28, 2008. In connection with such sale, we entered into a Registration Rights Agreement with the Jayhawk Group, dated March 23, 2003.

During November 2006, we entered into an agreement (the “Jayhawk Agreement”) with the Jayhawk Group. Under the Jayhawk Agreement, the Jayhawk Group agreed, that if we made an exchange or tender offer for the Series 2 Preferred, to tender 180,450 shares of the 346,662 shares of Series 2 Preferred owned by the Jayhawk Group upon certain conditions being met. The Jayhawk Agreement further provided that the Golsen Group would exchange or tender 26,467 shares of Series 2 Preferred beneficially owned by them, as a condition to the Jayhawk Group’s tender of 180,450 of its shares of Series 2 Preferred. Pursuant to the Jayhawk Agreement and the terms of our exchange tender offer, during March 2007, the Jayhawk Group and members of the Golsen Group tendered 180,450 and 26,467 shares, respectively, of Series 2 Preferred for 1,335,330 and 195,855 shares, respectively, of our common stock in our tender offer and waived a total of approximately $4.96 million in accrued and unpaid dividends, with the Jayhawk Group waiving a total of $4.33 million and the Golsen Group waiving a total of $0.63 million.

We received a letter, dated May 23, 2007, from a law firm representing a stockholder of ours demanding that we investigate potential short-swing profit liability under Section 16(b) of the Exchange Act of the Jayhawk Group. The stockholder alleges that the surrender by the Jayhawk

Group of 180,450 shares of our Series 2 Preferred in our issuer exchange tender offer in March 2007 was a sale which was subject to Section 16 and matchable against prior purchases of Series 2 Preferred by the Jayhawk Group. The Jayhawk Group advised us that they do not believe that they are liable for short-swing profits under Section 16(b). The provisions of Section 16(b) provide that if we do not file a lawsuit against the Jayhawk Group in connection with these Section 16(b) allegations within 60 days from the date of the stockholder's notice to us, then the stockholder may pursue a Section 16(b) short-swing profit claim on our behalf. After completion of the investigation of this matter by our outside corporate/securities counsel, we attempted to settle this matter with the Jayhawk Group, but were unable to reach a resolution satisfactory to all parties. On October 9, 2007, the law firm representing the stockholder has initiated a lawsuit against the Jayhawk Group pursing a Section 16(b) short-swing profit claim on our behalf up to approximately $819,000.

The redemption of all of our outstanding Series 2 Preferred date was completed on August 27, 2007. The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. The Certificate of Designations for the Series 2 Preferred provided, and it is our position, that the holders of Series 2 Preferred that elected to convert shares of Series 2 Preferred into our common stock prior to the scheduled redemption date were not entitled to receive payment of any accrued and unpaid dividends on the shares so converted. As a result, holders that elected to convert shares of Series 2 Preferred are not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted. On or about August 16, 2007, the Jayhawk Group elected to convert the 155,012 shares of Series 2 Preferred held by it, and as of September 30, 2007, we have issued to the Jayhawk Group 671,046 shares of our common stock as a result of such conversion.

The Company has been advised by the Jayhawk Group, in connection with the Jayhawk Group's conversion of its holdings of Series 2 Preferred, the Jayhawk Group may bring legal proceedings against us for all accrued and unpaid dividends on the Series 2 Preferred that the Jayhawk Group converted after receiving a notice of redemption. The 155,012 shares of Series 2 Preferred converted by the Jayhawk Group after we issued the notice of redemption for the Series 2 Preferred would have been entitled to receive approximately $4.0 million of accrued and unpaid dividends on the August 27, 2007 redemption date, if such shares were outstanding on the redemption date and had not been converted and into common stock.

As a holder of Series 2 Preferred, the Jayhawk Group participated in the nomination and election of two individuals to serve on our Board of Directors in accordance with the terms of the Series 2 Preferred. As of September 30, 2007, the number of outstanding shares of Series 2 Preferred was less than 140,000. As a result, the right of the holders of Series 2 Preferred to nominate and elect two individuals to serve on our Board of Directors terminated pursuant to the terms of the Series 2 Preferred, and as of such date, the two independent directors elected by the holders of our Series 2 Preferred no longer serve as directors on our Board of Directors.

Golsen Group

In connection with the completion of our March 2007 tender offer for our outstanding shares of our Series 2 Preferred, members of the Golsen Group (a) tendered 26,467 shares of Series 2 Preferred in exchange for our issuance to them of 195,855 shares of our common stock and

(b) waived approximately $0.63 million in accrued and unpaid dividends on the shares of Series 2 Preferred tendered. Such tender by the Golsen Group was a condition to Jayhawk's Agreement to tender shares of Series 2 Preferred in the tender offer. See discussion above under "Jayhawk."

As of August 27, 2007, the Golsen Group redeemed 23,083 shares of Series 2 Preferred and received the cash redemption amount of approximately $1.76 million pursuant to the terms of our redemption of all of our outstanding Series 2 Preferred. The redemption price was $50.00 per share of Series 2 Preferred, plus $26.25 per share in accrued and unpaid dividends pro-rata to the date of redemption. The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. Holders that converted shares of Series 2 Preferred were not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted.

On September 7, 2007, we paid the accrued and unpaid dividends on our outstanding preferred stock utilizing a portion of the net proceeds of the sale of the 2007 Debentures and working capital, including approximately $2.25 million of accrued and unpaid dividends on our Series B Preferred and our Series D Preferred, all of the outstanding shares of which are owned by the Golsen Group.

A subsidiary within our Climate Control Business remodeled their offices, including the replacement of carpet and flooring throughout the office area. In connection with the remodeling, the subsidiary made payments for the purchase of carpeting totaling $69,000 and $13,000 during 2006 and the first nine months of 2007, respectively, to Designer Rugs, a company owned by Linda Golsen Rappaport, the daughter of Jack E. Golsen, our Chairman and Chief Executive Officer, and sister of Barry H. Golsen, our President.

Former Significant Shareholders

In October 2006, we issued 773,655 shares of our common stock to certain holders of our Series 2 Preferred in exchange for 104,548 shares of Series 2 Preferred. The shares of common stock issued included 303,400 and 262,167 shares issued in exchange for 41,000 and 35,428 shares of Series 2 Preferred stock to Paul J. Denby and James W. Sight (the "Former Significant Shareholders"), respectively, or to entities controlled by the Former Significant Shareholders. In connection with such exchange, the Former Significant Shareholders waived a total of approximately $1.78 million in accrued and unpaid dividends. Each of the Former Significant Shareholders, either individually or together with entities controlled by them, beneficially owned more than 5% of our issued and outstanding stock as of January 1, 2006. We have been advised that, as of September 30, 2007, neither of the Former Significant Shareholders owned more than 5% of our issued and outstanding stock.

Cash Dividends

During 2006, we paid nominal cash dividends to holders of certain series of our preferred stock. These dividend payments included $91,000 and $133,000 to the Golsen Group and the Jayhawk Group, respectively. Additionally, the dividend payments included $23,000 collectively to the Former Significant Shareholders. See "Golsen Group" above for a discussion of dividends paid in 2007 with respect to our securities held by members of the Golsen Group.

Northwest

Northwest Internal Medicine Associates ("Northwest"), a division of Plaza Medical Group, P.C., has an agreement with the Company to perform medical examinations of the management and supervisory personnel of the Company and its subsidiaries. Under such agreement, Northwest is paid $2,000 a month to perform all such examinations. Dr. Robert C. Brown (a director of the Company) is Vice President and Treasurer of Plaza Medical Group, P.C.

Quail Creek Bank

Bernard Ille, a member of our board of directors, is a director of Quail Creek Bank, N.A. (the "Bank"). The Bank is a lender to one of our subsidiaries. During 2006, the subsidiary made interest and principal payments on outstanding debt owed to the Bank in the amount of $.3 million and $1.6 million, respectively. During the nine months ended September 30, 2007, the subsidiary made interest and principal payments on outstanding debt owed to the Bank in the amount of $.1 million and $3.3 million, respectively. At December 31, 2006, the subsidiary's loan payable to the Bank was approximately $3.3 million, (none at September 30, 2007) with an annual interest rate of 8.25%. The loan was secured by certain of the subsidiary's property, plant and equipment. This loan was paid in full in June 2007 utilizing a portion of the net proceeds of our sale of the 2007 Debentures.

Critical Accounting Policies and Estimates

See our discussion on critical accounting policies in Item 7 of our Form 10-K, as amended. In addition, the preparation of financial statements requires management to make estimates and assumptions that affect the reported amount of assets, liabilities, revenues and expenses, and disclosures of contingencies.

Change in Accounting for Plant Turnaround Costs

As previously disclosed, in September 2006, the FASB completed a project to clarify guidance on the accounting for Turnarounds. The FASB issued FASB Staff Position No. AUG AIR-1 ("FSP") which eliminated the accrue-in-advance method of accounting for Turnarounds which was the method we were using. In addition, the adoption of the provisions in the FSP is to be considered a change in accounting principle with retrospective application as described in SFAS 154, if practical. The FSP became effective for us on January 1, 2007. There were three acceptable accounting methods for Turnarounds that we could adopt of which we adopted the direct expensing method which requires us to expense Turnaround costs as they are incurred.

For the nine months ended September 30, 2007 and 2006, Turnaround costs for the Chemical Business totaled $870,000 and $1,788,000 respectively. Based on our current plan for Turnarounds to be performed during the remainder of 2007, we estimate that we will incur Turnaround costs of approximately $2.4 million during the fourth quarter of 2007. However, it is possible that these Turnarounds could be performed during a different quarter and/or the actual costs could be significantly different than our estimates.

Changes in Accounting Estimates

During the third quarter of 2007, we had the following changes in accounting estimates:

- the recognition of $3,150,000 relating to deferred income taxes included in benefits for income taxes as discussed above under Income Taxes and

- the recognition of a provision of $735,000 relating to additional AMT included in benefits for income taxes as also discussed above under Income Taxes.

The net effect of these changes in accounting estimates increased income from continuing operations by $2,415,000 and net income by $2,415,000 for the nine and three months ended September 30, 2007. In addition, these changes in accounting estimates increased basic and diluted net income per share by $.13 and $.11, respectively, for the nine months ended September 30, 2007 and $.12 and $.10, respectively, for the three months ended September 30, 2007.

Results of Operations

Nine months ended September 30, 2007 compared to Nine months ended September 30, 2006

Net Sales

The following table contains certain information about our net sales in different industry segments for the nine months ended September 30,

	2007	2006	Change	Percentage Change
		(Dollars In Thousands)		
Net sales:				
Climate Control:				
Geothermal and water source heat pumps	$ 127,292	$ 97,880	$ 29,412	30.0 %
Hydronic fan coils	65,414	43,227	22,187	51.3 %
Other HVAC products	28,758	19,138	9,620	50.3 %
Total Climate Control	221,464	160,245	61,219	38.2 %
Chemical:				
Agricultural products	92,002	70,216	21,786	31.0 %
Industrial acids and other chemical products	72,784	75,123	(2,339)	(3.1)%
Mining products	57,608	56,122	1,486	2.6 %
Total Chemical	222,394	201,461	20,933	10.4 %
Other	7,896	6,510	1,386	21.3 %
Total net sales	$ 451,754	$ 368,216	$ 83,538	22.7 %

Climate Control Business

- Net sales of our geothermal and water source heat pump products increased primarily as a result of increases in export, original equipment manufacturer (“OEM”) and commercial shipments. In total, the number of geothermal and water source heat pump products

shipments increased by approximately 16% in the first nine months of 2007 as compared to the first nine months of 2006. In addition, an increase of approximately 14% relates to the change in product mix and price increases. The price increases were instituted in response to rising raw material and component purchase prices. Due to the significant backlog of customer orders at the time the price increases were put into effect, the impact of customer price increases trail cost increases in raw material and component purchase prices. In 2007, the impact of price increases is estimated to be around 5%. We continue to maintain a market share leadership position based on data supplied by the Air-Conditioning and Refrigeration Institute;

- Net sales of our hydronic fan coils increased primarily due to a 18% increase in the number of units sold due to an increase in large customer orders as well as a 29% increase in average unit sales prices as the result of the change in product mix, lower discounting, and higher selling prices driven by raw material cost increases;
- Net sales of our other HVAC products increased as the result of engineering and construction services due to work completed on construction contracts and an increase in the number of larger custom air handlers sold.

Chemical Business

El Dorado and Cherokee produce all the chemical products described in the table above and Baytown produces only nitric acid products. The volume of tons sold and the sales prices for the Chemical Business increased 3% and 8%, respectively, compared with the same period of 2006.

- Volume at El Dorado remained essentially the same while sales prices increased 10% directly related to strong agricultural product market demand relative to supply for nitrogen fertilizer;
- Volume at Cherokee increased 11% and sales prices increased 7% primarily related to the same market-driven demand for nitrogen fertilizer. Additionally, there were low demand and production curtailments experienced throughout the first quarter of 2006 as the result of reduction in orders from several key customers due to the high cost of natural gas caused by the effects of Hurricane Katrina.
- Volume remained essentially the same while sales prices increased 3% at Baytown.

Other - Net sales classified as “Other” consists of sales of industrial machinery and related components. The increase in net sales relates primarily to increased customer demand and an expansion of our machine tool product line.

Table of Contents

Gross Profit

Gross profit by industry segment represents net sales less cost of sales. The following table contains certain information about our gross profit in different industry segments for the nine months ended September 30,

	2007	2006	Change	Percentage Change
	(Dollars In Thousands)			
Gross profit:				
Climate Control	$ 65,061	$ 48,362	$ 16,699	34.5%
Chemical	33,980	18,430	15,550	84.4%
Other	2,840	2,245	595	26.5%
	$ 101,881	$ 69,037	$ 32,844	47.6%

	2007	2006	Change
Gross profit percentage (1):			
Climate Control	29.4%	30.2 %	(0.8)%
Chemical	15.3%	9.1 %	6.2 %
Other	36.0%	34.5 %	1.5 %
Total	22.6%	18.7 %	3.9 %

(1) As a percentage of net sales

The increase in gross profit in our Climate Control Business was a direct result of the increase in sales volume, change in product mix, and price increases as discussed above. The decline in our gross profit percentage was primarily due to raw material costs increases being incurred ahead of customer price increases becoming effective as well as changes in product mix.

The increase in gross profit of our Chemical Business relates primarily to improved margins on agricultural products sold by El Dorado and Cherokee. In addition, total Turnaround costs for our Chemical Business decreased approximately $0.9 million due primarily to the timing of when the Turnarounds were performed. The overall higher production volumes resulted in improved absorption of fixed costs and the decrease in Turnaround costs are the primary reasons for the increase in our gross profit percentage.

During the first nine months of 2007 and 2006, we recorded the realization of losses on certain nitrogen-based inventories of approximately $0.4 million and $1.1 million, respectively. In addition during the first nine months of 2007, we realized insurance recoveries of approximately $1.5 million relating to a business interruption claim associated with Cherokee. Also during the first nine months of 2006, we realized insurance recoveries of approximately $0.9 million relating to a business interruption claim associated with El Dorado. The above transactions contributed to an increase in gross profit for each respective period.

The increase in gross profit classified as “Other” (see discussion above) is due primarily to the increase in sales as discussed above.

Operating Income

Our chief operating decision makers use operating income by industry segment for purposes of making decisions which include resource allocations and performance evaluations. Operating income by industry segment represents gross profit by industry segment less selling, general and

administrative expense ("SG&A") incurred by each industry segment plus other income and other expense earned/incurred by each industry segment before general corporate expenses and other business operations, net. General corporate expenses and other business operations, net consist of unallocated portions of gross profit, SG&A, other income and other expense. The following table contains certain information about our operating income for the nine months ended September 30,

	2007	2006	Change
		(In Thousands)	
Operating income:			
Climate Control	$ 27,875	$ 18,480	$ 9,395
Chemical	27,123	9,019	18,104
General corporate expense and other business operations, net	(7,225)	(6,292)	(933)
	$ 47,773	$ 21,207	$ 26,566

Operating Income - Climate Control: The net increase in operating income of our Climate Control Business resulted primarily from the net increase of gross profit of $16.7 million as discussed above. This increase in operating income was partially offset by increased personnel cost of $2.1 million as the result of increased number of personnel and group healthcare costs, increased commissions and warranty expenses of $1.6 million and $0.7 million, respectively, due to increased sales volume and distribution/product mix and increased shipping and handling costs of $1.1 million due to increased sales volume and rising fuel costs.

Operating Income - Chemical: The net increase of our Chemical Business' operating income primarily relates to the net increase in gross profit of $15.6 million as discussed above. Also as discussed above under "Overview – Chemical Business", our Chemical Business recognized income of approximately $3.3 million relating to a litigation settlement during the nine months ended September 30, 2007.

General Corporate Expense and Other Business Operations, Net: The net increase of $0.9 million in our general corporate expense and other business operations, net relates primarily to an increase of $0.8 million in personnel costs due, in part, to increased group health care costs and an increase of professional fees of $0.6 million primarily as the result of assistance received in our evaluation of our internal controls and procedures and related documentation for Sarbanes-Oxley requirements which was partially offset by the increase of $0.6 million in gross profit classified as "Other" as discussed above. In addition, during the first nine months of 2006, we received a refund of $0.4 million relating to insurance brokerage fees which was partially offset by a litigation settlement of $0.3 million relating to an asserted financing fee.

Interest Expense - Interest expense was $8.1 million for the first nine months of 2007 compared to $9.0 million for the same period of 2006, a decrease of $0.9 million. This decrease in interest expense relates primarily to the acquisition of the 10-3/4% Senior Unsecured Notes during 2006 and the conversions of the 2006 Debentures during 2006 and 2007.

Benefit and Provision For Income Taxes - The benefit for income taxes for the first nine months of 2007 was $1.0 million compared to a provision for income taxes of $0.4 million for the same period in 2006. The change of $1.4 million was primarily the result of the reversal of

valuation allowances against net deferred assets of approximately $3.2 million as discussed above under "Income Taxes". The benefit derived from the reversal of the valuation allowances was partially offset by an increase in the federal AMT and state income taxes resulting from increased taxable income and higher effective tax rates.

Net Loss (Income) From Discontinued Operations– Net income from discontinued operations was $0.3 million for the first nine months of 2007 compared to a net loss from discontinued operations of $0.2 million for the same period in 2006. The loss incurred in 2006 relates primarily to provisions for our estimated costs to investigate and delineate a site in Hallowell, Kansas as a result of meetings with the Kansas Department of Health and Environment ("KDHE") during 2006. However, on September 12, 2007, the KDHE approved our proposal to perform surface and groundwater monitoring and to implement a mitigation work plan to acquire additional field data. As a result of receiving approval from the KDHE for our proposal, net income from discontinued operations for 2007 relates primarily to the recognition of the reduction of our share of estimated costs associated with this remediation.

Three months ended September 30, 2007 compared to Three months ended September 30, 2006

Net Sales

The following table contains certain information about our net sales in different industry segments for the three months ended September 30,

	2007	2006	Change	Percentage Change
		(Dollars In Thousands)		
Net sales:				
Climate Control:				
Geothermal and water source heat pumps	$ 44,417	$ 36,589	$ 7,828	21.4%
Hydronic fan coils	22,493	15,663	6,830	43.6%
Other HVAC products	8,731	8,958	(227)	(2.5)%
Total Climate Control	75,641	61,210	14,431	23.6%
Chemical:				
Agricultural products	23,918	17,905	6,013	33.6%
Industrial acids and other chemical products	27,050	24,337	2,713	11.1%
Mining products	18,284	18,522	(238)	(1.3)%
Total Chemical	69,252	60,764	8,488	14.0%
Other	2,720	1,994	726	36.4%
Total net sales	$ 147,613	$ 123,968	$ 23,645	19.1%

Climate Control Business

- Net sales of our geothermal and water source heat pump products increased primarily as a result of a change in product mix, an increase in sales to the OEM and export markets, and a series of customer selling price increases announced in 2006 that were not realized in sales until 2007. In aggregate, unit mix, by industry and market served, affected the results with $3.7 million of the sales increase from

export and $1.7 million of the sales increase from the OEM customers. The impact of the customer price increases is estimated to be approximately 5%. We continue to maintain a market share leadership position based on data supplied by the Air-Conditioning and Refrigeration Institute;

- Net sales of our hydronic fan coils increased primarily due to a 29% increase in average unit sales prices as the result of a change in product mix, lower discounting, and higher selling prices driven by raw material cost increases as well as a 14% increase in the number of units sold due to an increase in large customer orders;
- Net sales of our other HVAC products decreased as the result of a decrease in the number of larger custom air handlers sold. This decrease was partially offset by an increase in engineering and construction services due to work completed on construction contracts.

Chemical Business

El Dorado and Cherokee produce all the chemical products described in the table above and Baytown produces only nitric acid products. The volume of tons sold and sale prices increased 3% and 11%, respectively, compared with the same quarter of 2006.

- Volume at El Dorado decreased 3% as the result of a delayed fall agricultural season due to weather conditions and sales prices increased 15% directly related to strong agricultural product market prices;
- Volume at Cherokee increased 4% and sales prices increased 17% primarily related to the market-driven demand for nitrogen fertilizer.
- Volume at Baytown increased 11% due to increased customer demand while sales prices remained essentially the same.

Other - Net sales classified as “Other” consists of sales of industrial machinery and related components. The increase in net sales relates primarily to increased customer demand for our machine tool products.

Table of Contents

Gross Profit

Gross profit by industry segment represents net sales less cost of sales. The following table contains certain information about our gross profit in different industry segments for the three months ended September 30,

	2007	2006	Change	Percentage Change
	(Dollars In Thousands)			
Gross profit:				
Climate Control	$ 22,433	$ 17,853	$ 4,580	25.7%
Chemical	11,738	5,531	6,207	112.2%
Other	1,001	679	322	47.4%
	$ 35,172	$ 24,063	$ 11,109	46.2%

	2007	2006	Change
Gross profit percentage (1):			
Climate Control	29.7%	29.2 %	0.5%
Chemical	16.9%	9.1 %	7.8 %
Other	36.8%	34.1 %	2.7 %
Total	23.8%	19.4 %	4.4 %

(1) As a percentage of net sales

The increase in gross profit in our Climate Control Business was a direct result of the increase in sales volume as discussed above. The improvement in our gross profit percentage was primarily due to product line mix and customer price increases becoming effective.

The increase in gross profit of our Chemical Business relates primarily to improved margins on agricultural products sold by El Dorado as discussed above.

In addition, during the third quarter of 2007, we realized insurance recoveries of approximately $1.5 million relating to a business interruption claim associated with Cherokee. Also during the third quarter of 2006, we realized insurance recoveries of $0.3 million relating to a business interruption claim associated with El Dorado. The above transactions contributed to an increase in gross profit and gross profit percentage for each respective period.

The increase in gross profit classified as “Other” (see discussion above) is due primarily to the increase in sales as discussed above.

Operating Income

Our chief operating decision makers use operating income by industry segment for purposes of making decisions which include resource allocations and performance evaluations. Operating income by industry segment represents gross profit by industry segment less selling, general and administrative expense (“SG&A”) incurred by each industry segment plus other income and other expense earned/incurred by each industry segment before general corporate expenses and other business operations, net. General corporate expenses and other business operations, net consist of unallocated portions of gross profit, SG&A, other income and other expense. The following table contains certain information about our operating income for the three months ended September 30,

Table of Contents

	2007	2006	Change
		(In Thousands)	
Operating income:			
Climate Control	$ 9,750	$ 6,903	$ 2,847
Chemical	11,477	2,393	9,084
General corporate expense and other business operations, net	(2,130)	(2,516)	386
	$ 19,097	$ 6,780	$ 12,317

Operating Income - Climate Control: The net increase in operating income of our Climate Control Business resulted primarily from the net increase of gross profit of $4.6 million as discussed above. This increase in operating income was partially offset by an increase in personnel costs of $0.7 million as the result of increased number of personnel and group healthcare costs and an increase of $0.4 million in commissions due to increased sales volume and distribution/product mix.

Operating Income - Chemical: The net increase of our Chemical Business' operating income primarily relates to the net increase in gross profit of $6.2 million as discussed above. Also as discussed above under "Overview – Chemical Business", our Chemical Business recognized income of approximately $3.3 million relating to a litigation settlement during the three months ended September 30, 2007.

General Corporate Expense and Other Business Operations, Net: The net decrease of $0.4 million in our general corporate expense and other business operations, net relates primarily to the increase of $0.3 million in gross profit classified as "Other" as discussed above.

Interest Expense - Interest expense was $3.5 million for the third quarter of 2007 compared to $3.2 million for the third quarter of 2006, an increase of $0.3 million. This net increase in interest expense relates primarily to the interest incurred relating to the 2007 Debentures and the change in fair value of interest rate cap contracts partially offset by the conversions of the 2006 Debentures and the pay down of the Working Capital Revolver Loan.

Non-Operating Other Income, net - Our non-operating other income, net was $532,000 for the three-month period ended September 30, 2007 compared to $68,000 for 2006. The increase of $464,000 relates primarily to interest income earned in 2006 from investing a portion of the net proceeds from the 2007 Debentures in money market funds.

Benefit and Provision For Income Taxes - The benefit for income taxes for the three months ended September 30, 2007 was $1.5 million compared to a provision for income taxes of $0.2 million for the same period in 2006. The change of approximately $1.7 million was primarily the result of the reversal of valuation allowances against net deferred assets of approximately $3.2 million as discussed above under "Income Taxes". The benefit derived from the reversal of the valuation allowances was partially offset by an increase in the federal AMT and state income taxes resulting from increased taxable income and higher effective tax rates.

Net Loss (Income) From Discontinued Operations– Net income from discontinued operations was $0.4 million for the third quarter of 2007 compared to a net loss from discontinued operations of $0.1 million for the same period in 2006. The loss incurred in 2006

relates primarily to provisions for our estimated costs to investigate and delineate a site in Hallowell, Kansas as a result of meetings with the Kansas Department of Health and Environment ("KDHE") during 2006. However, on September 12, 2007, the KDHE approved our proposal to perform surface and groundwater monitoring and to implement a mitigation work plan to acquire additional field data. As a result of receiving approval from the KDHE for our proposal, net income from discontinued operations for 2007 relates to the recognition of the reduction of our share of estimated costs associated with this remediation.

Cash Flow From Continuing Operating Activities

Historically, our primary cash needs have been for operating expenses, working capital and capital expenditures. We have financed our cash requirements primarily through internally generated cash flow, borrowings under our revolving credit facilities, secured asset financing and the sale of assets. See additional discussion concerning cash flow from our Climate Control and Chemical Businesses in "Liquidity and Capital Resources".

For 2007, net cash provided by continuing operating activities was $26.6 million, including net income plus depreciation and amortization and other adjustments partially offset by cash used by changes in assets and liabilities.

Accounts receivable increased $20.7 million including:

- an increase of $13.5 million relating to the Climate Control Business due primarily to increased sales of hydronic fan coils and heat pump products as discussed above under "Results of Operations" and
- a net increase of $6.7 million relating to the Chemical Business as the result of increased sales at Cherokee and El Dorado primarily as the result of increased demand for agricultural products and the timing of a receipt of payment from a major customer.

Inventories increased $1.6 million including:

- a net increase of $1.8 million relating to the Climate Control Business, primarily hydronic fan coils and heat pump products due primarily to increased production and increased levels of finished goods on hand as the result of the expansion of our facilities to meet customer demand partially offset by a decrease in large custom air handlers as the result of increased sales,
- an increase of $1.4 million relating to our industrial machinery to meet customer demand partially offset by,
- a decrease of $1.5 million relating to the Chemical Business primarily relating to the increase in sales of agricultural products as previously discussed.

Other supplies and prepaid items increased $2.7 million primarily as a result of an increase of $4.1 million in precious metals due primarily to the increased cost of these metals and additional metals purchased and recovered net of the amount consumed in the manufacturing process and sold by the Chemical Business and an increase of $0.6 million in deposits to vendors for the purchase of certain chemical-related products partially offset by the decrease of $2.6 million in prepaid insurance as the result of recognizing the related insurance expense for the nine months of 2007.

Accounts payable decreased $3.8 million primarily due to a decrease of $3.7 million in the Chemical Business due, in part, to the payment of invoices relating to Baytown's property taxes and a scheduled lease billing and invoices relating to maintenance performed at El Dorado, and the decrease in the average cost of certain raw materials used at El Dorado.

Customer deposits decreased $0.2 million as the result of recognizing sales associated with those deposits.

The change in deferred rent expense of $2.4 million is due to the scheduled lease payments during the first nine months of 2007 exceeding the rent expense recognized on a straight-line-basis.

The increase in other current and noncurrent liabilities of $7.9 million includes an increase in accrued payroll and benefits of $2.3 million primarily as the result of the increase in the number of days outstanding due to the timing of our payroll-related payments, an increase in accrued property and income taxes of $1.9 million due primarily to the recognition of these expenses for the first nine months of 2007, an increase in deferred revenue on extended warranty contracts of $0.8 million as the result of an increase in sales of Climate Control products and a net increase of $2.9 million due to other individually immaterial items.

Cash Flow from Continuing Investing Activities

Net cash used by continuing investing activities was $7.1 million for 2007 which included $10.3 million for capital expenditures of which $5.1 million are for the benefit of our Climate Control Business and $5.1 million are for our Chemical Business and the purchase of interest rate cap contracts for $0.6 million. These expenditures were partially offset by proceeds from restricted cash of $3.7 million which was primarily used to pay down debt.

Cash Flow from Continuing Financing Activities

Net cash provided by continuing financing activities was $19.3 million which primarily consisted of:

- net proceeds of $57.0 million from the 2007 Debentures as discussed above under "Liquidity and Capital Resources",
- net proceeds of $2.4 million from other long-term debt primarily for working capital purposes,
- proceeds of $1.1 million from the exercise of stock options, offset, in part, by
- payments of $26.4 million on revolving debt facilities, net of proceeds, primarily from the use of proceeds from the 2007 Debentures,
- payments of $7.6 million on other long-term debt and debt issuance costs,
- dividend payments of $2.9 million on preferred stock,
- payments of $2.9 million on short-term financing and drafts payable, net of proceeds, and
- payments of $1.3 million to acquire non-redeemable preferred stock.

Table of Contents

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K under the Securities Exchange Act of 1934, as amended, except for the following:

Cepolk Holding, Inc. ("CHI"), a subsidiary of the Company, is a limited partner and has a 50% equity interest in Cepolk Limited Partnership ("Partnership") which is accounted for on the equity method. The Partnership owns an energy savings project located at the Ft. Polk Army base in Louisiana ("Project"). At September 30, 2007, our investment was $3.4 million. For the first nine months of 2007, distributions received from this Partnership were $0.6 million and our equity in earnings was $0.7 million. As of September 30, 2007, the Partnership and general partner to the Partnership is indebted to a term lender ("Lender") of the Project with a term extending to December 2010 ("Loan"). CHI has pledged its limited partnership interest in the Partnership to the Lender as part of the Lender's collateral securing all obligations under the Loan. This guarantee and pledge is limited to CHI's limited partnership interest and does not expose CHI or the Company to liability in excess of CHI's limited partnership interest. No liability has been established for this pledge since it was entered into prior to adoption of FIN 45. CHI has no recourse provisions or available collateral that would enable CHI to recover its partnership interest should the Lender be required to perform under this pledge.

Aggregate Contractual Obligations

In the operation of our businesses, we enter into contracts, leases and borrowing arrangements. In connection with a series of agreements (the "Bayer Agreement") with Bayer Corporation ("Bayer"), under which we are to supply nitric acid with a provision for pass through of production costs subject to certain performance obligations on our part, a subsidiary of ThermaClime entered into a 10 year lease in June 1999 that requires minimum future net lease rentals of approximately $16.6 million at September 30, 2007. The lease payments are includable costs in these agreements. These lease rentals are made monthly over the term of the agreements, typically with one annual payment representing a majority of the amount due for the year. A lease payment of approximately $8.1 million due in January 2008 has been considered in evaluating our liquidity.

As discussed in our Form 10-K, as amended, we had certain contractual obligations at December 31, 2006, with various maturity dates, related to the following:

- long-term debt,
- interest payments on long-term debt,
- capital expenditures,
- operating leases,
- exchange-traded futures contracts,
- purchase obligations and
- other long-term liabilities.

Table of Contents

As discussed above within this MD&A, the following occurred during the nine months ended September 30, 2007:

- net proceeds of $57.0 million from the 2007 Debentures;
- net payments of $26.4 million on revolving debt facilities primarily from the use of the proceeds from the 2007 Debentures;
- conversion of $4.0 million of the 2006 Debentures into common stock; and
- capital expenditures of approximately $10.3 million relating primarily to the Climate Control and Chemical Businesses.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

General

Our results of operations and operating cash flows are impacted by changes in market interest rates and changes in market prices of copper, steel, anhydrous ammonia and natural gas.

Forward Sales Commitments Risk

Periodically, we enter into forward firm sales commitments for products to be delivered in future periods. As a result, we could be exposed to embedded losses should our product costs exceed the firm sales prices. At September 30, 2007, we had no embedded losses associated with sales commitments with firm sales prices.

Commodity Price Risk

Our Climate Control Business buys substantial quantities of copper and steel for use in manufacturing processes and our Chemical Business buys substantial quantities of anhydrous ammonia and natural gas as feedstocks generally at market prices. Periodically, our Climate Control Business enters into exchange-traded futures for copper and our Chemical Business enters into exchange-traded futures for natural gas, which contracts are generally accounted for on a mark-to-market basis in accordance with SFAS 133. At September 30, 2007, our purchase commitments under these contracts were for 750,000 pounds of copper through March 2008 at a weighted average cost of $3.31 per pound ($2,482,000) and a weighted average market value of $3.63 per pound ($2,726,000). In addition, our Chemical Business had purchase commitments under these contracts for 190,000 MMBtu of natural gas through March 2008 at a weighted average cost of $8.17 per MMBtu ($1,552,000) and a weighted average market value of $7.59 per MMBtu ($1,441,000).

Interest Rate Risk

Our interest rate risk exposure results from our debt portfolio which is impacted by short-term rates, primarily variable-rate borrowings from commercial banks, and long-term rates, primarily fixed-rate notes, some of which prohibit prepayment or require substantial prepayment penalties.

Reference is made to our Form 10-K, as amended, for an expanded analysis of expected maturities of long-term debt and its weighted average interest rates.

Table of Contents

In 2005, we purchased two interest rate cap contracts for a cost of $590,000 to help minimize our interest rate risk exposure relating to the Working Capital Revolver Loan. These contracts set a maximum three-month LIBOR base rate of 4.59% on $30 million of debt and mature in March 2009. In April 2007, we purchased two interest rate cap contracts for a cost of $621,000 to help minimize our interest rate risk exposure associated with debt. These contracts set a maximum three-month LIBOR base rate of 5.35% on $50 million of debt and mature in April 2012. These contracts are free-standing derivatives and are accounted for on a mark-to-market basis in accordance with SFAS No.133. At September 30, 2007, the market value of these contracts was $765,000.

As of September 30, 2007, the estimated fair value of our variable rate and fixed rate debt exceeded the debt's carrying value by approximately $2.4 million ($6.0 million at December 31, 2006).

Item 4. Controls and Procedures

As noted on the cover of this Form 10-Q and discussed above under “Filing Requirements Pursuant to Sarbanes Oxley,” as of December 31, 2007, we will be an “accelerated filer.” Due to the definitions, certain areas contained within the disclosure controls and procedures, as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), overlap with the definition of internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act).

Our disclosure controls and procedures are designed to ensure that information relating to us, including our consolidated subsidiaries, that is required to be disclosed in our periodic reports filed with the Securities and Exchange Commission (“SEC”) is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that such information is communicated timely to our management. We have evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of September 30, 2007 and have concluded that our disclosure controls and procedures are effective as of September 30, 2007. During the evaluations performed as of September 30 and prior periods, we have noted various significant deficiencies in our disclosure controls and procedures, which in our opinion do not have a material effect on our disclosure controls and procedures. In our efforts to comply with the provisions of “Sarbanes Oxley”, we have and will continue to actively remediate significant deficiencies noted in our evaluations.

There were no changes to our internal control over financial reporting during the quarter ended September 30, 2007 that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

[Table of Contents](#)

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained within this report may be deemed "Forward-Looking Statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements in this report other than statements of historical fact are Forward-Looking Statements that are subject to known and unknown risks, uncertainties and other factors which could cause actual results and performance of the Company to differ materially from such statements. The words "believe", "expect", "anticipate", "intend", "will", and similar expressions identify Forward-Looking Statements. Forward-Looking Statements contained herein relate to, among other things,

- the Climate Control's focus on increasing the sales and operating margins of all products, developing and introducing new and energy efficient products, and increasing production to meet customer demand;
- the Climate Control Business will continue to launch new products and product upgrades in an effort to maintain and improve our current market position and to establish presence in new markets;
- fully utilizing the regular NOL carryforwards in 2008 and generating taxable income in the future at which time we will be recognizing and paying federal income taxes at regular corporate rates;
- shipping substantially all of our September 30, 2007 backlog within twelve months;
- our Chemical Business continues to focus on growing our non-seasonal industrial customer base with an emphasis on customers accepting the risk inherent with raw material costs, while maintaining a strong presence in the seasonal agricultural sector;
- our strategy in the Chemical Business is to maximize production efficiency of the facilities, thereby lowering the fixed cost of each ton produced;
- the amount relating to committed expenditures;
- the prospects for new product in the Climate Control Business are improving;
- not paying cash dividends on our outstanding common stock in the near future;
- sufficient liquidity to fund foreseeable growth and meet all current commitments;
- ability to meet all required financial covenant tests for the year ending December 31, 2007 under our loan agreements;
- having adequate cash to satisfy our cash requirements as they become due in 2007;
- our seasonal products in our Chemical Business;
- since we will become an accelerated filer on December 31, 2007, we will incur additional costs to meet the requirements as an accelerated filer for the year ending December 31, 2007 and future periods;

  capital expenditures and the amounts thereof including the amounts relating to the sulfuric acid plant;
- the amount of Turnaround costs to be incurred during the fourth quarter of 2007;
- the additional capital expenditures at the El Dorado's sulfuric acid plant will increase our production capacity which can be sold in our markets;
- the plan to repay the Senior Secured Loan on or before November 8, 2007 with a new $50 million loan, at a lower interest rate, with fewer pledged assets securing the new loan, and with financial covenants substantially similar to the Senior Secured Loan;
- continue to actively remediate significant deficiencies noted in our evaluations of disclosure controls and procedures; and
- the future use of proceeds of our 2007 Debentures.

While we believe the expectations reflected in such Forward-Looking Statements are reasonable, we can give no assurance such expectations will prove to have been correct. There are a variety of factors which could cause future outcomes to differ materially from those described in this report, including, but not limited to,

- decline in general economic conditions, both domestic and foreign,
- material reduction in revenues,
- material increase in interest rates,
- ability to collect in a timely manner a material amount of receivables,
- increased competitive pressures,
- changes in federal, state and local laws and regulations, especially environmental regulations, or in interpretation of such, pending,
- additional releases (particularly air emissions) into the environment,
- material increases in equipment, maintenance, operating or labor costs not presently anticipated by us,
- the requirement to use internally generated funds for purposes not presently anticipated,
- the inability to secure additional financing for planned capital expenditures,
- the cost for the purchase of anhydrous ammonia and natural gas,
- changes in competition,
- the loss of any significant customer,
- changes in operating strategy or development plans,
- inability to fund the working capital and expansion of our businesses,
- adverse results in any of our pending litigation,
- inability to obtain necessary raw materials and
- other factors described in "Management's Discussion and Analysis of Financial Condition and Results of Operation" contained in this report.

Given these uncertainties, all parties are cautioned not to place undue reliance on such Forward-Looking Statements. We disclaim any obligation to update any such factors or to publicly announce the results of any revisions to any of the Forward-Looking Statements contained herein to reflect future events or developments.

PART II
OTHER INFORMATION

Item 1. Legal Proceedings

There are no material legal proceedings or material developments in any such legal proceedings pending against us and/or our subsidiaries not reported in Item 3 of our Form 10-K, as amended, and in Item I of Part II of our Form 10-Qs for the quarters ended March 31, 2007 and June 30, 2007, except for the following material developments to such proceedings that occurred during the third quarter of 2007:

Settlement Agreement

The Company and its subsidiary, Cherokee Nitrogen Company ("CNC"), entered into a Settlement Agreement and Release on September 24, 2007, with Dynegy, Inc. ("Dynegy"), Dynegy's subsidiary, Dynegy Marketing and Trade ("DMT"), and Nelson Brothers, LLC ("Nelson"), to settle the lawsuit previously reported, titled Nelson Brothers, LLC v. Cherokee Nitrogen v. Dynegy Marketing, which was pending in Alabama state court in Colbert County, Alabama (the "Lawsuit"). Dynegy had filed a counterclaim against CNC for $580,000 allegedly owed on account, which had been recorded by CNC. The settlement resulted in the dismissal with prejudice of all matters in the Lawsuit and the net payment (after payments to Nelson and legal fees and expenses) received by CNC of approximately $2,692,000, as well as allow CNC to retain the disputed $580,000 account payable. As previously disclosed, Nelson agreed to settle its portion of the lawsuit with CNC by CNC agreeing to pay Nelson 25% of the net proceeds (after costs) that are received by CNC from Dynegy in connection with a settlement or resolution of this lawsuit.

Short-Swing Profit Claim

We received a letter dated May 23, 2007 from a law firm representing a stockholder of ours demanding that we investigate potential short-swing profit liability under Section 16(b) of the Exchange Act of the Jayhawk Group. The stockholder alleges that the surrender by the Jayhawk Group of 180,450 shares of our Series 2 Preferred in our issuer exchange tender offer in March 2007 was a sale which was subject to Section 16 and matchable against prior purchases of Series 2 Preferred by the Jayhawk Group. The Jayhawk Group advised us that they do not believe that they are liable for short-swing profits under Section 16(b). The provisions of Section 16(b) provide that if we do not file a lawsuit against the Jayhawk Group in connection with these Section 16(b) allegations within 60 days from the date of the stockholder's notice to us, then the stockholder may pursue a Section 16(b) short-swing profit claim on our behalf. We engaged our outside corporate/securities counsel to investigate this matter. After completion of this investigation, we attempted to settle the matter with the Jayhawk Group but were unable to reach a resolution satisfactory to all parties. On October 9, 2007, the law firm representing the stockholder initiated a lawsuit against the Jayhawk Group pursuing a Section 16(b) short-swing profit claim on our behalf up to approximately $819,000.

Item 1A. Risk Factors

Reference is made to Item 1A of our Form 10-K, as amended, and our Form 10-Q for the quarter ended March 31, 2007 and June 30, 2007 for our discussion concerning risk factors. The risk

factors set forth in our Form 10-K, as amended and Form 10-Q's remain unchanged, except the following risk factors have been amended as follows:

We have not paid dividends on our outstanding common stock in many years.

We have not paid cash dividends on our outstanding common stock in many years, and we do not anticipate paying cash dividends on our outstanding common stock in the near future. We intend to retain most of our future earnings, if any, to provide funds for our operations and/or expansion of our business.

In September 2007, we paid an aggregate of approximately $2.0 million in accrued and unpaid dividends due as of December 31, 2006, on our outstanding Series B 12% Cumulative Convertible Preferred ("Series B Preferred"), and our Series D, 6% Cumulative, Convertible Class C Preferred Stock, no par value ("Series D Preferred"), utilizing a portion of the net proceeds from the sale of our 5.5% Convertible Senior Subordinated Debentures due 2012. In addition, in September 2007 we paid an aggregate of approximately $0.3 million in cash dividends due for 2007 on our outstanding Series B Preferred, Series D Preferred and our Convertible, Noncumulative Preferred Stock ("Noncumulative Preferred"), utilizing funds from our working capital. All of the issued and outstanding shares of our Series B Preferred and Series D Preferred are owned by the Golsen Group. As a result of these payments, we have no accrued and unpaid dividends due on our outstanding cumulative preferred stock as of the date of this prospectus.

There are no assurances that we will in the future pay any quarterly dividends on any of our outstanding shares of preferred stock. If, in the future, accrued and unpaid dividends exist on our preferred stock, no dividends may be paid on our common stock. In the event of our liquidation, winding up or dissolution, there can be no distributions on our common stock unless and until all of the liquidation preference and stated value amounts of our outstanding preferred stock and all accrued and unpaid dividends, if any, due on our outstanding cumulative preferred stock are paid in full. Further, not paying dividends that accrue on our outstanding preferred stock could adversely affect the marketability of our common stock and our ability to raise additional equity capital.

The risk factor as to being highly leveraged, which could affect our ability to pay our outstanding indebtedness, obtain additional financing and fund our operations is hereby deleted, because of our recently completed $60 million of Debentures, we have no outstanding borrowings under our existing working capital facility as of the date of this report and we are in a position of having a substantial amount of excess cash.

The risk factor as to our inability to maintain a majority of independent directors on our board of directors at the time the two directors elected by the holders of the Series 2 Preferred ceased to serve on our board of directors, which could affect our ability to meet the continued listing criteria of the American Stock Exchange (the "AMEX") and our common stock could be delisted is hereby deleted, because we elected two additional independent directors, as defined by AMEX's rules, to our board of directors prior to the time the two directors elected by the holders of the Series 2 Preferred ceased to serve as members of our board of directors.

Table of Contents

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

On July 11, 2007, our Board of Directors approved the redemption of all of our outstanding Series 2 Preferred. We mailed a notice of redemption to all holders of record of our Series 2 Preferred on July 12, 2007. The redemption date was August 27, 2007, and each share of Series 2 Preferred that was redeemed received a redemption price of $50.00 plus $26.25 per share in accrued and unpaid dividends pro-rata to the date of redemption. The holders of shares of Series 2 Preferred had the right to convert each share into 4.329 shares of our common stock, which right to convert terminated 10 days prior to the redemption date. If a holder converted its shares of Series 2 Preferred, the holder was not entitled to any accrued and unpaid dividends as to the shares of Series 2 Preferred converted. As a result, 167,475 shares of Series 2 Preferred were converted into 724,993 shares of our common stock and we redeemed 25,820 shares of Series 2 Preferred during the three months ended September 30, 2007 as shown below:

Period	(a) Total number of shares of Series 2 Preferred acquired (1)	(b) Average price paid per share of Series 2 Preferred (1)	(c) Total number of shares of Series 2 Preferred acquired as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares of Series 2 Preferred that may yet be acquired under the plans or programs
July 1, 2007 - July 31, 2007	-	$ -	-	-
August 1, 2007 - August 31, 2007	193,295	$ 80.87	193,295	-
September 1, 2007 - September 30, 2007	-	$ -	-	-
Total	193,295	$ 80.87	193,295	-

(1) These shares of Series 2 Preferred were restored to the status of authorized but unissued shares of Class C Preferred Stock, without designation as to class or series, and may thereafter be issued. The average price paid per share of the 167,475 shares of Series 2 Preferred converted into our common stock is based on the closing market price of our common stock on the dates these shares were converted. The average price paid per share of the 25,820 shares of Series 2 Preferred redeemed is based on the redemption price of $50.00 per share.

Table of Contents

During the three months ended September 30, 2007, the Company and affiliated purchasers, as defined, purchased the following shares of common stock:

Period	(a) Total number of shares of common stock purchased (1)	(b) Average price paid per share of common stock (1)	(c) Total number of shares of common stock purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares of common stock that may yet be purchased under the plans or programs
July 1, 2007 - July 31, 2007	764	$ 21.44	-	-
August 1, 2007 - August 31, 2007	-	$ -	-	-
September 1, 2007 - September 30, 2007	-	$ -	-	-
Total	764	$ 21.44		-

(1) We received the above shares of common stock for payment of the exercise price of certain stock options exercised during this period. These shares are being held as treasury stock.

Item 3. Defaults upon Senior Securities

Not applicable

Item 4. Submission of Matters to a Vote of Security Holders

Not applicable

Item 5. Other Information

Not applicable

Item 6. Exhibits

(a) Exhibits The Company has included the following exhibits in this report:

3(i) Restated Certificate of Incorporation, as amended, incorporated by reference from Exhibit 3(i).1 in the Company's Form S-1 Registration Statement, file number 333-145721.

4.1 Term Loan Agreement, dated as of November 2, 2007, among LSB Industries, Inc., TermaClime, Inc. and certain subsidiaries of ThermaClime, Inc., Cherokee Nitrogen Holdings, Inc., the Lenders, the Administrative and Collateral Agent and the Payment Agent.

4.2 Amended and Restated Loan and Security Agreement by and among LSB Industries, Inc., ThermaClime, Inc. and each of its subsidiaries that are Signatories, the lenders and Wells Fargo Foothill, Inc.

31.1 Certification of Jack E. Golsen, Chief Executive Officer, pursuant to Sarbanes-Oxley Act of 2002, Section 302.

31.2 Certification of Tony M. Shelby, Chief Financial Officer, pursuant to Sarbanes-Oxley Act of 2002, Section 302.

32.1 Certification of Jack E. Golsen, Chief Executive Officer, furnished pursuant to Sarbanes-Oxley Act of 2002, Section 906.

32.2 Certification of Tony M. Shelby, Chief Financial Officer, furnished pursuant to Sarbanes-Oxley Act of 2002, Section 906.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has caused the undersigned, duly authorized, to sign this report on its behalf on this 5th day of November 2007.

LSB INDUSTRIES, INC.

By: /s/ Tony M. Shelby
Tony M. Shelby
Executive Vice President of Finance and Chief Financial Officer
(Principal Financial Officer)

By: /s/ Jim D. Jones
Jim D. Jones
Senior Vice President, Corporate Controller and Treasurer
(Principal Accounting Officer)

TERM LOAN AGREEMENT
Dated as of November 2, 2007

among

THERMACLIME, INC.,
CHEROKEE NITROGEN HOLDINGS, INC.,
NORTHWEST FINANCIAL CORPORATION,
CHEMEX I CORP.,
CHEMEX II CORP.,
CHEROKEE NITROGEN COMPANY,
CLIMACOOL CORP.,
CLIMATECRAFT, INC.,
CLIMATE MASTER, INC.,
DSN CORPORATION,
EL DORADO CHEMICAL COMPANY,
INTERNATIONAL ENVIRONMENTAL CORPORATION,
KOAX CORP.,
LSB CHEMICAL CORP.,
THE CLIMATE CONTROL GROUP, INC.,
TRISON CONSTRUCTION, INC.,
THERMACLIME TECHNOLOGIES, INC., and
XPEDIAIR, INC.,
as the Borrowers,

LSB INDUSTRIES, INC.,
as Parent,

THE PERSONS LISTED ON SCHEDULE 1.01(d) HERETO,
as Lenders,

BANC OF AMERICA LEASING & CAPITAL, LLC,
not in its individual capacity but solely as Administrative Agent and as Collateral Agent,

and

BANK OF UTAH,
not in its individual capacity but solely as Payment Agent

BANC OF AMERICA LEASING & CAPITAL, LLC,

as Arranger

TERM LOAN AGREEMENT

This TERM LOAN AGREEMENT ("Agreement") is entered into as of November 2, 2007, among THERMACLIME, INC., an Oklahoma corporation ("ThermaClime"), CHEROKEE NITROGEN HOLDINGS, INC., an Oklahoma corporation ("Cherokee"), NORTHWEST FINANCIAL CORPORATION, an Oklahoma corporation ("NFC"), CHEMEX I CORP., an Oklahoma corporation, CHEMEX II CORP, an Oklahoma corporation, CHEROKEE NITROGEN COMPANY, an Oklahoma corporation ("CNC"), CLIMACOOL CORP., an Oklahoma corporation, CLIMATECRAFT, INC., an Oklahoma corporation, CLIMATE MASTER, INC., a Delaware corporation, DSN CORPORATION, an Oklahoma corporation ("DSN"), EL DORADO CHEMICAL COMPANY, an Oklahoma corporation ("EDCC"), INTERNATIONAL ENVIRONMENTAL CORPORATION, an Oklahoma corporation, KOAX CORP., an Oklahoma corporation, LSB CHEMICAL CORP., an Oklahoma corporation, THE CLIMATE CONTROL GROUP, an Oklahoma corporation, TRISON CONSTRUCTION, INC., an Oklahoma corporation ("Trison"), THERMACLIME TECHNOLOGIES, INC., an Oklahoma corporation, and XPEDIAIR, INC., an Oklahoma corporation, as borrowers (each a "Borrower" and collectively the "Borrowers"), LSB Industries, Inc., a Delaware corporation ("Parent"), as a guarantor, each Lender from time to time party hereto, BANC OF AMERICA LEASING & CAPITAL, LLC, not in its individual capacity but solely as Administrative Agent and as Collateral Agent, and BANK OF UTAH, not in its individual capacity but solely as Payment Agent.

PRELIMINARY STATEMENTS:

The Borrowers have requested that the Lenders provide a term loan facility, and Parent, in light of the direct and indirect benefits to Parent of the availability of such term loan facility to the Borrowers, has agreed to guarantee the obligations of the Borrowers.

The Lenders have indicated their willingness to make a single advance term loan facility available to the Borrowers, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND ACCOUNTING TERMS

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

"Act" has the meaning specified in Section 11.21.

"Administrative Agent" means BALCAP in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

"Affiliate Leases" means any operating lease that is entered into between any Borrower or any of its Subsidiaries, as lessee, and any "related party" (as defined in paragraph 5 of Financial Accounting Standards Board Statement No. 13, Accounting for leases ("FAS13")) or Affiliate of such lessee, as lessor, that is required to be treated as capital lease obligations under GAAP, pursuant to FAS13, as amended from time to time.

"Agent" means any of the Administrative Agent, the Collateral Agent or the Payment Agent individually and "Agents" means the Administrative Agent, the Collateral Agent and the Payment Agent collectively.

"Agreement" means this Term Loan Agreement.

"Alternative Rate" means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate." The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Applicable Percentage" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Closing Date, such Lender's Term Commitment at such time and (ii) thereafter, the principal amount of such Lender's Term Loans at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means three percent (3%) per annum.

"Appraisal" means an appraisal performed by the Appraiser and delivered to the Payment Agent on the Closing Date which establishes the aggregate Appraised Value of the Facility Assets.

"Appraised Value" means the orderly liquidation value in-place of the Facility Assets.

"Appraiser" means Valuation Research Corporation.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means BALCAP, in its capacity as arranger.

"Assigned Agreements" means (a) in connection with the Cherokee Facility, the NAESB Base Contract dated as of April 1, 2003 between Interconn Resources, Inc. and CNC, as modified by the Special Provisions to NAESB Base Contract dated as of April 1, 2003, and (b) in connection with the El Dorado Facility, (i) the On-Site Product Supply Agreement dated as of May 31, 1994

between EDCC and Air Liquide America Corporation, as amended, (ii) the Anhydrous Ammonia Sales Agreement entered into on March 9, 2005 and made effective January 3, 2005 among Koch Nitrogen International SARL, Koch Nitrogen Company and EDCC, and (iii) the Contract for Rail Car Switching Services entered into on October 1, 1994 between EDCC and ISC, Inc. (Watco).

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of the Payment Agent if such consent is required by Section 11.06(b)), and accepted by the Payment Agent, in substantially the form of Exhibit D or any other form approved by the Payment Agent.

"Assignment and Consent" means an assignment and consent agreement entered into by each Loan Party which is a party to the Assigned Agreement to which such Assignment and Consent relates and each other Person party to such Assigned Agreement and which is substantially in the form and which provides for the rights and obligations set forth in the form of Assignment and Consent attached hereto as Exhibit G.

"Attributable Indebtedness" means, on any date, (a) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease (but excluding Affiliate Leases) and (b) all Synthetic Debt of such Person.

"Audited Financial Statements" means the audited consolidated balance sheets of (i) Parent and its Subsidiaries and (ii) ThermaClime and its Subsidiaries, in each case for the fiscal year ended December 31, 2006, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Parent and its Subsidiaries and ThermaClime and its Subsidiaries, as applicable, including the notes thereto.

"BALCAP" means Banc of America Leasing & Capital, LLC and its successors.

"Bank of America" means Bank of America, N.A. and its successors.

"Bank of America Fee Letter" means the letter agreement dated June 9, 2007 between ThermaClime and Bank of America.

"Bank of Utah" means Bank of Utah and its successors.

"Borrower" and "Borrowers" have the meanings specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing Date" means the date specified in the borrowing notice delivered by the Borrowers to the Payment Agent pursuant to Section 2.01(b).

"Borrowing Notice" has the meaning specified in Section 2.01(b).

"Business Day" means (i) any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, Georgia, Oklahoma or the state where the Payment Agent's Office is located, and (ii) at any time interest on the Term Loans is calculated using the LIBO Rate, any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Capital Expenditures" means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

"Capitalized Lease Obligations" means any Indebtedness represented by obligation under a Capitalized Lease, but excluding all Indebtedness under Affiliate Leases.

"Capitalized Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations

issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having the highest rating obtainable from either S&P or Moody's, (c) commercial paper maturing no more than 1 year from the date of acquisition thereof and, at the time of acquisition, having a rating of A-1 or P-1, or better, from S&P or Moody's, and (d) certificates of deposit or bankers' acceptances maturing within 1 year from the date of acquisition thereof either (i) issued by any bank organized under the laws of the United States or any state thereof which bank has a rating of A or A2, or better, from S&P or Moody's, or (ii) certificates of deposit less than or equal to $100,000 in the aggregate issued by any other bank insured by the Federal Deposit Insurance Corporation.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Holders becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be

deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of a greater number of shares of Parent's stock entitled to vote for members of the board of directors or equivalent governing body of Parent than the number of shares of such stock held by the Permitted Holders; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) Parent ceases to directly or indirectly own and control 100% of the outstanding capital stock of ThermaClime or Cherokee; or

(d) ThermaClime ceases to directly or indirectly own and control 100% of the outstanding capital stock of each Borrower (other than ThermaClime or Cherokee); or

(e) any Borrower ceases to directly own and control 100% of the outstanding capital stock of each of its Subsidiaries extant as of the Closing Date.

"Cherokee" has the meaning set forth in the introductory paragraph hereto.

"Cherokee Facility Collateral" means "Cherokee Collateral" as such term is defined in the Cherokee Mortgage and the Security Agreement**.**

"Cherokee Mortgage" means the Mortgage, Assignment of Rents and Security Agreement and Fixture Filing Statement (Alabama), in the form of Exhibit F-1 dated as of the date hereof, between Cherokee Nitrogen Holdings, Inc., as mortgagor, and BALCAP, as mortgagee.

"Cherokee Site" means the real property described on Schedule 1.01(a).

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

"CNC" has the meaning set forth in the introductory paragraph hereto.

"Code" means the Internal Revenue Code of 1986.

"Collateral Agent" means BALCAP in its capacity as collateral agent under any of the Loan Documents, or any successor collateral agent.

“Collateral Agent’s Office” means the Collateral Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Collateral Agent may from time to time notify to the Borrowers, the other Agents and the Lenders.

“Collateral” means all of the “Collateral” and “Mortgaged Property” referred to in the Collateral Documents subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties, including without limitation, the Cherokee Facility Collateral and the El Dorado Facility Collateral.

“Collateral Documents” means, collectively, the Security Agreement, the Mortgages, the Trademark Security Agreement, each of the mortgages, collateral assignments, security agreements, pledge agreements, intercompany lease assignments and lease subordinations, and other similar agreements delivered to the Payment Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create or perfect a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“Compliance Certificate” means a certificate substantially in the form of Exhibit B.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of ThermaClime and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income taxes, (iii) depreciation and amortization expense and (iv) other expenses reducing such Consolidated Net Income which do not represent a cash item in such period (in each case of or by ThermaClime and its Subsidiaries for such Measurement Period) and minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income (in each case of or by ThermaClime and its Subsidiaries for such Measurement Period).

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of: (a)(i) Consolidated EBITDA during the Measurement Period, less (ii) the aggregate amount of all Capital Expenditures made during the Measurement Period by ThermaClime and its Subsidiaries on a consolidated basis, but excluding any such payments to the extent financed through the incurrence of additional Indebtedness, less (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash, in each case of or by ThermaClime and its Subsidiaries for the most recently completed Measurement Period; to (b) the sum of (i) Consolidated Interest Charges, plus (ii) the aggregate principal amount of all regularly scheduled principal payments or redemptions or similar acquisitions for value of outstanding debt for borrowed money (excluding (x) prepayments of principal under the Revolving Credit Agreement which are not accompanied by or give rise to a reduction in the aggregate outstanding commitments under the Revolving Credit Agreement and not including in this exclusion the final scheduled payment of amounts due under the

Revolving Credit Agreement at maturity, and (y) payment at maturity of the Indebtedness of ThermaClime to Parent under the $6,950,000 10 3/4% bonds maturing in November, 2007, provided that Parent is the sole holder of such Indebtedness and such Indebtedness is at all times subject to the terms of the Intercompany Loan Subordination Agreement) for ThermaClime and its Subsidiaries on a consolidated basis during such Measurement Period, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02, plus (iii) all amounts paid or payable by ThermaClime and its Subsidiaries on Capitalized Lease Obligations having a scheduled due date during such Measurement Period, plus (iv) dividends paid by ThermaClime to Parent during such Measurement Period as permitted hereunder.

“Consolidated Interest Charges” means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest and interest paid on intercompany loans (but excluding interest paid on intercompany notes solely as between Borrowers) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of Capitalized Lease Obligations constituting rent expense that is treated as interest in accordance with GAAP, in each case, of or by ThermaClime and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Indebtedness as of such date to (b) Consolidated EBITDA of ThermaClime and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of ThermaClime and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that ThermaClime’s equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Period of any Person if such Person is not a Subsidiary, except that ThermaClime’s equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to ThermaClime or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to ThermaClime as described in clause (b) of this proviso).

“Consolidated Total Indebtedness” means, as of any date of determination, for ThermaClime and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar

instruments, (b) all purchase money Indebtedness other than Indebtedness under Affiliate Leases, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, other than (i) indemnifications for which no reimbursement claim has been made arising under performance and payment bonds entered into in the ordinary course of Borrowers' construction business to support Borrowers' performance of their obligations under construction and construction supply contracts or the payment by Borrowers of amounts due their subcontractors and suppliers under such contracts and (ii) undrawn letters of credit, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than any Borrower or any Subsidiary, and excluding that certain pledge by CEPOLK Holding Inc. to The Prudential Insurance Company of America of its 50% limited partnership interest in CEPOLK Limited Partnership to secure repayment of a loan from The Prudential Insurance Company of America to CEPOLK Limited Partnership; provided that other than the pledge of its limited partnership interest, CEPOLK Holdings Inc. does not have any recourse liability for the Indebtedness payable to The Prudential Insurance Company of America; and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which a Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Borrower or such Subsidiary.

"Contractual Obligation" means, 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" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means, with respect to any Term Loan, an interest rate equal to the interest rate (including the Applicable Rate) otherwise applicable to such Term Loan plus 2% per annum.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Term Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Payment Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"Disposition" or "Dispose" means the sale, transfer, exclusive license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States.

"DSN" has the meaning set forth in the introductory paragraph hereto.

"Early Prepayment Period" means the period commencing on and excluding the first anniversary of the Closing Date and ending on and including the third anniversary of the Closing Date.

"EDCC" has the meaning set forth in the introductory paragraph hereto.

"EDN" means El Dorado Nitrogen Company.

"El Dorado Facility Collateral" means "El Dorado Collateral" as such term is defined in the El Dorado Mortgage and the Security Agreement.

"El Dorado Mortgage" means the Mortgage, Assignment of Rents and Security Agreement and Fixture Filing Statement (Arkansas), in the form of Exhibit F-2 dated as of the date hereof, between Northwest Financial Corporation, as mortgagor, and BALCAP, as mortgagee.

“El Dorado Site” means the real property described on Schedule 1.01(b).

“Eligible Assignee” means a Person that is (a) a Lender, U.S.-based Affiliate of a Lender or Approved Fund, or (b) any other financial institution approved by Payment Agent whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or any other Applicable Law.

“Environmental Laws” means any and all present and future Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, directives, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, industrial hygiene, environmental conditions, the protection of human health or the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions, soil and ground water contamination, discharges to waste or public systems, or the assessment, monitoring or remediation of the same, as may be amended from time to time.

“Environmental Liability” means any claim, demand, order, suit, obligation, cost, liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, monitoring, fines, penalties or indemnity obligations), loss or expense (including attorneys’ and consultants’ fees and expenses), whenever the same shall have occurred, whether before or after the date of the Loan, of any Borrower, any other Loan Party (other than Parent) or any of their respective Subsidiaries (other than the Excluded Subsidiaries) directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, processing, labeling, recycling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment, (e) alleged personal injury or property damage arising under any statutory or common-law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of an abnormally dangerous activity, or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Losses” means, to the extent arising out of or as a result of any actual, proposed or threatened presence or release of Hazardous Materials or any Environmental Liability or any failure of any Borrower or other Loan Party or Subsidiary’s failure to comply with any Environmental Law or Environmental Permit, whether occurring before or after transfer of any Mortgaged Property by foreclosure or transfer in aid or in lieu of foreclosure, any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, assessments, penalties, costs and expenses, including, without limitation, remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs and other related costs (and including, without limitation, reasonable attorneys’ fees and costs, reasonable consultants’ fees and costs, and reasonable accountants’ fees and costs), and all foreseeable and unforeseeable consequential damages, diminution in value of any Mortgaged Property, damages for the loss or restriction of use of any Mortgaged Property, damages arising from any adverse impact on marketing any Mortgaged Property and sums paid in settlement of claims.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“EPA” has the meaning set forth in Section 5.09(c).

“Equipment” has the meaning set forth in the Security Agreement.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with Parent or any Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Assets" has the meaning set forth in the Security Agreement.

"Excluded Subsidiaries" means EDN, all Subsidiaries of EDN, and CEPOLK Holdings, Inc.

"Excluded Taxes" means, with respect to any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrowers under Section 11.13), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 3.01(a).

"Existing Loan Agreement" means that certain Loan Agreement dated as of September 15, 2004 among the Borrowers, ORIX Capital Markets, LLC, as agent, and a syndicate of lenders.

"Existing Permitted Leases and Use Rights" means the leases and use rights agreements to portions of the Sites as such leases and use rights exist on the Closing Date and are described at items 2, 3, 4, 5 and 6 of Part I of Schedule 7.05 and at item 4 of Part II of Schedule 7.05 and without regard to modifications or amendments thereto entered into following the Closing Date other than as permitted pursuant to Section 7.15.

"Facility Assets" means the land, land improvements, buildings, fixtures, chemical processing equipment, pumps, piping and wiring, transformers, substations, storage tanks, pollution control, office furniture, office equipment, computers and software, laboratory equipment, vehicles and lift trucks (other than railcar rolling stock or titled vehicles), as more particularly described on (i) Part A of Schedule 1.01(c), with respect to the Cherokee Site and the Facility Assets therein, and (ii) Part B of Schedule 1.01(c), with respect to the El Dorado Site and the Facility Assets therein.

"Facility Business" means the business conducted by the Borrowers at Cherokee Site and the El Dorado Site.

"Family Entities" means, with respect to any individual, any trust, corporation, limited liability company, or partnership for which (1) all the beneficiaries, shareholders, members, or partners, as the case may be, are Family Members of such individual, and (2) such individual or a Family Member of such individual is the controlling trustee, shareholder, member, or partner of such entity.

"Family Member" means, with respect to any individual, any other individual having a relationship by blood (to the second degree of consanguinity), marriage or adoption to such individual.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of Utah on such day on such transactions as determined by the Payment Agent.

"Fee Letters" means Bank of America Fee Letter and the Payment Agent Fee Letter collectively and "Fee Letter" means either of them.

"Financial/Negative Covenants" means the covenants set forth in Article 7 of the Revolving Credit Agreement.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which any Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person which is granted or pledged by such Person to secure any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, Parent and each Subsidiary of ThermaClime that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12; provided that in no event shall Excluded Subsidiaries be Guarantors.

“Guaranty” means, collectively, the Guaranty made by Parent under Article X in favor of the Secured Parties, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of Borrowers’ business and repayable in accordance with customary trade practices);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Capitalized Lease Obligations of such Person, all Attributable Indebtedness in respect of Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indefeasible Payment and Performance of All Obligations" means the indefeasible payment in full, in cash, and performance in full of all of the Obligations.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Information Memorandum" means the information memorandum dated July 23, 2007 used by the Arranger in connection with the syndication of the Term Commitments.

"Intercompany Lease" means an intercompany lease of the Collateral solely among two or more Borrowers as set forth in Schedule 7.05 and which is subject to an Intercompany Lease Subordination Agreement.

"Intercompany Lease Subordination Agreement" means a subordination agreement in the form attached hereto as Exhibit H-1 executed and delivered by the parties to the Intercompany Leases.

"Intercompany Loan Subordination Agreement" means a subordination agreement in the form attached hereto as Exhibit H-2, executed and delivered by Parent and the Borrowers, pursuant to which such parties agree to subordinate certain of their rights to payments of intercompany indebtedness to the rights of the Agents and the Lenders in the Obligations.

"Interest Payment Date" means the last day of each Interest Period applicable to such Term Loan and the Maturity Date.

"Interest Period" means (a) initially, the period commencing on and including the Closing Date and ending on but excluding the date 90 days thereafter, and (b) thereafter, each period commencing on and including the last day of the immediately preceding Interest Period and ending on but excluding the date 90 days thereafter; provided that (i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall end on the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) 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, and (iii) if any Interest Period for any Term Loan would otherwise (but for this clause (iii)) extend beyond the Maturity Date, then such Interest Period shall end on the Maturity Date.

"Inter-Lender Agreement" has the meaning specified in Section 4.01(a)(xix).

"Inventory" has the meaning specified in the Security Agreement.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (excluding (i) commission, travel and similar advances to officers and employees of such Person made in the ordinary course of business and (ii) bona fide accounts receivable arising from the sale of goods or the rendition of services in the ordinary course of business consistent with past practice), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.18.

"IRS" means the United States Internal Revenue Service.

"KT Agreement" means that certain Agreement dated as of October 27, 1994, by and between Kaltenbach-Thuring S.A. and El Dorado Chemical Company.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Lender” means the Persons set forth on Schedule 1.01(d) hereto, together with any successors and assigns.

“Lending Office” means, as to any Lender, the office or offices of such Lender set forth on Schedule 1.01(d) or any Assignment and Assumption Agreement as such Lender’s office or offices for payments and notices hereunder, or such other office or offices as a Lender may from time to time notify ThermaClime and the Payment Agent.

“LIBO Rate” means, with respect to any Interest Period at any time, the applicable London interbank offered rate for deposits in U.S. dollars appearing on Bloomberg LIBO Page 3, British Bankers Association as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, and having a maturity approximately equal to such Interest Period; or if no London interbank offered rate of such maturity then appears on Bloomberg LIBO Page 3, then the rate equal to the London interbank offered rate for deposits in U.S. dollars maturing immediately before or immediately after such maturity, whichever is higher, as determined by the Payment Agent from Bloomberg LIBO Page 3; or if Bloomberg LIBO Page 3 is not available, the applicable LIBO Rate for the relevant Interest Period shall be the rate determined by the Payment Agent to be the arithmetic average of the rates at which Bank

of Utah offers to place deposits in U.S. dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, in the approximate amount of the Outstanding Amount on such date and having a maturity approximately equal to such Interest Period.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Term Notes, (c) the Guaranty (including any Subsidiary guaranties or supplements thereto delivered pursuant to Section 6.12), (d) the Collateral Documents, (e) the Fee Letters, (f) the Intercompany Loan Subordination Agreement, (g) the Management Agreement Subordination, (h) the Intercompany Lease Subordination Agreements, and (i) the Inter-Lender Agreement.

“Loan Parties” means, collectively, each Borrower and each Guarantor.

“Management Agreement” means the Management Agreement dated November 21, 1997 between Parent and ThermaClime, as amended by the First Amendment to Management Agreement dated as of November 2, 2007.

“Management Agreement Subordination” means subordination agreement in the form of Exhibit I executed by the parties to the Management Agreement.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities, condition (financial or otherwise) or prospects of (i) the Borrowers and their Subsidiaries taken as a whole or (ii) solely in the case of Section 5.06(b), Parent and the Borrowers taken as a whole; (b) a material impairment of (i) the rights and remedies of any Agent or any Lender under any Loan Document or the perfection or priority of the Collateral Agent’s Liens with respect to the Collateral, or (ii) the ability of the Borrowers, taken as a whole, or Parent, individually, or ThermaClime, individually or on behalf of the other Borrowers, to perform their obligations under any Loan Document; (c) a material adverse effect upon the legality, validity, binding effect or enforceability of any Loan Document; or (d) a material adverse change in or material adverse effect upon the value, useful life or utility of the Collateral.

“Material Contracts” means, with respect to any Borrower, each Assigned Agreement and each other agreement, lease, license or contract relating to the operations, business assets, properties, affairs or prospects of the Facility Business or the Collateral which provides for or involves (a) obligations (contingent or otherwise) or payments (i) relating to the purchase, supply, transmission or transportation of ammonia for the El Dorado Site or natural gas for the Cherokee Site or (ii) a purchase, sale, lease, license, maintenance, transportation or transmission agreement providing for payments during the initial term thereof or during the period of any renewals provided for therein in excess of $20,000,000, (b) the license or grant of any material patent, copyright, trade secret or

other proprietary right, other than standard commercial software licenses, (c) the ownership, lease or use of any of the Facility Assets or any assets (other than the Excluded Assets which are not of a type subject to that certain Contract for Rail Car Switching Services entered into on October 1, 1994 between EDCC and ISC, Inc. or any agreement entered into in replacement thereof) used in the business conducted on either of the Sites and which are owned by any Person other than the Borrowers and located on either of the Sites, other than assets having an original cost or replacement value of less than $500,000, or (d) the grant or acquisition of any Permit which if existed on the Closing Date would be listed in Schedule 5.23.

“Maturity Date” means November 3, 2012; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of ThermaClime.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” has the meaning specified in Section 4.01(a)(iv).

“Mortgage Policy” has the meaning specified in Section 4.01(a)(iv)(B).

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“NFC” has the meaning set forth in the introductory paragraph hereto.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Loan Parties arising under any Loan Document or with respect to the Term Loans, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Loan Party as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means 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 under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of all the Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans occurring on such date.

“Parent” has the meaning specified in the introductory paragraph hereto.

“Participant” has the meaning specified in Section 11.06(d).

“Payment Agent” means Bank of Utah in its capacity as payment agent under any of the Loan Documents, or any successor payment agent.

“Payment Agent Fee Letter” means the letter agreement dated as October 31, 2007 between ThermaClime and Bank of Utah.

“Payment Agent’s Office” means the Payment Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the PaymentAgent may from time to time notify to the Borrowers, the other Agents and the Lenders.

“Payoff Letter” means a letter agreement, in form and substance satisfactory to the Payment Agent, executed and delivered by Orix Capital Markets, LLC, as agent (“Orix”) and the Borrowers pursuant to which Orix provides payoff information with respect to the obligations of Borrowers under the Existing Loan Agreement and agrees to release its Liens on the Collateral upon receipt of the required payoff amount.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Permits" means, collectively, all building, constructions, environmental and other permits, licenses, franchises, approvals, consents, authorizations and other approvals.

"Permitted Encumbrances" means (i) Liens granted by a Borrower in favor of the Collateral Agent under any of the Collateral Documents; (ii) Liens described in the Mortgage Title Policies delivered to and accepted by the Payment Agent pursuant to Section 4.01(a)(iv)(B); (iii) Liens for taxes not yet delinquent or which are subject to a Permitted Protest; (iv) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not yet delinquent or which are subject to a Permitted Protest; (v) easements, rights-of-way, restrictions and other similar title exceptions and encumbrances affecting real property which, in the aggregate, do not (A) materially interfere with the use or

operation thereof by Borrowers or their Subsidiaries (other than the Excluded Subsidiaries), (B) materially detract from the value of any Collateral subject thereto as currently operated, or (C) involve any material danger of the loss of, or loss of priority of, the Collateral Agent's Liens on the Collateral, (vi) Liens permitted pursuant to the final paragraph of Section 7.01, (vii) the Existing Permitted Leases and Use Rights, and (viii) Intercompany Leases.

"Permitted Holders" means Jack E. Golsen, Barry E. Golsen, Tony M. Shelby, David R. Goss, David M. Shear, Robert C. Brown, their respective Family Members, and their respective Family Entities.

"Permitted Protest" means the right of the applicable Borrower or Subsidiary of Borrower to protest any Lien (other than Liens securing the Obligations), Laws, taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) (i) with respect to obligations that could not result in the imposition of a Lien on any Collateral, a reserve with respect to such obligation is established in the books and records of such Borrower or such Subsidiary as is required under GAAP, or (ii) with respect to obligations that could result in the imposition of a Lien on any Collateral, such obligation has been adequately bonded in the reasonable opinion of the Payment Agent so long as such bonding does not involve any material risk of the sale, forfeiture or loss of any Collateral, (b) any such protest is instituted promptly and prosecuted diligently by the applicable Borrower or Subsidiary in good faith, and (c) the Payment Agent is satisfied, in the exercise of its reasonable discretion, that while such protest is pending, the value, use and useful life of the Collateral will not be adversely affected and there will be no impairment of the enforceability, validity or priority of any of the Collateral Agent's Liens.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by any Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 6.02.

"Prepayment Fee" means, as of any date of a prepayment pursuant to Section 2.02, the product of (i) the principal amount of the Term Loans being prepaid (which in the case of a replacement pursuant to Section 3.06(b) shall be the principal amount of the Term Loans of each replaced Lender paid to each such Lender pursuant to Section 11.13(b)) and (ii) (x) one percent (1.00%), if the date of prepayment is on or prior to the second anniversary of the Closing Date or (y) one half of one percent (.50%), if the date of repayment is following the second anniversary of the Closing Date.

"Register" has the meaning specified in Section 11.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Required Lenders" means, as of any date of determination, Lenders holding more than 50% of the Outstanding Amount on such date.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

"Revolving Agent" means Wells Fargo Foothill, Inc. (formerly known as Foothill Capital Corporation), as arranger and administrative agent, and each of its successors and assigns in such capacity under the Revolving Credit Agreement and each such Person who acts in such capacity under any replacement or refinancing of the Revolving Credit Agreement permitted pursuant to the terms of this Agreement or if no such Person is acting in such capacity under any such replacement or refinancing of the Revolving Credit Agreement in the case where there is a single holder of the Indebtedness under the Revolving Credit Agreement, then such holder.

"Revolving Credit Agreement" means the Loan and Security Agreement dated as of April 13, 2001 among Parent, the Borrowers, the lending institutions party thereto and Wells Fargo Foothill, Inc. (formerly known as Foothill Capital Corporation), as arranger and administrative agent, as amended by the First Amendment to Loan and Security Agreement dated as of August 3, 2001, the Second Amendment to Loan and Security Agreement dated as of May 24, 2002, the Third Amendment to Loan and Security Agreement dated as of November 18, 2002, the Fourth Amendment to Loan and Security Agreement dated as of March 3, 2003, the Fifth Amendment to Loan and Security Agreement dated as of December 31, 2003, the Sixth Amendment to Loan and Security Agreement dated as of June 29, 2004, the Seventh Amendment to Loan and Security Agreement dated as of September 15, 2004, the Eighth Amendment to Loan and Security Agreement dated as of February 28, 2005, the Ninth Amendment to Loan and Security Agreement dated as of February 22, 2006, the Tenth Amendment to Loan and Security Agreement dated as of March 21, 2007, as amended and restated by that certain Amended and Restated Loan and Security Agreement dated as of November __, 2007, and,

to the extent permitted under Section 7.02(a), (i) as further amended, renewed, extended or otherwise modified and (ii) any new revolving credit agreement in replacement thereof.

"Revolving Credit Documents" means the Revolving Credit Agreement, each of the mortgages and other collateral agreements, documents and instruments relating thereto and other agreements, documents and instruments executed in connection therewith or contemplated thereby.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Parties" means, collectively, the Agents, the Lenders, each co-agent or sub-agent appointed by any Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

"Security Agreement" has the meaning specified in Section 4.01(a)(iii).

"Services Agreement" means the Services Agreement dated August 23, 2002 between Parent and ThermaClime.

"Site" means either of and "Sites" mean collectively the Cherokee Site and the El Dorado Site.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent liabilities and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Borrower.

"Support Rights and Interests" means the contractual arrangements, licenses, rights and interests used in or necessary to the conduct of the Facility Business or the operation and maintenance of the Facility Assets (including, without limitation, rights to roads, pipelines, wires, transfer lines, tanks, electric generating facilities, circulation and treatment systems, conduits, docks, control rooms, computer equipment, software, and manuals instructions, process drawings and schematics for the use, operation and maintenance of the Facility), and includes, as of the Closing Date, the Borrowers' rights under the Assigned Agreements.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Debt" means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of "Indebtedness" or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Tax Sharing Agreement" means the Tax Sharing Agreement dated as of November 21, 1997 between ThermaClime and Parent.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Commitment" means, as to each Term Lender, its obligation to make Term Loans to the Borrowers pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender's name on Schedule 2.01 under the caption "Term Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement, and "Term Commitments" means the aggregate "Term Commitments" of all Lenders.

"Term Facility" means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Term Commitments at such time, and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

"Term Lender" means (a) at any time on or prior to the Closing Date, any Lender that has a Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

"Term Loan" means an advance made by any Term Lender under the Term Facility.

"Term Note" means a promissory note made by the Borrowers in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit A.

"ThermaClime" has the meaning specified in the introductory paragraph hereto.

"Threshold Amount" means $5,000,000.

"Trademark Security Agreement" means a trademark security agreement in the form of Exhibit M executed by the Borrowers in favor of the Collateral Agent.

"Trison" has the meaning specified in the introductory paragraph hereto.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" and "U.S." mean the United States of America.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of Parent and its Subsidiaries or ThermaClime and its Subsidiaries or to the determination of any amount for Parent and its Subsidiaries or ThermaClime and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Parent or ThermaClime, as applicable, is required to consolidate pursuant to FASB Interpretation No. 46 – Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Subsidiary as defined herein.

1.04 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

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

1.05 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE II.

THE TERM COMMITMENTS AND TERM LOANS

2.01 The Term Loans.

(a) Generally. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrowers on the Borrowing Date in an amount not to exceed such Term Lender's Term Commitment. The borrowing pursuant to this Section 2.01 shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Applicable Percentages of the Term Facility. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

(b) Borrowing Notice. The Borrowers shall deliver to the Payment Agent irrevocable written notice of the Borrowers' request for the borrowing of the Term Loans (the "Borrowing Notice"), which Borrowing Notice shall be in substantially the form of

Exhibit C and shall include (i) the requested Borrowing Date (which date must be a Business Day) and (ii) a request for Term Loans in the aggregate principal amount of $50,000,000. Borrower shall deliver such notice not later than one (1) Business Day prior to the requested Borrowing Date to the Payment Agent (which shall promptly forward a copy of such Borrowing Notice to each Lender). The Payment Agent shall on or before the proposed Borrowing Date notify (A) the Borrowers and the Lenders of the LIBO Rate applicable to the initial Interest Period upon determination of such LIBO Rate, and (B) each Lender of the amount of its Applicable Percentage of the Term Loans to be funded.

(c) Funding. Following its receipt from the Payment Agent of the Borrowing Notice, each Lender shall make the amount of its Term Loan available to the Payment Agent in immediately available funds at the Payment Agent's Office not later than 1:00 p.m. on the Borrowing Date. Upon satisfaction, or waiver pursuant to Section 11.01(a), of the conditions set forth in Section 4.01 and the Payment Agent's receipt of all the amounts to be funded by the Lenders on such date, the Payment Agent shall make all funds so received available to the Borrowers in like funds as received by the Payment Agent by wire transfer of such funds, in accordance with instructions provided to (and reasonably acceptable to) the Payment Agent by the Borrowers; provided, however, that all amounts necessary to pay in full amounts due with respect to the Existing Loan Agreement shall be wired as directed in the Payoff Letter.

2.02 Optional Prepayments. Subject to the last two sentences of this Section 2.02, the Borrowers may, upon written notice to the Payment Agent from the Borrowers, at any time or from time to time voluntarily prepay Term Loans in whole or in part; provided that (A) such notice must be received by the Payment Agent not later than 11:00 a.m. thirty (30) days prior to the date of prepayment of such Term Loans; (B) any prepayment of Term Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (C) if the Borrowers make a prepayment or cause any payment to a Lender of all or any portion of the outstanding principal amount of its Loans under Section 11.13(b) with respect to any replacement pursuant to Section 3.06(b) anytime during the Early Prepayment Period, the Borrowers shall also pay to the Payment Agent for the benefit of the Lenders or, in the case of a payment under Section 11.13(b) the Lenders being repaid, a Prepayment Fee; provided that no Prepayment Fee shall be payable in connection with prepayments made with the proceeds of Dispositions permitted pursuant to Section 7.05(f) or in connection with a prepayment required by Section 3.02. Each such notice shall specify the date and amount of such prepayment. The Payment Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding principal amount of the Term Loans pursuant to this Section 2.02 shall be applied to the principal repayment installments thereof on a pro rata basis, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages of the Term Loans. Notwithstanding anything to the contrary contained herein, except for a prepayment arising solely with respect to Sections 3.02, 3.06(b), or 7.05(f) as provided for above, the Borrowers shall not be permitted to prepay the Term Facility pursuant to this Section 2.02 during the period from the Closing Date through the date which is the first anniversary of the Closing Date.

2.03 Repayment of Term Loans. The Borrowers shall repay to the Term Lenders the aggregate principal amount of all Term Loans outstanding on the Maturity Date.

2.04 Interest.

(a) Each Term Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the LIBO Rate for such Interest Period plus the Applicable Rate; provided that in the event that Section 3.02 or 3.03 applies, such Term Loan shall bear interest on the outstanding principal amount thereof in accordance with the provisions of Section 3.02 or 3.03, as applicable.

(b) (i) If any amount of principal of any Term Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration, pursuant to Section 2.03, or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Term Loan) payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Term Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.05 Fees. The Borrowers shall pay to the Arranger, the Administrative Agent and the Payment Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters.

2.06 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year); provided that in the event that (i) the Alternative Rate provisions of Section 3.02 or 3.03 or (ii) the Default Rate applies, all

computations of interest based upon the Alternative Rate when the Alternative Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. Interest shall accrue on each Term Loan for the day on which the Term Loan is made, and shall not accrue on a Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid. Each determination by the Payment Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.07 Evidence of Debt. The Term Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Payment Agent in the ordinary course of business. The accounts or records maintained by the Payment Agent and each Lender shall be conclusive absent manifest error of the amount of the Term Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Payment Agent in respect of such matters, the accounts and records of the Payment Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Payment Agent, the Borrowers shall execute and deliver to such Lender (through the Payment Agent) a Term Note, which shall evidence such Lender's Term Loans in addition to such accounts or records. Each Lender may attach schedules to its Term Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

2.08 Payments Generally.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Payment Agent, for the account of the respective Lenders to which such payment is owed, at the Payment Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Payment Agent will promptly distribute to each Lender its Applicable Percentage of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Payment Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Payment Agent funds for any Term Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Payment Agent because (i) the conditions to the Term Loans set forth in Article IV are not satisfied or waived in accordance with the terms hereof or (ii) any Lender fails to fund to the Payment Agent the full amount to be funded by it on such date, the Payment Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(c) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Term Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Term Loan, to purchase its participation or to make its payment under Section 11.04(c).

(d) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Term Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Term Loan in any particular place or manner.

(e) Insufficient Funds. If at any time insufficient funds are received by and available to the Payment Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

2.09 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Payment Agent of such fact, and (b) purchase (for cash at face value) participations in the Term Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant, other than to any Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

ARTICLE III.

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers or Parent hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrowers shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) any Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers or Parent, as the case may be, shall make such deductions and (iii) the Borrowers or Parent, as the case may be, shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrowers and Parent. Without limiting the provisions of subsection (a) above, the Borrowers and Parent shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrowers and Parent. The Borrowers and Parent shall, jointly and severally, indemnify each Agent and each Lender (each such Person a "Tax Indemnitee"), within 30 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by such Tax Indemnitee, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that if a Tax Indemnitee fails to give notice to ThermaClime of the imposition of any Indemnified Taxes or Other Taxes on or to be paid by such Tax Indemnitee within 90 days following its receipt of actual written notice of the imposition of such Indemnified Taxes or Other Taxes, there will be no obligation for Parent or Borrowers to pay to such Tax Indemnitee interest or penalties attributable to the period beginning after such 90th day and ending 7 days after ThermaClime receives notice from such Tax Indemnitee. A certificate as to the amount of such payment or liability delivered to the Borrowers by such Tax Indemnitee (with a copy to the Payment Agent), or by any Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower or Parent, as the case may be, is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to ThermaClime (with a copy to the Payment Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrowers, Parent or the Payment Agent, 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 of withholding. In addition, any Lender, if requested by the Borrowers, Parent or the Payment Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers, Parent or the Payment Agent as will enable the Borrowers, Parent or the Payment Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, if any Borrower or Parent, as the case may be, is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Borrowers, Parent and the Payment Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrowers, Parent or the Payment Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of any Borrower or Parent within the meaning of section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If any Tax Indemnitee determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section 3.01 by the Borrowers or Parent, as the case may be, or with respect to which the Borrowers or Parent, as the case may be, has paid additional amounts pursuant to this Section, it shall promptly notify ThermaClime and pay to the Borrowers or Parent, as the case may be, an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers or Parent under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of any out-of-pocket expenses of such Tax Indemnitee and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrowers or Parent, as the case may be, upon the request of such Tax Indemnitee, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Tax Indemnitee if such Tax Indemnitee is required to repay such refund to such Governmental Authority. A certificate as to the amount of such repayment shall be delivered by such Tax Indemnitee to ThermaClime. This subsection shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers, Parent or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Term Loans accruing interest at rates based on the LIBO Rate, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Payment Agent, any obligation of such Lender to make or continue Term Loans accruing interest at a rate based on the LIBO Rate shall be suspended until such Lender notifies the Payment Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Payment Agent), prepay such Lender's Term Loans (and the amount of any prepayment to the extent such amount is required to be paid pursuant to this Section 3.02 shall not be subject to a Prepayment Fee) or, if available, convert the interest rate accruing on such Lender's Term Loans to the Alternative Rate plus the Applicable Rate, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Loans accruing interest at a rate based on the LIBO Rate to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Loans accruing interest at a rate based on the LIBO Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Term Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Term Loan, (b) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed Term Loan, or (c) the LIBO Rate for any requested Interest Period with respect to a proposed Term Loan does not adequately and fairly reflect the cost to such Lenders of funding such Term Loan, the Payment Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain Term Loans accruing interest at a rate based on the LIBO Rate shall be suspended until the Payment Agent (upon the instruction of the

Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of Term Loans or, failing that, will be deemed to have converted such request into a request for Term Loans in the amount specified therein accruing interest at a rate per annum equal to the Alternative Rate plus the Applicable Rate.

3.04 Increased Costs; Reserves on Term Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

(ii) subject any non-foreign Lender to any tax of any kind whatsoever with respect to this Agreement or any Term Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Term Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Term Loan (or of maintaining its obligation to make any such Term Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or will have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, or the Term Loans made by such Lender, to a level below that which such Lender or such Lender's holding company

could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to ThermaClime shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender delivers to ThermaClime a certificate pursuant to Section 3.04(c) above or notifies ThermaClime of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Term Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Term Loan equal to the actual costs of such reserves allocated to such Term Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Term Loan, provided ThermaClime shall have received at least 30 days' prior notice (with a copy to the Payment Agent) of such additional interest with respect to the initial Interest Payment Date for which such additional interest is due from such Lender. If a Lender fails to give notice 30 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 30 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Payment Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Term Loan on a day other than the last day of the Interest Period for such Term Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Term Loan) to prepay, borrow, continue or convert any Term Loan on the date or in the amount notified by the Borrowers; or

(c) any assignment of a Term Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Term Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Term Loan made by it at the LIBO Rate for such Term Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Term Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive repayment of all Obligations hereunder.

ARTICLE IV.

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Term Loans. The obligation of each Lender to make its Term Loan on the Borrowing Date hereunder is subject to satisfaction of the following conditions precedent:

(a) The Payment Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to each Agent and each of the Lenders:

(i) executed counterparts of this Agreement, the Guaranty, the Intercompany Loan Subordination Agreement and the Management Agreement Subordination, sufficient in number for distribution to each Agent, each Lender and the Borrowers;

(ii) a Term Note executed by all of the Borrowers in favor of each Lender;

(iii) a security agreement, in substantially the form of Exhibit E (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended, the "Security Agreement"), duly executed by each Loan Party, together with:

(A) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Payment Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement,

(B) completed requests for information, dated on or before the date of the Term Loans, all effective financing statements filed in the jurisdictions referred to in clause (A) above that name any Loan Party as debtor, together with copies of such other financing statements,

(C) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement that the Payment Agent may deem necessary or desirable in order to perfect the Liens created thereby,

(D) copies of each of the Assigned Agreements, together with a fully executed Assignment and Consent relating thereto, and

(E) evidence that all other action that the Payment Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement has been taken (including receipt of duly executed payoff letters, UCC-3 termination statements and landlords' and bailees' waiver and consent agreements and all filings necessary to perfect the Liens created under the Security Agreement with respect to the trademarks used in connection with the Facility Business);

(iv) deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust, in substantially the form of Exhibits F-1 and F-2 (with such changes as may be satisfactory to the Payment Agent and its counsel to account for local law matters) and covering the Cherokee Site and the El Dorado Site (together with the Assignments of Leases and Rents referred to therein and each other mortgage delivered pursuant to Section 6.12, in each case as amended, the "Mortgages"), duly executed by the appropriate Loan Party, together with:

(A) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Payment Agent may deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid,

(B) fully paid American Land Title Association Lender's Extended Coverage title insurance policies (the "Mortgage Policies"), with endorsements and in amounts acceptable to the Payment Agent, issued, coinsured and reinsured by title insurers acceptable to the Payment Agent, insuring the Mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Permitted Encumbrances and other Liens permitted under the Loan Documents, and providing for such other affirmative insurance (including endorsements for mechanics' and materialmen's Liens and for zoning of the applicable property) and such coinsurance and direct access reinsurance as the Payment Agent may deem necessary or desirable,

(C) American Land Title Association/American Congress on Surveying and Mapping form surveys, for which all necessary fees (where applicable) have been paid, and dated no more than 60 days before the Closing Date, certified to the Collateral Agent and the issuer of the Mortgage Policies in a manner satisfactory to the Payment Agent by a land surveyor duly registered and licensed in the States in which the property described in such surveys is located and acceptable to the Payment Agent, showing all buildings and other improvements, any off-site improvements, the location of any easements, parking spaces, rights of way, building set-back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects acceptable to the Payment Agent,

(D) estoppel and consent agreements executed by each of the lessors of the leased real properties listed on Schedule 4.01(a)(iv), along with (1) a memorandum of lease in recordable form with respect to such leasehold interest, executed and acknowledged by the owner of the affected real property, as lessor, or (2) evidence that the applicable lease with respect to such leasehold interest or a memorandum thereof has been recorded in all places necessary or desirable, in the Payment Agent's reasonable judgment, to give constructive notice to third-party purchasers of such leasehold interest, or (3) if such leasehold interest was acquired or subleased from the holder of a

recorded leasehold interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form satisfactory to the Payment Agent,

(E) evidence of the insurance required by the terms of the Mortgages,

(F) an appraisal of each of the properties described in the Mortgages, and

(G) evidence that all other action that the Payment Agent may deem necessary or desirable in order to create valid first and subsisting Liens on the property described in the Mortgages has been taken;

(v) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Payment Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(vi) such documents and certifications as the Payment Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Borrower and Parent is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(vii) a favorable opinion of David M. Shear, general counsel to the Loan Parties, addressed to each Agent and each Lender, as to the matters set forth in Exhibit J-1 and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) a favorable opinion of (A) Balch & Bingham LLP, local Alabama counsel to the Lenders, addressed to each Agent and each Lender, as to the matters set forth in Exhibit J-2 and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request, and (B) Friday, Eldredge & Clark, LLP, local Arkansas counsel to the Lenders, addressed to each Agent and each Lender, as to the matters set forth in Exhibit J-3 and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request ;

(ix) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the consummation by such Loan Party of the transactions contemplated in the

Loan Documents and the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(x) a certificate signed by a Responsible Officer of each Borrower certifying (A) that the conditions specified in Sections 4.01(e) and (f) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(xi) a copy of the business plan and budget of each of Parent and its Subsidiaries and ThermaClime and its Subsidiaries, in each case on a consolidated basis, including forecasts of consolidated balance sheets and statements of income or operations and cash flows of Parent and its Subsidiaries or ThermaClime and its Subsidiaries, as applicable, on a monthly basis for the fiscal year ending December 31, 2007, as prepared by management of Parent or ThermaClime, as applicable, and delivered to the Revolving Agent in accordance with the provisions of the Revolving Credit Documents;

(xii) certificates attesting to the Solvency of each Loan Party before and after giving effect to the Term Loans, from its chief financial officer;

(xiii) an environmental assessment report addressed to each Agent and from an environmental consulting firm acceptable to the Lenders, which report shall identify existing and potential environmental concerns and shall quantify related costs and liabilities, associated with each of the Cherokee Site and the El Dorado Site, and the Lenders shall be satisfied with the nature and amount of any such matters and with the Borrowers' plans with respect thereto;

(xiv) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Collateral Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(xv) (A) the unaudited consolidated and consolidating financial statements consisting of a consolidated and consolidating balance sheet of each of Parent and its Subsidiaries and ThermaClime and its Subsidiaries, in each case dated as of June 30, 2007, (B) the related consolidated and consolidating statements of income or operations, consolidated statements of shareholders' equity and consolidated statements of cash flows for the fiscal quarter ended on that date, and (C) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrowers ended June 30, 2007, signed by chief executive officer, chief financial officer, treasurer or controller of ThermaClime;

(xvi) the Payoff Letter and other evidence that the Existing Loan Agreement has been, or concurrently with the Closing Date is being, terminated and all Liens securing obligations under the Existing Loan Agreement have been, or concurrently with the Closing Date are being, released;

(xvii) (A) an Amended and Restated Loan and Security Agreement dated of even date herewith shall have been executed by the Revolving Agent, the "Lenders" party to the Revolving Credit Agreement and the Borrowers and a true and correct copy of such amendment shall have been delivered to the Payment Agent, which agreement shall be in form and substance satisfactory to the Payment Agent, and (B) release documents in form and substance satisfactory to the Payment Agent, pursuant to which the Revolving Agent releases any and all Liens that it has on any of the Collateral or on any Equity Interests of any Loan Party or any Subsidiary of any Loan Party;

(xviii) the borrowing of the Term Loans shall have occurred on or before November 9, 2007;

(xix) an Inter-Lender Agreement in the form of Exhibit L (the "Inter-Lender Agreement") executed and delivered by all parties thereto;

(xx) Assignment and Subordination Agreement in the form attached hereto as Exhibit K with respect to each of the leases listed on Schedule 7.05; and

(xxi) such other assurances, certificates, documents, consents or opinions as any Agent or any Lender reasonably may require.

(b) The Borrowers shall have delivered to the Administrative Agent and the Arranger a fully executed copy of the Bank of America Fee Letter and to the Payment Agent a fully executed copy of the Payment Agent Fee Letter, and all fees required to be paid to the Agents, the Arranger and the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Agents, the Borrowers shall have paid all fees, charges and disbursements of counsel to the Agents (directly to such counsel if requested by the Agents) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that, unless otherwise agreed in writing, such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agents).

(d) The Lenders shall have completed a due diligence investigation of Parent, the Borrowers and their respective Subsidiaries in scope, and with results, satisfactory to the Lenders, and shall have been given such access to the management, records, books of account, contracts and properties of Parent, the Borrowers and their respective Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as they shall have requested; all of the information made available to any Agent prior to June 18, 2007 shall be complete and correct in all material respects; and no changes or developments shall have occurred, and no new or additional information shall have been received or discovered by the Agents or the Lenders regarding Parent, the Borrowers and their respective Subsidiaries after June 18, 2007 that (A) either

individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (B) purports to adversely affect the Term Loans, and nothing shall have come to the attention of the Lenders during the course of such due diligence investigation to lead them to believe (i) that the Information Memorandum was or has become misleading, incorrect or incomplete in any material respect, or (ii) that the transactions contemplated in the Loan Documents will have a Material Adverse Effect.

(e) The representations and warranties of each Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of the Term Loans, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(f) No Default shall exist, or would result from the making of the Term Loans or from the application of the proceeds thereof.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Payment Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES

Each Borrower and, in the case of Sections 5.01, 5.02, 5.03 (other than Sections 5.03(b) and (c)), 5.04, 5.05, 5.06, 5.07, 5.11, 5.12, 5.13, 5.15, 5.16 and 5.18, Parent, represents and warrants to the Agents and the Lenders that as of the date of this Agreement, the date of the Borrowing Notice and the Borrowing Date:

5.01 Existence, Qualification and Corporate Power. Each Loan Party (a) is a corporation, duly organized or formed, validly existing and in good standing under the Laws of its jurisdiction of incorporation, (b) has all requisite corporate power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business as currently conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which it is party, have been duly authorized by all necessary corporate or limited liability company action, and do not and will not (a) contravene the terms of any of its Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under or require any payment to be made under, (i) any Material Contract (other than the Existing Loan Agreement) to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.03 Governmental Authorization; Other Consents. Except as set forth in Schedule 5.03, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which it is a party, (b) the grant by any Borrower of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first

priority nature thereof) or (d) the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party hereto or thereto. Each Loan Document to which Loan Party is a party, when so delivered, constitutes a legal, valid and binding obligation of such Person, enforceable against it in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Parent and its Subsidiaries or ThermaClime and its Subsidiaries, as applicable, as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries or ThermaClime and its Subsidiaries, as applicable, as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating financial statements consisting of a consolidating and consolidated balance sheet of each of Parent and its Subsidiaries and ThermaClime and its Subsidiaries, in each case dated as of June 30, 2007, and the related consolidated and consolidating statements of income or operations, consolidated statements of shareholders' equity and consolidated statements of cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the

financial condition of Parent and its Subsidiaries or ThermaClime and its Subsidiaries, as applicable, as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05 sets forth all material indebtedness and other material liabilities, direct or contingent, of Borrowers as of the date of such financial statements, including liabilities for taxes and Indebtedness.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The consolidated and consolidating forecasted balance sheets, statements of income and consolidated cash flows of each of Parent and its Subsidiaries and ThermaClime and its Subsidiaries, in each case delivered pursuant to Section 4.01 or Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, Parent's or ThermaClime's, as applicable, best good faith estimate of its future financial condition and performance.

5.06 Litigation. Except as set forth on Schedule 5.06 or the report filed by Parent with the SEC on Form 10-Q made on August 8, 2007, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Parent or any Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Parent or any Borrower or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transaction, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect, except for matters that are fully covered by independent third-party insurance, subject to customary deductibles, as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage.

5.07 No Default. No Loan Party is in default under or with respect to, or a party to, any Contractual Obligation (including, without limitation, obligations under the Revolving Credit Documents) that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) Each Borrower and each of its Subsidiaries (other than Excluded Subsidiaries), has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Collateral is subject to no Liens, other than Permitted Encumbrances. All of the Collateral is located on or at the Sites. All of the Cherokee Facility Collateral is located on or at the Cherokee Site and all of the El Dorado Facility Collateral is located on or at the El Dorado Site.

(b) Without limiting the generality of the foregoing: (i) Cherokee has good and marketable record title in fee simple to the Collateral consisting of real property (including the Cherokee Site and the improvements and fixtures thereon), subject only to Permitted Encumbrances; (ii) Cherokee and CNC have good and marketable title to all personal property located on the Cherokee Site or consisting of a part of the Collateral (other than (A) certain inventory owned by customers and certain rolling stock in each case composing Excluded Assets, (B) certain personal property owned by obligors under lease and use arrangements

described at items 2, 3, 4, 5 and 6 of Part I of Schedule 7.05 and which is located solely on the portion of the Cherokee Site subject to each such lease and use arrangement, (C) one (1) liquid nitrogen tank and two (2) air vaporizers leased by CNC and located on the Cherokee Site), subject only to Permitted Encumbrances or in the case of the Inventory, subject to the Liens in favor of the Revolving Agent; (iii) NFC has good and marketable record title in fee simple to the Collateral consisting of real property (including the El Dorado Site and the improvements and fixtures thereon), subject only to Permitted Encumbrances; (iv) NFC, EDCC and DSN have good and marketable title to all personal property located on the El Dorado Site or consisting of a part of the Collateral (other than (A) certain inventory owned by customers and certain rolling stock in each case composing Excluded Assets, (B) certain personal property owned by obligors under lease and use arrangements described at item 4 of Part II of Schedule 7.05 and which is located solely on the portion of the El Dorado Site subject to each such lease and use arrangement and (C) certain mobile air compressors and one (1) spectrometer and related accessories leased by EDC and located on the El Dorado Site), subject only to Permitted Encumbrances or in the case of the Inventory, subject to the Liens in favor of the Revolving Agent provided however, that with respect to clauses (ii) and (iv) of this Section 5.08(b), also excluding office equipment and accessories to operating equipment which if removed would not adversely affect the use, value or useful life of the Collateral, which are owned by third parties, leased to or used by a Borrower listed in this Section 5.08(a) and which individually has an original cost and replacement value less than $25,000 and all of which equipment and accessories collectively has an aggregate original cost and replacement value of not more than $500,000.00.

5.09 Environmental Compliance. Each Borrower has taken all required steps to investigate the past and present condition and usage of each of the Facility Assets and the operations conducted thereon and, based upon such investigation, has determined that:

(a) except as disclosed in Schedule 5.09, none of the Borrowers, any of their respective Subsidiaries (other than the Excluded Subsidiaries), any current operator of any Facility Assets or any current operations thereon is in violation, or alleged violation, of any Environmental Laws, which violation could reasonably be expected to have a Material Adverse Effect;

(b) except as disclosed in Schedule 5.09, none of the Borrowers or any of their respective Subsidiaries (other than the Excluded Subsidiaries) has received notice from any third party including any Federal, state or local Governmental Authority, (i) that any one of them has been identified by the United States Environmental Protection Agency ("EPA") or any other Governmental Authority as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of

1980 as amended with respect to a site listed on the National Priorities List, 40 C.F.R. Part 300 Appendix B (1986) or any other Environmental Law; (ii) that any hazardous waste, as defined by 42 U.S.C. §9601(5), any hazardous substances as defined by 42 U.S.C. §9601(14), any pollutant or contaminant as defined by 42 U.S.C. §9601(33) or any Hazardous Materials, which any one of them has generated, transported or disposed of has been found at any site at which a federal, state or local agency or other third party has conducted or has ordered any Borrower or any of its Subsidiaries (other than the Excluded Subsidiaries), as applicable, to conduct a Hazardous Materials site assessment, remedial investigation, removal or other response action pursuant to any Environmental Law; or (iii) that it is, shall or may be named as a party to any claim, action, cause of action, complaint, or legal or administrative proceeding (in each case, contingent or otherwise) arising out of any third party's incurrence of costs, expenses, losses or damages of any kind whatsoever in connection with the release or presence of Hazardous Materials;

(c) except as disclosed in Schedule 5.09, (A) no portion of the Cherokee Site or the El Dorado Site has been used for the handling, processing, storage or disposal of Hazardous Materials except in accordance with applicable Environmental Laws; and no underground tank or other underground storage receptacle for Hazardous Materials is located on any portion of the Cherokee Site or the El Dorado Site; (B) in the course of any activities conducted by any Borrower, its Subsidiaries (other than the Excluded Subsidiaries) or operators of its properties, no Hazardous Materials have been generated or are being used on the Cherokee Site or the El Dorado Site except in accordance with applicable Environmental Laws; (C) except as disclosed in Schedule 5.09, there have been no releases (i.e. any past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping) or threatened releases of Hazardous Materials on, upon, into or from any Facility Assets, which releases could reasonably be expected to have a Material Adverse Effect or which would adversely effect any adjacent property, human health or the environment; (D) to each Borrower's knowledge, there have been no releases on, upon, from or into any real property in the vicinity of any portion of the Cherokee Site or the El Dorado Site which, through soil or groundwater migration, may have come to be located thereon, and which could reasonably be expected to have a Material Adverse Effect; and (E) in addition, to each Borrower's knowledge, any Hazardous Materials that have been generated on any portion of the Cherokee Site or the El Dorado Site have been transported offsite only by carriers having an identification number issued by the EPA or another Governmental Authority, treated or disposed of only by treatment or disposal facilities maintaining valid permits as required under applicable Environmental Laws, which transporters and facilities have been and are, to each Borrower's knowledge, operating in compliance with such permits and applicable Environmental Laws; and

(d) none of the Borrowers, their respective Subsidiaries (other than the Excluded Subsidiaries), or any portion of the Cherokee Site or the El Dorado Site is subject to any applicable Environmental Law requiring the performance of Hazardous Materials site assessments, or the removal or remediation of Hazardous Materials, or the giving of notice to any Governmental Authority or the recording or delivery to other Persons of an environmental disclosure document or statement by virtue of the transactions set forth herein and contemplated hereby, or as a condition to the effectiveness of any other transactions contemplated hereby.

5.10 Insurance. The properties of each Borrower and each of its Subsidiaries (other than the Excluded Subsidiaries) are insured with financially sound and reputable insurance companies not Affiliates of any Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar business and owning similar properties in localities where such Borrower and its Subsidiaries (other than the Excluded Subsidiaries) operate.

5.11 Taxes. Borrowers, their Subsidiaries (other than the Excluded Subsidiaries) and Parent have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are subject to a Permitted Protest. There is no proposed tax assessment against any Borrower or any of its Subsidiaries (other than the Excluded Subsidiaries) that would, if made, have a Material Adverse Effect.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Parent and each Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Parent and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of Parent and each Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.13 Subsidiaries. Parent has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13 and has no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. Each Borrower is a wholly-owned Subsidiary of Parent, and each such Borrower is identified in Part (a) of Schedule 5.13. All of the

outstanding Equity Interest in each of the Borrowers have been validly issued, are fully paid and non-assessable and are owned by the owners and in the amounts specified in Part (c) of Schedule 5.13 free and clear of all Liens.

5.14 Margin Regulations; Investment Company Act.

(a) No Borrower is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrowers, any Person Controlling any Borrower, or any Subsidiary thereof is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. Each Loan Party has disclosed to the Agents and the Lenders all material agreements, instruments and corporate or other restrictions to which it or, in the case of each Borrower, any of its Subsidiaries (other than the Excluded Subsidiaries) is subject, and all other matters known to it, that could reasonably be expected to result in a Material Adverse Effect; provided that the Loan Parties have not been required to provide information regarding general market, economic and industry conditions. No report, financial statement, certificate or other information (taken together as a whole) furnished (whether in writing or orally) by or on behalf of any Loan Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each Loan Party is in compliance in all material respects with the requirements of all Laws (including, without limitation, the Act) and all orders, writs, injunctions and decrees applicable to it or to its properties except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is subject to a Permitted Protest or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. Each Borrower and each of its Subsidiaries (other than the Excluded Subsidiaries) owns, or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, which IP Rights are described in Schedule 5.18. Except as specifically disclosed in Schedule 5.18, to the knowledge of Borrowers, no IP Rights of any Borrower or its Subsidiaries (other than Excluded Subsidiaries) infringes in any material respect upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.18, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Solvency. Immediately prior to and following the Closing Date and the Borrowing Date, each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, and the Borrowers taken as a whole are, Solvent.

5.19 Casualty, Etc. Neither the businesses nor the properties of any Borrower or any of its Subsidiaries (other than the Excluded Subsidiaries) are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.20 Perfection of Security Interest; Filings.

(a) (i) The Cherokee Mortgage when recorded will constitute an enforceable, first priority lien of record and perfected security interest of record in Cherokee's interest in the Cherokee Facility Collateral set forth therein consisting of real property (including fixtures) in favor of the Collateral Agent, and (ii) the Security Agreement constitutes an enforceable, and upon the filing of effective financing statements pursuant to the requirements of the UCC, and, solely with respect to the portion of the Collateral consisting of trademarks, the filing of a Trademark Security Agreement with the U.S. Patent and Trademark Office, first priority lien of record and perfected security interest of record in each Borrower's interest, if any, in the Cherokee Facility Collateral consisting of personal property set forth therein in favor of the Collateral Agent, in each case subject to Permitted Encumbrances, as against all Persons, including Cherokee and its creditors. Except for the filings and recordings listed in Schedule 4.01(a)(iii) (which filings or recordings, or arrangements therefor meeting the requirements specified herein, shall have been duly made on or before the Closing Date (including the payment of any fees or taxes relating to any of the foregoing)), no other filings or recordings are necessary to create in favor of the Collateral Agent a valid and enforceable first priority Lien for the benefit of the Lenders on the Cherokee Facility Collateral free and clear of all other Liens, other than Permitted Encumbrances.

(b) (i) The El Dorado Mortgage when recorded will constitute an enforceable, first priority lien of record and perfected security interest of record in NFC's interest in the El Dorado Facility Collateral set forth therein consisting of real property (including fixtures) in favor of the Collateral Agent, and (ii) the Security Agreement constitutes an enforceable, and upon the filing of effective financing statements pursuant to the requirements of the UCC and, solely with respect to the portion of the Collateral consisting of trademarks, the filing of a Trademark Security Agreement with the United States Patent and Trademark Office, first priority lien of record and perfected security interest of record in each Borrower's interest, if any, in the El Dorado Facility Collateral consisting of personal property set forth therein in favor of the Collateral Agent, in each case subject to Permitted Encumbrances, as against all Persons, including NFC and its creditors. Except for the filings and recordings listed in Schedule 4.01(a)(iii) (which filings or recordings, or arrangements therefor meeting the requirements specified herein, shall have been duly made on or before the Closing Date (including the payment of any fees or taxes relating to any of the foregoing)), no other filings or recordings are necessary to

create in favor of the Collateral Agent a valid and enforceable first priority Lien for the benefit of the Lenders on the El Dorado Facility Collateral free and clear of all other Liens, other Permitted Encumbrances.

(c) Except for the filings and recordings listed in Schedule 4.01(a)(iii) (which filings or recordings, or arrangements therefor meeting the requirements specified herein, shall have been duly made on or before the Closing Date (including the payment of any fees or taxes relating to any of the foregoing)), no other filings or recordings are necessary to create in favor of the Collateral Agent a valid and enforceable first priority Lien for the benefit of the Lenders on the Cherokee Facility Collateral and the El Dorado Facility Collateral free and clear of all other Liens, other Permitted Encumbrances.

(d) None of the Borrowers nor any of Affiliates of a Borrower has created, consented to, incurred or suffered to exist any Lien upon the Collateral, other than Permitted Encumbrances.

5.21 Services, Materials, Property Interests and Other Rights. Other than with respect to services, materials, property interests or other rights which are routinely obtainable in the ordinary course of business, the Material Contracts and the Support Rights and Interests comprise all of the services, materials and property interests and other rights material to the operation and maintenance of the Facility Assets and the Facility Business as currently being operated. Schedule 5.21 sets forth an accurate list of all utility, ammonia and natural gas pipelines and all other pipelines that enter the Sites from adjacent properties, in each case relating to, and utilized or expected to be utilized in, the Facility Business of the Borrowers at the Cherokee Site, the El Dorado Site or relating to the Facility Assets.

5.22 Material Contracts. Schedule 5.22 sets forth an accurate list of all of the Material Contracts. There exists no event of default, material default or material breach in the performance of any covenant, agreement, obligation or condition to be performed by any Borrower or any other party thereto under any Material Contract, and there are no allegations of any existing default by any Borrower (or, to such Borrower's knowledge, by any other party thereto) under any Material Contract. None of the Material Contracts has been amended, supplemented or otherwise modified in any material respect except as disclosed by the Borrowers to the Payment Agent in writing on the Closing Date, and all of the Material Contracts are in full force and effect. To each Borrower's knowledge, no event of force majeure or other event or condition has occurred which permits or requires any party to any of the Material Contracts to cancel, suspend or terminate its performance of such Material Contract or which could excuse any such party from liability for nonperformance. The technology and "Technical Information" (as that term is defined in the KT Agreement) which is granted to and licensed to EDCC under the KT Agreement is neither used by Borrowers or necessary for the production of ammonia nitrate as currently produced by Borrowers or for the ownership, use or operation of the Facility Assets or to conduct the Facility Business as presently conducted. A successor owner of the Facility Assets with respect to the El Dorado Site would not need the rights licensed under the KT Agreement in order to produce ammonia nitrate as currently produced by Borrowers at the El Dorado Site.

5.23 Permits. Schedule 5.23 sets forth a complete listing of all Permits (other than general business, occupancy and building permits) necessary for each Borrower to conduct the Facility Business as it is currently being conducted. No Permits are required to be held by Borrower or in connection with the Facility Business for the treatment, storage or disposal of Hazardous Materials. Except for the Permits listed in Schedule 5.23 and general business, occupancy and building permits, no other Permits are necessary for the ownership, use or operation of the Facility Assets or to conduct the Facility Business as presently conducted.

5.24 Zoning. The current and anticipated use of each of the Cherokee Site and the El Dorado Site complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Cherokee Site and the El Dorado Site, as applicable, without the existence of any variance, non-complying use, nonconforming use or other special exception, all use restrictions of any Governmental Authority having jurisdiction have been satisfied, and no violation of any Laws exists with respect thereto other than those that individually and in the aggregate could not reasonably be expected to have a Material Adverse Effect.

5.25 Separate Tax Lot. Neither the Cherokee Site nor the El Dorado Site is part of a larger tract of land owned by any Borrower or any of its Affiliates nor is it otherwise included under any unity of title or similar covenant with other lands not encumbered by the Cherokee Mortgage or the El Dorado Mortgage.

5.26 Utilities. All utility services necessary for the operation of the Facility Assets as presently conducted are available at the boundaries of each of the Cherokee Site and the El Dorado Site, as applicable, including electric and natural gas facilities, telephone service, water supply, storm and sanitary sewer facilities.

5.27 Labor Matters. Except as set forth in Schedule 5.27, there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrowers or any of their Subsidiaries (other than the Excluded Subsidiaries) as of the Closing Date and none of the Borrowers nor any of their Subsidiaries (other than the Excluded Subsidiaries) has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

5.28 Collateral. The Collateral includes all tangible and intangible assets, Permits, Material Contracts, and all other Support Rights and Interests, other than the Excluded Assets, necessary to operate and maintain the Facility Assets as they are currently operated and maintained.

5.29 Performance of This Agreement. The proceeds of the Term Loans on the Closing Date are not being distributed to any Borrower into any deposit account located in either Alabama or Arkansas. None of the Loan Documents have been executed or will be executed by any Loan Party in either Alabama or Arkansas.

ARTICLE VI.

AFFIRMATIVE COVENANTS

So long as any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied, each Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary (other than Excluded Subsidiaries) to, and solely in the case of Sections 6.01, 6.02, 6.03, 6.05(a), 6.08, 6.09 and 6.14, Parent shall:

6.01 Financial Statements. Deliver to each Agent and each Lender, in form and detail satisfactory to Agents and the Required Lenders:

(a) as soon as available, but in any event within 90 days (or, if such person has filed a filing extension with the SEC, 105 days) after the end of each fiscal year of each of ThermaClime and Parent (commencing with the fiscal year ending December 31, 2007), a consolidated and consolidating balance sheet of each of ThermaClime and its Subsidiaries and Parent and its Subsidiaries as at the end of such fiscal year, and the related consolidated and consolidating statements of income or operations and statements of cash flows (such consolidating statements of cash flows to be prepared on a business grouping basis (as opposed to an individual company basis), consistent with prior practice of Parent and ThermaClime), and consolidated statements of shareholders' equity for such fiscal year, setting forth in the case of the consolidated balance sheets, statements of income or operations and statements of cash flows in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of Ernst & Young or any other independent certified public accountant of nationally recognized standing selected by Parent and ThermaClime, as applicable, and reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception as to the scope of such audit, and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of ThermaClime or Parent, as applicable, to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of ThermaClime and its Subsidiaries or Parent and its Subsidiaries, as applicable;

(b) as soon as available, but in any event within 45 days (or, if such Person has filed a filing extension with the SEC, 50 days) after the end of each of the first three fiscal quarters of each fiscal year of ThermaClime and Parent (commencing with the fiscal quarter ended September 30, 2007), unaudited statements consisting of a consolidated and consolidating balance sheet of each of ThermaClime and its Subsidiaries and Parent and its Subsidiaries, in each case as at the end of such fiscal quarter, and the related consolidated and consolidating statements of income or operations and statements of cash flows (such consolidating statements of cash flows to be prepared on a business grouping basis (as opposed to an individual company basis), consistent with prior practice of Parent and ThermaClime), and consolidated statements of shareholders' equity for such fiscal quarter and for the portion of ThermaClime's or Parent's, as applicable, fiscal year then ended, setting forth in the case of the consolidated balance sheets, statements of income or operations and statements of cash flows in

comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of ThermaClime or Parent, as applicable, as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of ThermaClime and its Subsidiaries or Parent and its Subsidiaries, as applicable, in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event at least 1 day before the start of each fiscal year of ThermaClime and Parent, an annual business plan and budget of each of ThermaClime and its Subsidiaries and Parent and its Subsidiaries, in each case on a consolidated basis, including forecasts prepared by management of ThermaClime and Parent, as applicable, in form satisfactory to the Payment Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of each of ThermaClime and its Subsidiaries and Parent and its Subsidiaries, in each case on a monthly basis for the immediately following fiscal year.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02 Certificates; Other Information. Deliver to each Agent and each Lender, in form and detail satisfactory to the Agents and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a) (commencing with the delivery of the financial statements for the fiscal year ended December 31, 2007), a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any continuing Default under the financial covenants set forth in Section 7.11 or, if any such continuing Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended September 30, 2007), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of each of ThermaClime and Parent;

(c) promptly after any request by the Payment Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which ThermaClime or Parent may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Payment Agent pursuant hereto;

(e) promptly after the furnishing thereof, copies of any notices of defaults that have not been waived or cured in accordance with the terms of those agreements or proposed prepayments in connection with the termination or final payment in full of the

associated debt facility delivered to the Revolving Agent (or any holder of Indebtedness under the Revolving Credit Documents) or any holder of other Indebtedness of any Loan Party with an aggregate principal amount greater than $5,000,000 pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(g) not later than five Business Days after receipt thereof by any Loan Party, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to the Revolving Credit Documents or and other instrument, indenture, loan or credit or similar agreement involving Indebtedness in an amount greater than $5,000,000 regarding or related to any breach or default that has not been waived or cured prior to such date by any party thereto or any other event that could reasonably be expected to result in a Material Adverse Effect and, from time to time upon request by the Payment Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as Payment Agent may reasonably request;

(h) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Borrower or any of its Subsidiaries (other than the Excluded Subsidiaries) with any Environmental Law or Environmental Permit that could reasonably be expected to (i) have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(i) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party, or compliance with the terms of the Loan Documents, as any Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which ThermaClime or Parent posts such documents, or provides a link thereto on ThermaClime's or Parent's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and each Agent have access (whether a commercial, third-party website or whether sponsored by any Agent); provided that: (i) the Borrowers shall deliver paper copies of such documents to any Agent or any Lender that requests the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by such Agent or such Lender and (ii) the Borrowers shall notify each Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Payment Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrowers shall be

required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Payment Agent. Except for such Compliance Certificates, the Payment Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Borrower and Parent hereby acknowledges that the Agents and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of Parent or the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform").

6.03 Notices. Promptly upon a Responsible Officer of any Loan Party becoming aware, notify each Agent and each Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any existing default under, a Contractual Obligation of any Borrower or any Subsidiary (other than the Excluded Subsidiaries); (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower or any Subsidiary (other than the Excluded Subsidiaries) and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Subsidiary (other than the Excluded Subsidiaries), including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event; and

(d) of any material change in accounting policies or financial reporting practices by any Loan Party except for changes made pursuant to GAAP.

Each notice pursuant to Section 6.03 shall be accompanied by a statement of a Responsible Officer of ThermaClime setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and propose to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, or before delinquency or, in the case of clause (c) below, on or before the expiration of any grace period therefore, all its material obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are subject to a Permitted Protest; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, unless the same is subject to a Permitted Protest; and (c) all material Indebtedness (or in the case of trade payables, other than those with respect to any Assigned Agreement, incurred in the ordinary course of business, in accordance with customary and ordinary practices), but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties; Collateral. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business or which constitute Collateral in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) use the standard of care typical in the industry in the operation and maintenance of its facilities including the Facility Assets except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (d) have full power and lawful authority to encumber such Borrower's interests in the Collateral pursuant to the terms of the Collateral Documents; (e) protect or cause to be protected the title to the Facility Assets and all other Collateral, the status of each of the Cherokee Mortgage and

the El Dorado Mortgage as a perfected lien on and security interest in the Facility Assets and such other Collateral; and (f) forever warrant and defend the same against any other claims of any persons or parties whomsoever.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Payment Agent of termination, lapse or cancellation of such insurance.

(b) Without limiting the generality of the foregoing, the Borrowers shall maintain the following insurance with respect to the Facility Assets:

(i) Special form property damage insurance, with a policy limit in an amount not less than the currently insured value of the Facility Assets and any other tenant improvements (if any). Each policy evidencing such coverage shall include (i) a lender's loss payable endorsement (438 BFU, or its equivalent) in favor of the Collateral Agent for the benefit of each of the Secured Parties as loss payee, and (ii) any other similar endorsements reasonably required by the Payment Agent.

(ii) Commercial general liability coverage (including "umbrella" liability coverage) with such limits as the Payment Agent may reasonably require. The policy evidencing such coverage shall name each of the Agents and the Lenders as additional insured. Coverage shall be written on an occurrence (not a claims made) basis.

(iii) Flood insurance as the Payment Agent may reasonably require in the future, if any portion of the improvements with respect to the Facility Assets are situated or become situated in an area then designated as "flood prone," "within a flood plain" or similar designation under federal or state law.

(c) All policies of insurance required by the Payment Agent shall be issued by companies reasonably acceptable to the Payment Agent and shall otherwise be reasonably acceptable to the Payment Agent as to minimum amounts, forms, risk coverages, reinsurance amounts, deductibles and loss payable and cancellation provisions; provided, that in no event shall (i) any such insurance company be rated less than "A" by AM Best Company or (ii) any such policy relating to the Collateral provide for any deductible amount in excess of $1,500,000. In addition, each policy must provide the Payment Agent at least thirty (30) days' prior written notice of cancellation, non-renewal or modification. If, at least thirty (30) days before a required policy expires, the Payment Agent does not receive proof and evidence that a new policy has been issued and that premiums for it have been paid, then the Payment Agent may participate in all negotiations or other communication between the Borrowers and the insurance company and the Borrowers will use reasonable best efforts to cooperate with the Payment Agent to procure all required insurance hereunder prior to any existing policy expiration. If the Payment Agent does not receive proof and evidence that a new policy has been issued and that premiums for it have been paid ten (10) Business Days prior to the date a required policy expires, the Payment Agent may in its sole discretion procure a new policy and advance funds to pay the premiums for it. The Borrowers shall reimburse the Payment Agent, on demand, for any funds advanced by the Payment Agent to pay insurance premiums, which advances shall be considered to be additional loans to the Borrowers secured by the Cherokee Mortgage, the El Dorado Mortgage and the other Loan Documents and bearing interest at the interest rate for the term Loans then in effect hereunder.

6.08 Compliance with Laws. Comply with (a) Laws and regulations wherever its business is conducted, except for noncompliance (i) that could not reasonably be expected to have a Material Adverse Effect or (ii) in connection with Permitted Protests and not resulting in any Event of Default hereunder, (b) the provisions of its charter documents and by-laws, (c) all agreements and instruments by which it or any of its properties may be bound and (d) all applicable decrees, orders, and judgments, except for, in the case of clauses (c) or (d) above, noncompliance (i) that could not reasonably be expected to have a Material Adverse Effect or (ii) in connection with Permitted Protests and not resulting in any Event of Default hereunder. If any authorization, consent, approval, permit or license from any officer, agency or instrumentality of any government shall become necessary or required in order that such Borrower or any of its Subsidiaries (other than the Excluded Subsidiaries) may fulfill any of its obligations hereunder or any of the other Loan Documents to which such Borrower or such Subsidiary is a party, such Borrower will, or (as the case may be) will cause such Subsidiary to, immediately take or cause to be taken all reasonable steps within the power of such Borrower or such Subsidiary to obtain such authorization, consent, approval, permit or license and if requested furnish the Agents and the Lenders with evidence thereof.

6.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Parent, such Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Parent, such Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of each Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower, but if no Event of Default has occurred and is continuing, Borrowers shall not be required to pay for more than one inspection per Lender during any twelve month period; provided, however, that when an Event of Default exists any Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 Use of Proceeds. Use the proceeds of the Term Loans solely to repay in full the Debt outstanding under the Existing Loan Agreement.

6.12 Covenant to Guarantee Obligations.

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary by ThermaClime (other than any Subsidiary that is a Subsidiary of EDN), then the Borrowers shall, at the Borrowers' expense:

(i) within 10 days after such formation or acquisition, cause such Subsidiary to duly execute and deliver to the Payment Agent a guaranty or guaranty supplement, in form and substance satisfactory to the Payment Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents and agreeing to be bound by the provisions of Section 11.17 as if such Subsidiary were a Borrower hereunder, and

(ii) within 10 days after such formation or acquisition, furnish to the Payment Agent a description of the real and personal properties of such Subsidiary, in detail satisfactory to the Payment Agent.

(b) At any time upon request of the Payment Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Payment Agent may deem necessary or desirable in obtaining the full benefits of such guaranties.

6.13 Compliance with Environmental Laws. Comply, and cause all lessees and other Persons operating or occupying its properties, including the Facility Assets, to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits except for noncompliance that could not reasonably be expected to have a Material Adverse Effect; obtain and renew all Environmental Permits necessary for its operations and Facility Assets; and conduct any investigation, assessment, evaluation, report, study, sampling and testing, and undertake any cleanup, monitoring, removal, remedial or other action necessary to monitor, remove or clean up Hazardous Materials at or emanating from any of its Facility Assets, in accordance with the requirements of all Environmental Laws; provided, however, that neither any Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is subject to a Permitted Protest. Upon reasonable notice, at their sole cost and expense, Borrowers and its Subsidiaries shall perform any Hazardous Materials site assessment or other investigation of environmental conditions related to the Facility Assets, pursuant to any reasonable written request of Lenders (including sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), and share with Lenders the reports and other results thereof, and Lenders shall be entitled to rely on such reports and other results thereof; (a) Borrower and its Subsidiaries shall, at their sole cost and expense, comply with all reasonable written requests of Lenders to (i) comply in all material respects with any Environmental Law, (ii) comply with any directive from any Governmental Authority, and (iii) take any other reasonable action necessary or appropriate for protection of human health or the environment; (b) neither Borrower nor any of its Subsidiaries (other than the Excluded Subsidiaries) shall, and will use all commercially reasonable efforts to prevent any tenant or other user of the Facility Assets from doing any act that (i) materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Cherokee Site or the El Dorado Site), (ii) impairs or may impair the value of the Facility Assets, (iii) is contrary to any requirement of any insurer and could reasonably be expected to have a Material Adverse Effect, (iv) constitutes a public or private nuisance, constitutes waste and could reasonably be expected to have a Material Adverse Effect, or (v) violates any covenant, condition, agreement or easement applicable to the properties and could reasonably be expected to have a Material Adverse Effect.

6.14 Further Assurances. Promptly upon request by the Payment Agent, or any Lender through the Payment Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Payment Agent, or any Lender through the Payment Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Borrower's or any of its Subsidiaries' (other than the Excluded Subsidiaries') properties, assets, rights or interests constituting Collateral or Facility Assets to the Liens covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any Subsidiary of any Borrower (other than any Excluded Subsidiary) is or is to be a party, and cause each of Borrowers' Subsidiaries (other than the Excluded Subsidiaries) to do so.

6.15 Material Contracts. If any Borrower enters into any Material Contract after the Closing Date, ThermaClime shall deliver to the Payment Agent a true, correct and complete copy of such Material Contract (including all exhibits, schedules and annexes thereto) and (a) in the case of any Material Contract that constitutes the replacement of the On-Site Product Supply Agreement dated as of May 31, 1994 between EDCC and Air Liquide America Corporation, as amended, or otherwise provides for the same or similar services, products or rights provided for under such agreement, such Material Contract shall be assignable to the Payment Agent on terms and conditions satisfactory to the Payment Agent, and promptly upon the request of the Payment Agent, ThermaClime shall deliver to the Payment Agent an Assignment and Consent executed by all parties to such replacement or same or similar Material Contract, or (b) in the case of any other Material Contract, including any Material Contract that constitutes the replacement of any Assigned Agreement other than the agreement referred to in clause (a) above, the Borrowers shall use commercially reasonably efforts to ensure that (i) such Material Contract is freely assignable to the Collateral Agent on terms and conditions satisfactory to the Payment Agent, and (ii) promptly upon the request of the Payment Agent, an Assignment and Consent executed by all parties to such other Material Contract is delivered to Payment Agent.

6.16 Copies of Certain Amendments. Promptly deliver to Payment Agent copies of all amendments or modifications to the Revolving Credit Documents, any material loan agreements involving Indebtedness in excess of $5,000,000, or other Material Contracts to which any Borrower is a party.

6.17 Incorporation of Future Financial/Negative Covenants. If the Borrowers shall at any time after the Closing Date amend, refinance, renew, replace, extend or otherwise modify the Revolving Credit Agreement, in the form and as in effect on the Closing Date, in a manner that requires the Borrowers to comply with any Financial/Negative Covenant (other than Sections 7.10, 7.19 and 7.20(a)(i) of the Revolving Credit Agreement as in effect on the Closing Date) that either is not at such time included in this Agreement or, if such Financial/Negative Covenant shall already be included in this Agreement, is more restrictive upon the Borrowers and their Subsidiaries (other than the Excluded Subsidiaries) than such existing Financial/Negative Covenant, each such Financial/Negative Covenant and each event of default, definition and other provision relating to such Financial/Negative Covenant in the Revolving Credit Agreement (other than the excluded Sections listed above) shall be deemed to be incorporated by reference in this Agreement, *mutatis mutandis*, as if then set forth herein in full. Promptly and in any event within five Business Days after any such incorporation by reference shall have first occurred with respect to each such Financial/Negative Covenant and without limiting the immediate effectiveness of such incorporation by reference, ThermaClime will furnish to the Payment Agent and each Lender a copy of such amendment or modification, certified to be true and correct by a Responsible Officer of the Company; and within 20 Business Days after such incorporation by reference the Loan Parties will execute and deliver to the Payment Agent an instrument, in form and substance reasonably satisfactory to the Required Lenders and the Loan Parties, modifying this Agreement by adding or modifying, as the case may be, the full text of such Financial/Negative Covenant and the related events of default, definitions and other provisions. The incorporation of any such Financial/Negative Covenant and other provisions into this Agreement as aforesaid in

respect of the Revolving Credit Agreement shall automatically (without any action being taken by any Loan Party, any Agent or any Lender) take effect simultaneously with the effectiveness of the amendment refinancing, renewal, replacement, extension or other modification to the Revolving Credit Agreement.

6.18 Material Contracts. ThermaClime shall promptly notify the Payment Agent of any additional Material Contracts that arise and are used in or necessary to the conduct of the Facility Business after the Closing Date and the Borrowers shall execute and deliver any security documents necessary or appropriate to the creation of a Lien in favor of the Collateral Agent with respect to such additional Material Contracts as required under Section 6.15.

ARTICLE VII.

NEGATIVE COVENANTS

So long as any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied, no Borrower shall, nor shall it permit any Subsidiary (other than Excluded Subsidiaries) to, directly or indirectly, and solely in the case of Section 7.04, Parent shall not:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist (without prompt action to cause the release thereof) under the Uniform Commercial Code of any jurisdiction a financing statement (excluding precautionary UCC financing statement filings regarding assets, other than Collateral, relating to (i) operating leases entered into by any Borrower or any of its Subsidiaries provided such operating leases are not prohibited under the Loan Documents, (ii) consigned products or merchandise, or (iii) inventory or other goods owned by third parties and stored on the premises of any Borrower or any of its Subsidiaries), that names any Borrower or any of its Subsidiaries (other than the Excluded Subsidiaries) as debtor, other than the following:

(a) Permitted Encumbrances;

(b) Liens existing on the date hereof and listed on Schedule 7.01(b) and any refinancings, renewals or extensions thereof with respect to Liens relating to Indebtedness permitted pursuant to Section 7.02(c)(i), provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(e), (iii) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(e) and (iv) no such Lien shall encumber any of the Collateral;

(c) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA; provided that no such Liens encumber any of the Collateral;

(d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, payment and performance bonds and other obligations of a like nature incurred in the ordinary course of business; provided that no such Liens encumber any of the Collateral;

(e) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h); provided that no such Liens encumber any of the Collateral;

(f) Liens securing Indebtedness permitted under Section 7.02(c)(ii) and Liens securing refinancings, renewals and extensions thereof permitted pursuant to Section 7.02(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, and (ii) no such Liens encumber any of the Collateral except as specifically permitted in the final paragraph of this Section 7.01; and

(g) Liens in favor of the Revolving Agent granted pursuant to the Revolving Credit Documents; provided that no such Liens encumber any of the Collateral.

Following the Closing Date, Borrowers may finance certain additional personal property to be located on either the Cherokee Site or the El Dorado Site by means of a Capitalized Lease or other financing arrangement otherwise permitted under this Agreement. Upon request by ThermaClime, Payment Agent shall, at ThermaClime's sole cost and expense, execute such documents as are reasonably necessary to release such additional personal property from the Liens granted to Collateral Agent hereunder; provided that ThermaClime certifies to Payment Agent in writing that such additional personal property (i) is solely compromised of movable personal property, (ii) is not connected to any portion of the Collateral, unless such personal property is fully severable and can be disconnected from the Collateral to which it is connected without damage or modification to such Collateral and without the occurrence of material cost or expense, (iii) is not in replacement or substitution of any Collateral, and (iv) if removed, shall not adversely affect the use of the Facility Assets, the value of the Collateral or the operation of the Facility Business. Upon repayment of such Capitalized Lease or financing arrangement, ThermaClime shall cause each applicable Borrower which has any interest in any such personal property to execute and cause to be filed and recorded, at its sole cost and expense, all documents requested by Payment Agent necessary to perfect Collateral Agent's Lien with respect to such personal property.

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Borrowers outstanding at any time under the Revolving Credit Documents together with Indebtedness owed to underlying issuers with respect to underlying letters of credit issued at the request of a lender under the Revolving Credit Agreement and as permitted under the portions of the Revolving Credit Agreement relating to underlying letters of credit, and under any amendments, refinancings, renewals, replacements, extensions or other modifications to the Revolving Credit Agreement; provided that (i) the aggregate amount of Indebtedness thereunder, including all Indebtedness owed to any underlying issuer, shall not exceed $70,000,000 in the aggregate and (ii) Borrowers shall comply with the requirements of Section 6.17 in connection with any such amendment, refinancing, renewal, replacement, extension or other modification;

(b) Indebtedness under the Loan Documents;

(c) Indebtedness (i) outstanding on the date hereof and listed on Part A of Schedule 7.02 or (ii) constituting Capitalized Lease Obligations, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(f) and incurred after the Closing Date, provided that the aggregate amount of all such Indebtedness under this clause (ii) at any one time outstanding shall not exceed $7,500,000;

(d) Indebtedness owing by (i) any Borrower to any Guarantor or any other Borrower and (ii) any Guarantor to any Borrower or any other Guarantor other than Parent, provided that all such Indebtedness is subject to the Intercompany Loan Subordination Agreement;

(e) refinancings, renewals, replacements or extensions of Indebtedness permitted under Section 7.02(c) (and continuance or renewal of any Liens associated therewith if permitted under Section 7.01(b) or 7.01(f)) so long as: (i) the terms and conditions of such refinancings, renewals, or extensions do not, in the Payment Agent's judgment, materially impair the prospects of repayment of the Obligations by Borrowers or materially impair Borrowers' creditworthiness, (ii) such refinancings, renewals, or extensions do not result in an increase in the principal amount of, or interest rate with respect to, the Indebtedness so refinanced, renewed, or extended, except for increases in the principal amount of such Indebtedness not exceeding the principal amount of such Indebtedness outstanding on the Closing Date, (iii) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions, that, taken as a whole, are materially more burdensome or restrictive to the applicable Borrower, and (iv) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must include subordination terms and conditions that are at least as favorable to the Agents and the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness;

(f) other subordinated Indebtedness the terms and conditions of which, including provisions subordinating such Indebtedness to the Obligations, as satisfactory to the Lenders;

(g) Indebtedness owing by any Borrower or any Subsidiary of any Borrower to any Subsidiary of Parent that is not also a Subsidiary of ThermaClime, provided that the aggregate principal amount of such Indebtedness shall not exceed $500,000 at any time;

(h) Guarantees (i) by endorsement of instruments or items of payment for deposit to the account of the Borrowers or Guarantors (other than Parent), (ii) relating to Indebtedness otherwise permitted under this Section 7.02 and the guarantees set forth on Part B of Schedule 7.02, and (iii) of performance, surety or appeal bonds of any Borrower or Guarantor;

(i) Investments permitted under Section 7.03;

(j) Indebtedness owing to EDN or its Subsidiaries resulting from loans from EDN or its Subsidiaries to any Borrower or Guarantor permitted pursuant to Section 7.06(g); and

(k) other unsecured Indebtedness in an aggregate principal amount not to exceed $500,000 at any time outstanding.

7.03 Investments. Make or hold any Investments, except:

(a) Investments held by the Borrowers and their Subsidiaries in the form of Cash Equivalents;

(b) Investments in negotiable instruments for collection;

(c) advances made in connection with purchases of goods or services in the ordinary course of business;

(d) Investments by any Borrower or Guarantor in Loan Parties (other than Parent);

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) Investments constituting Guarantees of Indebtedness permitted by Section 7.02(e) or Guarantees otherwise permitted under Section 7.02(h);

(g) Investments set forth on Schedule 7.03;

(h) Investments made by any Borrower or Guarantor (other than Parent) in Parent, provided that the aggregate amount of such Investments do not exceed $2,000,000 at any time outstanding;

(i) Investments in EDN and its Subsidiaries permitted pursuant to Section 7.06(g);

(j) Investments in any newly created Subsidiary by means of purchase or other acquisition of the Equity Interests of such Subsidiary, including by way of a merger, but only if such Subsidiary is a Guarantor pursuant to the requirements of Section 6.12; and

(k) other Investments not exceeding $1,000,000 in the aggregate outstanding at any time.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or any substantial part of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom, (a) any Borrower (other than ThermaClime, Cherokee or NFC) or any Subsidiary of any Borrower may merge with and into any Borrower, (b) Parent may merge with any entity (other than a Borrower) if Parent is the surviving entity of such merger, (c) any Borrower or any Subsidiary of any Borrower may sell, transfer, lease or otherwise dispose of its assets (other than any Collateral, except in the case of the Intercompany Leases) to any Borrower, and (d) the Existing Permitted Leases and Use Rights shall be permitted hereunder.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete, damaged, replaced or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) the use or transfer of money and Cash Equivalents by the Borrowers and their Subsidiaries in a manner that is not prohibited by the terms of this Agreement or the Revolving Credit Documents;

(d) Dispositions by the Borrowers and their Subsidiaries of accounts, provided that (i) the consideration payable in connection with the sale or disposition of such accounts shall be in cash and shall equal no less than 100% of the aggregate original invoice amount of such accounts, or (ii) in the case of any accounts that are subject to Liens in favor of the Revolving Agent under the Revolving Credit Documents, such accounts are disposed of in compliance with the requirements set forth in the Revolving Credit Agreement;

(e) Dispositions permitted by Section 7.04;

(f) Dispositions by the Borrowers of obsolete, damaged or worn out equipment constituting Collateral (i) that is promptly (or in the case of damaged equipment in connection with an event of loss, within 180 days) replaced with equipment of similar manufacture having value, remaining useful life and utility at least equal to, and being in at least as good an operating and maintenance condition as, the equipment being replaced, or (ii) that is not replaced in accordance

with clause (i) above, in an aggregate amount not to exceed $2,000,000 during the term of this Agreement; provided that (A) within 180 Business Days, the proceeds of any such Disposition that is not reinvested in replacement equipment pursuant to clause (i) above shall be paid to the Payment Agent as a prepayment of the outstanding principal amount of the Term Loans, and (B) concurrently with such prepayment, ThermaClime shall deliver to the Payment Agent a certificate describing the Disposed of equipment and certifying that such equipment was obsolete, damaged or worn out and that the failure to replace such equipment could not be reasonably expected to have a Material Adverse Effect. Upon receipt by the Payment Agent of (x) either evidence of replacement of equipment pursuant to clause (i) above or the proceeds of a Disposal of equipment pursuant to clause (ii) above and (y) to the extent necessary or appropriate to create a Lien in favor of the Collateral Agent on any replacement equipment, duly executed security documents, the Payment Agent will take such steps as are necessary to promptly release the Collateral Agent's Lien on the equipment so Disposed of; and

(g) Dispositions permitted under Section 7.4(a) of the Revolving Credit Agreement (as in effect on the date hereof), provided that the proceeds of any such Disposition are applied in accordance with the requirements of Section 7.4(a) of the Revolving Credit Agreement (as in effect on the date hereof);

(h) nonexclusive licenses of IP Rights in the ordinary course of business;

(i) Intercompany Leases; and

(j) Existing Permitted Leases and Use Rights.

Notwithstanding anything to the contrary contained in this Section 7.05, Borrowers shall not (and shall not permit any of their Subsidiaries to) make or suffer to exist any Disposition of Collateral except to the extent permitted by Sections 7.05(f), (i) or (j) above.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests, except that, so long as no distribution is made of any Collateral:

(a) any Borrower may make Restricted Payments to another Borrower or issue Equity Interests to another Borrower or to Parent if no Change of Control would result therefrom;

(b) ThermaClime may make distributions and pay dividends to Parent in repayment of the costs and expenses incurred by Parent that are directly allocable to the Borrowers for Parent's provision of the Services (as defined in the Services Agreement) on behalf of the Borrowers pursuant to the Services Agreement;

(c) each Borrower may make distributions and pay dividends to any Guarantor (other than Parent), and each Guarantor may make distributions and pay dividends to any Borrower or Guarantor (other than Parent);

(d) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, (i) ThermaClime may make distributions and pay dividends to Parent in respect of the management fees payable by ThermaClime to Parent in accordance with the Management Agreement, provided that the aggregate amount of all such payments made by ThermaClime pursuant to this clause (d)(i) shall not exceed $2,500,000 during any fiscal year of ThermaClime or the maximum management fees payable to Parent each calendar quarter under the Management Agreement, and (ii) ThermaClime may make distributions and pay dividends to Parent in an aggregate amount not to exceed, during each fiscal year, the sum of (A) 50% of the actual consolidated net income of the Borrowers for such fiscal year determined in accordance with GAAP, plus (B) the amounts paid to Parent during such fiscal year in accordance with Section 7.06(e);

(e) so long as a Secured Party has not exercised any of its rights or remedies following an Event of Default, ThermaClime may make distributions and pay dividends to Parent in an aggregate amount not to exceed, during each fiscal year, the consolidated income tax liability of the Borrowers for such fiscal year calculated as if each the Borrowers was a separate consolidated taxpayer;

(f) each Borrower may make distributions and pay dividends to any Subsidiary of Parent that is not also a Subsidiary of ThermaClime or that is a Subsidiary of ThermaClime but is not a Borrower or a Guarantor, provided that the aggregate amount of such distributions and dividends shall not exceed $100,000 during each fiscal year; and

(g) each Borrower and Guarantor may repay loans, make advances, distributions, and pay dividends to EDN and its Subsidiaries, provided that (i) no Default or Event of Default has occurred and is continuing or would result from the making of such distributions or dividends, and (ii) the aggregate amount of such repayments, advances, distributions and dividends does not exceed $5,000,000 during any week, and (iii) the aggregate amount of such loans repaid and advances, distributions and dividends paid to EDN and its Subsidiaries by the Borrowers and Guarantors (other than the Parent) shall not exceed the aggregate amount of advances, distributions and dividends paid by EDN and its Subsidiaries to the Borrowers and Guarantors (other than the Parent) at any time.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08 Transactions with Affiliates. Except for agreements set forth on Schedule 7.08, enter into any transaction of any kind with any Affiliate of any Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to such Borrower or such Subsidiary as would be obtainable by such Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to transactions among any Borrower and any other Loan Party.

7.09 Restrictive Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary (other than any Excluded Subsidiary) of a Borrower to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property owned by such Subsidiary to or invest in any Borrower or any Guarantor, except for any agreement in effect (A) on the date hereof and set forth on Schedule 7.09 or (B) at the time any Subsidiary (other than any Excluded Subsidiary) becomes a Subsidiary of any Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of a Borrower, (ii) of any Subsidiary (other than any Excluded Subsidiary) to Guarantee the Indebtedness of any Borrower other than as prohibited under the Revolving Credit Agreement but in no event shall such prohibition in the Revolving Credit Agreement at any time be greater in scope or more restrictive than the prohibition as set forth in the Revolving Credit Agreement as of Closing Date or (iii) of any Borrower or any Subsidiary (other than any Excluded Subsidiary) to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that clauses (a)(i) and (a)(iii) above shall shall not prohibit (x) any negative pledge or restriction on Restricted Payments or transfer of property provided for in the Revolving Credit Agreement but in no event shall such negative pledge or restriction in the Revolving Credit Agreement at any time be greater in scope or more restrictive than the negative pledge or such restriction as set forth in the Revolving Credit Agreement as of Closing Date, or (y) any negative pledge or restriction with respect to the transfer of property in favor of any holder of Indebtedness permitted under Sections 7.02(c) or 7.02(e) solely to the extent any such negative pledge or restriction on transfer relates to the property financed by or which is the subject of the Indebtedness permitted under Section 7.02(c) or 7.02(e) and

agreements evidencing such Indebtedness do not otherwise limit the making of Restricted Payments, and, provided further, that the prohibition on restrictions on transfers of assets as set forth in clause (a)(i) above shall not apply to customary restrictions contained in an agreement for the sale of property to the extent such sale is permitted by this Agreement and such restriction relates solely to the asset being sold; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.10 Use of Proceeds. Use the proceeds of any Term Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio at any time during any period of four fiscal quarters of ThermaClime set forth below to be greater than 4.50 to 1.00.

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter of ThermaClime to be less than 1.10 to 1.00.

7.12 Amendments of Organization Documents. Amend any of its Organization Documents if such amendment would have the effect of changing the name, place of organization or type of organization of any Loan Party; provided, however, that any Borrower or its Subsidiaries may change its name or add any new fictitious name if the Borrowers provide the Payment Agent and the Collateral Agent with at least 30 days' prior written notice of such change and at such time the Borrowers promptly provide to the Collateral Agent any financing statements, fixture filings or other Collateral Documents as requested by the Payment Agent necessary or appropriate for the continued perfection of the Collateral Agent's Liens on the Collateral.

7.13 Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.14 Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Term Loans in accordance with the terms of this Agreement, (b) regularly scheduled or required repayments or redemptions of Indebtedness set forth in Section 7.02, (c) refinancings and refundings of Indebtedness set forth in Section 7.02(c) in compliance with Section 7.02(e), and (d) refinancings and replacements of the Revolving Credit Agreement to the extent permitted pursuant to Sections 7.02(a) and 6.17 and payments to reduce Indebtedness under the Revolving Credit Agreement which are not accompanied by or give rise to a reduction in the aggregate outstanding commitments under the Revolving Credit Agreement.

7.15 Amendment, Etc. of Indebtedness and Certain Agreements. Amend, modify or change in any manner any term or condition of (a) any Indebtedness set forth in Schedule 7.02, except for any refinancing, refunding, renewal or extension thereof permitted by Section 7.02(e), or (b) the Existing Permitted Leases and Use Rights, the Intercompany Leases, the Management Agreement, the Services Agreement or the Tax Sharing Agreement, without the prior written consent of the Payment Agent, excluding amendments and modifications to an agreement listed in this clause (b) to effect extensions or renewals thereof that do not otherwise affect the terms and conditions thereof and, in the case of the Existing Permitted Leases and Use Rights, the Intercompany Leases and the Management Agreement, affect the subordination thereof to the Obligations as provided for in the Intercompany Lease Subordination Agreement, the Management Agreement, and subordinations to be delivered with respect to the Existing Permitted Leases and Use Rights pursuant to Section 4.01.

7.16 Performance of This Agreement. No payments required or permitted under the terms of this Agreement will be paid by any Loan Party or made to any Agent or any Lender in either Alabama or Arkansas.

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Term Loan, or (ii) pay within three days after the same becomes due, any interest on any Term Loan or any fee due hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) Parent or any Borrower fails to perform or observe any term, covenant or agreement applicable to it contained in any of Section 6.03, 6.05(a), 6.10, 6.11, 6.14 or Article VII, (ii) Parent fails to perform or observe any term, covenant or agreement contained in Section 10.05 or 10.07, (iii) any Borrower fails to perform or observe any term, covenant or agreement contained in Sections 4.2, 4.3 (other than Section 4.3(a)), or 4.4 of the Security Agreement but in each case after giving affect to any cure or grace periods set forth in such sections of the Security Agreement, or Section 2.01(g) of the respective Mortgages to which it is a party; or (iv) Parent or any Borrower fails to perform or observe any term, covenant or agreement applicable to it contained in any of Section 6.01, 6.02, 6.05(b), 6.05(c), or 6.12 or Section 4.3(a) of the Security Agreement and such failure continues for 10 days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or materially misleading when made; or

(e) Cross-Default. (i) Parent, any Borrower or any Subsidiary of any Borrower (other than any Excluded Subsidiary) (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of the Indebtedness arising under the Revolving Credit Documents or any other Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform or otherwise defaults under or breaches any other agreement or condition in any Revolving Credit Document or relating to any other such Indebtedness or Guarantee described above or contained in any instrument or agreement evidencing, securing or relating thereto, if the effect of such failure, default or breach as described in clauses (i)(A) or clause (i)(B) above is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of any required notice or the expiration of any applicable grace or cure period, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity (other than required prepayments of less than all of the Indebtedness set forth in the documents related thereto), or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Parent, any Borrower or any Subsidiary of any Borrower (other than an Excluded Subsidiary) is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Parent, any Borrower or any Subsidiary of any Borrower (other than an Excluded Subsidiary) is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by Parent, such Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days after the institution of such proceeding, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any of Parent, any Borrower or any Subsidiary of any Borrower (other than any Excluded Subsidiary) (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding $1,500,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) any Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect (subject only to ThermaClime's right to cure a failure by Collateral Agent to file a continuation statement as set forth in Section 8.01(l) below); or any Loan Party or any Affiliate of any Loan Party contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby; provided that, if such failure to create a perfected first priority Lien arises solely as a result of the failure by the Collateral Agent following the Closing Date to file a UCC-3 continuation statement, then to the extent that ThermaClime fails within five (5) days after request in writing by any Agent or any Lender, to file such UCC-3 continuation statement or such other filings as requested in writing by Collateral Agent or any such Lender to maintain or restore such perfected first priority Lien; or

(m) Subordination. Any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any provision of the Intercompany Loan Subordination Agreement (the "Subordination Provisions"), (B) that the Subordination Provisions exist for the benefit of the Agents and the Lenders or (C) that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, either the Payment Agent with respect to clauses (a) and (b) below or the Collateral Agent with respect to clause (c) below, shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Term Loans to be terminated, whereupon such commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers; and

(c) exercise on behalf of itself, the Lenders all rights and remedies available to it or the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Term Loans shall automatically terminate, the unpaid principal amount of all outstanding Term Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of any Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Term Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Payment Agent or in the case of proceeds received by the Collateral Agent, the Collateral Agent, in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agents and amounts payable under Article III) payable to each Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after Indefeasible Payment and Performance of All Obligations, to the Borrowers or as otherwise required by Law.

ARTICLE IX.

THE AGENTS

9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints BALCAP to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto; provided that in no event shall the Administrative Agent have any powers or be required to take any actions other than those set forth in Section 11.01. Each of the Lenders hereby irrevocably appoints BALCAP to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, including, without limitation, acting as Collateral Agent to the Lenders for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such actions, discretion and powers as are reasonably incidental thereto provided, however, in no event shall the Collateral Agent have any obligations under the Loan Documents to take any actions other than those described in or otherwise specifically delegated to the Collateral Agent under the Loan Documents. Each of the Lenders hereby irrevocably appoints Bank of Utah to act on its behalf as Payment Agent hereunder and under the other Loan Documents and authorizes the Payment Agent to take such actions on its behalf and to exercise such powers as are delegated to the Payment Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agents and the Lenders, and neither any Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Persons serving as the Agents hereunder each shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Persons serving as the Agents hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. None of the Agents shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, none of the Agents:

(a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents, all of which such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that none of the Agents shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of their Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

None of the Agents shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.01) or (ii) in the absence of its own gross negligence or willful misconduct. Each Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to such Agent

by a Borrower or a Lender. None of the Agents shall be liable for any action taken or not taken by the other Agents or any co-agents, sub-agents and attorneys-in-fact appointed by the other Agents.

None of the Agents shall be responsible for or have any duty to ascertain or inquire (or in the case of clause (iv) cause or maintain except as specifically directed to do so by the Lenders) into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants,

agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

9.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan, that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. Each Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent, Collateral Agent or Payment Agent, as applicable.

9.06 Resignation of Agents. Each Agent may at any time give notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the retiring Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the

retiring Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent, Collateral Agent or Payment Agent hereunder, as applicable, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent, Collateral Agent or Payment Agent, as applicable.

9.07 Non-Reliance on Agents and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, the Arranger listed on the cover page hereof shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

9.09 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents 2.05 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender (and the Administrative Agent, as applicable) to make such payments to the Payment Agent and, if the Payment Agent shall consent to the making of such payments directly to the Lenders, to pay to the Payment Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Agents under Sections 2.05 and 11.04.

Nothing contained herein shall be deemed to authorize the Payment Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Payment Agent to vote in respect of the claim of any Lender or in any such proceeding.

9.10 Collateral and Guaranty Matters. The Lenders irrevocably authorize the Collateral Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 11.01;

(b) to release any Guarantor from its obligations under a Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by the final paragraph of Section 7.01.

Upon request by the Collateral Agent or the Payment Agent, as applicable, at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or for the Payment Agent to release any Guarantor from its obligations under a Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Collateral Agent or the Payment Agent, as applicable, will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

ARTICLE X.

CONTINUING GUARANTY

10.01 Guaranty. Parent hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations (in each case, after all applicable grace periods, if

any, provided for in the Loan Documents), whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers to the Secured Parties, arising hereunder and under the other Loan Documents (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). The Payment Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Parent, and conclusive for the purpose of establishing the amount of the Obligations absent manifest error. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Parent under this Guaranty (other than Indefeasible Payment and Performance of All Obligations), and Parent hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than Indefeasible Payment and Performance of All Obligations).

10.02 Rights of Lenders. Parent consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for

payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Collateral Agent and the Lenders in their sole discretion may determine in accordance with the provisions of the Loan Documents; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, Parent consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Parent under this Guaranty or which, but for this provision, might operate as a discharge of Parent.

10.03 Certain Waivers. Parent waives (a) any defense arising by reason of any disability or other defense of any Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of any Borrower, other than Indefeasible Payment and Performance of All Obligations; (b) any defense based on any claim that Parent's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting Parent's liability hereunder; (d) any right to proceed against any Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever until such time as Indefeasible Payment and Performance of All Obligations; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party until such time as Indefeasible Payment and Performance of All Obligations; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties (other than Indefeasible Payment and Performance of All Obligations). Parent expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests,

notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

10.04 Obligations Independent. The obligations of Parent hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against Parent to enforce this Guaranty whether or not any Borrower or any other person or entity is joined as a party.

10.05 Subrogation. Parent shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full. If any amounts are paid to Parent in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until Indefeasible Payment and Performance of All Obligations has occurred. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of any Borrower or Parent is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, assignee, receiver or any other party, in connection with any case or proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Parent under this paragraph shall survive termination of this Guaranty.

10.07 Subordination. Parent hereby subordinates the payment of all obligations and indebtedness of the Borrowers owing to Parent, whether now existing or hereafter arising, relating to any obligation of the Borrowers to Parent as subrogee of the Secured Parties or resulting from Parent's performance under this Guaranty, to the Indefeasible Payment and Performance of All Obligations. If the Secured Parties so request, any such obligation or indebtedness of any Borrower to Parent shall be enforced and performance received by Parent as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of Parent under this Guaranty.

10.08 Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case or proceeding commenced by or against Parent or any Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Parent immediately upon demand by the Secured Parties.

10.09 Condition of Borrowers. Parent acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as Parent requires, and that none of the Secured Parties has any duty, and Parent is not relying on the Secured Parties at any time, to disclose to Parent any information relating to the business, operations or financial condition of any Borrower or any other guarantor (Parent waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

ARTICLE XI.

MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Agents, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), without the written consent of each Lender;

(b) extend or increase the Term Commitment of any Lender (or reinstate any Term Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Term Loan, or (subject to clause (ii) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 11.01(g)), without the written consent of each Lender;

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(h) release all or substantially all of the value of a Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from a Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Payment Agent acting alone); or

(i) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the affected Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document; and (ii) any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Term Commitment of such Lender may not be increased or extended without the consent of such Lender.

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Parent, any Borrower or any Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in Schedule 1.01(d) hereto.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites), provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if

such Lender has notified the each Agent that it is incapable of receiving notices under such Article by electronic communication. Each Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Payment Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent or any of their respective Related Parties (collectively, the "Agent Parties") have any liability to Parent, any Borrower, any Lender, the other Agent or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's or any Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Parent, any Borrower, any Lender, the other Agent or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Parent, each Borrower and each Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers and the Payment Agent. In addition, each Lender agrees to notify the Payment Agent from time to time to ensure that the Payment Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other

communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to any Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Agents and Lenders.The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify each Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Borrower. All telephonic notices to and other telephonic communications with each Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure by any Lender or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Agents and their respective Affiliates (including the reasonable fees, charges and disbursements of counsel for each Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by any Agent or any Lender (including the fees, charges and disbursements of any counsel for any Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Term Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Term Loans.

(b) Indemnification by the Borrowers. The Borrowers shall indemnify each Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses (including, without limitation, Environmental Losses), claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of any Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on, under, from or about any property owned or operated by any Borrower or any of their respective Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of their respective Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort, Applicable Law or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. The foregoing indemnity shall in no manner be construed to limit or adversely affect any of Indemnitee's other rights under this Agreement, including Indemnitee's rights to approve any remedial work or the contractors and consulting engineers retained in connection therewith.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to any Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for such Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.08(c).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent, the replacement of any Lender, the termination of the Term Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of any Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Payment Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Payment Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither any Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Payment Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (and any

other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Term Loans at the time owing to it under the Term Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the principal outstanding balance of the Term Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Collateral Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000, unless the Collateral Agent otherwise consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of ThermaClime (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to an Eligible Assignee (as defined in clause (a) of such definition) that as of the date of the proposed assignment or sale would not be subject to capital adequacy or similar requirements under Section 3.04(b) or increased costs under Section 3.04(a); and

(B) the consent of the Payment Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Term Loan to a Person that is not an Eligible Assignee (as defined in clause (a) of such definition).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Payment Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Payment Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Payment Agent an Administrative Questionnaire.

(v) No Assignment to Parent or Borrowers. No such assignment shall be made to Parent, any Borrower or any of their respective Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Payment Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Payment Agent, acting solely for this purpose as an Agent of the Borrowers, shall maintain at the Payment Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Payment Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Agents, sell participations to any Person (other than a natural person or any Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Term Loans); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Agents and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.09 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with ThermaClime's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.07 Treatment of Certain Information; Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the consent of any Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Agents and the Lenders acknowledges that (a) the Information may include material non-public information concerning a Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the obligations of such Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have

made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrowers and the Payment Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Term Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agents and when the Payment Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Term Loan, and shall continue in full force and effect as long as any Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the

illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Payment Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Payment Agent the assignment fee specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE

PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrowers and Parent acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the Arranger are arm's-length commercial transactions between the Borrowers, Parent and their respective Affiliates, on the one hand, and the Agents and the Arranger, on the other hand, (B) each of the Borrowers and Parent has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrowers and Parent is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Borrower, Parent or any of their respective Affiliates, or any other Person and (B) none of the Agents nor the Arranger has any obligation to any Borrower, Parent or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, Parent and their respective Affiliates, and none of the Agents nor the Arranger has any obligation to disclose any of such interests to any Borrower, Parent or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrowers and Parent hereby waives and releases any claims that it may have against the Agents and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.17 Joint and Several Liability.

(a) Each Borrower has determined that it is in its best interest and in pursuance of its legitimate business purposes to induce the Lenders to extend credit to the Borrowers pursuant to this Agreement. Each Borrower acknowledges and represents that its business is integrally related to the business of the other Borrowers, that the availability of the Term Loans to any of the Borrowers benefits each of the Borrowers individually and that the Term Loans made will be for and inure to the benefit of each of the Borrowers, individually and as a group. Accordingly, the Borrowers shall be jointly and severally liable for the Obligations. Additionally, the Borrowers shall be jointly and severally liable (as a principal and not as a surety, guarantor or other accommodation party) for each and every representation, warranty, covenant and obligation made by or to be performed by the Borrowers or any Borrower under this Agreement, the Term Notes and the other Loan Documents, and each Borrower acknowledges that, in extending the credit provided herein, the Agents and the Lenders are relying upon the fact that the obligations of each Borrower hereunder are the joint and several obligations of a principal.

(b) To the maximum extent permitted by law, until such time as Indefeasible Payment and Performance of All Obligations has occurred each Borrower hereby waives any claim, right or remedy which such Borrower now has or hereafter acquires against any other Borrower that arises hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of any Agent or any Lender against any

Borrower or any Collateral which any Agent or any Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law. In addition, until such time as Indefeasible Payment and Performance of All Obligations has occurred each Borrower hereby waives any right to proceed against the other Borrowers, now or hereafter, for contribution, indemnity, reimbursement, and any other suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether arising under express or implied contract or by operation of law, which any Borrower may now have or hereafter have as against the other Borrowers with respect to the Obligations and each Borrower also hereby waives any rights of recourse to or with respect to any asset of the other Borrowers.

11.18 Certain Consents and Additional Waivers.

(a) The Agents and the Lenders may, at any time and from time to time (after the expiration of any applicable grace or cure periods expressly provided for in the Loan Documents), without the consent of or notice to any Loan Party, except such notice as may be required by applicable statute and which cannot be waived, without incurring responsibility to any Loan Party, and without impairing or releasing the obligations of any Loan Party in whole or in part, (i) exercise or refrain from exercising any rights against any Loan Party, (ii) to the extent permitted pursuant to the terms of the Loan Documents sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property pledged or mortgaged to secure or in any manner securing the Obligations, (iii) take and hold any additional security for any or all of the Obligations, (iv) apply any sums by whomsoever paid or howsoever realized to any Obligations of any Loan Party to the Agents or the Lenders regardless of what Obligations remain unpaid.

(b) Unless otherwise expressly provided herein, each Loan Party hereby waives, to the maximum extent permitted under applicable law, any and all benefits and defenses under any statute, regulation, judicial decision or other law which purports to exonerate or reduce the liability of any other Loan Party as a result of any disability or absence of liability of such other Loan Party or any defense to liability or enforcement which any other Loan Party may have and agrees that, by so doing, such Loan Party’s obligations hereunder shall continue even if the other Loan Parties have no liability at the time of execution of this Agreement or thereafter ceased or cease to be liable. Each Loan Party also waives, to the maximum extent permitted under applicable law, any and all benefits and defenses under any statute, regulation, judicial decision or other law which purports to limit the liability of any other Loan Party to that of such other Loan Party or to reduce the liability of any other Loan Party in proportion to any reduction in the liability of such other Loan Party and agrees that, by so doing, such Loan Party’s obligations hereunder may be more burdensome than that of the other Loan Parties.

(c) No invalidity, irregularity or unenforceability of the Obligations of a Loan Party under the Loan Documents shall affect, impair or be a defense to the Obligations of the other Loan Parties. Unless otherwise expressly provided herein, each Loan Party waives any defense arising by reason of any disability or other defense of the other Loan Parties or by reason of the cessation from any cause whatsoever of the liability of the other Loan Parties or by reason of any act or omission of any Agent or any Lender or others which directly or indirectly results in or aids the discharge or release of the other Loan Parties or any Obligations or any Collateral by operation of law or otherwise. The Obligations shall be enforceable against each Loan Party without regard to the

validity, regularity or enforceability of any of the Obligations with respect to any of the other Loan Parties or any of the documents related thereto or any collateral security documents securing any of the Obligations. No exercise by any Agent or any Lender of, and no omission of any Agent or any Lender to exercise, any power or authority recognized herein and no impairment or suspension of any right or remedy of any Agent or any Lender against any Loan Party or any Collateral shall in any way suspend, discharge, release, exonerate or otherwise affect any of the Obligations or any Collateral furnished by the Loan Parties or give to the Loan Parties any right of recourse against any Agent or any Lender. Each Loan Party specifically agrees that the failure of any Agent or any Lender: (i) to perfect any lien on or security interest in any property heretofore or hereafter given by any Loan Party to secure payment of the Obligations, or to record or file any document relating thereto or (ii) to file or enforce a claim against the estate (either in administration, bankruptcy or other proceeding under any Debtor Relief Laws) of any Loan Party shall not in any manner whatsoever terminate, diminish, exonerate or otherwise affect the liability of any Loan Party hereunder.

(d) Each Loan Party, to the maximum extent permitted under applicable law, hereby waives any right, whether arising under any statute, regulation, judicial decision or otherwise, to require any Agent or any Lender to (i) proceed against any other Loan Party, (ii) proceed against or exhaust any security received from any other Loan Party, or (iii) pursue any other right or remedy in any Agent’s or the Lenders’ power whatsoever. Without limiting the generality of the foregoing, each Loan Party, to the maximum extent permitted under applicable law, waives any and all marshaling rights or similar rights which may be available at law or in equity. A separate action or actions may be brought and prosecuted against any Loan Party whether or not action is brought against the other Loan Parties and whether the other Loan Parties are joined in any such action or actions; and each Loan Party waives the benefit of any statute of limitations affecting the liability hereunder or the enforcement hereof, and agrees that any payment of any Obligations or other act which shall toll any statute of limitations applicable thereto shall similarly operate to toll such statute of limitations applicable to the liability hereunder.

(e) Unless otherwise expressly provided herein, each Loan Party further waives, to the maximum extent permitted under applicable law: (i) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of such Loan Party against any other Loan Party or any security, whether resulting from an election by the Agents and the Lenders to foreclose upon security by judicial or nonjudicial sale or otherwise; (ii) any setoff or counterclaim of such Loan Party or any defense of any kind (including defenses resulting from any disability) or the cessation or stay of enforcement from any cause whatsoever of the liability of such Loan Party (including without limitation the lack of validity or

enforceability of any Loan Document); (iii) any right to exoneration, in whole or in part, of which would otherwise be applicable; and (iv) all valuation, appraisal, extension or redemption laws now or hereafter in effect. Unless otherwise expressly provided herein, each Loan Party agrees that, to the maximum extent permitted under applicable law, its Obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

(f) Each Loan Party acknowledges that it has the ability, and hereby assumes the obligation and responsibility, to keep informed of the financial condition of the other Loan Parties and of other matters or circumstances affecting the ability of the other Loan Parties to pay or perform its obligations hereunder or the risk of nonpayment and nonperformance. Each Loan Party hereby waives, to the maximum extent permitted under applicable law, any obligation on the part of any Agent or any Lender to inform such Loan Party of the financial condition, or any changes in financial condition, of the other Loan Parties or of any other matter or circumstance which might affect the ability of any of the other Loan Parties to pay or perform under this Agreement or any other Loan Document, or the risk of nonpayment or nonperformance.

11.19 <u>Limitations on Borrowers' Liability; Borrowers Rights to Subrogation and Reimbursement</u>. (a) In any action or proceeding arising under or related to any Debtor Relief Laws if the obligations of any Borrower under the Loan Documents would otherwise be held or determined to be avoidable, invalid or unenforceable as a fraudulent transfer or otherwise as a result or on account of the amount of its liability under the Loan Documents, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Borrower or any other Person, including any third party acting on behalf of such Borrower, be automatically limited and reduced to the highest amount which is valid and enforceable.

(a) In the event that any Collateral owned by a Borrower (the "Affected Borrower") or the value thereof, is transferred or paid to the Lenders or an Agent in satisfaction of or is deemed to satisfy the obligations of another Borrower (the "Affiliate Obligations"), such Affected Borrower shall be subrogated to the Lender's rights against the Parent as guarantor under this Agreement with respect to such Affiliate Obligations, and shall have a right to reimbursement from Parent with respect to such Affiliate Obligations; provided that such right of subrogation and right to reimbursement shall be subordinated in all respects to the right of the Secured Parties under the guaranty at Article X including but not limited to the right to payment in full of all amounts payable thereunder.

11.20 <u>Appointment of ThermaClime as Agent</u>. Each other Borrower hereby irrevocably appoints ThermaClime as its agent and attorney-in-fact for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any Term Loans made by the Lenders, to any such Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by each Borrower acting singly, shall be valid and effective if given or taken only by ThermaClime, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to ThermaClime in accordance with the terms of this Agreement shall be deemed to have been delivered to each Borrower. It is understood that the handling of certain loan accounts and the Collateral of the Borrowers in a combined fashion is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that none of the Lenders shall incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of such loan accounts and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the

integrated group. To induce the Lenders to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each Lender and hold each Lender harmless against any and all liability, expense, loss or claim of damage or injury, made against any Lender by any Borrower or by any third party whosoever, arising from or incurred by reason of (a) the handling of any loan account and any Collateral of the Borrowers as herein provided, (b) any Lender relying on any instructions of ThermaClime, or (c) any other action taken by any Lender hereunder or under the other Loan Documents, except that the Borrowers will have no liability to the relevant indemnified Person under this Section 11.20 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such indemnified Person.

11.21 <u>USA PATRIOT Act Notice</u>. Each Lender that is subject to the Act (as hereinafter defined) and each Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or such Agent, as applicable, to identify each Loan Party in accordance with the Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWERS:

THERMACLIME, INC.,
an Oklahoma corporation

By: ______________________________

Name: ____________________

Title: ____________________

CHEROKEE NITROGEN HOLDINGS, INC.,
an Oklahoma corporation

By: ____________________

Name: ____________________

Title: ____________________

NORTHWEST FINANCIAL CORPORATION,
an Oklahoma corporation

By: ____________________

Name: ____________________

Title: ____________________

CHEMEX I CORP.,
an Oklahoma corporation

By: ____________________

Name: ____________________

Title: ____________________

CHEMEX II CORP.,
an Oklahoma corporation

By: ____________________

Name: ____________________

Title: ____________________

CHEROKEE NITROGEN COMPANY,
an Oklahoma corporation

By: ____________________

Name: ____________________

Title: ____________________

CLIMACOOL CORP.,
an Oklahoma corporation

By: ____________________

Name: ____________________

Title: ____________________

CLIMATECRAFT, INC.,
an Oklahoma corporation

By: ____________________________

Name: ____________________________

Title: ____________________________

CLIMATE MASTER, INC.,
a Delaware corporation

By: ____________________________

Name: ____________________________

Title: ____________________________

DSN CORPORATION,
an Oklahoma corporation

By: ____________________________

Name: ____________________________

Title: ____________________________

EL DORADO CHEMICAL COMPANY,
an Oklahoma corporation

By: ____________________________

Name: ____________________________

Title: ____________________________

INTERNATIONAL ENVIRONMENTAL CORPORATION,
an Oklahoma corporation

By: ____________________________

Name: ____________________________

Title: ____________________________

KOAX CORP.,
an Oklahoma corporation

By: ____________________________

Name: ____________________________

Title: ____________________________

LSB CHEMICAL CORP.,
an Oklahoma corporation

By: ____________________________

Name: ______________________________

Title: ______________________________

THE CLIMATE CONTROL GROUP, INC.,
an Oklahoma corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

TRISON CONSTRUCTION, INC.,
an Oklahoma corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

THERMACLIME TECHNOLOGIES, INC.,
an Oklahoma corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

XPEDIAIR, INC.,
an Oklahoma corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

PARENT:

LSB INDUSTRIES, INC.,
a Delaware corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

BANC OF AMERICA LEASING & CAPITAL, LLC,
not in its individual capacity but solely as Collateral Agent

By: ______________________________

Name: ____________________

Title: ____________________

BANC OF AMERICA LEASING & CAPITAL, LLC,
not in its individual capacity but solely as Administrative Agent

By: ____________________

Name: ____________________

Title: ____________________

BANK OF UTAH,
not in its individual capacity but solely as Payment Agent

By: ____________________

Name: ____________________

Title: ____________________

BANC OF AMERICA LEASING & CAPITAL LLC,
as a Lender

By: ____________________

Name: ____________________

Title: ____________________

MERRILL LYNCH CAPITAL, A DIVISION OF MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.,
as a Lender

By: ____________________

Name: ____________________

Title: ____________________

ARVEST BANK,
as a Lender

By: ____________________

Name: ____________________

Title: ____________________

TABLE OF CONTENTS

		Page
ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS		1
1.01	Defined Terms	1
1.02	Other Interpretive Provisions	25
1.03	Consolidation of Variable Interest Entities	25
1.04	Accounting Terms	26
1.05	Rounding	26
1.06	Times of Day	26
ARTICLE II. THE TERM COMMITMENTS AND TERM LOANS		26
2.01	The Term Loans	26
2.02	Optional Prepayments	27
2.03	Repayment of Term Loans	28
2.04	Interest	28
2.05	Fees	28
2.06	Computation of Interest and Fees	28
2.07	Evidence of Debt	29
2.08	Payments Generally.	29
2.09	Sharing of Payments by Lenders	30
ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY		31
3.01	Taxes	31
3.02	Illegality	33
3.03	Inability to Determine Rates	34
3.04	Increased Costs; Reserves on Term Loans.	34
3.05	Compensation for Losses	35
3.06	Mitigation Obligations; Replacement of Lenders	36
3.07	Survival	36
ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS		36
4.01	Conditions of Term Loans	36
ARTICLE V. REPRESENTATIONS AND WARRANTIES		42
5.01	Existence, Qualification and Corporate Power	42
5.02	Authorization; No Contravention	43
5.03	Governmental Authorization; Other Consents	43
5.04	Binding Effect	43
5.05	Financial Statements; No Material Adverse Effect.	43
5.06	Litigation	44
5.07	No Default	44
5.08	Ownership of Property; Liens	44
5.09	Environmental Compliance	45
5.10	Insurance	47
5.11	Taxes	47

TABLE OF CONTENTS

		Page
5.12	ERISA Compliance	47
5.13	Subsidiaries	47
5.14	Margin Regulations; Investment Company Act.	48
5.15	Disclosure	48
5.16	Compliance with Laws	48
5.17	Intellectual Property; Licenses, Etc.	48

5.18	Solvency	49
5.19	Casualty, Etc	49
5.20	Perfection of Security Interest; Filings.	49
5.21	Services, Materials, Property Interests and Other Rights	50
5.22	Material Contracts	50
5.23	Permits	51
5.24	Zoning	51
5.25	Separate Tax Lot	51
5.26	Utilities	51
5.27	Labor Matters	51
5.28	Collateral	51
5.29	Performance of This Agreement	51
ARTICLE VI. AFFIRMATIVE COVENANTS		51
6.01	Financial Statements	52
6.02	Certificates; Other Information	53
6.03	Notices	55
6.04	Payment of Obligations	55
6.05	Preservation of Existence, Etc	56
6.06	Maintenance of Properties; Collateral	56
6.07	Maintenance of Insurance	56
6.08	Compliance with Laws	57
6.09	Books and Records	58
6.10	Inspection Rights	58
6.11	Use of Proceeds	58
6.12	Covenant to Guarantee Obligations	58
6.13	Compliance with Environmental Laws	59
6.14	Further Assurances	59
6.15	Material Contracts	60
6.16	Copies of Certain Amendments	60
6.17	Incorporation of Future Financial/Negative Covenants	60
6.18	Material Contracts	61
ARTICLE VII. NEGATIVE COVENANTS		61
7.01	Liens	61
7.02	Indebtedness	62
7.03	Investments	64
7.04	Fundamental Changes	64
7.05	Dispositions	65

TABLE OF CONTENTS

		Page
7.06	Restricted Payments	66
7.07	Change in Nature of Business	67
7.08	Transactions with Affiliates	67
7.09	Restrictive Agreements	67
7.10	Use of Proceeds	68
7.11	Financial Covenants	68
7.12	Amendments of Organization Documents	68
7.13	Accounting Changes	68
7.14	Prepayments, Etc. of Indebtedness	68
7.15	Amendment, Etc. of Indebtedness and Certain Agreements	69
7.16	Performance of This Agreement	69
ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES		69
8.01	Events of Default	69
8.02	Remedies upon Event of Default	72
8.03	Application of Funds	72
ARTICLE IX. THE AGENTS		73
9.01	Appointment and Authority.	73
9.02	Rights as a Lender	74
9.03	Exculpatory Provisions	74
9.04	Reliance by Agents	75

9.05 Delegation of Duties 75
9.06 Resignation of Agents 75
9.07 Non-Reliance on Agents and Other Lenders 76
9.08 No Other Duties, Etc 76
9.09 Collateral Agent May File Proofs of Claim 76
9.10 Collateral and Guaranty Matters 77

ARTICLE X. CONTINUING GUARANTY 77
10.01 Guaranty 77
10.02 Rights of Lenders 78
10.03 Certain Waivers 78
10.04 Obligations Independent 79
10.05 Subrogation 79
10.06 Termination; Reinstatement 79
10.07 Subordination 79
10.08 Stay of Acceleration 79
10.09 Condition of Borrowers 80

ARTICLE XI. MISCELLANEOUS 80
11.01 Amendments, Etc 80
11.02 Notices; Effectiveness; Electronic Communications 81
11.03 No Waiver; Cumulative Remedies 83
11.04 Expenses; Indemnity; Damage Waiver 83

TABLE OF CONTENTS

Page

11.05 Payments Set Aside 85
11.06 Successors and Assigns 85
11.07 Treatment of Certain Information; Confidentiality 89
11.08 Right of Setoff 89
11.09 Interest Rate Limitation 90
11.10 Counterparts; Integration; Effectiveness 90
11.11 Survival of Representations and Warranties 90
11.12 Severability 90
11.13 Replacement of Lenders 91
11.14 Governing Law; Jurisdiction; Etc. 91
11.15 Waiver of Jury Trial 92
11.16 No Advisory or Fiduciary Responsibility 93
11.17 Joint and Several Liability. 93
11.18 Certain Consents and Additional Waivers 94
11.19 Limitations on Borrowers’ Liability; Borrowers Rights to Subrogation and Reimbursement 96
11.20 Appointment of ThermaClime as Agent 96
11.21 USA PATRIOT Act Notice 97

TABLE OF CONTENTS

Page

SCHEDULES

1.01(a) Cherokee Site
1.01(b) El Dorado Site
1.01(c) Facility Assets
1.01(d) Lenders and Lending Offices
2.01 Commitments and Applicable Percentages
4.01(a)(iii) Financing Statements
4.01(a)(iv) Leased Property
5.03 Government Authorizations and Other Consents
5.05 Indebtedness

5.06	Litigation
5.09	Environmental Matters
5.13	Subsidiaries
5.18	IP Rights
5.21	Pipelines
5.22	Material Contracts
5.23	Permits
5.27	Labor Matters
7.01(b)	Existing Liens
7.02	Existing Indebtedness and Guarantees
7.03	Existing Investments
7.05	Facility Leases/Uses
7.08	Affiliate Transactions
7.09	Burdensome Agreements
11.02	Addresses for Notices; Payment Information

TABLE OF CONTENTS

Page

EXHIBITS

Form of	
A	Term Note
B	Compliance Certificate
C	Borrowing Notice
D	Assignment and Assumption
E	Security Agreement
F-1	Cherokee Mortgage
F-2	El Dorado Mortgage
G	Assignment and Consent Agreement
H-1	Intercompany Lease Subordination Agreement
H-2	Intercompany Loan Subordination Agreement
I	Management Agreement Subordination
J-1	Opinion Matters – Counsel to Loan Parties
J-2	Opinion Matters – Local Counsel (Alabama)
J-3	Opinion Matters – Local Counsel (Arkansas)
K	Assignment and Subordination Agreement
L	Inter-Lender Agreement
M	Trademark Security Agreement

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

by and among

LSB INDUSTRIES, INC.,

as Guarantor,

THERMACLIME, INC. and
EACH OF ITS SUBSIDIARIES THAT ARE SIGNATORIES HERETO,

as Borrowers,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

and

WELLS FARGO FOOTHILL, INC.

as the Arranger and Administrative Agent

Dated as of [__][__], 2007

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Agreement"), is entered into as of [__][__], 2007, between and among, on the one hand, the lenders identified on the signature pages hereof (such lenders, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), **WELLS FARGO FOOTHILL, INC.**, a California corporation formerly known as Foothill Capital Corporation, as the arranger and administrative agent for the Lenders ("Agent"), and, on the other hand, **LSB INDUSTRIES, INC.**, an Delaware corporation ("Parent"), **THERMACLIME, INC.**, an Oklahoma corporation formerly known as ClimaChem, Inc. ("ThermaClime"), and each of the Subsidiaries of ThermaClime identified on the signature pages hereof (such Subsidiaries, together with ThermaClime, are referred to hereinafter each individually as a "Borrower", and individually and collectively, jointly and severally, as "Borrowers").

WHEREAS, the Borrowers, the Agent and the Lenders are parties to the Loan and Security Agreement, dated as of April 13, 2001 (as heretofore amended or otherwise modified, the "Original Loan Agreement"), pursuant to which the Lenders extended credit to the Borrowers consisting of (i) several term loan facilities in an aggregate principal amount of $7,500,000 at any time outstanding of which no amounts are outstanding on the date hereof (the "Original Term Loan") and (ii) a revolving credit facility, in an aggregate principal amount of $50,000,000 at any time outstanding, as reduced in accordance with the terms thereof (the "Original Revolver Facility" and together with the Original Term Loan, the "Original Loan Facility"), which included a $8,500,000 sub-facility for the issuance of letters of credit;

WHEREAS, pursuant to the Original Loan Agreement, the Borrowers granted to the Agent and the Lenders, a continuing security interest in all of their right, title and interest in all then existing and thereafter acquired or arising Collateral (as defined in the Original Loan Agreement) in order to secure the repayment of any and all of the Obligations (as defined in the Original Loan Agreement);

WHEREAS, the Borrowers have notified the Agent that they intend to refinance the Orix Loans (as defined in the Original Loan Agreement) by entering into a new term loan facility arranged by Banc of America Leasing & Capital, LLC (the "BofA Facility") and have requested that the Lenders amend the Original Loan Agreement in order to make certain modifications to the Original Loan Facility (including, without limitation, releasing the Agent's lien on certain Collateral some of which is being pledged to secure obligations under the BofA Facility), and in connection therewith, to amend and restate the Original Loan Agreement in its entirety to provide for certain other modifications as set forth herein;

WHEREAS, in connection with the amendment and restatement of the Original Loan Agreement, the Borrowers have agreed to continue, confirm and reaffirm the grant to the Agent, for the benefit of the Lender Group, of the security interest in the Collateral that is not released herein to secure the Obligations; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and subject to the terms and conditions of this Agreement, the parties hereto agree to amend and restate the Original Loan Agreement as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, the following terms shall have the following definitions:

"Account Debtor" means any Person who is or who may become obligated under, with respect to, or on account of, an Account, chattel paper, or a General Intangible.

"Accounts" means all of Borrowers' now owned or hereafter acquired right, title, and interest with respect to "accounts" (as that term is defined in the Code), and any and all supporting obligations in respect thereof.

"ACH Transactions" means any cash management or related services (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) provided by the Bank Product Provider for the account of a Borrower or its Subsidiaries.

"Additional Documents" has the meaning set forth in Section 4.4.

"Administrative Borrower" has the meaning set forth in Section 17.9.

"Advances" has the meaning set forth in Section 2.1.

"Affiliate" means, as applied to any Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, in any event: (a) any Person which owns directly or indirectly 15% or more of the securities having ordinary voting power for the election of directors or other members of the governing body of a Person or 15% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed to control such Person; (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person; and (c) each partnership or joint venture in which a Person is a general partner or joint venturer shall be deemed to be an Affiliate of such Person.

"Agent" means Foothill, solely in its capacity as agent for the Lenders hereunder, and any successor thereto.

"Agent's Account" means an account at a bank designated by Agent from time to time as the account into which Borrowers shall make all payments to Agent for the benefit of the Lender Group and into which the Lender Group shall make all payments to Agent under this Agreement and the other Loan Documents; unless and until Agent notifies Administrative Borrower and the Lender Group to the contrary, Agent's Account shall be that certain deposit account bearing account number 323-266193 and maintained by Agent with The Chase Manhattan Bank, 4 New York Plaza, 15th Floor, New York, New York 10004, ABA #021000021.

"Agent Advances" has the meaning set forth in Section 2.3(e)(i).

"Agent's Liens" means the Liens granted by Borrowers to Agent for the benefit of the Lender Group under this Agreement or the other Loan Documents.

"Agent-Related Persons" means Agent together with its Affiliates, officers, directors, employees, and agents.

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

"Applicable Prepayment Premium" means, as of any date of determination, an amount equal to (a) during the period of time from and after the Restatement Effective Date up to April 12, 2008, 2% times the sum of (i) the Maximum Revolver Amount, plus (ii) the outstanding principal balance of the Term Loan on the date immediately prior to the date of determination, (b) during the period of time from and including April 13, 2008 up to April 12, 2009, 1% times the sum of (i) the Maximum Revolver Amount, plus (ii) the outstanding principal balance of the Term Loan on the date immediately prior to the date of determination, and (c) during the period of time from and including April 13, 2009 up to April 12, 2010, 0.5% times the sum of (i) the Maximum Revolver Amount, plus (ii) the outstanding principal balance of the Term Loan on the date immediately prior to the date of determination; and (d) during the period of time from and including April 13, 2010 and prior to the Maturity Date, 0% times the sum of (i) the Maximum Revolver Amount, plus (ii) the outstanding principal balance of the Term Loan on the date immediately prior to the date of determination.

"Assignee" has the meaning set forth in Section 14.1.

"Assignment and Acceptance" means an Assignment and Acceptance substantially in the form of Exhibit A-1.

"Authorized Person" means any officer or other employee of Administrative Borrower.

"Availability" means, as of any date of determination, if such date is a Business Day, and determined at the close of business on the immediately preceding Business Day, if such date of determination is not a Business Day, the amount that Borrowers are entitled to borrow as Advances under Section 2.1 (after giving effect to all then outstanding Obligations (other than Bank Products Obligations) and all sublimits and reserves applicable hereunder).

"Bank Product Agreements" means those certain cash management service agreements entered into from time to time by a Borrower or its Subsidiaries in connection with any of the Bank Products.

"Bank Product Obligations" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Borrowers or their Subsidiaries to Bank Product Provider pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to

become due, now existing or hereafter arising, and including all such amounts that Borrowers are obligated to reimburse to Agent or any member of the Lender Group as a result of Agent or such member of the Lender Group purchasing participations or executing indemnities or reimbursement obligations with respect to the Bank Products provided to Borrowers or their Subsidiaries pursuant to the Bank Product Agreements.

"Bank Product Provider" means Wells Fargo or any of its Affiliates.

"Bank Product Reserves" means, as of any date of determination, the amount of reserves that Agent has established (based upon Bank Product Provider's reasonable determination of the credit exposure in respect of then extant Bank Products) for Bank Products then provided or outstanding.

"Bank Products" means any service or facility extended to Borrowers or their Subsidiaries by Bank Product Provider including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, (f) cash management, including controlled disbursement, accounts or services, or (g) Hedge Agreements.

"Bankruptcy Code" means the United States Bankruptcy Code, as in effect from time to time.

"Base LIBOR Rate" means the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/16%), on the basis of the rates at which Dollar deposits are offered to major banks in the London interbank market on or about 11:00 a.m. (California time) 2 Business Days prior to the commencement of the applicable Interest Period, for a term and in amounts comparable to the Interest Period and amount of the LIBOR Rate Loan requested by Administrative Borrower in accordance with this Agreement, which determination shall be conclusive in the absence of manifest error.

"Base Rate" means, the rate of interest announced within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate.

"Base Rate Loan" means each portion of an Advance or the Term Loan that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" means 0.50 percentage point.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which any Borrower or any Subsidiary or ERISA Affiliate of any Borrower has been an "employer" (as defined in Section 3(5) of ERISA) within the past six years.

"Board of Directors" means the board of directors (or comparable managers) of Parent or any committee thereof duly authorized to act on behalf thereof.

"BofA" means, collectively, Banc of America Leasing & Capital, LLC and each of the lenders party to the BofA Loan Agreement, and their respective successors and assigns (including any other lender or group of lenders that at any time succeeds to or refinances, replaces or substitutes for all or any portion of the BofA Loans at any time and from time to time).

"BofA Collateral" means the "Collateral" (as such term is defined in the BofA Loan Agreement as in effect on the date hereof).

"BofA Inter-Lender Agreement" means that certain Inter-Lender Agreement dated as of ______, 2007 by and between Agent and BofA (as collateral agent), as the same may be amended, supplemented or otherwise modified from time to time.

"BofA Loan Agreement" means that certain Term Loan Agreement dated as of ______, 2007, by and among ThermaClime and each of the borrowers listed therein, Parent, as guarantor, each of the lenders listed therein, and BofA, as administrative agent and collateral agent for lenders, and Bank of Utah, as payment agent, as the same may be amended, supplemented or otherwise modified from time to time.

"BofA Loans" means those certain term loans made by BofA to ThermaClime and each of the borrowers listed in the BofA Loan Agreement pursuant to the terms of the BofA Loan Agreement in an aggregate principal amount of up to $50,000,000.

"Books" means all of each Borrower's now owned or hereafter acquired books and records (including all of its Records indicating, summarizing, or evidencing its assets (including the Collateral) or liabilities, all of its Records relating to its business operations or financial condition, and all of its goods or General Intangibles related to such information).

"Borrower" and "Borrowers" have the respective meanings set forth in the preamble to this Agreement.

"Borrowing" means a borrowing hereunder of Advances made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of an Agent Advance, or a Term Loan, as the case may be.

"Borrowing Base" has the meaning set forth in Section 2.1.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Capital Assets" has the meaning set forth in Section 2.2.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Capitalized Lease Obligation" means any Indebtedness represented by obligations under a Capital Lease, but excluding all Indebtedness under any operating lease that is entered into between any Borrower and any of its Subsidiaries, as lessee, and any "related party" (as defined in paragraph 5 of Financial Accounting Standards Board Statement No. 13, "Accounting for leases (FAS13)") or Affiliate of such lessee, as lessor, that is required to be treated as capital lease obligations under GAAP, pursuant to FAS 13, as amended from time to time.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having the highest rating obtainable from either S&P or Moody's, (c) commercial paper maturing no more than 1 year from the date of acquisition thereof and, at the time of acquisition, having a rating of A-1 or P-1, or better, from S&P or Moody's, and (d) certificates of deposit or bankers' acceptances maturing within 1 year from the date of acquisition thereof either (i) issued by any bank organized under the laws of the United States or any state thereof which bank has a rating of A or A2, or better, from S&P or Moody's, or (ii) certificates of deposit less than or equal to $100,000 in the aggregate issued by any other bank insured by the Federal Deposit Insurance Corporation.

"Cash Management Bank" has the meaning set forth in Section 2.7(a).

"Cash Management Account" has the meaning set forth in Section 2.7(a).

"Cash Management Agreements" means those certain cash management service agreements, in form and substance satisfactory to Agent, each of which is among Administrative Borrower, Agent, and one of the Cash Management Banks.

"Change of Control" means (a) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of a greater number of shares of Parent's Stock having the right to vote for the election of members of the Board of Directors than the number of shares of such Stock held by the Permitted Holders, or (b) a majority of the members of the Board of Directors do not constitute Continuing Directors, or (c) the Parent ceases to directly or indirectly own and control 100% of the outstanding capital Stock of

ThermaClime, or (d) ThermaClime ceases to directly or indirectly own and control 100% of the outstanding capital Stock of each Borrower (other than ThermaClime), or (e) any Borrower ceases to directly own and control 100% of the outstanding capital Stock of each of its Subsidiaries extant as of the Closing Date.

"Chemex I" means Chemex I Corp., an Oklahoma corporation formerly known as Slurry Explosive Corporation.

"Chemex II" means Chemex II Corp., an Oklahoma corporation formerly known as Universal Tech Corporation.

"Cherokee" means Cherokee Nitrogen Holdings, Inc., an Oklahoma corporation formerly known as Cherokee Nitrogen Company.

"ClimaCool" means ClimaCool Corp., an Oklahoma corporation.

"ClimateCraft" means ClimateCraft, Inc., an Oklahoma corporation.

"Climate Control Business" means the business consisting of the manufacture and sale of hydronic fan coils and water source heat pumps as well as other products used in commercial and residential heating, ventilation and air conditioning systems conducted by TTI, CMI, IEC, Koax, ClimateCraft, XPA and ClimaCool.

"Climate Control Raw Inventory" means Eligible Raw Inventory that is used or consumed in the Climate Control Business.

"Closing Date" means April 13, 2001, the date on which the Original Loan Agreement became effective.

"CMI" means Climate Master, Inc., a Delaware corporation.

"Closing Date Business Plan" means the set of Projections of Borrowers for the 1 year period following the Closing Date, in form and substance (including as to scope and underlying assumptions) satisfactory to Agent.

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Collateral" means all of each Borrower's now owned or hereafter acquired right, title, and interest in and to each of the following:

(a) Accounts,

(b) Books,

(c) General Intangibles,

(d) Inventory,

(e) Investment Property (excluding the Stock of (i) each Borrower and its Subsidiaries and (ii) EDN and DSN and their respective Subsidiaries),

(f) Negotiable Collateral,

(g) money or other assets of each such Borrower that arise from or relate to Accounts, Books, General Intangibles and Inventory and that now or hereafter come into the possession, custody, or control of any member of the Lender Group, and

(h) the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the foregoing, and any and all Accounts, Books, General Intangibles, Inventory, Investment Property, Negotiable Collateral, money, deposit accounts, or other tangible or intangible property resulting from the sale, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the proceeds thereof; provided, however, that the Collateral shall not include any BofA Collateral.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Inventory, in each case, in form and substance satisfactory to Agent.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds) of Borrowers.

"Commitment" means, with respect to each Lender, its Revolver Commitment, its Term Loan Commitment or its Total Commitment, as the context requires, and, with respect to all Lenders, their Revolver Commitments, their Term Loan Commitments or their Total Commitments, as the context requires, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or on the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 14.1.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 delivered by the chief financial officer of Parent to Agent.

"Consolidated Net Interest Expense" means, with respect to any Person for any period, gross interest expense of such Person and its Subsidiaries for such period determined in conformity with GAAP (including, without limitation, interest expense paid to Affiliates of such Person other than a Subsidiary of Parent, less the sum of interest income and non-cash accretion expense and non-cash amortization of debt origination cost for such period, each determined on a consolidated basis and in accordance with GAAP for such Person and its Subsidiaries.

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Parent (as such terms are used in Rule 14a-11 under the Exchange Act) and whose initial assumption of office resulted from such contest or the settlement thereof.

"Contribution Agreement" means that certain Contribution Agreement, dated as of even date herewith, among the Borrowers and the Guarantors, in form and substance satisfactory to Agent.

"Daily Balance" means, with respect to each day during the term of this Agreement, the amount of an Obligation owed at the end of such day.

"DDA" means any checking or other demand deposit account maintained by any Borrower.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Defaulting Lender" means any Lender that fails to make any Advance (or other extension of credit) that it is required to make hereunder on the date that it is required to do so hereunder.

"Defaulting Lender Rate" means (a) the Base Rate for the first 3 days from and after the date the relevant payment is due, and (b) thereafter, at the interest rate then applicable to Advances that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

"Designated Account" means account number 400519526 of Administrative Borrower maintained with the Designated Account Bank or such other deposit account of Administrative Borrower (located within the United States) that has been designated as such, in writing, by Administrative Borrower to Agent.

"Designated Account Bank" means BancFirst of Oklahoma, whose office is located at 4500 West Memorial, Oklahoma City, Oklahoma 73126, and whose ABA number is 103003632.

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 90 days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to the Accounts during such period, by (b) Borrowers' billings during such period plus the Dollar amount of clause (a).

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one percentage point for each percentage point by which Dilution is in excess of 5%.

"Disbursement Letter" means an instructional letter executed and delivered by Administrative Borrower to Agent regarding the extensions of credit to be made on the Closing Date, the form and substance of which is satisfactory to Agent.

"Dollars" or "$" means United States dollars.

"DSN Corporation" means DSN Corporation, an Oklahoma corporation.

"Due Diligence Letter" means the due diligence letter sent by Agent's counsel to Administrative Borrower, together with Administrative Borrower's completed responses to the inquiries set forth therein, the form and substance of such responses to be satisfactory to Agent.

"EBITDA" means, with respect to any fiscal period, the result of (i) ThermaClime's and its Subsidiaries' consolidated net earnings (or loss), minus (ii) the aggregate amount of all extraordinary gains of ThermaClime and its Subsidiaries for such period, plus (iii) the aggregate amount of (a) all extraordinary losses, interest expense, income taxes, and depreciation and amortization of ThermaClime and its Subsidiaries for such period and (b) other non-operating, non-cash, one time charges of ThermaClime and its Subsidiaries for such period, all as determined in accordance with GAAP.

"EDC" means El Dorado Chemical Company, an Oklahoma corporation.

"EDN" means El Dorado Nitrogen Company, an Oklahoma corporation.

"Eligible Accounts" means those Accounts created by one of Borrowers in the ordinary course of its business, that arise out of its sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made by Borrowers under the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the criteria set forth below; provided, however, that such criteria may be fixed and revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash remitted to Borrowers. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within 120 days of original invoice date or Accounts which are more than 60 days past due,

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an employee or Affiliate of any Borrower,

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold (except Accounts of the Borrowers having an aggregate invoice amount for all such Borrowers of up to $1,500,000 with respect to goods that are subject to a bill and hold letter in form and substance satisfactory to Agent), or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or Canada or any state or province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit satisfactory to Agent in its Permitted Discretion, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which the applicable Borrower has complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC § 3727), or (ii) any state of the United States (exclusive, however, of (y) Accounts owed by any state that does not have a statutory counterpart to the Assignment of Claims Act or (z) Accounts owed by any state that does have a statutory counterpart to the Assignment of Claims Act as to which the applicable Borrower has complied to Agent's satisfaction),

(h) Accounts with respect to which the Account Debtor is a creditor of any Borrower, has or has asserted a right of setoff, has disputed its liability, or has made any claim with respect to its obligation to pay the Account, to the extent of such claim, right of setoff, or dispute,

(i) Accounts with respect to an Account Debtor whose total obligations owing to Borrowers exceed 10% (or, in the case of Carrier Corporation and Orica USA Inc., 20%) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) Accounts with respect to which the Account Debtor is located in the states of New Jersey, Minnesota, or West Virginia (or any other state that requires a creditor to file a business activity report or similar document in order to bring suit or otherwise enforce its remedies against such Account Debtor in the courts or through any judicial process of such state), unless the applicable Borrower has qualified to do business in New Jersey, Minnesota, West Virginia, or such other states, or has filed a business activities report with the applicable division of taxation, the department of revenue, or with such other state offices, as appropriate, for the then-current year, or is exempt from such filing requirement,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed (except Accounts of the Borrowers having an aggregate invoice amount for all such Borrowers of up to $1,500,000 with respect to goods that are subject to a bill and hold letter in form and substance satisfactory to Agent) to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor, or

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services.

"Eligible Inventory" means Inventory of Borrowers consisting of first quality finished goods held for sale in the ordinary course of Borrowers' business located at one of the business locations of Borrowers set forth on Schedule E-1 (or in-transit between any such locations), that complies with each of the representations and warranties respecting Eligible Inventory made by Borrowers in the Loan Documents, and that is not excluded as ineligible by virtue of the one or more of the criteria set forth below; provided, however, that such criteria may be fixed and revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) a Borrower does not have good, valid, and marketable title thereto,

(b) it is not located at one of the locations in the United States set forth on Schedule E-1 or in transit from one such location to another such location,

(c) it is located on real property owned or leased by a Borrower or in a contract warehouse, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor, warehouseman, or other third party, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

(d) it is not subject to a valid and perfected first priority security Agent's Lien,

(e) it consists of goods returned or rejected by a Borrower's customers, or

(f) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process, raw materials or component parts, or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in a Borrower's business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment.

"Eligible Raw Inventory" means Inventory of Borrowers that would qualify as Eligible Inventory but for the fact that it consists of goods that are raw materials or component parts used or consumed in a Borrower's business.

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of $250,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of $250,000,000, provided that such bank is

acting through a branch or agency located in the United States, (c) a finance company, insurance company, or other financial institution or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of $250,000,000, (d) any Affiliate (other than individuals) of a Lender that was party hereto as of the Closing Date, or any fund, money market account, investment account or other account managed by a Lender or an Affiliate of a Lender, (e) so long as no Event of Default has occurred and is continuing, any other Person approved by Agent and Administrative Borrower, and (f) during the continuation of an Event of Default, any other Person approved by Agent.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials from (a) any assets, properties, or businesses of any Borrower or any predecessor in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower or any predecessor in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, to the extent binding on Borrowers, relating to the environment, employee health and safety, or Hazardous Materials, including CERCLA; RCRA; the Federal Water Pollution Control Act, 33 USC § 1251 et seq; the Toxic Substances Control Act, 15 USC, § 2601 et seq; the Clean Air Act, 42 USC § 7401 et seq.; the Safe Drinking Water Act, 42 USC. § 3803 et seq.; the Oil Pollution Act of 1990, 33 USC. § 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 USC. § 11001 et seq.; the Hazardous Material Transportation Act, 49 USC § 1801 et seq.; and the Occupational Safety and Health Act, 29 USC. §651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"Equipment" means all of Borrowers' now owned or hereafter acquired right, title, and interest with respect to equipment, machinery, machine tools, motors, furniture, furnishings, fixtures, vehicles (including motor vehicles), tools, parts, goods (other than consumer goods, farm products, or Inventory), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of a Borrower under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of a Borrower under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which a Borrower is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with a Borrower and whose employees are aggregated with the employees of a Borrower under IRC Section 414(o).

"Event of Default" has the meaning set forth in Section 8.

"Excess Availability" means the amount, as of the date any determination thereof is to be made, equal to Availability minus the aggregate amount, if any, of (i) all trade payables of Borrowers aged in excess of their historical levels with respect thereto, and (ii) the amount determined by Agent that is necessary to maintain Borrowers' liabilities reasonably within terms, in each case as determined by Agent in its Permitted Discretion.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Fair Market Value" means, with respect to any asset or property of a Person, the price which could be negotiated in an arm's length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

"Family Member" means, with respect to any individual, any other individual having a relationship by blood (to the second degree of consanguinity), marriage, or adoption to such individual.

"Family Entities" means, with respect to any individual, any trust, corporation, limited liability company, or partnership for which (i) all of the beneficiaries, shareholders, members, or partners, as the case may be, are Family Members of such individual, and (ii) such individual or a Family Member of such individual is the controlling trustee, shareholder, member, or partner of such entity.

"Fee Letter" means that certain fee letter, dated as of the Closing Date, between Borrowers and Agent, in form and substance satisfactory to Agent, as amended, supplemented or otherwise modified from time to time.

"FEIN" means Federal Employer Identification Number.

"Fixed Charge Coverage Ratio" means, for any period, the ratio of (i) EBITDA for such period, to (ii) the sum of (A) all principal of Indebtedness of ThermaClime and its Subsidiaries scheduled to be paid or prepaid during such period (not including prepayments of Advances unless such prepayments are accompanied by a reduction of the Revolver Commitment and not including the final scheduled payment of the Obligations at the Maturity Date), plus (B) Consolidated Net Interest Expense of ThermaClime and its Subsidiaries for such period, plus (C) all amounts paid or payable by ThermaClime and its Subsidiaries on Capitalized Lease Obligations having a scheduled due date during such period.

"Foothill" means Wells Fargo Foothill, Inc., a California corporation formerly known as Foothill Capital Corporation.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning set forth in Section 2.13(b)(ii).

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"General Intangibles" means all of Borrowers' now owned or hereafter acquired right, title, and interest with respect to "general intangibles" as that term is defined in the Code (including payment intangibles, contract rights, rights to payment, proprietary rights, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, patents, trade names, trademarks, servicemarks, copyrights, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, money, deposit accounts, insurance premium rebates, tax refunds, and tax refund claims), and any and all supporting obligations in respect thereof.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means any federal, state, local, or other governmental or administrative body, instrumentality, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Guaranties" means, collectively, (i) the guaranty made by Parent contained in Section 18 hereof and (ii) those certain general continuing guaranties executed and delivered by Guarantors (other than Parent) in favor of Agent, for the benefit of the Lender Group, in form and substance satisfactory to Agent.

"Guarantor Security Agreement" means a security agreement made by Guarantors in favor of Agent for the benefit of Lenders, the form and substance of which is satisfactory to Agent.

"Guarantors" means (i) the Parent, (ii) each of ThermaClime's Subsidiaries extant as of the Closing Date (other than EDN, DSN, and their respective Subsidiaries) that are not Borrowers, and (iii) Cherokee.

"Hard Cost" means, with respect to each Capital Asset acquired by a Borrower, the cash purchase price paid by a Borrower for such Capital Asset less the aggregate amount of all soft costs (including, without limitation, all taxes, delivery and storage charges, installation charges and other charges added to such purchase price) included in the purchase price for such Capital Asset.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means any and all transactions, agreements, or documents now existing or hereafter entered into between Borrower or its Subsidiaries and Bank Product Provider, which provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the

purpose of hedging Borrower's or its Subsidiaries' exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

"IEC" means International Environmental Corporation, an Oklahoma corporation.

"Indebtedness" means (a) all obligations of a Borrower for borrowed money, (b) all obligations of a Borrower evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations of a Borrower in

respect of letters of credit, bankers acceptances, interest rate swaps, or other financial products, (c) all Capitalized Lease Obligations, (d) all obligations or liabilities of others secured by a Lien on any asset of a Borrower, irrespective of whether such obligation or liability is assumed, (e) all obligations of a Borrower for the deferred purchase price of assets (other than trade debt incurred in the ordinary course of a Borrower's business and repayable in accordance with customary trade practices), and (f) any obligation of a Borrower guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse to a Borrower) any obligation of any other Person.

"Indemnified Liabilities" has the meaning set forth in Section 11.3.

"Indemnified Person" has the meaning set forth in Section 11.3.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intangible Assets" means, with respect to any Person, that portion of the book value of all of such Person's assets that would be treated as intangibles under GAAP.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan and ending 1, 2, or 3 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an 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), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2, or 3 months after the date on which the Interest Period began, as applicable, and (e) Borrowers (or Administrative Borrower on behalf thereof) may not elect an Interest Period which will end after the Maturity Date.

"In-Transit Inventory" means Eligible Inventory that is in-transit (via rail car or truck) between any of the locations set forth on Schedule E-1 with respect to which Agent has received reports in form and substance satisfactory to Agent.

"Inventory" means all Borrowers' now owned or hereafter acquired right, title, and interest with respect to inventory, including goods held for sale or lease or to be furnished under a contract of service, goods that are leased by a Borrower as lessor, goods that are furnished by a Borrower under a contract of service, and raw materials, work in process, or materials used or consumed in a Borrower's business.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, or capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) bona fide Accounts arising from the sale of goods or rendition of services in the ordinary course of business consistent with past practice), purchases or other acquisitions for consideration of Indebtedness or Stock, and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"Investment Property" means all of Borrowers' now owned or hereafter acquired right, title, and interest with respect to "investment property" as that term is defined in the Code (but excluding the Stock of (i) each Borrower and its Subsidiaries and (ii) EDN and DSN and their respective Subsidiaries), and any and all supporting obligations in respect thereof.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"Issuing Lender" means Foothill or any other Lender that, at the request of Administrative Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing L/Cs or L/C Undertakings pursuant to Section 2.12.

"Koax" means Koax Corp., an Oklahoma corporation.

"L/C" has the meaning set forth in Section 2.12(a).

"L/C Disbursement" means a payment made by the Issuing Lender pursuant to a Letter of Credit.

"L/C Undertaking" has the meaning set forth in Section 2.12(a).

"Lender" and "Lenders" have the respective meanings set forth in the preamble to this Agreement, and shall include any other Person made a party to this Agreement in accordance with the provisions of Section 14.1.

"Lender Group" means, individually and collectively, each of the Lenders (including the Issuing Lender), the Bank Product Provider and Agent.

"Lender Group Expenses" means all (a) out-of-pocket costs or expenses (including taxes, and insurance premiums) required to be paid by a Borrower under any of the Loan Documents that are paid or incurred by any one or more members of the Lender Group, (b) fees or charges paid or incurred by any one or more members of Lender Group in connection with any one or more members of the Lender Group's transactions with Borrowers under the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, judgment, and UCC searches and including searches with the patent and trademark office, the copyright office), filing, recording, (including, without limitation, mortgage recordation taxes and other similar fees or taxes in connection with the recordation or filing or any mortgage from time to time together with any penalties, interest or costs arising therefrom or related thereto) publication, appraisal (including periodic

Collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement), and environmental audits, (c) costs and expenses incurred by any one or more members of Lender Group in the disbursement of funds to or for the account of Borrowers (by wire transfer or otherwise), (d) charges paid or incurred by any one or more members of Lender Group resulting from the dishonor of checks, (e) reasonable costs and expenses paid or incurred by any one or more members of the Lender Group to correct any default or enforce any provision of the Loan Documents, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) audit fees and expenses of any one or more members of Lender Group related to audit examinations of the Books to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement, (g) reasonable costs and expenses of third party claims or any other suit paid or incurred by any one or more members of the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents, (h) any one or more members of Lender Group's reasonable fees and expenses (including attorneys fees) incurred in advising, structuring, drafting, reviewing, administering, or amending the Loan Documents, and (i) any one or more members of Lender Group's reasonable fees and expenses (including attorneys fees) incurred in terminating, enforcing (including attorneys fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Borrower or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, and the officers, directors, employees, and agents of such Lender.

"Letter of Credit" means an L/C or an L/C Undertaking, as the context requires.

"Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit plus 100% of the amount of outstanding time drafts accepted by an Underlying Issuer as a result of drawings under Underlying Letters of Credit.

"LIBOR Deadline" has the meaning set forth in Section 2.13(b)(i).

"LIBOR Notice" means a written notice in the form of Exhibit L-1.

"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan, the rate per annum determined by Agent (rounded upwards, if necessary, to the next 1/16%) by dividing (a) the Base LIBOR Rate for such Interest Period, by (b) 100% minus the Reserve Percentage. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

"LIBOR Rate Loan" means each portion of an Advance that bears interest at a rate determined by reference to the LIBOR Rate.

"LIBOR Rate Margin" means 1.75 percentage points.

"Lien" means any interest in an asset securing an obligation owed to, or a claim by, any Person other than the owner of the asset, whether such interest shall be based on the common law, statute, or contract, whether such interest shall be recorded or perfected, and whether such interest shall be contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances, including the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, security agreement, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also including reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting Real Property.

"Loan Account" has the meaning set forth in Section 2.10.

"Loan Documents" means this Agreement, the Bank Product Agreements, the Cash Management Agreements, the Contribution Agreement, the Disbursement Letter, the Due Diligence Letter, the Fee Letter, the Guaranties, Guarantor Security Agreement, the Letters of Credit, the Officers' Certificate, the Patent Security Agreement, the Trademark Security Agreement, any note or notes executed by a Borrower in connection with this Agreement and payable to a member of the Lender Group, and any other agreement entered into, now or in the future, by any Borrower and the Lender Group in connection with this Agreement.

"LSB Chemical" means LSB Chemical Corp., an Oklahoma corporation.

"Management Agreement" means the Management Agreement dated November 21, 1997 between the Parent and ThermaClime (as amended, renewed or extended), in the form delivered to Agent on the Closing Date.

"Material Adverse Change" means (a) a material adverse change in the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrowers taken as a whole, (b) a material impairment of the ability of Borrowers, taken as a whole, to perform their obligations under the Loan Documents or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral, or (c) a material impairment of the enforceability or priority of the Agent's Liens with respect to the Collateral as a result of an action or failure to act on the part of a Borrower.

"Maturity Date" has the meaning set forth in Section 3.4.

"Maximum Revolver Amount" means $50,000,000 minus the aggregate principal amount of the Term Loan then outstanding.

"Negotiable Collateral" means all of Borrowers' now owned and hereafter acquired right, title, and interest with respect to letters of credit, letter of credit rights, instruments, promissory notes, drafts, documents, and chattel paper (including electronic chattel paper and tangible chattel paper), and any and all supporting obligations in respect thereof.

"Net Orderly Liquidation Value" means, with respect to an item of Eligible Inventory and Eligible Raw Inventory, as of any date of determination, the orderly liquidation value thereof as determined by Agent in its Permitted Discretion, which determination may be made by Agent in reliance on periodic appraisals.

"Obligations" means (a) all loans, Advances, debts, principal, interest (including any interest that, but for the provisions of the Bankruptcy Code, would have accrued), contingent reimbursement obligations with respect to outstanding Letters of Credit, premiums, liabilities (including all amounts charged to Borrowers' Loan Account pursuant hereto), obligations, fees (including the fees provided for in the Fee Letter), charges, costs, Lender Group Expenses (including any fees or expenses that, but for the provisions of the Bankruptcy Code, would have accrued), guaranties, covenants, and duties of any kind and description owing by Borrowers to the Lender Group pursuant to or evidenced by the Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all Lender Group Expenses that Borrowers are required to pay or reimburse by the Loan Documents, by law, or otherwise, and (b) all Bank Product Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all amendments, changes, extensions, modifications, renewals, replacements, substitutions, and supplements, thereto and thereof, as applicable, both prior and subsequent to any Insolvency Proceeding.

"Officers' Certificate" means the representations and warranties of officers form submitted by Agent to Administrative Borrower, together with Borrowers' completed responses to the inquiries set forth therein, the form and substance of such responses to be satisfactory to Agent.

"Operating Lease Obligations" means all obligations for the payment of rent for any real or personal property under leases or agreements to lease, other than Capitalized Lease Obligations.

"Original Loan Agreement" has the meaning set forth in the recitals to this Agreement.

"Original Revolver Facility" has the meaning set forth in the recitals to this Agreement.

"Original Revolver Indebtedness" has the meaning set forth in Section 2.1(h).

"Original Term Loan" has the meaning set forth in the recitals to this Agreement.

"Original Term Loan Indebtedness" has the meaning set forth in Section 2.2(b).

"Originating Lender" has the meaning set forth in Section 14.1(e).

"Overadvance" has the meaning set forth in Section 2.5.

"Parent" has the meaning set forth in the preamble to this Agreement.

"Participant" has the meaning set forth in Section 14.1(e).

"Patent Security Agreement" means a patent security agreement executed and delivered by Borrowers and Agent, the form and substance of which is satisfactory to Agent.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Dispositions" means (a) sales or other dispositions by Borrowers of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of the applicable Borrower's business, (b) sales by Borrowers of Inventory to buyers in the ordinary course of business, (c) the use or transfer of money or Cash Equivalents by Borrowers in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, (d) the licensing by Borrowers, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of the applicable Borrower's business, (e) sales, transfers leases or other dispositions of assets by any Borrower or any of its Subsidiaries to any other Borrower or Guarantor (other than Parent), and (f) sales or other dispositions by Borrowers of Accounts which are not Eligible Accounts, provided that (i) the consideration payable in connection with the sale or disposition of such non-Eligible Accounts shall be in cash and shall equal no less than 100% of the aggregate original invoice amount of such Accounts and (ii) the proceeds from such sales or dispositions shall be deposited in a Cash Management Account and applied to the Obligations.

"Permitted Holders" means Jack E. Golsen, Barry H. Golsen, David Goss, David Shear, Tony Shelby, Robert Brown, their respective Family Members, and their respective Family Entities.

"Permitted Investments" means (a) Investments in Cash Equivalents, (b) Investments in negotiable instruments for collection, (c) advances made in connection with purchases of goods or services in the ordinary course of business, (d) Investments by any Borrower or Guarantor in any other Borrower or any Guarantor (other than Parent), (e) guarantees by a Borrower or Guarantor of Indebtedness permitted under Section 7.1(e), (f) guarantees permitted under Section 7.6, (g) other Investments set forth on Schedule 7.13 hereto, (h) Investments made by any Borrower or Guarantor (other than the Parent) in the Parent, provided the aggregate amount of such Investments do not exceed $2,000,000 at any time outstanding and (i) Investments in any newly created Subsidiary by means of purchase or other acquisition of the equity interests of such Subsidiary including by way of merger, provided there is no investment of Collateral.

"Permitted Liens" means (a) Liens held by Agent for the benefit of Agent and the Lenders, (b) Liens for unpaid taxes that either (i) are not yet delinquent, or (ii) do not constitute an Event of Default hereunder and are the subject of Permitted

Protests, (c) Liens set forth on Schedule P-1, (d) the interests of lessors under operating leases, (e) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as such Lien attaches only to the asset purchased or acquired and the proceeds thereof, (f) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of Borrowers' business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests, (g) Liens arising from deposits made in connection with obtaining worker's compensation or other unemployment insurance, social security and other similar laws (h) Liens or deposits to secure performance of bids, tenders, or leases incurred in the ordinary course of Borrowers' business and not in connection with the borrowing of money, (i) Liens granted as security for surety, payment, performance or appeal bonds in connection with obtaining such bonds in the ordinary course of Borrowers' business, (j) Liens resulting from any judgment or award that is not an Event of Default hereunder, (k) with respect to any Real Property, easements, exceptions, reservations, encroachments, restrictions, rights of way, zoning restrictions and other similar title policy exceptions or encumbrances that do not materially interfere with or impair the use or operation thereof by Borrowers; and (l) Liens on the BofA Collateral in favor of BofA (as collateral agent) on the Restatement Effective Date securing the repayment of the BofA Loans and all other obligations under the BofA Loan Agreement.

"Permitted Protest" means the right of the applicable Borrower to protest any Lien (other than any such Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the Books in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by the applicable Borrower in good faith, and (c) Agent is satisfied in its Permitted Discretion that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of the Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness incurred after the Closing Date in an aggregate amount outstanding at any one time not in excess of $7,500,000.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Projections" means Parent's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a consistent basis with Parent's historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means:

(a) with respect to a Lender's obligation to make Advances and receive payments of principal, interest, fees, costs, and expenses with respect thereto, the percentage obtained by dividing (i) such Lender's Revolver Commitment, by (ii) the aggregate Revolver Commitments of all Lenders,

(b) with respect to a Lender's obligation to participate in Letters of Credit, to reimburse the Issuing Lender, and to receive payments of fees with respect thereto, the percentage obtained by dividing (i) such Lender's Revolver Commitment, by (ii) the aggregate Revolver Commitments of all Lenders,

(c) with respect to a Lender's obligation to make the Term Loan and receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Term Loan Commitment, by (ii) the aggregate amount of all Lenders' Term Loan Commitments, and

(d) with respect to all other matters (including the indemnification obligations arising under Section 16.7), the percentage obtained by dividing (i) such Lender's Total Commitment, by (ii) the aggregate amount of Total Commitments of all Lenders; provided, however, that, in each case, in the event all Commitments have been terminated, Pro Rata Share shall be determined according to the Commitments in effect immediately prior to such termination.

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 60 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Borrower and the improvements thereto.

"Record" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (d) conduct any other actions authorized by 42 USC § 9601.

"Report" has the meaning set forth in Section 16.17.

"Required Lenders" means, at any time, Lenders whose Pro Rata Shares aggregate 66-2/3 % of the Total Commitments, or if the Commitments have been terminated irrevocably, 66-2/3% of the Obligations (other than Bank Product Obligations) then outstanding.

"Reserve Percentage" means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

"Restatement Effective Date" has the meaning set forth in Section 3.2.

"Revolver Commitment" means, with respect to each Lender, its Revolver Commitment, and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or on the signature

page of the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 14.1.

"Revolver Usage" means, as of any date of determination, the sum of (a) the then extant amount of outstanding Advances, plus (b) the then extant amount of the Letter of Credit Usage.

"Risk Participation Liability" means, as to each Letter of Credit, all reimbursement obligations of Borrowers to the Issuing Lender with respect to an L/C Undertaking, consisting of (a) the amount available to be drawn or which may become available to be drawn, (b) all amounts that have been paid by the Issuing Lender to the Underlying Issuer to the extent not reimbursed by Borrowers, whether by the making of an Advance or otherwise, and (c) all accrued and unpaid interest, fees, and expenses payable with respect thereto.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Securities Account" means a "securities account" as that term is defined in the Code.

"Senior Leverage Coverage Ratio" means, as of any date, the ratio of (a) the sum of (i) the aggregate outstanding principal amount of the Advances, the Term Loan and the BofA Loans plus the Letter of Credit Usage as of such date to (b) EBITDA for the twelve (12) month period ending as of the last day of the month immediately preceding such date.

"Services Agreement" means the Services Agreement dated November 21, 1997 between the Parent and ThermaClime (as amended, renewed or extended), in the form delivered to Agent on the Closing Date.

"Settlement" has the meaning set forth in Section 2.3(f)(i).

"Settlement Date" has the meaning set forth in Section 2.3(f)(i).

"Solvent" means, with respect to any Person on a particular date, that such Person is not insolvent (as such term is defined in the Uniform Fraudulent Transfer Act).

"Special Term Advance" has the meaning set forth in Section 2.01(h).

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity, other than EDN, DSN and each of their respective Subsidiaries.

"Swing Lender" means Foothill or any other Lender that, at the request of Administrative Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender hereunder.

"Swing Loan" has the meaning set forth in Section 2.3(d)(i).

"Tangible Net Worth" means, with respect to any Person, as of any date of determination, the result of (a) the total stockholder's equity of such Person and its Subsidiaries, minus (b) the sum of (i) all Intangible Assets of such Person and its Subsidiaries, (ii) all of such Person's prepaid expenses, and (iii) all amounts due to such Person and its Subsidiaries from Affiliates.

"Taxes" has the meaning set forth in Section 2.2.

"Term Loan" has the meaning set forth in Section 2.2(a).

"Term Loan Amount" means $7,500,000.

"Term Loan Commitment" means, with respect to each Lender, its Term Loan Commitment, and, with respect to all Lenders, their Term Loan Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1.

"Term Loan Priority Collateral" means all Capital Assets acquired by a Borrower with proceeds of the Term Loan.

"ThermaClime" means ThermaClime, Inc., an Oklahoma corporation formerly known as ClimaChem, Inc.

"ThermaClime Fifth Supplemental Indenture" means that certain Fifth Supplemental Indenture dated as of May 24, 2002, among ThermaClime, as issuer, the guarantors named therein, and Bank One, N.A., as trustee, supplementing and amending the ThermaClime Indenture.

"ThermaClime Indenture" means the Indenture dated as of November 26, 1997 among ThermaClime, as issuer, the guarantors named therein, and Bank One, N.A., as trustee, with respect to ThermaClime's 10 3/4% Senior Notes due 2007.

"ThermaClime Notes" means the Securities (as such term is defined in the ThermaClime Indenture) issued by ThermaClime under and pursuant to the ThermaClime Indenture.

"Total Commitment" means, with respect to each Lender, its Total Commitment, and, with respect to all Lenders, their Total Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 attached hereto or on the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 14.1.

"Trademark Security Agreement" means a trademark security agreement executed and delivered by certain Borrowers and Agent, the form and substance of which is satisfactory to Agent.

"Trison" means Trison Construction, Inc., an Oklahoma corporation.

"TTI" means ThermaClime Technologies, Inc., an Oklahoma corporation.

"Underlying Issuer" means a third Person which is the beneficiary of an L/C Undertaking and which has issued a letter of credit at the request of the Issuing Lender for the benefit of Borrowers.

"Underlying Letter of Credit" means a letter of credit that has been issued by an Underlying Issuer.

"Voidable Transfer" has the meaning set forth in Section 17.7.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"XPA" means XpediAir, Inc., an Oklahoma corporation formerly known as The Environmental Group, Inc.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Borrowers" or the term "Parent" is used in respect of a financial covenant or a related definition, it shall be understood to mean Parent and its Subsidiaries on a consolidated basis unless the context clearly requires otherwise.

1.3 Code. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein.

1.4 Construction. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in the other Loan Documents to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in the other Loan Documents shall be satisfied by the transmission of a Record and any Record transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.

1.5 Schedules and Exhibits. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. LOAN AND TERMS OF PAYMENT.

2.1 Advances.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender with a Revolver Commitment agrees (severally, not jointly or jointly and severally) to make advances ("Advances") to Borrowers in an amount at any one time outstanding not to exceed such Lender's Pro Rata Share of an amount equal to the lesser of (i) the Maximum Revolver Amount less the Letter of Credit Usage or (ii) the Borrowing Base less the Letter of Credit Usage. For purposes of this Agreement, "Borrowing Base," as of any date of determination, shall mean the result of the following for all Borrowers:

(A) the lesser of

(1) 85% of the amount of Eligible Accounts of such Borrowers, less the amount, if any, of the sum of the Dilution Reserve, and

(2) an amount equal to such Borrowers' Collections with respect to Accounts for the immediately preceding 75 day period, plus

(B) the lowest of

(1) $25,000,000, and

(2) the sum of

(x) the lesser of (i) 70% of the value of such Borrowers' Eligible Inventory, and (ii) 80% of the Net Orderly Liquidation Value of such Borrowers' Eligible Inventory, plus

(y) the lesser of (i) 60% (or, in the case of Climate Control Raw Inventory, 65%) of the value of such Borrowers' Eligible Raw Inventory, and (ii) 80% of the Net Orderly Liquidation Value of such Borrowers' Eligible Raw Inventory, minus

(C)(z) the sum of (1) the Bank Products Reserve, and (2) the aggregate amount of reserves, if any, established by Agent under Section 2.1(b).

(b) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right to establish reserves in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary or appropriate, against the Borrowing Base, including reserves with respect to (i) sums that Borrowers are required to pay (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay under any Section of this Agreement or any other Loan Document, and (ii) amounts owing by Borrowers to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than any existing Permitted Lien set forth on Schedule P-1 which is specifically identified thereon as entitled to have priority over the Agent's Liens), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral. In addition to the foregoing, Agent shall have the right to have the Inventory reappraised by a qualified appraisal company selected by Agent from time to time after the Closing Date for the purpose of redetermining the Net Orderly Liquidation Value of the Eligible Inventory and/or the Eligible Raw Inventory, which appraisals, so long as no Default or Event of Default shall have occurred and be continuing, shall be conducted at Borrowers' expense no more frequently than once during any twelve month period, and, after the occurrence and during the continuance of a Default or an Event of Default, at Borrowers' expense as frequently as Agent shall determine. Based upon the results of any such redetermination, and any other information received from the collateral reporting required under Section 6.2, Agent may, in its Permitted Discretion, redetermine the Borrowing Base.

(c) Intentionally deleted.

(d) Notwithstanding the foregoing, the aggregate principal amount of Advances made by the Lenders based upon the aggregate value of Borrowers' Eligible Inventory included in the Borrowing Base shall not exceed the aggregate principal amount of Advances made by the Lenders based upon the aggregate amount of Borrowers' Eligible Accounts included in the Borrowing Base.

(e) Notwithstanding the foregoing, the aggregate principal amount of Advances made by the Lenders based upon the aggregate value of Borrowers' In-Transit Inventory shall not exceed $2,000,000. In addition, all amounts payable to common carriers in respect of Borrowers' In-Transit Inventory shall be deducted by Agent from the proceeds of Advances made by Lenders in respect of such In-Transit Inventory.

(f) The Lenders with Revolver Commitments shall have no obligation to make additional Advances hereunder to the extent such additional Advances would cause the Revolver Usage to exceed (i) the Maximum Revolver Amount or (ii) the maximum amount of indebtedness permitted to be incurred pursuant to clause (b) of the definition of "Permitted Indebtedness" under the ThermaClime Indenture.

(g) Amounts borrowed pursuant to this Section may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement.

(h) Notwithstanding anything to the contrary contained in this Section 2.1, the Borrowers hereby acknowledge, confirm and agree that (i) immediately prior to the Restatement Effective Date, the existing outstanding principal amount of the Advances under and as defined in the Original Loan Facility is equal to $[0.00] (such Indebtedness being hereinafter referred to as the "Original Revolver Indebtedness"), (ii) such Original Revolver Indebtedness shall not be repaid on the Closing Date, but rather shall be reevidenced by this Agreement as a portion of the Advances outstanding hereunder, and (iii) for all purposes of this Agreement and the other Loan Documents, the sum of the Original Revolver Indebtedness on the Restatement Effective Date and the Advances made on the Restatement Effective Date (if any) shall constitute the Advances outstanding on the Restatement Effective Date.

2.2 CapEx Loans.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender with a Term Loan Commitment may, in its sole discretion, make term loans (collectively, the "Term Loan") to Borrowers, in an aggregate principal amount at any one time outstanding not to exceed such Lender's Pro Rata Share of the Term Loan Amount. The proceeds of each Term Loan shall be used by a Borrower solely to fund a portion of the purchase price of assets ("Capital Assets") acquired by such Borrower that, in accordance with GAAP, are or should be included in "property, plant and equipment" or in a similar fixed asset account on such Borrower's balance sheet. The maximum principal amount of each Term Loan shall not exceed 70% of the Hard Cost of the Capital Assets to be acquired by the Borrowers with a portion of the proceeds of such Term Loan. Each Term Loan shall be made in a minimum amount of $50,000. The outstanding unpaid principal balance and all accrued and unpaid interest under

the Term Loan shall be due and payable on the date of termination of this Agreement, whether by its terms, by prepayment, or by acceleration. All amounts outstanding under the Term Loan shall constitute Obligations. Any principal amount of the Term Loan which is repaid or prepaid by Borrowers may be reborrowed pursuant to the terms hereof. Borrowers may, at any time, prepay all or a portion of the Term Loan without penalty or premium.

(b) Notwithstanding anything to the contrary contained in this Section 2.2, the Borrowers hereby acknowledge, confirm and agree that (i) immediately prior to the Restatement Effective Date, the outstanding principal amount of the Term Loan under and as defined in the Original Loan Facility is equal to $[0.00] (such Indebtedness being hereinafter referred to as the "Original Term Loan Indebtedness"), (ii) such Original Term Loan Indebtedness shall not be repaid on the Restatement Effective Date, but rather shall be reevidenced by this Agreement as a portion of the Term Loan outstanding hereunder, (iii) for all purposes of this Agreement and the other Loan Documents, the Original Term Loan Indebtedness on the Restatement Effective Date shall constitute the Term Loan outstanding on the Restatement Effective Date.

2.3 Borrowing Procedures and Settlements.

(a) **Procedure for Borrowing**. Each Borrowing shall be made by an irrevocable written request by an Authorized Person delivered to Agent, which notice must be received by Agent no later than 10:00 a.m. (California time) on the Business Day prior to the date that is the requested Funding Date in the case of a request for an Advance specifying (i) the amount of such Borrowing, (ii) the requested Funding Date, which shall be a Business Day; provided, however, that in the case of a request for Swing Loan in an amount of $6,000,000, or less, such notice will be timely received if it is received by Agent no later than 10:00 a.m. (California time) on the Business Day that is the requested Funding Date, and (iii) in the case of a Borrowing consisting of a Term Loan, the Capital Assets proposed to be financed with the proceeds of such Term Loan together with the Hard Cost of such Capital Assets, the invoices pertaining to such Capital Assets and any other information or documents reasonably requested by Agent that pertain to such Capital Assets. At Agent's election, in lieu of delivering the above-described written request, any Authorized Person may give Agent telephonic notice of such request by the required time, with such telephonic notice to be confirmed in writing within 24 hours of the giving of such notice.

(b) **Agent's Election**. Promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall elect, in its discretion, (i) to have the terms of Section 2.3(c) apply to such requested Borrowing, or (ii) if the Borrowing is for an Advance, to request Swing Lender to make a Swing Loan pursuant to the terms of Section 2.3(d) in the amount of the requested Borrowing; provided, however, that if Swing Lender declines in its sole discretion to make a Swing Loan pursuant to Section 2.3(d), Agent shall elect to have the terms of Section 2.3(c) apply to such requested Borrowing.

(c) **Making of Advances**.

(i) In the event that Agent shall elect to have the terms of this Section 2.3(c) apply to a requested Borrowing as described in Section 2.3(b), then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders, not later than 1:00 p.m. (California time) on the Business Day immediately preceding the Funding Date applicable thereto, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the

requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. (California time) on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Advances, upon satisfaction of the applicable conditions precedent set forth in Section 3 hereof, Agent shall make the proceeds thereof available to Administrative Borrower on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to Administrative Borrower's Designated Account; provided, however, that, subject to the provisions of Section 2.3(i), Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if Agent shall have actual knowledge that (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender on or prior to the Closing Date or, with respect to any Borrowing after the Closing Date, at least 1 Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers on such date a corresponding amount. If and to the extent any Lender shall not have made its full amount available to Agent in immediately available funds and Agent in such circumstances has made available to Borrowers such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Lender's Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Borrowing. The

failure of any Lender to make any Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make an Advance on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on any Funding Date.

(iii) Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments to each other non-Defaulting Lender member of the Lender Group ratably in accordance with their Commitments (but only to the extent that such Defaulting Lender's Advance was funded by the other members of the Lender Group) or, if so directed by Administrative Borrower and if no Default or Event of Default had occurred and is continuing (and to the extent such Defaulting Lender's Advance was not funded by the Lender Group), retain same to be re-advanced to Borrowers as if such Defaulting Lender had made Advances to Borrowers. Subject to the foregoing, Agent may hold and, in its Permitted Discretion, re-lend to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by it for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. This Section shall remain effective with respect to such Lender until (x) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable, (y) the non-Defaulting Lenders, Agent, and Borrowers shall have waived such Defaulting Lender's default in writing, or (z) the Defaulting Lender makes its Pro Rata Share of the applicable Advance and pays to Agent all amounts owing by Defaulting Lender in respect thereof. The operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder to Agent or to the Lenders other than such Defaulting Lender. Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Administrative Borrower at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance Agreement in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being repaid its share of the outstanding Obligations (other than Bank Product Obligations) (including an assumption of its Pro Rata Share of the Risk Participation Liability) without any premium or penalty of any kind whatsoever; provided further, however, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund.

(d) **Making of Swing Loans**.

(i) In the event Agent shall elect, with the consent of Swing Lender, as a Lender, to have the terms of this Section 2.3(d) apply to a requested Borrowing as described in Section 2.3(b), Swing Lender as a Lender shall make such Advance in the amount of such Borrowing (any such Advance made solely by Swing Lender as a Lender pursuant to this Section 2.3(d) being referred to as a "Swing Loan" and such Advances being referred to collectively as "Swing Loans") available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds to Administrative Borrower's Designated Account. Each Swing Loan is an Advance hereunder and shall be subject to all the terms and conditions applicable to other Advances, except that no such Swing Loan shall be eligible for the LIBOR Option and all payments on any Swing Loan shall be payable to Swing Lender as a Lender solely for its own account (and for the account of the holder of any participation interest with respect to such Swing Loan). Subject to the provisions of Section 2.3(i), Agent shall not request Swing Lender as a Lender to make, and Swing Lender as a Lender shall not make, any Swing Loan if Agent has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the

applicable Borrowing unless such condition has been waived, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender as a Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making, in its sole discretion, any Swing Loan.

(ii) The Swing Loans shall be secured by the Agent's Liens, shall constitute Advances and Obligations hereunder, and shall bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(e) **Agent Advances**.

(i) Agent hereby is authorized by Borrowers and the Lenders, from time to time in Agent's sole discretion, (1) after the occurrence and during the continuance of a Default or an Event of Default, or (2) at any time that any of the other applicable conditions precedent set forth in Section 3 have not been satisfied, to make Advances to Borrowers on behalf of the Lenders that Agent, in its Permitted Discretion deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations), or (C) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement, including Lender Group Expenses and the costs, fees, and expenses described in Section 10 (any of the Advances described in this Section 2.3(e) shall be referred to as "Agent Advances"). Each Agent Advance is an Advance hereunder and shall be subject to all the terms and conditions

applicable to other Advances, except that no such Agent Advance shall be eligible for the LIBOR Option and all payments thereon shall be payable to Agent solely for its own account (and for the account of the holder of any participation interest with respect to such Agent Advance).

(ii) The Agent Advances shall be repayable on demand and secured by the Agent's Liens granted to Agent under the Loan Documents, shall constitute Advances and Obligations hereunder, and shall bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(f) **Settlement**. It is agreed that each Lender's funded portion of the Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of or enforceable by Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Advances, the Swing Loans, and the Agent Advances shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent, (1) on behalf of Swing Lender, with respect to each outstanding Swing Loan, (2) for itself, with respect to each Agent Advance, and (3) with respect to Collections received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. (California time) on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Advances, Swing Loans, and Agent Advances for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(c)(iii)): (y) if a Lender's balance of the Advances, Swing Loans, and Agent Advances exceeds such Lender's Pro Rata Share of the Advances, Swing Loans, and Agent Advances as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. (California time) on the Settlement Date, transfer in immediately available funds to the account of such Lender as such Lender may designate, an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances, Swing Loans, and Agent Advances, and (z) if a Lender's balance of the Advances, Swing Loans, and Agent Advances is less than such Lender's Pro Rata Share of the Advances, Swing Loans, and Agent Advances as of a Settlement Date, such Lender shall no later than 12:00 p.m. (California time) on the Settlement Date transfer in immediately available funds to the Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances, Swing Loans, and Agent Advances. Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loan or Agent Advance and, together with the portion of such Swing Loan or Agent Advance

representing Swing Lender's Pro Rata Share thereof, shall constitute Advances of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Advances, Swing Loans, and Agent Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, Swing Loans, and Agent Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral. To the extent that a net amount is owed to any such Lender after such application, such net amount shall be distributed by Agent to that Lender as part of such next Settlement.

(iii) Between Settlement Dates, Agent, to the extent no Agent Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to Swing Lender's Pro Rata Share of the Advances. If, as of any Settlement Date, Collections received since the

then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Advances other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders, to be applied to the outstanding Advances of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Agent Advances, and each Lender (subject to the effect of letter agreements between Agent and individual Lenders) with respect to the Advances other than Swing Loans and Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(g) **Notation**. Agent shall record on its books the principal amount of the Advances owing to each Lender, including the Swing Loans owing to Swing Lender, and Agent Advances owing to Agent, and the interests therein of each Lender, from time to time. In addition, each Lender is authorized, at such Lender's option, to note the date and amount of each payment or prepayment of principal of such Lender's Advances in its books and records, including computer records, such books and records constituting conclusive evidence, absent manifest error, of the accuracy of the information contained therein.

(h) **Lenders' Failure to Perform**. All Advances (other than Swing Loans and Agent Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender

shall be responsible for any failure by any other Lender to perform its obligation to make any Advance (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

(i) **Optional Overadvances**. Any contrary provision of this Agreement notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Advances (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or thereby would be created, so long as (i) after giving effect to such Advances (including a Swing Loan), the Revolver Usage with respect to the Borrowers does not exceed the Borrowing Base by more than $5,000,000, (ii) after giving effect to such Advances (including a Swing Loan) the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount, and (iii) at the time of the making of any such Advance (including a Swing Loan), Agent does not believe, in good faith, that the Overadvance created by such Advance will be outstanding for more than 90 days. The foregoing provisions are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers in any way. The Advances and Swing Loans, as applicable, that are made pursuant to this Section 2.3(i) shall be subject to the same terms and conditions as any other Advance or Swing Loan, as applicable, except that they shall not be eligible for the LIBOR Option and the rate of interest applicable thereto shall be the rate applicable to Advances that are Base Rate Loans under Section 2.6(c) hereof without regard to the presence or absence of a Default or Event of Default.

(i) In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the preceding paragraph, regardless of the amount of, or reason for, such excess, Agent shall notify Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers and intended to reduce, within a reasonable time, the outstanding principal amount of the Advances to Borrowers to an amount permitted by the preceding paragraph. In the event Agent or any Lender disagrees over the terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders.

(ii) Each Lender with a Revolver Commitment shall be obligated to settle with Agent as provided in Section 2.3(f) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(i), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

2.4 <u>Payments</u>.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 11:00 a.m. (California time) on the date specified herein. Any payment received by Agent later than 11:00 a.m. (California time), shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Administrative Borrower prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such

payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(iii) In the event the aggregate principal amount of the Advances outstanding on any day exceeds the maximum amount of indebtedness permitted to be incurred pursuant to clause (b) of the definition of "Permitted Indebtedness" under the ThermaClime Indenture, Borrowers will immediately prepay the outstanding principal amount of the Advances, to the full extent of any such excess.

(iv) Upon receipt of any disbursements or dividends described in Section 6.16, the Borrowers shall immediately prepay the outstanding principal amount of the Advances in the amount of such distribution or dividend.

(b) **Apportionment and Application of Payments**.

(i) Except as otherwise provided with respect to Defaulting Lenders and except as otherwise provided in the Loan Documents (including letter agreements between Agent and individual Lenders), aggregate principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the

Obligations to which such payments relate held by each Lender) and payments of fees and expenses (other than fees or expenses that are for Agent's separate account, after giving effect to any letter agreements between Agent and individual Lenders) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee relates. All payments shall be remitted to Agent and all such payments (other than payments received while no Default or Event of Default has occurred and is continuing and which relate to the payment of principal or interest of specific Obligations or which relate to the payment of specific fees), and all proceeds of Accounts or other Collateral received by Agent, shall be applied as follows:

A. first, to pay any Lender Group Expenses then due to Agent under the Loan Documents, until paid in full,

B. second, to pay any Lender Group Expenses then due to the Lenders under the Loan Documents, on a ratable basis, until paid in full,

C. third, to pay any fees then due to Agent (for its separate accounts, after giving effect to any letter agreements between Agent and the individual Lenders) under the Loan Documents until paid in full,

D. fourth, to pay any fees then due to any or all of the Lenders (after giving effect to any letter agreements between Agent and individual Lenders) under the Loan Documents, on a ratable basis, until paid in full,

E. fifth, to pay interest due in respect of all Agent Advances, until paid in full,

F. sixth, ratably to pay interest due in respect of the Advances (other than Agent Advances), the Swing Loans, and the Term Loan until paid in full,

G. seventh, to pay the principal of all Agent Advances until paid in full,

H. eighth, to pay the principal amounts then due and payable (other than as a result of an acceleration thereof) with respect to the Term Loan until paid in full,

I. ninth, to pay the principal of all Swing Loans until paid in full,

J. tenth, so long as no Event of Default has occurred and is continuing, and at Agent's election (which election Agent agrees will not be made if an Overadvance would be created thereby), to pay amounts then due and owing by any Borrower or its Subsidiaries in respect of Bank Products, until paid in full,

K. eleventh, so long as no Event of Default has occurred and is continuing, to pay the principal of all Advances until paid in full,

L. twelfth, if an Event of Default has occurred and is continuing, ratably (i) to pay the principal of all Advances until paid in full, and (ii) to Agent, to be held by Agent, for the benefit of Wells Fargo or its Affiliates, as applicable, as cash collateral in an amount up to the amount of the Bank Products Reserve established prior to the occurrence of, and not in contemplation of, the subject Event of

Default until Borrowers' and their Subsidiaries' obligations in respect of the then extant Bank Products have been paid in full or the cash collateral amount has been exhausted,

M. thirteenth, if an Event of Default has occurred and is continuing, to pay the outstanding principal balance of the Term Loan (in inverse order of the maturity of the installments due thereunder) until the Term Loan is paid in full,

N. fourteenth, if an Event of Default has occurred and is continuing, to Agent, to be held by Agent, for the ratable benefit of Issuing Lender and those Lenders having a Revolver Commitment, as cash collateral in an amount up to 105% of the then extant Letter of Credit Usage until paid in full,

O. fifteenth, to pay any other Obligations (including Bank Product Obligations) until paid in full, and

P. sixteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(ii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(h).

(iii) In each instance, so long as no Default or Event of Default has occurred and is continuing, Section 2.4(b) shall not be deemed to apply to any payment by Borrowers specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement.

(iv) For purposes of the foregoing, "paid in full" means payment of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(v) In the event of a direct conflict between the priority provisions of this Section 2.4 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.4 shall control and govern.

(vi) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, all proceeds received by Agent from the sale or other disposition of, or in connection with any casualty or loss of, any Term Loan Priority Collateral shall be applied, first, to the Obligations in respect of the Term Loan then outstanding and the remainder of such proceeds shall be applied in accordance with Section 2.4(b)(i).

2.5 Overadvances. If, at any time or for any reason, the amount of Obligations (other than Bank Product Obligations) owed by Borrowers to the Lender Group pursuant to Sections 2.1 and 2.12 is greater than either the Dollar or percentage limitations set forth in Sections 2.1 or 2.12, (an "Overadvance"), Borrowers immediately shall pay to Agent, in cash, the amount of such excess, which amount shall be used by Agent to reduce such Overadvances in accordance with the priorities set forth in Section 2.4(b). In addition, Borrowers hereby promise to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full to the Lender Group as and when due and payable under the terms of this Agreement and the other Loan Documents.

2.6 Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.

(a) **Interest Rates**. Except as provided in clause (c) below, all Obligations (except for undrawn Letters of Credit and except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows (i) if the relevant Obligation is an Advance that is a LIBOR Rate Loan, at a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin, (ii) otherwise, at a per annum rate equal to the Base Rate plus the Base Rate Margin.

The foregoing notwithstanding, at no time shall any portion of the Obligations (other than Bank Product Obligations) in respect of the Term Loan bear interest on the Daily Balance thereof at a per annum rate less than 6.25%. To the extent that interest accrued hereunder at the rate set forth herein would be less than the foregoing minimum daily rate, the interest rate chargeable hereunder for such day automatically shall be deemed increased to the minimum rate.

(b) **Letter of Credit Fee**. Borrowers shall pay Agent (for the ratable benefit of the Lenders with a Revolver Commitment, subject to any letter agreement between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.12(e)) which shall accrue at a rate equal to 1.00% per annum times the Daily Balance of the undrawn amount of all outstanding Letters of Credit.

(c) **Default Rate**. Upon the occurrence and during the continuation of an Event of Default (and at the election of Agent or the Required Lenders),

(i) all Obligations (except for undrawn Letters of Credit and except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to 2 percentage points above the per annum rate otherwise applicable hereunder, and

(ii) the Letter of Credit fee provided for above shall be increased to 2 percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment**. Interest, Letter of Credit fees, and all other fees payable hereunder shall be due and payable, in arrears, on the first day of each month at any time that Obligations or Commitments are outstanding. Borrowers hereby authorize Agent, from time to time, without prior notice to Borrowers, to charge such interest and fees, all Lender Group Expenses (as and when incurred), the charges, commissions, fees, and costs provided for in Section 2.12(e) (as and when accrued or incurred), the fees and costs provided for in Section 2.11 (as and when accrued or incurred), and all other payments as and when due and payable under any Loan Document (including any amounts due and payable to Wells Fargo or its Affiliates in respect of Bank Products up to the amount of the then extant Bank Products Reserve) to Borrowers' Loan Account, which amounts thereafter constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances hereunder. Any interest not paid when due shall be compounded by being charged to Borrowers' Loan Account and shall thereafter constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances that are Base Rate Loans hereunder.

(e) **Computation**. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate**. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 Cash Management.

(a) Borrowers shall (i) establish and maintain cash management services of a type and on terms satisfactory to Agent at one or more of the banks set forth on Schedule 2.7(a) (each a "Cash Management Bank"), and shall request in writing and otherwise take such reasonable steps to ensure that all of its Account Debtors forward payment of the amounts owed by them directly to such Cash Management Bank, and (ii) deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof, all Collections (including those sent directly by Account Debtors to a Cash Management Bank) into a bank account in Agent's name (a "Cash Management Account") at one of the Cash Management Banks.

(b) On the Closing Date, each Cash Management Bank shall establish and maintain Cash Management Agreements with Agent and Borrowers in form and substance acceptable to Agent, provided that such Cash Management Agreements may not be implemented until 30 days after the Closing Date. Each such Cash Management Agreement shall provide, among other things, that (i) all items of payment deposited in such Cash Management Account and proceeds thereof are held by such Cash Management Bank as agent or bailee-in-possession for Agent, (ii) the Cash Management Bank has no rights of setoff or recoupment or any other claim against the applicable Cash Management Account, other than for payment of its service fees and other charges directly related to the administration of such Cash Management Account and for returned checks or other items of payment, and (iii) it immediately will forward by daily sweep all amounts in the applicable Cash Management Account to the Agent's Account.

(c) So long as no Default or Event of Default has occurred and is continuing, Administrative Borrower may amend Schedule 2.7(a) or (b) to add or replace a Cash Management Account Bank or Cash Management Account; provided, however, that (i) such prospective Cash Management Bank shall be satisfactory to Agent and Agent shall have consented in writing in advance to the opening of such Cash Management Account with the prospective Cash Management Bank, and (ii) prior to the time of the opening of such Cash Management Account, Borrowers and such prospective Cash Management Bank shall have executed and delivered to Agent a Cash Management Agreement. Borrowers shall close any of their Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 30 days of notice from Agent that the creditworthiness of any Cash Management Bank is no longer acceptable in Agent's reasonable judgment, or as promptly as practicable and in any event within 60 days of notice from Agent that the operating performance, funds transfer, or availability procedures or performance of the Cash Management Bank with respect to Cash Management Accounts or Agent's liability under any Cash Management Agreement with such Cash Management Bank is no longer acceptable in Agent's reasonable judgment.

(d) The Cash Management Accounts shall be cash collateral accounts, with all cash, checks and similar items of payment in such accounts securing payment of the Obligations, and in which Borrowers are hereby deemed to have granted a Lien to Agent.

2.8 Crediting Payments. The receipt of any payment item by Agent (whether from transfers to Agent by the Cash Management Banks pursuant to the Cash Management Agreements or otherwise) shall not be considered a payment on account unless

such payment item is a wire transfer of immediately available federal funds made to the Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into the Agent's Account on a Business Day on or before 11:00 a.m. (California time). If any payment item is received into the Agent's Account on a non-Business Day or after 11:00 a.m. (California time) on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.9 Designated Account. Agent is authorized to make the Advances, and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person, or without instructions if pursuant to Section 2.6(d). Administrative Borrower agrees to establish and maintain a Designated Account for Borrowers with the Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Administrative Borrower, any Advance, Agent Advance or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.10 Maintenance of Loan Account; Statements of Obligations. Agent shall maintain an account on its books in the name of Borrowers and (the "Loan Account") on which Borrowers will be charged with the Term Loan, all Advances (including Agent Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued by Issuing Lender for Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents (except for Bank Product Obligations), including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.8, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account, including all amounts received in the Agent's Account from any Cash Management Bank. Agent shall render statements regarding the Loan Account to Administrative Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 45 days after receipt thereof by Administrative Borrower, Administrative Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

2.11 Fees. Borrowers shall pay to Agent the following fees and charges, which fees and charges shall be non-refundable when paid (irrespective of whether this Agreement is terminated thereafter) and shall be apportioned among the Lenders in accordance with the terms of letter agreements between Agent and individual Lenders:

(a) Unused Line Fee. On the first day of each month during the term of this Agreement, an unused line fee in the amount equal to 0.375% per annum times the result of (a) the Maximum Revolver Amount, less (b) the sum of (i) the average Daily Balance of Advances that were outstanding during the immediately preceding month, plus (ii) the average Daily Balance of the Letter of Credit Usage during the immediately preceding month,

(b) Fee Letter Fees. As and when due and payable under the terms of the Fee Letter, Borrowers shall pay to Agent the fees set forth in the Fee Letter, and

(c) For the separate account of each member of the Lender Group, audit, appraisal, and valuation fees and charges as follows, (i) a fee of $1,000 per day, per auditor, plus out-of-pocket expenses for each financial audit of a Borrower performed by personnel employed by Agent and each Lender that accompanies Agent's personnel in connection with such financial audit conducted by Agent, (ii) if implemented, for the sole account of the Agent, a one time charge of $3,000 plus out-of-pocket expenses for expenses for the establishment of electronic collateral reporting systems, (iii) a fee of $1,500 per day per appraiser, plus out-of-pocket expenses, for each appraisal of the Collateral consisting of Inventory and Capital Assets performed by personnel employed by Agent, provided, that, in the absence of a continuing Event of Default, the Borrowers shall not be obligated to pay for more than one (1) appraisal in any 12 month period, and (iv) the actual charges paid or incurred by the Agent (and, subject to clause (i) above, each Lender) if it elects to employ the services of one or more third Persons to perform financial audits of Borrowers, to appraise the Collateral, or any portion thereof, or to assess a Borrower's business valuation.

2.12 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, the Issuing Lender agrees to issue letters of credit (each, an "L/C") for the account of Borrowers or to purchase participations or execute indemnities or reimbursement obligations (each such undertaking, an "L/C Undertaking") with respect to letters of credit issued by an Underlying Issuer (as of the Closing Date, the prospective Underlying Issuer is to be Wells Fargo) for the account of Borrowers. To request the issuance of an L/C or an L/C Undertaking (or the amendment, renewal, or extension of an outstanding L/C or L/C Undertaking), Administrative Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Lender) to the Issuing Lender and Agent (reasonably in advance of the requested date of issuance, amendment, renewal, or extension) a notice requesting the issuance of an L/C or L/C Undertaking, or identifying the L/C or L/C Undertaking to be amended, renewed, or extended, the date of issuance, amendment, renewal, or extension, the date on which such L/C or L/C Undertaking is to expire, the amount of such L/C or L/C Undertaking, the name and address of the beneficiary thereof (or of the Underlying Letter of Credit, as applicable), and such other information as shall be necessary to prepare, amend, renew, or extend such L/C or L/C Undertaking. If requested by the Issuing Lender, Borrowers also shall be an applicant under the application with respect to any Underlying Letter of Credit that is to be the subject of an L/C Undertaking. The Issuing Lender shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the requested Letter of Credit:

(i) the Letter of Credit Usage would exceed the Borrowing Base less the amount of outstanding Advances, or

(ii) the Letter of Credit Usage would exceed $15,000,000, or

(iii) the Letter of Credit Usage would exceed the lesser of (A) Maximum Revolver Amount and (B) the maximum amount of indebtedness permitted to be incurred pursuant to clause (b) of the definition of “Permitted Indebtedness” under the ThermaClime Indenture less (C) the then extant amount of outstanding Advances.

Borrowers and the Lender Group acknowledge and agree that certain Underlying Letters of Credit may be issued to support letters of credit that already are outstanding as of the Closing Date. Each Letter of Credit (and corresponding Underlying Letter of Credit) shall have an expiry date no later than 30 days prior to the Maturity Date and all such Letters of Credit (and corresponding Underlying Letter of Credit) shall be in form and substance acceptable to the Issuing Lender (in the exercise of its Permitted Discretion), including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender is obligated to advance funds under a Letter of Credit, Borrowers immediately shall reimburse such L/C Disbursement to Issuing Lender by paying to Agent an amount equal to such L/C Disbursement not later than 11:00 a.m., California time, on the date that such L/C Disbursement is made, if Administrative Borrower shall have received written or telephonic notice of such L/C Disbursement prior to 10:00 a.m., California time, on such date, or, if such notice has not been received by Administrative Borrower prior to such time on such date, then not later than 11:00 a.m., California time, on (i) the Business Day that Administrative Borrower receives such notice, if such notice is received prior to 10:00 a.m., California time, on the date of receipt, and, in the absence of such reimbursement, the L/C Disbursement immediately and automatically shall be deemed to be an Advance hereunder and, thereafter, shall bear interest at the rate then applicable to Advances that are Base Rate Loans under Section 2.6. To the extent an L/C Disbursement is deemed to be an Advance hereunder Borrowers’ obligation to reimburse such L/C Disbursement shall be discharged and replaced by the resulting Advance. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.12(c) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interest may appear.

(b) Promptly following receipt of a notice of L/C Disbursement pursuant to Section 2.12(a), each Lender with a Revolver Commitment agrees to fund its Pro Rata Share of any Advance deemed made pursuant to the foregoing subsection on the same terms and conditions as if Borrowers had requested such Advance and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders with Revolver Commitment, the Issuing Lender shall be deemed to have granted to each Lender with a Revolver Commitment, and each Lender with a Revolver Commitment shall be deemed to have purchased, a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of the Risk Participation Liability of such Letter of Credit, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender’s Pro Rata Share of any payments made by the Issuing Lender under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Revolver Commitment hereby absolutely and unconditionally agrees to pay to

Agent, for the account of the Issuing Lender, such Lender’s Pro Rata Share of each L/C Disbursement made by the Issuing Lender and not reimbursed by Borrowers on the date due as provided in clause (a) of this Section, or of any reimbursement payment required to be refunded to Borrowers for any reason. Each Lender with a Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share pursuant to this Section 2.12(b) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3 hereof. If any such Lender fails to make available to Agent the amount of such Lender’s Pro Rata Share of any payments made by the Issuing Lender in respect of such Letter of Credit as provided in this Section, Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(c) Each Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group harmless from any loss, cost, expense, or liability, and reasonable attorneys fees incurred by the Lender Group arising out of or in connection with any Letter of Credit; provided, however, that no Borrower shall be obligated hereunder to indemnify for any loss, cost, expense, or liability that is caused by the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group. Each Borrower agrees to be bound by the Underlying Issuer’s regulations and interpretations of any Underlying Letter of Credit or by Issuing Lender’s interpretations of any L/C issued by Issuing Lender to or for such Borrower’s account, even though this interpretation may be different from such Borrower’s own, and each Borrower understands and agrees that the Lender Group shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrowers’ instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto. Each Borrower understands that the L/C Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by Borrowers against such Underlying Issuer. Each Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys fees), or liability incurred by the Lender Group under any L/C Undertaking as a result of the Lender Group’s indemnification of any Underlying Issuer; provided, however, that no Borrower shall be obligated hereunder to indemnify for any loss, cost, expense, or liability that is caused by the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group.

(d) Each Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender’s instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(e) Any and all charges, commissions, fees, and costs incurred by the Issuing Lender relating to Underlying Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and immediately shall be reimbursable by Borrowers to Agent for the account of the Issuing Lender; it being acknowledged and agreed by each Borrower that, as of the Closing Date, the issuance charge imposed by the prospective Underlying Issuer is .825% per annum

times the face amount of each Underlying Letter of Credit, that such issuance charge may be changed from time to time, and that the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

(f) If by reason of (i) any change in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Underlying Issuer or the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued hereunder, or

(ii) there shall be imposed on the Underlying Issuer or the Lender Group any other condition regarding any Underlying Letter of Credit or any Letter of Credit issued pursuant hereto;

and the result of the foregoing is to increase, directly or indirectly, the cost to the Lender Group of issuing, making, guaranteeing, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof by the Lender Group, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Administrative Borrower, and Borrowers shall pay on demand such amounts as Agent may specify to be necessary to compensate the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder. The determination by Agent of any amount due pursuant to this Section, as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

2.13 LIBOR Option.

(a) **Interest and Interest Payment Dates**. In lieu of having interest charged at the rate based upon the Base Rate, Borrowers shall have the option (the "LIBOR Option") to have interest on all or a portion of the Advances be charged at the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto, (ii) the occurrence of an Event of Default in consequence of which the Required Lenders or Agent on behalf thereof elect to accelerate the maturity of the Obligations, or (iii) termination of this Agreement pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Administrative Borrower properly has exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, Borrowers no longer shall have the option to request that Advances bear interest at the LIBOR Rate and Agent shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate then applicable to Base Rate Loans hereunder.

(b) LIBOR Election.

(i) Administrative Borrower may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. (California time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Administrative Borrower's election of the LIBOR Option for a permitted portion of the Advances and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. (California time) on the same day. Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the Lenders having a Revolver Commitment.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrowers. In connection with each LIBOR Rate Loan, each Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense incurred by Agent or any Lender as a result of (a) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to Agent or any Lender, be deemed to equal the amount determined by Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of Agent or a Lender delivered to Administrative Borrower setting forth any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section shall be conclusive absent manifest error.

(iii) Borrowers shall have not more than 5 LIBOR Rate Loans in effect at any given time. Borrowers only may exercise the LIBOR Option for LIBOR Rate Loans of at least $1,000,000 and integral multiples of $500,000 in excess thereof.

(c) **Prepayments**. Borrowers may prepay LIBOR Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of proceeds of Collections in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with clause (b) above.

(d) **Special Provisions Applicable to LIBOR Rate**.

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Administrative Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Administrative Borrower may, by notice to such affected Lender (y) require such Lender to furnish to Administrative Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (z) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under clause (b)(ii) above).

(ii) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Advances or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Administrative Borrower and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrowers shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding**. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match

fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Section shall apply as if each Lender or its Participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

2.14 Capital Requirements. If, after the date hereof, any Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital requirements for banks or bank holding companies, or any change in the interpretation or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material in the exercise of its Permitted Discretion, then such Lender may notify Administrative Borrower and Agent thereof. Following receipt of such notice, Borrowers agree to pay such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 90 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods.

2.15 Joint and Several Liability of Borrowers.

(a) Each of Borrowers is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agent and the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each of Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Person composing Borrowers without preferences or distinction among them.

(c) If and to the extent that any of Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Persons composing Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each Person composing Borrowers under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Person composing Borrowers enforceable against each such Borrower, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Person composing Borrowers hereby waives notice of acceptance of its joint and several liability, notice of any Advances or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Person composing Borrowers hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Person composing Borrowers in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Person composing Borrowers. Without limiting the generality of the foregoing, each of Borrowers assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Person composing Borrowers to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Person composing Borrowers, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Person composing Borrowers that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of such Person composing Borrowers under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Person composing Borrowers under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Person composing Borrowers or any Agent or Lender. The joint and several liability of the Persons composing Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, constitution or place of formation of any of the Persons composing Borrowers or any Agent or Lender.

(f) Each Person composing Borrowers represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Person composing Borrowers further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Person composing Borrowers hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of the Agent, the Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all of the Persons composing Borrowers as often as occasion therefor may arise and without requirement on the part of any such Agent, Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Persons composing Borrowers or to exhaust any remedies available to it or them against any of the other Persons composing Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Agent or Lender upon the insolvency, bankruptcy or reorganization of any of the Persons composing Borrowers, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

3. CONDITIONS; TERM OF AGREEMENT.

3.1 Conditions Precedent to the Initial Extension of Credit. The obligation of the Lender Group (or any member thereof) to make the initial Advance (or otherwise to extend any credit provided for hereunder) on the Closing Date, is subject to the fulfillment, to the satisfaction of Agent, of each of the conditions precedent set forth below:

(a) the Closing Date shall occur on or before April 16, 2001;

(b) Agent shall have received all financing statements required by Agent, duly executed by the applicable Borrowers, and Agent shall have received searches reflecting the filing of all such financing statements;

(c) Agent shall have received each of the following documents, in form and substance satisfactory to Agent, duly executed, and each such document shall be in full force and effect:

(i) [Intentionally Omitted]

(ii) the Disbursement Letter,

(iii) the Due Diligence Letter,

(iv) the Fee Letter,

(v) the Guaranties,

(vi) the Cash Management Agreements,

(vii) the Contribution Agreement,

(vii) the Officers' Certificate,

(ix) the Patent Security Agreement,

(x) the Trademark Security Agreement,

(xii) [Intentionally Omitted],

(xiii) the Guarantor Security Agreement,

(xiv) [Intentionally Omitted];

(d) Agent shall have received a certificate from the Secretary of each Borrower attesting to the resolutions of such Borrower's Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Borrower is a party and authorizing specific officers of such Borrower to execute the same;

(e) Agent shall have received copies of each Borrower's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary of such Borrower;

(f) Agent shall have received a certificate of status with respect to each Borrower, dated within 10 days of the Closing Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Borrower, which certificate shall indicate that such Borrower is in good standing in such jurisdiction;

(g) Agent shall have received certificates of status with respect to each Borrower, each dated within 30 days of the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Borrower) in which its failure to be duly qualified or licensed would constitute a Material Adverse Change, which certificates shall indicate that such Borrower is in good standing in such jurisdictions;

(h) Agent shall have received a certificate from the Secretary of each Guarantor attesting to the resolutions of such Guarantor's Board of Directors authorizing its execution, delivery, and performance of the Loan Documents to which such Guarantor is a party and authorizing specific officers of such Guarantor to execute the same;

(i) Agent shall have received copies of each Guarantor's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary of such Guarantor;

(j) Agent shall have received a certificate of status with respect to each Guarantor, dated within 10 days of the Closing Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Guarantor, which certificate shall indicate that such Guarantor is in good standing in such jurisdiction;

(k) Agent shall have received certificates of status with respect to each Guarantor, each dated within 30 days of the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Guarantor) in which its failure to be duly qualified or licensed would constitute a Material Adverse Change, which certificates shall indicate that such Guarantor is in good standing in such jurisdictions;

(l) Agent shall have received a certificate of insurance, together with the endorsements thereto, as are required by Section 6.8, the form and substance of which shall be satisfactory to Agent;

(m) Agent shall have received Collateral Access Agreements with respect to the locations set forth on Schedule 3.1(m) hereto;

(n) Agent shall have received opinions of Borrowers' counsel in form and substance satisfactory to Agent;

(o) Agent shall have received satisfactory evidence (including a certificate of the chief financial officer of Parent) that all tax returns required to be filed by Borrowers have been timely filed and all taxes upon Borrowers or their properties, assets, income, and franchises (including Real Property taxes and payroll taxes) have been paid prior to delinquency, except such taxes that are the subject of a Permitted Protest;

(p) Intentionally deleted;

(q) Agent shall have completed its business, legal, and collateral due diligence, including (i) a collateral audit and review of Borrowers' books and records and verification of Borrowers' representations and warranties to the Lender Group, the results of which shall be satisfactory to Agent, (ii) an inspection of each of the locations where Inventory is located, the results of which shall be satisfactory to Agent, and (iii) receipt of an updated environmental review of Borrowers' Real Property indicating no change from the initial environmental review provided to Agent on or about May, 2000;

(r) Agent shall have received completed reference checks with respect to Borrowers' senior management, the results of which are satisfactory to Agent in its sole discretion;

(s) Agent shall have received an appraisal from Continental Plant of the Net Orderly Liquidation Value of Borrowers' Inventory, the results of which shall be satisfactory to Agent;

(t) Agent shall have received (i) Borrowers' Closing Date Business Plan, and (ii) a draft of the Parent's consolidated audited income statement for the fiscal year ended December 31, 2000, the results of which shall be materially consistent with the draft annual financial statements provided to Agent prior to the Closing Date;

(u) Agent shall have received a schedule from Parent listing all of the Parent's significant real property indicating the estimated Fair Market Value of each item.

(v) Borrowers shall pay all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement;

(w) Agent shall have received copies of each of Management Agreement and the Services Agreement together with a certificate of the Secretary of the applicable Borrower certifying each such document as being a true, correct, and complete copy thereof;

(x) Borrowers shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by Borrowers of this Agreement or any other Loan Document or with the consummation of the transactions contemplated hereby and thereby; and

(y) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Agent.

3.2 Conditions Precedent to Restatement Effective Date. The effectiveness of this Agreement is subject to the fulfillment, in a manner satisfactory to the Agent, of each of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being herein called the "Restatement Effective Date"):

(a) Representations and Warranties; No Event of Default. The representations and warranties contained in Section 5 herein and in each other Loan Document and certificate or other writing delivered to the Agent or any Lender pursuant hereto on or prior to the Restatement Effective Date shall be correct in all material respects on and as of the Restatement Effective Date as though made on and as of such date, except to the extent that such representations and warranties (or any schedules related thereto) expressly relate solely to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such date); and no Default or Event of Default shall have occurred and be continuing on the Restatement Effective Date or would result from this Amendment becoming effective in accordance with its terms.

(b) Delivery of Documents. The Agent shall have received on or before the Restatement Effective Date the following, each in form and substance satisfactory to the Agent and, unless indicated otherwise, dated the Restatement Effective Date:

(i) counterparts of this Agreement duly executed by the Borrowers, the Agent and the Lenders;

(ii) fully executed copies of the BofA Loan Agreement and the BofA Inter-Lender Agreement;

(iii) such other agreements, instruments, approvals, opinions and other documents as the Agent may reasonably request from the Borrowers.

(c) Amendment Fee. The Borrowers shall have paid to the Agent, for the benefit of the Lenders, in immediately available funds, a fully earned and nonrefundable amendment fee equal to $50,000 the payment of which shall be effected by Agent charging such fee to Borrowers' Loan Account.

(d) Proceedings. All proceedings in connection with the transactions contemplated by this Agreement, and all documents incidental thereto, shall be satisfactory to the Agent and its special counsel, and the Agent and such special counsel shall have received from the Borrowers all such information and such counterpart originals or certified copies of documents, and such other agreements, instruments, approvals, opinions and other documents, as the Agent or such special counsel may reasonably request.

3.3 Conditions Precedent to all Extensions of Credit. The obligation of the Lender Group (or any member thereof) to make all Advances (or to extend any other credit hereunder) shall be subject to the following conditions precedent:

(a) the representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof; and

(c) no injunction, writ, restraining order, or other order of any nature prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against any Borrower, Agent, any Lender, or any of their Affiliates.

3.4 Term. This Agreement shall become effective upon the execution and delivery hereof by Borrowers, Agent, and the Lenders and shall continue in full force and effect for a term ending on April 13, 2012 (the "Maturity Date"). The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

3.5 Effect of Termination. On the date of termination of this Agreement, all Obligations (including contingent reimbursement obligations of Borrowers with respect to any outstanding Letters of Credit and including all Bank Products Obligations) immediately shall become due and payable without notice or demand (including providing cash collateral to be held by Agent for the benefit of Wells Fargo or its Affiliates with respect to the then extant Bank Products Obligations). No termination of this Agreement, however, shall relieve or discharge Borrowers of their duties, Obligations, or covenants hereunder and the Agent's Liens in the Collateral shall remain in effect until all Obligations have been fully and finally discharged and the Lender Group's obligations to provide additional credit hereunder have been terminated. When this Agreement has been terminated and all of the Obligations have been fully and finally discharged and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrowers' sole expense, execute and deliver any UCC termination

statements, lien releases, mortgage releases, re-assignments of trademarks, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, the Agent's Liens and all notices of security interests and liens previously filed by Agent with respect to the Obligations.

3.6 Early Termination by Borrowers. Borrowers have the option, at any time upon 90 days prior written notice by Administrative Borrower to Agent, to terminate this Agreement by paying to Agent, for the benefit of the Lender Group, in cash, the Obligations (including (a) either (i) providing cash collateral to be held by Agent for the benefit of those Lenders with a Revolver Commitment in an amount equal to 105% of the then extant Letter of Credit Usage, or (ii) causing the original Letters of Credit to be returned to the Issuing Lender, and (b) providing cash collateral to be held by Agent for the benefit of Wells Fargo or its Affiliates with respect to the then extant Bank Products Obligations), in full, together with the Applicable Prepayment Premium (to be allocated based upon letter agreements between Agent and individual Lenders). If Administrative Borrower has sent a notice of termination pursuant to the provisions of this Section, then the Commitments shall terminate and Borrowers shall be obligated to repay the Obligations (including (a) either (i) providing cash collateral to be held by Agent for the benefit of those Lenders with a Revolver Commitment in an amount equal to 105% of the then extant Letter of Credit Usage, or (ii) causing the original Letters of Credit to be returned to the Issuing Lender, and (b) providing cash collateral to be held by Agent for the benefit of Wells Fargo or its Affiliates with respect to the then extant Bank Products Obligations), in full, together with the Applicable Prepayment Premium, on the date set forth as the date of termination of this Agreement in such notice. In the event of the termination of this Agreement and repayment of the Obligations at any time prior to the Maturity Date, for any other reason, including (a) termination upon the election of the Required Lenders to terminate after the occurrence and during

the continuation of an Event of Default, (b) foreclosure and sale of Collateral, (c) sale of the Collateral in any Insolvency Proceeding, or (iv) restructure, reorganization or compromise of the Obligations by the confirmation of a plan of reorganization, or any other plan of compromise, restructure, or arrangement in any Insolvency Proceeding, then, in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lender Group or profits lost by the Lender Group as a result of such early termination, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lender Group, Borrowers shall pay the Applicable Prepayment Premium to Agent (to be allocated based upon letter agreements between Agent and individual Lenders), measured as of the date of such termination.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest.

(a) Each Borrower hereby grants to Agent, for the benefit of the Lender Group, a continuing security interest in all of its right, title, and interest in all currently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all of the Obligations in accordance with the terms and conditions of the Loan Documents and in order to secure prompt performance by Borrowers of each of their covenants and duties under the Loan Documents. The Agent's Liens in and to the Collateral shall attach to all Collateral without further act on the part of Agent or Borrowers. Anything contained in this Agreement or

any other Loan Document to the contrary notwithstanding, except for Permitted Dispositions and as otherwise permitted in Sections 7.3 and 7.4 of this Agreement, Borrowers have no authority, express or implied, to dispose of any item or portion of the Collateral.

(b) Each of the Borrowers hereby confirm, ratify and reaffirm that the Liens granted to the Agent pursuant to the Original Loan Agreement (as amended hereby), in all of its right, title, and interest in all then existing and thereafter acquired or arising Collateral in order to secure prompt repayment of any and all of the Obligations in accordance with the terms and conditions of the Loan Documents and in order to secure prompt performance by the Borrowers of each of their covenants and duties under the Loan Documents are continuing and are and shall remain unimpaired and continue to constitute fully perfected, first priority Liens in favor of Agent (subject only to Permitted Liens which have priority as a matter of law), for the benefit of the Lender Group, with the same force, effect and priority in effect both immediately prior to and after entering into this Agreement and the other Loan Documents entered into on or as of the Closing Date. Each of the Borrowers hereby confirm and agree that such Liens attach to all currently existing and hereafter acquired or arising Collateral in order to secure the prompt repayment of any and all of the Obligations in accordance with the terms and conditions of the Loan Documents (as defined herein) and in order to secure the prompt performance by the Borrowers of each of their covenants and duties under the Loan Documents. The Agent's Liens in and to the Collateral have attached and continue to attach to all such Collateral without further act on the part of Agent or the Borrowers. Anything contained in this Agreement or any other Loan Document to the contrary notwithstanding, except for Permitted Dispositions or as otherwise permitted in Sections 7.5 and 7.4 of this Agreement, the Borrowers have no authority, express or implied, to dispose of any item or portion of the Collateral.

4.2 Negotiable Collateral. In the event that any Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral, and if and to the extent that perfection or priority of Agent's security interest is dependent on or enhanced by possession, the applicable Borrower, immediately upon the request of Agent, shall endorse and deliver physical possession of such Negotiable Collateral to Agent.

4.3 Collection of Accounts, General Intangibles, and Negotiable Collateral. At any time after the occurrence and during the continuation of an Event of Default, Agent or Agent's designee may (a) notify Account Debtors of Borrowers that the Accounts, chattel paper, or General Intangibles have been assigned to Agent or that Agent has a security interest therein, or (b) collect the Accounts, chattel paper, or General Intangibles directly and charge the collection costs and expenses to the Loan Account. Each Borrower agrees that it will hold in trust for the Lender Group, as the Lender Group's trustee, any Collections that it receives and immediately will deliver said Collections to Agent or a Cash Management Bank in their original form as received by the applicable Borrower.

4.4 Filing of Financing Statements; Commercial Tort Claims; Delivery of Additional Documentation Required.

(a) Each Borrower authorizes Agent to file any financing statement required hereunder, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Borrower where permitted by applicable law. Each Borrower hereby ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Borrower prior to the date hereof. Agent shall endeavor to promptly deliver to Administrative Borrower a copy of each such financing statement so filed by Agent.

(b) If any Borrower acquires any commercial tort claims after the date hereof, such Borrower shall immediately deliver to Agent a written description of such commercial tort claim and shall deliver a written agreement, in form and substance satisfactory to Agent, pursuant to which such Borrower shall pledge and collaterally assign all of its right, title and interest in and to such commercial tort claim to Agent, for the benefit of the Lender Group, as security for the Obligations (a "Commercial Tort Claim Assignment").

(c) At any time upon the request of Agent, Borrowers shall execute and deliver to Agent, and cause its Subsidiaries that are Guarantors to execute and deliver to Agent, any and all financing statements, original financing statements in lieu of continuation statements, amendments to financing statements, fixture filings, security agreements, pledges, assignments, Commercial Tort Claim Assignments, endorsements of certificates of title, and all other

documents (collectively, the "Additional Documents") that Agent may request in its Permitted Discretion, in form and substance satisfactory to Agent, to create and perfect and continue perfected or better perfect the Agent's Liens in the Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, each Borrower authorizes Agent to execute any such Additional Documents in the applicable Borrower's name and authorize Agent to file such executed Additional Documents in any appropriate filing office. To the maximum extent permitted by applicable law, each Borrower authorizes the filing of any such Additional Documents without the signature of such Borrower in any appropriate filing office. In addition, on such periodic basis as Agent shall require, Borrowers shall (i) provide Agent with a report of all new patentable, copyrightable, or trademarkable materials acquired or generated by Borrowers during the prior period, (ii) cause all patents, copyrights, and trademarks acquired or generated by Borrowers that are not already the subject of a registration with the appropriate filing office (or an application therefor diligently prosecuted) to be registered with such appropriate filing office in a manner sufficient to impart constructive notice of Borrowers' ownership thereof, and (iii) cause to be prepared, executed, and delivered to Agent supplemental schedules to the applicable Loan Documents to identify such patents, copyrights, and trademarks as being subject to the security interests created thereunder.

4.5 Power of Attorney. Each Borrower hereby irrevocably makes, constitutes, and appoints Agent (and any of Agent's officers, employees, or agents designated by Agent) as such Borrower's true and lawful attorney, with power to (a) if such Borrower refuses to, or fails timely to execute and deliver any of the documents described in Section 4.4, sign the name of such Borrower on any of the documents described in Section 4.4, (b) at any time that an Event of Default has occurred and is continuing, sign such Borrower's name on any invoice or bill of lading relating to the Collateral, drafts against Account Debtors, or notices to Account Debtors, (c) send requests for verification of Accounts, (d) endorse such Borrower's name on any Collection item that may come into the Lender Group's possession, (e) at any time that an Event of Default has occurred and is continuing, make, settle, and adjust all claims under such Borrower's policies of property insurance and make all determinations and decisions with respect to such policies of insurance, and (f) at any time that an Event of Default has occurred and is continuing, settle and adjust disputes and claims respecting the Accounts, chattel paper, or General Intangibles directly with Account Debtors, for amounts and upon terms that Agent determines to be reasonable, and Agent may cause to be executed and delivered any documents and releases that Agent determines to be necessary. The appointment of Agent as each Borrower's attorney, and each and every one of its rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully and finally repaid and performed and the Lender Group's obligations to extend credit hereunder are terminated.

4.6 Right to Inspect. Agent and each Lender (through any of their respective officers, employees, or agents) shall have the right, from time to time hereafter to inspect the Books and to check, test, and appraise the Collateral in order to verify Borrowers' financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral.

4.7 Control Agreements. Each Borrower agrees that it will not transfer any Collateral or any other assets out of any Securities Accounts or deposit accounts and, if to another securities intermediary or depository, unless each of the applicable Borrower, Agent, and the substitute securities intermediary or depository have entered into a Control Agreement. Upon the occurrence and during the continuance of a Event of Default, Agent may notify any securities intermediary or depository to liquidate the applicable Securities Account or depository account or any related Investment Property maintained or held thereby and remit the proceeds thereof to the Agent's Account for application to the Obligations in accordance with the terms of the Loan Documents. Each Borrower hereby agrees to take any or all action that Agent requests in order for Agent to obtain control in accordance with Sections 9-104, 9-105, 9-106 and 9-107 of the Code with respect to any Collateral constituting Securities Accounts, deposit accounts, electronic chattel paper, Investment Property and letter-of-credit rights. No arrangement contemplated hereby or by a Control Agreement in respect of any Securities Accounts or other Investment Property, or deposit accounts, electronic paper or letter-of-credit rights, shall be modified by any Borrower without the prior written consent of Agent.

5. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects, as of the date hereof, and shall be true, correct, and complete, in all material respects, as of the Restatement Effective Date, and at and as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

5.1 No Encumbrances. Each Borrower has good and indefeasible title to its Collateral free and clear of Liens except for Permitted Liens.

5.2 Eligible Accounts. The Eligible Accounts are bona fide existing payment obligations of Account Debtors created by the sale and delivery of Inventory or the rendition of services to such Account Debtors in the ordinary course of Borrowers' business, owed to Borrowers without defenses, disputes, offsets, counterclaims, or rights of return or cancellation. As to each Eligible Account, such Account is not:

(a) owed by an employee, Affiliate, or agent of a Borrower,

(b) on account of a transaction wherein goods were placed on consignment or were sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or on any other terms by reason of which the payment by the Account Debtor may be conditional,

(c) payable in a currency other than Dollars,

(d) owed by an Account Debtor that has or has asserted a right of setoff, has disputed its liability, or has made any claim with respect to its obligation to pay the Account,

(e) owed by an Account Debtor that is subject to any Insolvency Proceeding or is not Solvent or as to which a Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(f) on account of a transaction as to which the goods giving rise to such Account have not been shipped and billed to the Account Debtor or the services giving rise to such Account have not been performed and accepted by the Account Debtor,

(g) a right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services, and

(h) an Account that has not been billed to the customer.

5.3 **Eligible Inventory and Eligible Raw Inventory**. All Eligible Inventory is of good and merchantable quality, free from defects. As to each item of Eligible Inventory and Eligible Raw Inventory, such Inventory is

(a) owned by a Borrower free and clear of all Liens other than Liens in favor of Agent,

(b) either located at one of the locations set forth on Schedule E-1 or in transit from one such location to another such location,

(c) not located on real property leased by a Borrower or in a contract warehouse, in each case, unless subject to a Collateral Access Agreement executed by the lessor, the warehouseman, or other third party, as the case may be, and unless segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

(d) not goods that have been returned or rejected by Borrowers' customers, and

(e) not goods that are obsolete or slow moving, restrictive or custom items, work-in-process, or that constitute spare parts, packaging and shipping materials, supplies used or consumed in Borrowers' business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment, except for Eligible Raw Inventory.

5.4 **Equipment**. All of the material Equipment is used or held for use in Borrowers' business or is useful in Borrowers' business.

5.5 **Location of Inventory**. The Inventory are not stored with a bailee, warehouseman, or similar party and are located only at the locations identified on Schedule 5.5.

5.6 **Inventory Records**. Each Borrower keeps correct and accurate records itemizing and describing the type, quality, and quantity of its Inventory and the book value thereof.

5.7 **Location of Chief Executive Office; FEIN**. The chief executive office of each Borrower is located at the address indicated in Schedule 5.7 and each Borrower's FEIN is identified in Schedule 5.7.

5.8 **Due Organization and Qualification; Subsidiaries**.

(a) Each Borrower is duly organized and existing and in good standing under the laws of the jurisdiction of its organization and qualified to do business in any state where the failure to be so qualified reasonably could be expected to have a Material Adverse Change.

(b) Set forth on Schedule 5.8(b), is a complete and accurate description of the authorized capital Stock of each Borrower, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 5.8(b), there are no subscriptions, options, warrants, or calls relating to any shares

of each Borrower's capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. No Borrower is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or

exchangeable for any of its capital Stock.

(c) Set forth on Schedule 5.8(c), is a complete and accurate list of each Borrower's direct and indirect Subsidiaries, showing: (i) the jurisdiction of their organization; (ii) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries; and (iii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by the applicable Borrower. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 5.8(c), there are no subscriptions, options, warrants, or calls relating to any shares of any Borrower's Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. No Borrower or any of its respective Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of any Borrower's Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock.

5.9 <u>Due Authorization; No Conflict</u>.

(a) As to each Borrower, the execution, delivery, and performance by such Borrower of this Agreement and the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Borrower.

(b) As to each Borrower, the execution, delivery, and performance by such Borrower of this Agreement and the Loan Documents to which it is a party do not and will not (i) violate any provision of federal, state, or local law or regulation applicable to any Borrower, the Governing Documents of any Borrower, or any order, judgment, or decree of any court or other Governmental Authority binding on any Borrower, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation of any Borrower, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of Borrower, other than Permitted Liens, or (iv) require any approval of any Borrower's interestholders or any approval or consent of any Person under any material contractual obligation of any Borrower.

(c) Other than the filing of financing statements, the execution, delivery, and performance by each Borrower of this Agreement and the Loan Documents to which such Borrower is a party do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority or other Person.

(d) As to each Borrower, this Agreement and the other Loan Documents to which such Borrower is a party, and all other documents contemplated hereby and thereby, when executed and delivered by such Borrower will be the legally valid and binding obligations of such Borrower, enforceable against such Borrower in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(e) The Agent's Liens are validly created, perfected, and first priority Liens, subject only to Permitted Liens and the filing of financing statements and other recordations with the United States Patent and Trademark Office.

(f) The execution, delivery, and performance by each Guarantor of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Guarantor.

(g) The execution, delivery, and performance by each Guarantor of the Loan Documents to which it is a party do not and will not (i) violate any provision of federal, state, or local law or regulation applicable to such Guarantor, the Governing Documents of such Guarantor, or any order, judgment, or decree of any court or other Governmental Authority binding on such Guarantor, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation of such Guarantor, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of such Guarantor, other than Permitted Liens, or (iv) require any approval of such Guarantor's interestholders or any approval or consent of any Person under any material contractual obligation of Guarantor.

(h) The execution, delivery, and performance by each Guarantor of the Loan Documents to which such Guarantor is a party do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority or other Person.

(i) The Loan Documents to which each Guarantor is a party, and all other documents contemplated hereby and thereby, when executed and delivered by such Guarantor will be legally valid and binding obligations of such Guarantor, enforceable against such Guarantor in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

5.10 <u>Litigation</u>. Other than those matters disclosed on Schedule 5.10, there are no actions, suits, or proceedings pending or, to the best knowledge of Borrowers, threatened against Borrowers, or any of their Subsidiaries, as applicable, except for (a) matters that are fully covered by insurance (subject to customary deductibles), and (b) matters arising after the Closing Date that, if decided adversely to Borrowers, or any of their Subsidiaries, as applicable, reasonably could not be expected to result in a Material Adverse Change.

5.11 No Material Adverse Change. All financial statements relating to Borrowers that have been delivered by Borrowers to the Lender Group have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, Borrowers' financial condition as of the date thereof and results of operations for the period then ended.

5.12 Fraudulent Transfer.

(a) Each Borrower is Solvent.

(b) No transfer of property is being made by any Borrower and no obligation is being incurred by any Borrower in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of Borrowers.

5.13 Employee Benefits. None of Borrowers, any of their Subsidiaries, or any of their ERISA Affiliates maintains or contributes to any Benefit Plan.

5.14 Environmental Condition. Except as set forth on Schedule 5.14, (a) to Borrowers' knowledge, none of Borrowers' properties or assets has ever been used by Borrowers or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such production, storage, handling, treatment, release or transport was in violation, in any material respect, of applicable Environmental Law, (b) to Borrowers' knowledge, none of Borrowers' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) none of Borrowers have received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by Borrowers, and (d) none of Borrowers have received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal or state governmental agency concerning any action or omission by any Borrower resulting in the releasing or disposing of Hazardous Materials into the environment.

5.15 [Intentionally Omitted].

5.16 Intellectual Property. Each Borrower owns, or holds licenses in, all trademarks, trade names, copyrights, patents, patent rights, and licenses that are necessary to the conduct of its business as currently conducted. Attached hereto as Schedule 5.16 is a true, correct, and complete listing of all material patents, patent applications, trademarks, trademark applications, copyrights, and copyright registrations as to which each Borrower is the owner or is an exclusive licensee.

5.17 Leases. Borrowers enjoy peaceful and undisturbed possession under all leases material to the business of Borrowers and to which Borrowers are a party or under which Borrowers are operating. All of such leases are valid and subsisting and no material default by Borrowers exists under any of them.

5.18 DDAs. Set forth on Schedule 5.18 are all of the DDAs of each Borrower, including, with respect to each depository (i) the name and address of that depository, and (ii) the account numbers of the accounts maintained with such depository.

5.19 Complete Disclosure. All factual information (taken as a whole) furnished by or on behalf of Borrowers in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement, the other Loan Documents or any transaction contemplated herein or therein is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of Borrowers in writing to the Agent or any Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. On the Closing Date, the Closing Date Projections represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent Borrowers' good faith best estimate of its future performance for the periods covered thereby.

5.20 Indebtedness. Set forth on Schedule 5.20 is a true and complete list of all Indebtedness of each Borrower outstanding immediately prior to the Closing Date that is to remain outstanding after the Closing Date, other than Indebtedness owing by a Borrower to another Borrower, and such Schedule accurately reflects the aggregate principal amount of such Indebtedness, the amortization schedule (if any) in respect of such Indebtedness and the maturity date of such Indebtedness.

6. AFFIRMATIVE COVENANTS.

Each Borrower covenants and agrees that, so long as any credit hereunder shall be available and until full and final payment of the Obligations, Borrowers shall and shall cause each of their respective Subsidiaries to do all of the following:

6.1 Accounting System. Maintain a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP and maintain records pertaining to the Collateral that contain information as from time to time reasonably may be requested by Agent. Borrowers also shall keep an inventory reporting system that shows all additions, sales, claims, returns, and allowances with respect to the Inventory.

6.2 Collateral Reporting. Provide Agent (and if so requested by a Lender, with copies for such Lender) with the following documents at the following times in form satisfactory to Agent:

Daily	(a) a sales journal, collection journal, and credit register since the last such schedule and a calculation of the Borrowing Base of Borrowers on an individual and a combined basis, and
	(b) notice of all returns, disputes, or claims.
Weekly	(c) Inventory reports specifying each Borrower's cost and the wholesale market value of its Inventory, with additional detail showing additions to and deletions from the Inventory.

Monthly (not later than the 15th day of each month)	(d) a detailed calculation of the Borrowing Base of Borrowers, on an individual and a combined basis, (including, in each case, detail regarding those Accounts that are not Eligible Accounts),
	(e) a detailed aging, by total, of the Accounts, together with a reconciliation to the detailed calculation of the Borrowing Base previously provided to Agent,
	(f) a summary aging, by vendor, of Borrowers' accounts payable and any book overdraft, and
	(g) a calculation of Dilution for the prior month.
Quarterly	(h) a detailed list of each Borrower's customers with outstanding account balances,
	(i) a report regarding each Borrower's accrued, but unpaid, ad valorem taxes,
Upon request by Agent	(j) copies of invoices in connection with the Accounts, credit memos, remittance advices, deposit slips, shipping and delivery documents in connection with the Accounts and, for Inventory and Equipment acquired by Borrowers, purchase orders and invoices, and
	(k) such other reports as to the Collateral, or the financial condition of Borrowers as Agent may request.

In addition, each Borrower agrees to cooperate fully with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth above.

6.3 Financial Statements, Reports, Certificates. Deliver to Agent, with copies to each Lender:

(a) as soon as available, but in any event within 30 days (45 days (or, if such Person has filed a filing extension with the SEC, 50 days) in the case of a month that is the end of one of the first 3 fiscal quarters in a fiscal year) after the end of each month during each of Parent's and ThermaClime's fiscal years,

(i) a company prepared consolidated and consolidating balance sheet, income statement, and statement of cash flow covering Parent's and its Subsidiaries' and ThermaClime's and its Subsidiaries' operations during such period,

(ii) a certificate signed by the chief financial officer or vice president/controller of Parent and of ThermaClime to the effect that:

A. the financial statements delivered hereunder have been prepared in accordance with GAAP (except for the lack of footnotes and being subject to year-end audit adjustments) and fairly present in all material respects the financial condition of Parent and its Subsidiaries and ThermaClime and its Subsidiaries, as the case may be,

B. the representations and warranties of Borrowers contained in this Agreement and the other Loan Documents are true and correct in all material respects on and as of the date of such certificate, as though made on and as of such date (except to the extent that such

representations and warranties relate solely to an earlier date), and

C. there does not exist any condition or event that constitutes a Default or Event of Default (or, to the extent of any non-compliance, describing such non-compliance as to which he or she may have knowledge and what action Borrowers have taken, are taking, or propose to take with respect thereto), and

(iii) for each month that is the date on which a financial covenant in Section 7.20 is to be tested, a Compliance Certificate demonstrating, in reasonable detail, compliance at the end of such period with the applicable financial covenants contained in Section 7.20, and

(b) as soon as available, but in any event within 90 days (or, if such Person has filed a filing extension with the SEC, 105 days) after the end of each of Parent's and ThermaClime's fiscal years,

(i) financial statements of Parent and its Subsidiaries and of ThermaClime and its Subsidiaries for each such fiscal year, prepared on a consolidated and consolidating basis, audited (in the case of the consolidated financial statements) by independent certified public accountants reasonably acceptable to Agent and certified, without any qualifications, by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, and statement of cash flow and, if prepared, such accountants' letter to management),

(ii) a certificate of such accountants addressed to Agent and the Lenders stating that such accountants do not have knowledge of the existence of any continuing Default or Event of Default under Section 7.20,

(c) as soon as available, but in any event at least 1 day prior to the start of each of Parent's and ThermaClime's fiscal years,

(i) copies of Borrowers' Projections, in form and substance (including as to scope and underlying assumptions) satisfactory to Agent, in its sole discretion, for the forthcoming year, month by month, certified by the chief financial officer or vice president/controller of Parent and of ThermaClime as being such officer's good faith best estimate of the financial performance of Parent and its Subsidiaries and of ThermaClime and its Subsidiaries, as the case may be, during the period covered thereby,

(d) if and when filed by any Borrower or by Parent or ThermaClime,

(i) 10-Q quarterly reports, Form 10-K annual reports, and Form 8-K current reports,

(ii) any other filings made by any Borrower, Parent or ThermaClime with the SEC,

(iii) copies of Borrowers', Parent's and ThermaClime's federal income tax returns (if requested by Agent), and any amendments thereto, filed with the Internal Revenue Service, and

(iv) any other information that is provided by Parent to its shareholders generally,

(e) if and when filed by any Borrower and as requested by Agent, satisfactory evidence of payment of applicable excise taxes in each jurisdictions in which (i) any Borrower conducts business or is required to pay any such excise tax, (ii) where any Borrower's failure to pay any such applicable excise tax would result in a Lien on the properties or assets of any Borrower, or (iii) where any Borrower's failure to pay any such applicable excise tax reasonably could be expected to result in a Material Adverse Change,

(f) as soon as a Borrower has knowledge of any event or condition that constitutes a Default or an Event of Default, notice thereof and a statement of the curative action that Borrowers propose to take with respect thereto,

(g) as soon as available, but no later than Wednesday of each week, a report listing (i) all cash distributions and advances made by EDN to any Borrower and Guarantor (other than Parent and Cherokee) during the preceding week and (ii) all cash distributions and advances made by any Borrower and Guarantor (other than Parent and Cherokee) to EDN during the preceding week, and

(h) upon the request of Agent, any other report reasonably requested relating to the financial condition of Borrowers.

In addition to the financial statements referred to above, Borrowers agree to deliver financial statements prepared on both a consolidated and consolidating basis and that no Borrower, or any Subsidiary of a Borrower, will have a fiscal year different from that of ThermaClime. Parent, ThermaClime and Borrowers agree that their independent certified public accountants are authorized to communicate with Agent and to release to Agent whatever financial information concerning Parent, ThermaClime or Borrowers that Agent reasonably may request. Parent, ThermaClime and each Borrower waives the right to assert a confidential relationship, if any, it may have with any accounting firm or service bureau in connection with any information requested by Agent pursuant to or in accordance with this Agreement, and agree that Agent may contact directly any such accounting firm or service bureau in order to obtain such information. Notwithstanding the foregoing, the Agent will use reasonable good faith efforts to permit a representative of Borrowers to be present or participate in any communication with such accountants.

6.4 [Intentionally Omitted].

6.5 Return. Cause returns and allowances as between Borrowers and their Account Debtors, to be on the same basis and in accordance with the usual customary practices of the applicable Borrower, as they exist at the time of the execution and delivery of this Agreement. If, at a time when no Event of Default has occurred and is continuing, any Account Debtor returns any Inventory to any Borrower, the applicable Borrower promptly shall determine the reason for such return and, if the applicable Borrower accepts such return, issue a credit memorandum (with a copy to be sent to Agent) in the appropriate amount to such Account Debtor. If, at a time when an Event of Default has occurred and is continuing, any Account Debtor returns any Inventory to any Borrower, the applicable Borrower promptly shall determine the reason for such return and, if Agent consents (which consent shall not be unreasonably withheld), issue a credit memorandum (with a copy to be sent to Agent) in the appropriate amount to such Account Debtor.

6.6 Maintenance of Properties. Maintain and preserve all of its properties which are necessary or useful in the proper conduct to its business in good working order and condition, ordinary wear and tear excepted, and comply at all times with the provisions of all leases to which it is a party as lessee, so as to prevent any loss or forfeiture thereof or thereunder.

6.7 Taxes. Cause all assessments and taxes, whether real, personal, or otherwise, due or payable by, or imposed, levied, or assessed against Borrowers or any of their assets to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest. Borrowers will make timely payment or deposit of all tax payments and withholding taxes required of it by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Agent with proof satisfactory to Agent indicating that the applicable Borrower has made such payments or deposits. Borrowers shall deliver satisfactory evidence of payment of applicable excise taxes in each jurisdictions in which any Borrower is required to pay any such excise tax.

6.8 Insurance.

(a) At Borrowers' expense, maintain insurance respecting its property and assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrowers also shall maintain business interruption, public liability, and product liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be in such amounts and with such insurance companies as are reasonably satisfactory to Agent. Borrowers shall deliver copies of all such policies to Agent with a satisfactory lender's loss payable endorsement naming Agent as sole loss payee (with respect to the policies covering any Collateral) or additional insured, as appropriate. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever.

(b) Administrative Borrower shall give Agent prompt notice of any loss covered by such insurance. Agent may elect to adjust, in its sole discretion, any losses (so long as no Default or Event of Default shall occur and be continuing, in excess of $250,000 or in any amount if a Default or Event of Default shall have occurred and be continuing) payable under any such insurance policies covering any Collateral, without any liability to Borrowers whatsoever in respect of such adjustments. Except as provided in the immediately succeeding sentence, any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid over to Agent to be applied at the option of the Required Lenders either to the prepayment of the Obligations or shall be disbursed to Administrative Borrower under staged payment terms reasonably satisfactory to the Required Lenders for application to the cost of repairs, replacements, or restorations. Any monies received as payment for any loss under any insurance policy in respect of assets or properties of a Borrower that do not constitute Collateral shall be applied, within 60 days of the receipt of such monies, at the option of such Borrower either to the prepayment of the Advances or to the cost of repairs, replacements, or restorations. Any such repairs, replacements, or restorations shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed prior to such damage or destruction.

(c) Borrowers shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 6.8, unless Agent is included thereon as named insured with the loss payable to Agent under a lender's loss payable endorsement or its equivalent. Administrative Borrower immediately shall notify Agent whenever such separate insurance is taken out, specifying the insurer thereunder and full particulars as to the policies evidencing the same, and copies of such policies promptly shall be provided to Agent.

6.9 Location of Inventory. Keep the Inventory only at the locations identified on Schedule 5.5; provided, however, that Administrative Borrower may amend Schedule 5.5 so long as such amendment occurs by written notice to Agent not less than 30 days prior to the date on which the Inventory is moved to such new location, so long as such new location is within the continental United States, and so long as, at the time of such written notification, the applicable Borrower provides any financing statements necessary to perfect and continue perfected the Agent's Liens on such assets and also provides to Agent a Collateral Access Agreement.

6.10 Compliance with Laws. Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, including the Fair Labor Standards Act and the Americans With Disabilities Act, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, would not result in and reasonably could not be expected to result in a Material Adverse Change.

6.11 Leases. Pay when due all rents and other amounts payable under any leases to which any Borrower is a party or by which any Borrower's properties and assets are bound, unless such payments are the subject of a Permitted Protest.

6.12 Brokerage Commissions. Pay any and all brokerage commission or finders fees incurred in connection with or as a result of Borrowers' obtaining financing from the Lender Group under this Agreement. Borrowers agree and acknowledge that payment of all such brokerage commissions or finders fees shall be the sole responsibility of Borrowers, and each Borrower agrees to indemnify, defend, and hold Agent and the Lender Group harmless from and against any claim of any broker or finder arising out of Borrowers' obtaining financing from the Lender Group under this Agreement.

6.13 Existence. At all times preserve and keep in full force and effect each Borrower's valid existence and good standing and any rights and franchises material to Borrowers' businesses.

6.14 Environmental.

(a) Keep any property either owned or operated by any Borrower free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens, (b) comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests, (c) promptly notify Agent of any release of a Hazardous Material of any reportable quantity from or onto property owned or operated by any Borrower and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law, and (d) promptly provide Agent with written notice within 10 days of the receipt of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of any Borrower, (ii) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Borrower, and (iii) notice of a violation, citation, or other administrative order which reasonably could be expected to result in a Material Adverse Change.

6.15 Disclosure Updates. Promptly and in no event later than 5 Business Days after obtaining knowledge thereof, (a) notify Agent if any written information, exhibit, or report furnished to the Lender Group contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and (b) correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement, filing, or recordation thereof.

7. NEGATIVE COVENANTS. Each Borrower covenants and agrees that, so long as any credit hereunder shall be available and until full and final payment of the Obligations, Borrowers will not and will not permit any of their respective Subsidiaries to do any of the following:

7.1 Indebtedness. Create, incur, assume, permit, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except:

(a) Indebtedness evidenced by this Agreement and the other Loan Documents, together with Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit;

(b) Indebtedness set forth on Schedule 5.20;

(c) Permitted Purchase Money Indebtedness;

(d) refinancings, renewals, replacements or extensions of Indebtedness permitted under clauses (b) and (c) of this Section 7.1 (and continuance or renewal of any Permitted Liens associated therewith) so long as: (i) the terms and conditions of such refinancings, renewals, or extensions do not, in Agent's judgment, materially impair the prospects of repayment of the Obligations by Borrowers or materially impair Borrowers' creditworthiness, (ii) such refinancings, renewals, or extensions do not result in an increase in the principal amount of, or interest rate with respect to, the Indebtedness so refinanced, renewed, or extended, except for increases in the principal amount of such Indebtedness not exceeding the principal amount of such Indebtedness outstanding on the Closing Date, (iii) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions, that, taken as a whole, are materially more burdensome or restrictive to the applicable Borrower, and (iv) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must be include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness;

(e) Indebtedness outstanding under the ThermaClime Notes in an aggregate principal amount not to exceed $7,000,000 at any one time outstanding;

(f) Indebtedness owing by (i) any Borrower to any Guarantor or any other Borrower and (ii) any Guarantor to any other Guarantor other than the Parent or any Borrower;

(g) subordinated Indebtedness the terms and conditions of which, including provisions subordinating such Indebtedness to the Obligations, are satisfactory to the Lenders;

(h) Indebtedness owing by any Borrower to any Subsidiary of Parent that is not also a Subsidiary of ThermaClime, provided that the aggregate principal amount of such Indebtedness shall not exceed $500,000 at any time;

(i) other unsecured Indebtedness in an aggregate amount not to exceed $500,000 at any time;

(j) Indebtedness composing Permitted Investments;

(k) Indebtedness outstanding under the BofA Loan Agreement, provided that (i) the aggregate principal amount of BofA Loans shall not exceed $50,000,000 (plus any paid-in-kind interest added to the principal balance thereof) at any time, (ii) any

prepayments or repayments of the principal amount of such Indebtedness shall reduce the amount of Indebtedness permitted under this Section 7.1(k) on a dollar-for-dollar basis and such prepaid or repaid amounts shall not be reborrowed by any Borrower without the prior written consent of the Lenders, (iii) Borrowers shall not make any payments in respect of such Indebtedness if an Event of Default has occurred and is continuing or would occur as a result of the making of such payment, except to the extent such payments are made solely from the proceeds of any BofA Collateral, and (iv) BofA and the Agent have entered into the BofA Inter-Lender Agreement; and

(l) Indebtedness owing to EDN or any of its Subsidiaries resulting from loans from EDN or its Subsidiaries to any Borrower or Guarantor permitted under Section 7.11(f).

7.2 Liens. Create, incur, assume, or permit to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens (including Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is refinanced, renewed, replaced or extended under Section 7.1(d) and so long as the replacement Liens only encumber those assets that secured the refinanced, renewed, or extended Indebtedness).

7.3 Restrictions on Fundamental Changes.

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock.

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution).

(c) Convey, sell, lease, license, assign, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its assets.

Clauses (a), (b) and (c) of this Section 7.3 shall not apply to (i) the merger or consolidation of a Borrower with and into another Borrower other than ThermaClime, or (ii) the sale, transfer, lease or other disposal of assets of any Borrower or any of its Subsidiaries to any other Borrower or Guarantor (other than Parent).

7.4 Disposal of Assets. Other than Permitted Dispositions and as provided in Section 7.3, convey, sell, lease, license, assign, transfer, or otherwise dispose of any of the assets of any Borrower, except that, so long as no Default or Event of Default has occurred and is continuing or would result therefrom:

(a) a Borrower may sell or otherwise dispose of any of its other assets, provided that (i) the proceeds from such sale or disposition are either applied to prepay the Obligations in accordance with Section 2.4(b) or distributed to ThermaClime and are used by ThermaClime solely to repurchase the ThermaClime Notes, (ii) after giving effect to the repurchase of the ThermaClime Notes in accordance with clause (i) above, Excess Availability is not less than $15,000,000, (iii) such assets are sold for Fair Market Value and (iv) the aggregate Fair Market Value of all such assets sold during each fiscal year pursuant to this Section 7.4(a) shall not exceed $4,000,000; and

(b) notwithstanding anything to the contrary contained herein, any Borrower and any of its respective Subsidiaries and Cherokee may sell, transfer or otherwise dispose of any BofA Collateral owned by such Person so long as (i) such disposition is permitted under the BofA Loan Agreement or if BofA otherwise consents to such sale or disposition and (ii) the proceeds from such sale are applied in accordance with Section 2.4(b) or, if the BofA Loan Agreement is then in effect, in accordance with the terms of the BofA Loan Agreement.

7.5 Change Name. Change any Borrower's name, FEIN, corporate structure or identity, or add any new fictitious name; provided, however, that a Borrower may change its name or add any new fictitious name upon at least 30 days prior written notice by Administrative Borrower to Agent of such change and so long as, at the time of such written notification, such Borrower provides any financing statements or fixture filings necessary to perfect and continue perfected Agent's Liens.

7.6 Guarantee. Guarantee or otherwise become in any way liable with respect to the obligations of any third Person except (i) by endorsement of instruments or items of payment for deposit to the account of Borrowers or which are transmitted or turned over to Agent, (ii) for guarantees of Indebtedness permitted under Section 7.1 and guarantees set forth on Schedule 5.20 and (iii) for guarantees of performance, surety or appeal bonds of any Borrower or Guarantor (other than the Parent).

7.7 Nature of Business. Make any change in the principal nature of Borrowers' business.

7.8 Prepayments and Amendments.

(a) Except in connection with a refinancing permitted by Section 7.1(d), prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Borrower or any Guarantor, other than the Obligations in accordance with this Agreement and as otherwise permitted in Section 7.8(b) and Section 7.4(b),

(b) ThermaClime shall not repurchase any ThermaClime Notes; provided, that ThermaClime may repurchase its ThermaClime Notes (i) to the extent permitted in Section 7.4, or (ii) with proceeds from a cash contribution made by Parent to ThermaClime so long as (A) no Default or Event of Default has occurred and is continuing or would result therefrom, (B) EBITDA for the fiscal quarter immediately preceding the date of such repurchase is not less than $5,000,000 and (C) after giving effect to such repurchase, Excess Availability is not less than $15,000,000, and

(c) Except in connection with a refinancing permitted by Section 7.1(d) and except in connection with the ThermaClime Fifth Supplemental Indenture, directly or indirectly, (i) amend, modify, alter, increase, or change any of the terms or conditions of any agreement, instrument, document, indenture, or other writing evidencing or concerning Indebtedness permitted under Sections 7.1(b), (c), (e) or (g) or (ii) amend, modify or otherwise change (or permit the amendment, modification or other

change in any manner of) any of the provisions of Indebtedness permitted under Section 7.1(k) or of any instrument or agreement (including, without limitation, the BofA Loan Agreement) relating to any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the principal amount of or the interest rate applicable to such Indebtedness, would change the lien subordination provisions of such Indebtedness, or would otherwise be materially adverse to any Borrower, the Agent or the Lenders in any respect.

7.9 Change of Control. Cause, permit, or suffer, directly or indirectly, any Change of Control.

7.10 Consignments. Consign any Inventory or sell any Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

7.11 Distributions. Other than distributions or the declaration and payment of dividends by a Borrower to another Borrower, make any distribution or declare or pay any dividends (in cash or other property, other than common Stock) on, or purchase, acquire, redeem, or retire any of any Borrower's Stock, of any class, whether now or hereafter outstanding or pay any management or similar fees; provided, that:

(a) ThermaClime may make distributions and pay dividends to Parent in repayment of the costs and expenses incurred by Parent that are directly allocable to the Borrowers for Parent's provision of the Services (as defined in the Services Agreement) on behalf of the Borrowers pursuant to the Services Agreement;

(b) each Borrower may make distributions and pay dividends to any Guarantor (other than Parent and Cherokee), and each Guarantor may make distributions and pay dividends to any Borrower or Guarantor (other than Parent and Cherokee);

(c) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, (i) ThermaClime may make distributions and pay dividends to Parent in respect of the management fees payable by ThermaClime to Parent in accordance with the Management Agreement, provided that the aggregate amount of all such payments made by Borrowers pursuant to this clause (c)(i) shall not exceed $2,500,000 during any fiscal year of ThermaClime or the maximum management fees payable to Parent each calendar quarter under the Management Agreement, and (ii) ThermaClime may make distributions and pay dividends to Parent in an aggregate amount not to exceed, during each fiscal year, the sum of (A) 50% of the actual consolidated net income of the Borrowers for such fiscal year determined in accordance with GAAP, plus (B) the amounts paid to Parent during such fiscal year in accordance with Section 7.11(d);

(d) so long as Agent has not exercised any of its rights or remedies following an Event of Default, ThermaClime may make distributions and pay dividends to Parent in an aggregate amount not to exceed, during each fiscal year, the consolidated income tax liability of the Borrowers for such fiscal year

calculated as if each the Borrower was a separate consolidated taxpayer;

(e) each Borrower may make distributions and pay dividends to any Subsidiary of Parent that is not also a Subsidiary of ThermaClime, provided that the aggregate amount of such distributions and dividends shall not exceed $100,000 during each fiscal year; and

(f) each Borrower and Guarantor may make advances, distributions and pay dividends to EDN and its Subsidiaries, provided that (i) no Default or Event of Default has occurred and is continuing or would result from the making of such distributions or dividends, (ii) the aggregate amount of such advances, distributions and dividends does not exceed $5,000,000 during any week, (iii) the aggregate amount of such advances, distributions and dividends paid to EDN and its Subsidiaries by the Borrowers and Guarantors (other than the Parent and Cherokee) shall not exceed the aggregate amount of advances, distributions and dividends paid by EDN and its Subsidiaries to the Borrowers and Guarantors (other than the Parent and Cherokee), and (iv) as of the end of any fiscal year, the aggregate amount of such advances, distributions and dividends paid to EDN and its Subsidiaries by the Borrowers and Guarantors (other than the Parent and Cherokee) during such year minus the aggregate amount of advances, distributions and dividends paid by EDN and its Subsidiaries to the Borrowers and Guarantors (other than the Parent and Cherokee) during such year shall not exceed $10,000,000.

7.12 Accounting Methods. Modify or change its method of accounting (other than as may be required to conform to GAAP) or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of Borrowers' accounting records without said accounting firm or service bureau agreeing to provide Agent information regarding the Collateral or Borrowers' financial condition.

7.13 Investments. Except for Permitted Investments, directly or indirectly, make or acquire any Investment, or incur any liabilities (including contingent obligations) for or in connection with any Investment; provided, however, that Borrowers are also permitted to make or acquire other Investments (other than in the Cash Management Accounts) not exceeding $1,000,000 in the aggregate outstanding at any one time.

7.14 Transactions with Affiliates. Except for agreements set forth on Schedule 7.14 or transactions among the Borrowers and Guarantors, directly or indirectly enter into or permit to exist any transaction with any Affiliate of any Borrower except for transactions that are in the ordinary course of Borrowers' business, upon fair and reasonable terms, that are fully disclosed to Agent, and that are no less favorable to Borrowers than would be obtained in an arm's length transaction with a non-Affiliate.

7.15 Suspension. Suspend or go out of a substantial portion of its business.

7.16 Compensation. Pay or accrue total cash compensation, during any year, to its officers and senior management employees in an aggregate amount in excess of the amount established by the compensation committee of Parent.

7.17 Use of Proceeds. Use the proceeds of the Advances and the Term Loan for any purpose other than (a) on the Closing Date, to pay transactional fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, and (b) thereafter, consistent with the terms and conditions hereof, for its lawful and permitted purposes.

7.18 Change in Location of Chief Executive Office; Inventory and Equipment with Bailees. Relocate its chief executive office to a new location without Administrative Borrower providing 30 days prior written notification thereof to Agent and so long as, at the time of such written notification, the applicable Borrower provides any financing statements or fixture filings necessary to perfect and continue perfected the Agent's Liens and also provides to Agent a Collateral Access Agreement with respect to such new location. The Inventory and Equipment shall not at any time now or hereafter be stored with a bailee, warehouseman, or similar party without Agent's prior written consent.

7.19 Securities Accounts. Maintain assets in any Securities Account at any time that Advances are outstanding.

7.20 Financial Covenants.

(a) Fail to maintain:

(i) **Minimum EBITDA.** EBITDA for the 12 month period ending each fiscal quarter after September 30, 2007 of greater than $25,000,000;

(ii) Intentionally deleted.

(iii) **Fixed Charge Coverage Ratio**. A Fixed Charge Coverage Ratio, measured on a fiscal year-end basis commencing with the fiscal year ending December 31, 2001, of not less than 1.10:1.00.

(iv) **Senior Leverage Coverage Ratio**. A Senior Leverage Coverage Ratio, measured on a quarterly basis commencing with the fiscal quarter ending December 31, 2007, of not greater than 4.50:1.00.

(b) Intentionally deleted.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 If Borrowers fail to pay when due and payable or when declared due and payable, all or any portion of the Obligations (whether of principal, interest (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts), fees and charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts constituting Obligations);

8.2 If Borrowers fail to perform, keep, or observe any term, provision, condition, covenant, or agreement contained in Sections 6.1, 6.2 (but only up to three times during any 12-month period, and only in relation to Defaults caused by the failure of third Persons to provide required information or reporting, and not in relation to Defaults caused by a Borrower), 6.3, 6.6, 6.9, 6.10, 6.11 and 6.15 of this Agreement, or comparable provisions of the other Loan Documents, within 10 days of the date when required (or within 5 days of the date when required in the case of Section 6.2 or Section 6.3), or if a Borrower or Guarantor otherwise fails to perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement or in any of the other Loan Documents;

8.3 If any material portion of any Borrower's or any of its Subsidiaries' assets is attached, seized, subjected to a writ or distress warrant, levied upon, or comes into the possession of any third Person;

8.4 If an Insolvency Proceeding is commenced by any Borrower, any Guarantor or any of their Subsidiaries;

8.5 If an Insolvency Proceeding is commenced against any Borrower, any Guarantor or any of their Subsidiaries, and any of the following events occur: (a) the applicable Borrower, Guarantor or the Subsidiary consents to the institution of the Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof; provided, however, that, during the pendency of such period, Agent (including any successor agent) and each other member of the Lender Group shall be relieved of their obligation to extend credit hereunder, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, any Borrower, any Guarantor or any of their Subsidiaries, or (e) an order for relief shall have been entered therein;

8.6 If any Borrower, any Guarantor or any of their Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs;

8.7 If a notice of Lien (other than (a) a Permitted Lien, (b) Liens on any property or assets of the Parent and (c) Liens on any property or assets of Cherokee that are subordinate to the Agent's Liens), levy, or assessment securing or otherwise with respect to Indebtedness or an obligation for the payment of money in an aggregate amount in excess of $100,000 is filed of record with respect to any Borrower's, any Guarantor's or any of its Subsidiaries' assets by the United States, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, or if any taxes or debts owing at any time hereafter to any one or more of such entities becomes a Lien (other than (a) a Permitted Lien, (b) Liens on any property or assets of the Parent and (c) Liens on any property or assets of Cherokee that are subordinate to the Agent's Liens), whether choate or otherwise, upon any Borrower's, any Guarantor's or any of its Subsidiaries' assets and the same is not paid on the payment date thereof;

8.8 If a judgment or other claim for an amount in excess of $100,000 becomes a Lien (other than (a) Liens on any property or assets of the Parent and (b) Liens on any property or assets of Cherokee that are subordinate to the Agent's Liens) or encumbrance upon any material portion of any Borrower's, any Guarantor's or any of its Subsidiaries' properties or assets;

8.9 If there is a default in any material agreement to which any Borrower, any Guarantor (other than the Parent and Cherokee) or any of its Subsidiaries is a party and such default (a)(i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of the applicable Borrower's, Guarantor's or its Subsidiaries' obligations thereunder, to terminate such agreement, or to refuse to renew such agreement pursuant to an automatic renewal right therein, and (b) involves Indebtedness or an obligation for the payment of money in an aggregate amount in excess of $100,000;

8.10 If any Borrower, any Guarantor (other than the Parent and Cherokee) or any of its Subsidiaries makes any payment on account of Indebtedness that has been contractually subordinated in right of payment to the payment of the Obligations, except to the extent such payment is permitted by the terms of the subordination provisions applicable to such Indebtedness;

8.11 If any material misstatement or misrepresentation exists now or hereafter in any warranty, representation, statement, or Record made to the Lender Group by any Borrower, any Guarantor, their Subsidiaries, or any officer, employee, agent, or director of any Borrower, any Guarantor or any of their Subsidiaries;

8.12 If the obligation of any Guarantor under its Guaranty is limited or terminated by operation of law or by such Guarantor thereunder;

8.13 If this Agreement or any other Loan Document that purports to create a Lien, shall, for any reason not as a result of any act or omission of the Agent, fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on or security interest in the Collateral covered hereby or thereby; or

8.14 Any provision of any Loan Document shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be contested by any Borrower or Guarantor, or a proceeding shall be commenced by any Borrower or Guarantor, or by any Governmental Authority having jurisdiction over any Borrower or Guarantor, seeking to establish the invalidity or unenforceability thereof, or any Borrower or Guarantor shall deny that any Borrower or Guarantor has any liability or obligation purported to be created under any Loan Document.

9. THE LENDER GROUP'S RIGHTS AND REMEDIES.

9.1 <u>Rights and Remedies</u>. Upon the occurrence, and during the continuation, of an Event of Default, the Required Lenders (at their election but without notice of their election and without demand) may authorize and instruct Agent to do any one or more of the following on behalf of the Lender Group (and Agent, acting upon the instructions of the Required Lenders, shall do the same on behalf of the Lender Group), all of which are authorized by Borrowers:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable;

(b) Cease advancing money or extending credit to or for the benefit of Borrowers under this Agreement, under any of the Loan Documents, or under any other agreement between Borrowers and the Lender Group;

(c) Terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender Group, but without affecting any of the Agent's Liens in the Collateral and without affecting the Obligations;

(d) Settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms which Agent considers advisable, and in such cases, Agent will credit the Loan Account with only the net amounts received by Agent in payment of such disputed Accounts after deducting all Lender Group Expenses incurred or expended in connection therewith;

(e) Cause Borrowers to hold all returned Inventory in trust for the Lender Group, segregate all returned Inventory from all other assets of Borrowers or in Borrowers' possession and conspicuously label said returned Inventory as the property of the Lender Group;

(f) Without notice to or demand upon any Borrower or Guarantor, make such payments and do such acts as Agent considers necessary or reasonable to protect its security interests in the Collateral. Each Borrower agrees to assemble the Collateral if Agent so requires, and to make the Collateral available to Agent at a place that Agent may designate which is reasonably convenient to both parties. Each Borrower authorizes Agent to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien that in Agent's determination appears to conflict with the Agent's Liens and to pay all expenses incurred in connection therewith and to charge Borrowers' Loan Account therefor. With respect to any of Borrowers' owned or leased premises, each Borrower hereby grants Agent a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of the Lender Group's rights or remedies provided herein, at law, in equity, or otherwise;

(g) Without notice to any Borrower (such notice being expressly waived), and without constituting a retention of any collateral in satisfaction of an obligation (within the meaning of the Code), set off and apply to the Obligations any and all (i) balances and deposits of any Borrower held by the Lender Group (including any amounts received in the Cash Management Accounts), or (ii) Indebtedness at any time owing to or for the credit or the account of any Borrower held by the Lender Group;

(h) Hold, as cash collateral, any and all balances and deposits of any Borrower held by the Lender Group, and any amounts received in the Cash Management Accounts, to secure the full and final repayment of all of the Obligations;

(i) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Agent is hereby granted a license or other right to use, without charge, for the benefit of the Lender Group, such Borrower's labels, patents, copyrights, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and such Borrower's rights under all licenses and all franchise agreements shall inure to the Lender Group's benefit;

(j) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrowers' premises) as Agent determines is commercially reasonable. It is not necessary that the Collateral be present at any such sale;

(k) Agent shall give notice of the disposition of the Collateral as follows:

(i) Agent shall give Administrative Borrower (for the benefit of the applicable Borrower) a notice in writing of the time and place of public sale, or, if the sale is a private sale or some other disposition other than a public sale is to be made of the Collateral, the time on or after which the private sale or other disposition is to be made; and

(ii) The notice shall be personally delivered or mailed, postage prepaid, to Administrative Borrower as provided in Section 12, at least 10 days before the earliest time of disposition set forth in the notice; no notice needs to be given prior to the disposition of any portion of the Collateral that is perishable or threatens to decline speedily in value or that is of a type customarily sold on a recognized market;

(l) Agent, on behalf of the Lender Group may credit bid and purchase at any public sale;

(m) Agent may seek the appointment of a receiver or keeper to take possession of all or any portion of the Collateral or to operate same and, to the maximum extent permitted by law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing;

(n) The Lender Group shall have all other rights and remedies available to it at law or in equity pursuant to any other Loan Documents; and

(o) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrowers. Any excess will be returned, without interest and subject to the rights of third Persons, by Agent to Administrative Borrower (for the benefit of the applicable Borrower).

9.2 <u>Remedies Cumulative</u>. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. TAXES AND EXPENSES.

If any Borrower fails to pay any monies (whether taxes, assessments, insurance premiums, or, in the case of leased properties or assets, rents or other amounts payable under such leases) due to third Persons, or fails to make any deposits or furnish any required proof of payment or deposit, all as required under the terms of this Agreement, then, Agent, in its sole discretion and without prior notice to any Borrower, may do any or all of the following: (a) make payment of the same or any part thereof, (b) set up such reserves in Borrowers' Loan Account as Agent deems necessary to protect the Lender Group from the exposure created by such failure, or (c) in the case of the failure to comply with <u>Section 6.8</u> hereof, obtain and maintain insurance policies of the type described in <u>Section 6.8</u> and take any action consistent with the terms of this Agreement. Any such amounts paid by Agent shall constitute Lender Group Expenses and any such payments shall not constitute an agreement by the Lender Group to make similar payments in the future or a waiver by the Lender Group of any Event of Default under this Agreement. Agent need not inquire as to, or contest the validity of, any such expense, tax, or Lien and the receipt of the usual official notice for the payment thereof shall be conclusive evidence that the same was validly due and owing.

11. WAIVERS; INDEMNIFICATION.

11.1 <u>Demand; Protest; etc.</u> Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which each such Borrower may in any way be liable.

11.2 <u>The Lender Group's Liability for Collateral</u>. Each Borrower hereby agrees that: (a) so long as the Lender Group complies with its obligations, if any, under the Code, Agent shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrowers.

11.3 <u>Indemnification</u>. Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons with respect to each Lender, each Participant, and each of their respective officers, directors, employees, agents, and attorneys-in-fact (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, and damages, and all reasonable attorneys fees and disbursements and other out-of-pocket costs and expenses actually incurred in connection therewith (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution, delivery, enforcement, performance, or administration of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby, and (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto (all the foregoing, collectively, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrowers shall have no obligation to any Indemnified Person under this <u>Section 11.3</u> with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

12. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by Borrowers or Agent to the other relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as the Administrative Borrower or Agent, as applicable, may designate to each other in accordance herewith), or telefacsimile to Borrowers in care of Administrative Borrower or to Agent, as the case may be, at its address set forth below:

If to Administrative Borrower:	**THERMACLIME, INC.** 16 South Pennsylvania Avenue Oklahoma City, Oklahoma 73107 Attn: Tony M. Shelby Fax No. (405) 236-1209

with copies to:	**THERMACLIME, INC.** 16 South Pennsylvania Avenue Oklahoma City, Oklahoma 73107 Attn: David M. Shear, Esq. Fax No. (405) 236-1209
If to Agent:	**WELLS FARGO FOOTHILL, INC.** 2450 Colorado Avenue Suite 3000 West Santa Monica, California 90404 Attn: Business Finance Division Manager Fax No. (310) 478-9788
with copies to:	**SCHULTE ROTH & ZABEL LLP** 919 Third Avenue New York, New York 10022 Attn: Eliot L. Relles, Esq. Fax No. (212) 593-5955

Agent and Borrowers may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12, other than notices by Agent in connection with enforcement rights against the Collateral under the provisions of the Code, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail. Each Borrower acknowledges and agrees that notices sent by the Lender Group in connection with the exercise of enforcement rights against Collateral under the provisions of the Code shall be deemed sent when deposited in the mail or personally delivered, or, where permitted by law, transmitted by telefacsimile or any other method set forth above.

13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH

RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK,

PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWERS AND THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13(b).

BORROWERS AND THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWERS AND THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

14.1 Assignments and Participations.

(a) Any Lender may, with the written consent of Agent (provided that no written consent of Agent shall be required in connection with any assignment and delegation by a Lender to an Eligible Transferee and no notice to Agent shall be required in connection with any assignment and delegation by a Lender to an Affiliate of a Lender or a fund or account managed by a Lender), assign and delegate to one or more assignees (each an "Assignee") all, or any ratable part of all, of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount of $5,000,000 (except such minimum amount shall not apply to any Affiliate of a Lender or to a fund or account managed by a Lender); provided, however, that Borrowers and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Administrative Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Administrative Borrower and Agent an Assignment and Acceptance substantially in the form of Exhibit A-1, and (iii) the assignor Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $5,000. Anything contained herein to the contrary notwithstanding, the consent of Agent shall not be required (and payment of any fees shall not be required) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender or the assignee is an Affiliate (other than individuals) of, or a fund, money market account, investment account or other account managed by a Lender or an Affiliate of a Lender.

(b) From and after the date that Agent notifies the assignor Lender (with a copy to Administrative Borrower, if applicable) that it has received an executed Assignment and Acceptance and payment (if applicable) of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 11.3 hereof) and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto), and such assignment shall affect a novation between Borrowers and the Assignee.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (1) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (2) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrowers or the performance or observance by Borrowers of any of their obligations under this Agreement or any other Loan Document furnished pursuant hereto, (3) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (4) such Assignee will, independently and without reliance upon Agent, such assigning Lender 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 decisions in taking or not taking action under this Agreement, (5) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement as are delegated to Agent, by the terms hereof, together with such powers as are reasonably incidental thereto, and (6) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon each Assignee's making its processing fee payment (if applicable) under the Assignment and Acceptance and receipt and acknowledgment by Agent of such fully executed Assignment and Acceptance, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons not Affiliates of such Lender (a "Participant") participating interests in its Obligations, the Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or a material portion of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender, or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums; and (v) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation; except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off 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. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collections, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation, a Lender may disclose all documents and information which it now or hereafter may have relating to Borrowers or Borrowers' business.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

14.2 Successors. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrowers may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void ab initio. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 14.1 hereof and, except as expressly required pursuant to Section 14.1 hereof, no consent or approval by any Borrower is required in connection with any such assignment.

15. AMENDMENTS; WAIVERS.

15.1 Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by Borrowers therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and Administrative Borrower (on behalf of all Borrowers) and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders affected thereby and Administrative Borrower (on behalf of all Borrowers) and acknowledged by Agent, do any of the following:

(a) increase or extend any Commitment of any Lender,

(b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(c) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document,

(d) change the percentage of the Commitments that is required to take any action hereunder,

(e) amend this Section or any provision of the Agreement providing for consent or other action by all Lenders,

(f) release Collateral other than as permitted by Section 16.12,

(g) change the definition of "Required Lenders",

(h) contractually subordinate any of the Agent's Liens,

(i) release any Borrower or Guarantor from any obligation for the payment of money, or

(j) change the definition of Borrowing Base or the definitions of Eligible Accounts, Eligible Inventory, Eligible Raw Inventory, Eligible Inventory, Maximum Revolver Amount, Term Loan Amount, or change Section 2.1(b); or

(k) amend any of the provisions of Section 16.

and, provided further, however, that no amendment, waiver or consent shall, unless in writing and signed by Agent, Issuing Lender, or Swing Lender, affect the rights or duties of Agent, Issuing Lender, or Swing Lender, as applicable, under this Agreement or any other Loan Document. The foregoing notwithstanding, any amendment, modification, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrowers, shall not require consent by or the agreement of Borrowers.

15.2 Replacement of Holdout Lender. If any action to be taken by the Lender Group or Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders, and a Lender ("Holdout Lender") fails to give its consent, authorization, or agreement, then Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute Lenders (each, a "Replacement Lender"), and the Holdout Lender shall have not right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance Agreement, subject only to the Holdout Lender being repaid its share of the outstanding Obligations (including an assumption of its Pro Rata Share of the Risk Participation Liability) without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance Agreement prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance Agreement. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 14.1. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make the Holdout Lender's Pro Rata Share of Advances and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of the Risk Participation Liability of such Letter of Credit.

15.3 No Waivers; Cumulative Remedies. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or, any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

16. AGENT; THE LENDER GROUP.

16.1 Appointment and Authorization of Agent. Each Lender hereby designates and appoints Foothill as its representative under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as such on the express conditions contained in this Section 16. The provisions of this Section 16 are solely for the benefit of Agent, and the Lenders, and Borrowers shall have no rights as a third party beneficiary of any of the provisions contained herein. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have 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 Agent; it being expressly understood and agreed that the use of the word "Agent" is for convenience only, that Foothill is merely the representative of the Lenders, and only has the contractual duties set forth herein. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices,

ledgers and records reflecting the status of the Obligations, the Collateral, the Collections, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Advances, for itself or on behalf of Lenders as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management accounts as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrowers, the Obligations, the Collateral, the Collections, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

16.2 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects as long as such selection was made without gross negligence or willful misconduct.

16.3 Liability of Agent. None of the Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Borrower or any Subsidiary or Affiliate of any Borrower, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall 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 Books or properties of Borrowers or the books or records or properties of any of Borrowers' Subsidiaries or Affiliates.

16.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement 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 counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by 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. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

16.5 Notice of Default or Event of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Administrative Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 16.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9;

provided, however, that unless and until Agent has received any such request, 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.

16.6 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Borrowers and their Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrowers and any other Person (other than the Lender Group) party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person 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 investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrowers and any other Person (other than the Lender Group) party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrowers and any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons.

16.7 Costs and Expenses; Indemnification. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, reasonable attorneys fees and expenses, costs of collection by outside collection agencies and auctioneer fees and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to the Loan Agreement or

otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from Collections received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses from Collections received by Agent, each Lender hereby agrees that it is and shall be obligated to pay to or reimburse Agent for the amount of such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so), according to their Pro Rata Shares, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for

the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out-of-pocket expenses (including attorneys fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

16.8 Agent in Individual Capacity. Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrowers and their Subsidiaries and Affiliates and any other Person (other than the Lender Group) party to any Loan Documents as though Agent were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, Agent or its Affiliates may receive information regarding Borrowers or their Affiliates and any other Person (other than the Lender Group) party to any Loan Documents that is subject to confidentiality obligations in favor of Borrowers or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Agent in its individual capacity.

16.9 Successor Agent. Agent may resign as Agent upon 45 days notice to the Lenders. If Agent resigns under this Agreement, the Required Lenders shall appoint a successor Agent for the Lenders. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders. In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 45 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

16.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial

advisory, underwriting or other business with Borrowers and their Subsidiaries and Affiliates and any other Person (other than the Lender Group) party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrowers or their Affiliates and any other Person (other than the Lender Group) party to any Loan Documents that is subject to confidentiality obligations in favor of Borrowers or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender not shall be under any obligation to provide such information to them. With respect to the Swing Loans and Agent Advances, Swing Lender shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the sub-agent of the Agent.

16.11 Withholding Taxes.

(a) If any Lender is a "foreign corporation, partnership or trust" within the meaning of the IRC and such Lender claims exemption from, or a reduction of, U.S. withholding tax under Sections 1441 or 1442 of the IRC, such Lender agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower:

(i) if such Lender claims an exemption from withholding tax pursuant to its portfolio interest exception, (a) a statement of the Lender, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder (within the meaning of Section 881(c)(3)(B) of the IRC), or (III) a controlled foreign corporation described in Section 881(c)(3)(C) of the IRC, and (B) a properly completed IRS Form W-8BEN, before the first payment of any interest under this Agreement and at any other time reasonably requested by Agent or Administrative Borrower;

(ii) if such Lender claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, properly completed IRS Form W-8BEN before the first payment of any interest under this Agreement and at any other time reasonably requested by Agent or Administrative

Borrower;

(iii) if such Lender claims that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI before the first payment of any interest is due under this Agreement and at any other time reasonably requested by Agent or Administrative Borrower;

(iv) such other form or forms as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding tax.

Such Lender agrees promptly to notify Agent and Administrative Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(b) If any Lender claims exemption from, or reduction of, withholding tax under a United States tax treaty by providing IRS Form W-8BEN and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender, such Lender agrees to notify Agent of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender. To the extent of such percentage amount, Agent will treat such Lender's IRS Form W-8BEN as no longer valid.

(c) If any Lender is entitled to a reduction in the applicable withholding tax, Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (a) of this Section are not delivered to Agent, then Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(d) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless for all amounts paid, directly or indirectly, by Agent as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent under this Section, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(e) All payments made by Borrowers hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense, except as required by applicable law other than for Taxes (as defined below). All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction (other than the United States) or by any political subdivision or taxing authority thereof or therein (other than of the United States) with respect to such payments (but excluding, any tax imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (i) measured by or based on the net income or net profits of a Lender, or (ii) to the extent that such tax results from a change in the circumstances of the Lender, including a change in the residence, place of organization, or principal place of business of the Lender, or a change in the branch or lending office of the Lender participating in the transactions set forth herein) and all interest, penalties or similar liabilities

with respect thereto (all such non-excluded taxes, levies, imposts, duties, fees, assessments or other charges being referred to collectively as "Taxes"). If any Taxes are so levied or imposed, each Borrower agrees to pay the full amount of such Taxes, and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement or under any note, including any amount paid pursuant to this Section 16.11(e) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrowers shall not be required to increase any such amounts payable to Agent or any Lender (i) that is not organized under the laws of the United States, if such Person fails to comply with the other requirements of this Section 16.11, or (ii) if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence. Borrowers will furnish to Agent as promptly as possible after the date the payment of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by Borrowers.

16.12 Collateral Matters.

(a) The Lenders hereby irrevocably authorize Agent, at its option and in its sole discretion, to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrowers of all Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Administrative Borrower certifies to Agent that the sale or disposition is permitted under Section 7.4 of this Agreement or the other Loan Documents (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Borrower owned any interest at the time the security interest was granted or at any time thereafter, or (iv) constituting property leased to a Borrower under a lease that has expired or is terminated in a transaction permitted under this Agreement. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or any substantial portion of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by Agent or Administrative Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 16.12; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge,

affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Borrowers in respect of) all interests retained by Borrowers, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by Borrowers or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers

granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise provided herein.

16.13 **<u>Restrictions on Actions by Lenders; Sharing of Payments</u>**.

(a) Each of the Lenders agrees that it shall not, without the express consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrowers or any deposit accounts of Borrowers now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral the purpose of which is, or could be, to give such Lender any preference or priority against the other Lenders with respect to the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's ratable portion of all such distributions by Agent, such Lender promptly shall (1) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; <u>provided</u>, <u>however</u>, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

16.14 **<u>Agency for Perfection</u>**.Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in assets which, in accordance with Article 9 of the UCC can be perfected only by possession. Should any Lender obtain possession of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver such Collateral to Agent or in accordance with Agent's instructions.

16.15 **<u>Payments by Agent to the Lenders</u>**. All payments to be made by Agent to the Lenders shall be made by bank wire transfer or internal transfer of immediately available funds pursuant to such wire transfer instructions as each party may

designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, or interest of the Obligations.

16.16 **<u>Concerning the Collateral and Related Loan Documents</u>**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents relating to the Collateral, for the benefit of the Lender Group. Each member of the Lender Group agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

16.17 **<u>Field Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information</u>**. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a "Report" and collectively, "Reports") prepared by Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Borrowers and will rely significantly upon the Books, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrowers and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner; it being understood and agreed by Borrowers that in any event such Lender may make disclosures (a) to counsel for and other advisors, accountants, and auditors to such Lender, (b) reasonably required by any bona fide potential or actual Assignee or Participant in connection with any contemplated or actual assignment or transfer by such Lender of an interest herein or any participation interest in such Lender's rights hereunder, (c) of information that has become public by disclosures made by Persons other than such Lender, its Affiliates, assignees, transferees, or Participants, or (d) as required or requested by any court, governmental or administrative agency, pursuant to any subpoena or other legal process, or by any law, statute, regulation, or court order; provided, however, that, unless prohibited by applicable law, statute, regulation, or court order, such Lender shall notify Administrative Borrower of any request by any court, governmental or administrative agency, or pursuant to any subpoena or other legal process for disclosure of any such non-public material information concurrent with, or where practicable, prior to the disclosure thereof, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers; and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrowers to Agent that has not been contemporaneously provided by Borrowers to such Lender, and, upon receipt of such request, Agent shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrowers, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Administrative Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Administrative Borrower, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Administrative Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

16.18 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 16.7, no member of the Lender Group shall have any liability for the acts or any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for it or on its behalf in connection with its Commitment, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

17. GENERAL PROVISIONS.

17.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by Borrowers, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the Lender Group or Borrowers, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 Amendments in Writing.This Agreement only can be amended by a writing in accordance with Section 15.1.

17.6 Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but

one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

17.7 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by any Borrower or Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of the Lender Group related thereto, the liability of Borrowers or Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.8 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

17.9 ThermaClime as Agent for Borrowers. Each Borrower hereby irrevocably appoints ThermaClime as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower"), which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide Agent with all notices with respect to Advances and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) except as provided in the clause (i) above, to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Advances and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral of Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Loan Account and Collateral of Borrowers as herein provided, (b) the Lender Group's relying on any instructions of the Administrative Borrower, or (c) any other action taken by the Lender Group hereunder or under the other Loan Documents, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.9 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.10 No Novation. This Agreement constitutes an amendment and restatement of and supersedes the Original Loan Agreement and does not extinguish the obligations for the payment of money outstanding under the Original Loan Agreement or discharge or release the Obligations (including the Obligations of any predecessor corporations) under, and as defined in, the Original Loan Agreement except as provided herein or the Lien or priority of any mortgage, pledge, security agreement or any other security therefor except as provided herein. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under, and as defined in, the Original Loan Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments or documents executed concurrently herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of any Borrower or Guarantor under the Original Loan Agreement

from any of its obligations and liabilities as a "Borrower" or "Guarantor" thereunder except as provided herein. Each Borrower and Guarantor hereby (i) confirms and agrees that each Loan Document to which it is a party is, and shall continue to be, in full force and effect, as modified by this Agreement and instruments or documents executed concurrently herewith, and is hereby ratified and confirmed in all respects except that on and after the Restatement Effective Date all references in any such Loan Document to "the Loan Agreement," "thereto," "thereof," "thereunder" or words of like import referring to the Original Loan Agreement shall mean the Original Loan Agreement as amended and restated and superseded by this Agreement and (ii) confirms and agrees that to the extent that any such Loan Document purports to assign or pledge to the Agent a security interest in or Lien on, any collateral as security for the obligations of the Borrowers or the Guarantors from time to time existing in respect of the Original Loan Agreement and the Loan Documents, such pledge, assignment and/or grant of the security interest or lien is hereby ratified and confirmed in all respects, as amended hereby or thereby.

18. GUARANTY

18.1 Guaranty; Limitation of Liability. The Parent hereby, unconditionally and irrevocably, guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to bankruptcy, insolvency or reorganization of any Borrower), fees, expenses or otherwise (such obligations, to the extent not paid by the Borrowers, being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the Agents and the Lenders in enforcing any rights under the guaranty set forth in this Section 18. Without limiting the generality of the foregoing, the Parent's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Agents and the Lenders under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any Borrower.

18.2 Guaranty Absolute. The Parent guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agents or the Lenders with respect thereto. The obligations of the Parent under this Section 18 are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against Parent to enforce such obligations, irrespective of whether any action is brought against the Borrowers or whether the Borrowers are joined in any such action or actions. The liability of the Parent under this Section 18 shall be irrevocable, absolute and unconditional irrespective of, and Parent hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to the Borrowers or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Borrower; or

(e) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Agents or the Lenders that might otherwise constitute a defense available to, or a discharge of, Parent, any Borrower or any other guarantor or surety.

This Section 18 shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by a Lender or any other Person upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise, all as though such payment had not been made.

18.3. Waiver. Parent hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Section 18 and any requirement that the Agents or the Lenders exhaust any right or take any action against the Borrowers or any other Person or any collateral. Parent acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 18.3 is knowingly made in contemplation of such benefits. Parent hereby waives any right to revoke this Section 18, and acknowledges that this Section 18 is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

18.4. Continuing Guaranty; Assignments. This Section 18 is a continuing guaranty and shall (a) remain in full force and effect until the later of (i) the cash payment in full of the Guaranteed Obligations (other than indemnification obligations as to which no claim has been made) and all other amounts payable under this Section 18 and (ii) the Maturity Date, (b) be binding upon Parent, its successors and assigns and (c) inure to the benefit of and be enforceable by the Agents and the Lenders and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments and the Advances owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 14.1.

18.5. Subrogation. Parent will not exercise any rights that it may now or hereafter acquire against any Borrower or any other insider guarantor that arise from the existence, payment, performance or enforcement of Parent's obligations under this Section 18, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and

any right to participate in any claim or remedy of the Agents and the Lenders against any Borrower or any other insider guarantor or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Borrower or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Section 18 shall have been paid in full in cash and the Maturity Date shall have occurred. If any amount shall be paid to Parent in violation of the immediately preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Section 18 and the Maturity Date, such amount shall be held in trust for the benefit of the Agents and the Lenders and shall forthwith be paid to the Agents and the Lenders to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Section 18, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as collateral for any Guaranteed Obligations or other amounts payable under this Section 18 thereafter arising. If (i) Parent shall make payment to the Agents and the Lenders of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Section 18 shall be paid in full in cash and (iii) the Maturity Date shall have occurred, the Agents and the Lenders will, at Parent's request and expense, execute and deliver to Parent appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to Parent of an interest in the Guaranteed Obligations resulting from such payment by Parent.

[Signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

Parent:

LSB INDUSTRIES, INC.,
an Delaware corporation

By: ______________________________

Title:

Borrowers:

THERMACLIME, INC.,
an Oklahoma corporation

By: ______________________________

Title:

CHEROKEE NITROGEN COMPANY,
an Oklahoma corporation

By: ______________________________

Title:

CLIMATE MASTER, INC.,
a Delaware corporation

By: ______________________________

Title:

CLIMATECRAFT, INC.,
an Oklahoma corporation

By: ______________________________

Title:

CLIMACOOL, CORP.,
an Oklahoma corporation

____
By:
Title:

INTERNATIONAL ENVIRONMENTAL CORPORATION, an Oklahoma corporation

____
By:
Title:

THERMACLIME TECHNOLOGIES, INC.,
an Oklahoma corporation

____
By:
Title:

KOAX CORP., an Oklahoma corporation

By: ______________________

Title:

LSB CHEMICAL CORP., an Oklahoma corporation

By: ______________________

Title:

XPEDIAIR, INC., an Oklahoma corporation.

By: ______________________

Title:

EL DORADO CHEMICAL COMPANY, an Oklahoma corporation

By: ______________________

Title:

CHEMEX I CORP., an Oklahoma corporation

By: ______________________

Title:

TRISON CONSTRUCTION, INC., an Oklahoma corporation

By: ______________________

Title:

CHEMEX II CORP., an Oklahoma corporation

By: ______________________

Title:

Agent and Lenders:

WELLS FARGO FOOTHILL, INC., a California corporation, as Agent and as a Lender

By: ______________________

Title:

Lender:

WACHOVIA BANK, NATIONAL ASSOCIATION (as successor in interest to Congress Financial Corporation (Southwest))

By: ______________________

Title:

TABLE OF CONTENTS

	Page
1. DEFINITIONS AND CONSTRUCTION	2
1.1 Definitions	2
1.2 Accounting Terms	27
1.3 Code	28
1.4 Construction	28
1.5 Schedules and Exhibits	28
2. LOAN AND TERMS OF PAYMENT	28
2.1 Advances	28
2.2 CapEx Loans	30
2.3 Borrowing Procedures and Settlements	31
2.4 Payments.	38
2.5 Overadvances	41
2.6 Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.	41
2.7 Cash Management	43
2.8 Crediting Payments	44
2.9 Designated Account	44
2.10 Maintenance of Loan Account; Statements of Obligations	44
2.11 Fees	45
2.12 Letters of Credit	45
2.13 LIBOR Option.	48
2.14 Capital Requirements	51
2.15 Joint and Several Liability of Borrowers	51
3. CONDITIONS; TERM OF AGREEMENT	53
3.1 Conditions Precedent to the Initial Extension of Credit	53
3.2 Intentionally Omitted	56
3.3 Conditions Precedent to all Extensions of Credit	57
3.4 Term	57
3.5 Effect of Termination	58
3.6 Early Termination by Borrowers	58
4. CREATION OF SECURITY INTEREST	59
5. REPRESENTATIONS AND WARRANTIES.	62
5.1 No Encumbrances	62
5.2 Eligible Accounts	62
5.3 Eligible Inventory	63
5.4 Equipment	63
5.5 Location of Inventory	63
5.6 Inventory Records	63
5.7 Location of Chief Executive Office; FEIN	63
5.8 Due Organization and Qualification; Subsidiaries	63
5.9 Due Authorization; No Conflict.	64
5.10 Litigation	65
5.11 No Material Adverse Change	65

	Page
5.12 Fraudulent Transfer	66
5.13 Employee Benefits	66
5.14 Environmental Condition	66
5.15 [Intentionally Omitted]	66
5.16 Intellectual Property	66
5.17 Leases	66
5.18 DDAs.	67
5.19 Complete Disclosure	67
5.20 Indebtedness	67
6. AFFIRMATIVE COVENANTS	67
6.1 Accounting System	67
6.2 Collateral Reporting	67
6.3 Financial Statements, Reports, Certificates	68
6.5 Return	71
6.6 Maintenance of Properties	71
6.7 Taxes	71
6.8 Insurance.	72
6.9 Location of Inventory	72
6.10 Compliance with Laws	73
6.11 Leases	73
6.12 Brokerage Commissions	73
6.13 Existence	73
6.14 Environmental	73
6.15 Disclosure Updates	73
7. NEGATIVE COVENANTS.	74
7.1 Indebtedness	74
7.2 Liens	75
7.3 Restrictions on Fundamental Changes	75

7.4 Disposal of Assets 76
7.5 Change Name 76
7.6 Guarantee 76
7.7 Nature of Business 76
7.8 Prepayments and Amendments 77
7.9 Change of Control 77
7.10 Consignments 77
7.11 Distributions 77
7.12 Accounting Methods 78
7.13 Investments 78
7.14 Transactions with Affiliates 78
7.15 Suspension 79
7.16 Compensation 79
7.17 Use of Proceeds. 79
7.18 Change in Location of Chief Executive Office; Inventory and Equipment with Bailees 79
7.19 Securities Accounts 79
7.20 Financial Covenants 79
7.21 Minimum Availability —

7.22 Inactive Subsidiaries —
8. EVENTS OF DEFAULT 79
9. THE LENDER GROUP'S RIGHTS AND REMEDIES 82
9.1 Rights and Remedies 82
9.2 Remedies Cumulative 84
10. TAXES AND EXPENSES 84
11. WAIVERS; INDEMNIFICATION 85
11.1 Demand; Protest; etc. 85
11.2 The Lender Group's Liability for Collateral 85
11.3 Indemnification 85
12. NOTICES 86
13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER 87
14. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS 88
14.1 Assignments and Participations 88
14.2 Successors 90
15. AMENDMENTS; WAIVERS 90
15.1 Amendments and Waivers 90
15.2 Replacement of Holdout Lender 91
15.3 No Waivers; Cumulative Remedies. 92
16. AGENT; THE LENDER GROUP 92
16.1 Appointment and Authorization of Agent 92
16.2 Delegation of Duties 93
16.3 Liability of Agent 93
16.4 Reliance by Agent 94
16.5 Notice of Default or Event of Default 94
16.6 Credit Decision 94
16.7 Costs and Expenses; Indemnification. 95
16.8 Agent in Individual Capacity 95
16.9 Successor Agent. 96
16.10 Lender in Individual Capacity 96
16.11 Withholding Taxes 96
16.12 Collateral Matters 99
16.13 Restrictions on Actions by Lenders; Sharing of Payments. 99
16.14 Agency for Perfection 99
16.15 Payments by Agent to the Lenders 99
16.16 Concerning the Collateral and Related Loan Documents 100
16.17 Field Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information 100
16.18 Several Obligations; No Liability 101
17. GENERAL PROVISIONS 102
17.1 Effectiveness 102
17.2 Section Headings 102
17.3 Interpretation 102
17.4 Severability of Provisions 102
17.5 Amendments in Writing 102
17.6 Counterparts; Telefacsimile Execution 102

17.7 Revival and Reinstatement of Obligations 102
17.8 Integration 103
17.9 ThermaClime as Agent for Borrowers 103
17.10 No Novation 103
18. GUARANTY 104
18.1. Guaranty; Limitation of Liability 104
18.2. Guaranty Absolute 104
18.3. Waiver 105
18.4. Continuing Guaranty; Assignments 105
18.5. Subrogation 105

EXHIBITS AND SCHEDULES

Exhibit A-1	Form of Assignment and Acceptance
Exhibit B-1	Form of Borrowing Base Certificate
Exhibit C-1	Form of Compliance Certificate
Exhibit L-1	Form of LIBOR Notice
Schedule C-1	Commitments
Schedule E-1	Eligible Inventory Locations
Schedule P-1	Permitted Liens
Schedule 2.8(a)	Cash Management Banks
Schedule 3.1(m)	Collateral Access Locations
Schedule 5.5	Locations of Inventory and Equipment
Schedule 5.7	Chief Executive Office; FEIN
Schedule 5.8(b)	Capitalization of Borrowers
Schedule 5.8(c)	Capitalization of Borrowers' Subsidiaries
Schedule 5.10	Litigation
Schedule 5.14	Environmental Matters
Schedule 5.16	Intellectual Property
Schedule 5.18	Demand Deposit Accounts
Schedule 5.20	Permitted Indebtedness
Schedule 7.4(b)	Permitted LSB Indebtedness
Schedule 7.13	Other Permitted Investments
Schedule 7.14	Transactions with Affiliates

Schedule C-1

Commitments

Lender	Revolver Commitment	Term Loan Sub-facility Commitment*	Total Commitment
Wells Fargo Foothill, Inc.	$30,000,000	$ 4,500,000	$ 30,000,000
Congress Financial Corporation (Southwest)	$20,000,000	$ 3,000,000	$ 20,000,000
All Lenders	$50,000,000	$ 7,500,000	$ 50,000,000

* The Term Loan Commitment is a sub-facility of the Revolver Commitment.

EXHIBIT A-1

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

This **ASSIGNMENT AND ACCEPTANCE AGREEMENT** ("Assignment Agreement") is entered into as of __________ between __________ ("Assignor") and __________ ("Assignee"). Reference is made to the Agreement described in Item 2 of Annex I annexed hereto (the "Loan Agreement"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

In accordance with the terms and conditions of Section 14 of the Loan Agreement, the Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, that interest in and to the Assignor's rights and obligations under the Loan Documents as of the date hereof with respect to the Obligations owing to the Assignor, and Assignor's portion of the Total Commitments and the Revolver Commitments, all as specified in Item 4.b and Item 4.c of Annex I. After giving effect to such sale and assignments, the Assignee's portion of the Total Commitments and Revolver Commitments will be as set forth in Item 4.b of Annex I. After giving effect to such sale and assignment the Assignor's amount and portion of the Total Commitments and Revolver Commitments will be as set forth in Item 4.d and Item 4.e of Annex I.

The Assignor (a) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any other instrument or document furnished pursuant thereto; and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or any of its Subsidiaries or the performance or observance by any Borrower or any of its Subsidiaries of any of their respective obligations under the Loan Documents or any other instrument or document furnished pursuant thereto.

The Assignee (a) confirms that it has received copies of the Loan Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (b) agrees that it will, independently and without reliance, as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) confirms that it is eligible as an assignee under the terms of the Loan Agreement; (d) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (e) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender [and

(f) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's status for purposes of determining exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Loan Agreement or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty.]

Following the execution of this Assignment Agreement by the Assignor and Assignee, it will be delivered by the Assignor to the Agent for recording by the Agent. The effective date of this Assignment (the "Settlement Date") shall be the later of (a) the date of the execution hereof by the Assignor and the Assignee, the payment by Assignor or Assignee to Agent for Agent's sole and separate account a processing fee in the amount of $5,000, and the receipt of any required consent of the Agent, and (b) the date specified in item 5 of Annex I.

Upon recording by the Agent, as of the Settlement Date (a) the Assignee shall be a party to the Loan Agreement and, to the extent of the interest assigned pursuant to this Assignment Agreement, have the rights and obligations of a Lender thereunder and under the other Loan Documents, and (b) the Assignor shall, to the extent of the interest assigned pursuant to this Assignment Agreement, relinquish its rights and be released from its obligations under the Loan Agreement and the other Loan Documents.

Upon recording by the Agent, from and after the Settlement Date, the Agent shall make all payments under the Loan Agreement and the other Loan Documents in respect of the interest assigned hereby (including, without limitation, all payments or principal, interest and commitment fees (if applicable) with respect thereto) to the Assignee. Upon the Settlement Date, the Assignee shall pay to the Assignor the Assigned Share (as set forth in Item 4.b of Annex I) of the principal amount of any outstanding loans under the Loan Agreement and the other Loan Documents. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the other Loan Documents for periods prior to the Settlement Date directly between themselves on the Settlement Date.

THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement and Annex I hereto to be executed by their respective officers thereunto duly authorized, as of the first date above written.

[NAME OF ASSIGNOR]
as Assignor

By ______________________________

Title: ______________________________

[NAME OF ASSIGNEE]
as Assignee

By: ______________________________

Title: ______________________________

ACCEPTED THIS __ DAY OF ______

WELLS FARGO FOOTHILL, INC.,
AS AGENT

By: ____

Title: ____

ANNEX FOR ASSIGNMENT AND ACCEPTANCE

ANNEX I

1. Borrowers: ThermaClime, Inc., an Oklahoma corporation ("ThermaClime"), and each of the subsidiaries of ThermaClime and party to the below referenced Loan Agreement.
2. Name and Date of Loan Agreement: Amended and Restated Loan and Security Agreement, dated as of October [__], 2007, among LSB Industries, Inc., an Delaware corporation, as guarantor, the Borrowers, the lenders signatory thereto as the Lenders, and Wells Fargo Foothill, Inc., a California corporation, as the arranger and administrative agent for the Lenders.
3. Date of Assignment Agreement:
4. Amounts:
   a. Assignor's Total Commitment $__________
      i. Assignor's Revolver Commitment $__________
   b. Assigned Share of Total Commitment __________%
      i. Assigned Share of Revolver Commitment __________%
   c. Assigned Amount of Total Commitment $__________
      i. Assigned Amount of Revolver Credit Commitment $__________
   d. Resulting Amount of Assignor's Total Commitment after giving effect to the sale and Assignment to Assignee $__________
      i. Resulting Amount of Assignor's Revolver Commitment $__________
   e. Assignor's Resulting Share of Total Commitment after giving effect to the Assignment to Assignee __________%
      i. Assignor's Resulting Share of Revolving Credit Commitment __________%
5. Settlement Date: __________
6. Notice and Payment Instructions, etc.

Assignee:	Assignor:
By: ______________________	By: ______________________
Title: ______________________	Title: ______________________

7. Agreed and Accepted:

[ASSIGNOR]	[ASSIGNEE]
By: ______________________	By: ______________________
Title: ______________________	Title: ______________________

Accepted:
WELLS FARGO FOOTHILL, INC., as Agent

By: ____

Title: ____

EXHIBIT C-1

(Form of Compliance Certificate)

[on Borrowers' letterhead]

To: Wells Fargo Foothill, Inc., as Agent
under the below-referenced Loan Agreement
2450 Colorado Avenue, Suite 3000 West
Santa Monica, California 90404
Attn: Business Finance Division Manager

Re: Compliance Certificate dated __________

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Loan and Security Agreement, dated as of October [__], 2007 (the "Loan Agreement") among LSB Industries, Inc., an Delaware corporation ("Parent"), ThermaClime, Inc., an Oklahoma corporation ("ThermaClime"), certain of ThermaClime's subsidiaries identified on the signature pages thereof (such subsidiaries, together with ThermaClime, are collectively, jointly and severally, the "Borrowers"), the lenders signatory thereto (the "Lenders"), and Wells Fargo Foothill, Inc., a California corporation, as the arranger and administrative agent for the Lenders ("Agent"). Capitalized terms used in this Compliance Certificate have the meanings set forth in the Loan Agreement unless specifically defined herein.

Pursuant to Section 6.3 of the Loan Agreement, the undersigned officer of ThermaClime hereby certifies that:

1. The financial information of Parent and its Subsidiaries and of ThermaClime and its Subsidiaries, as the case may be, furnished in Schedule 1 attached hereto, has been prepared in accordance with GAAP (except for year-end adjustments and the lack of footnotes, in the case of financial statements delivered under Section 6.3(a) of the Loan Agreement) and fairly presents the financial condition of Parent and its Subsidiaries and of ThermaClime and its Subsidiaries, as the case may be.

2. Such officer has reviewed the terms of the Loan Agreement and has made, or caused to be made under his/her supervision, a review in reasonable detail of the transactions and condition of the Borrowers during the accounting period covered by the financial statements delivered pursuant to Section 6.3 of the Loan Agreement.

3. Such review has not disclosed the existence on and as of the date hereof, and the undersigned does not have knowledge of the existence as of the date hereof, of any event or condition that constitutes a Default or Event of Default, except for such conditions or events listed on Schedule 2 attached hereto, specifying the nature and period of existence thereof and what action Borrowers have taken, are taking, or propose to take with respect thereto.

4. Borrowers are in timely compliance with all representations, warranties, and covenants set forth in the Loan Agreement and the other Loan Documents, except as set forth on Schedule 2 attached hereto. Without limiting the generality of the foregoing, Borrowers are in compliance with the covenants contained in Section 7.20 of the Loan Agreement as demonstrated on Schedule 3 hereof.

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this __ day of __________, ____.

THERMACLIME, INC.,
an Oklahoma corporation,
as Administrative Borrower

By: ____

Name:
Title:

SCHEDULE 3

1. **Minimum EBITDA.**

(a) ThermaClime's and its Subsidiaries' EBITDA for the __________ ending __________, ______ is $______, which amount **[is/is not]** greater than or equal to the amount set forth in Section 7.20(a)(i) of the Loan Agreement for the corresponding period.

2. **Fixed Charge Coverage Ratio.** [If Applicable]

(a) The Fixed Charge Coverage Ratio of ThermaClime and its Subsidiaries, for the fiscal year ending __________, is calculated as follows

(i)	EBITDA of ThermaClime and its Subsidiaries for the 12 month period then ended:	$__________
(ii)	Principal Indebtedness of ThermaClime and its Subsidiaries scheduled to be paid or prepaid during such period:	$__________
(iii)	Gross interest expense of ThermaClime and its Subsidiaries for such period:	$__________
(iv)	Interest income of ThermaClime and its Subsidiaries for such period:	$__________
(v)	Non-cash accretion expense of ThermaClime and its Subsidiaries for such period:	$__________
(vi)	Non-cash amortization of debt origination cost of ThermaClime and its Subsidiaries for such period:	$__________
(vii)	Capitalized Lease Obligations of ThermaClime and its Subsidiaries having a scheduled due date during such period:	$__________

Item (i) divided by the sum of
Item (ii) plus Item (vii) plus the result of Item (iii) minus
the sum of Item (iv) plus Item (v) plus Item
(vi) (= Fixed Charge Coverage Ratio) ____ : ____

(b) The Fixed Charge Coverage Ratio set forth above **[is/is not]** greater than or equal to the amount set forth in Section 7.20(a)(iii) of the Loan Agreement for the corresponding period.

EXHIBIT L-1

FORM OF LIBOR NOTICE

Wells Fargo Foothill, Inc., as Agent
under the below referenced Loan Agreement
2450 Colorado Place
Suite 3000 West
Santa Monica, California 90404

Attention: ________________________

Ladies and Gentlemen:

Reference hereby is made to that certain Amended and Restated Loan and Security Agreement, dated as of October [__], 2007 (the "Loan Agreement"), among LSB Industries, Inc., an Delaware corporation ("Parent"), ThermaClime, Inc., an Oklahoma corporation ("Administrative Borrower"), certain of Administrative Borrower's subsidiaries signatory thereto (such subsidiaries, together with Administrative Borrower, each a "Borrower" and collectively, the "Borrowers"), the lenders signatory thereto (the "Lenders"), and Wells Fargo Foothill, Inc., a California corporation, as the arranger and administrative agent for the Lenders ("Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

This LIBOR Notice represents the Borrowers' request to elect the LIBOR Option with respect to outstanding Advances in the amount of $______ (the "LIBOR Rate Component")[, and is a written confirmation of the telephonic notice of such election given to Agent].

Such LIBOR Rate Component will have an Interest Period of [1, 2, or 3] month(s) commencing on __________.

This LIBOR Notice further confirms the Borrowers' acceptance, for purposes of determining the rate of interest based on the LIBOR Rate under the Loan Agreement, of the LIBOR Rate as determined pursuant to the Loan Agreement.

Administrative Borrower, on behalf of itself and the other Borrowers, represents and warrants that (i) as of the date hereof, each representation or warranty contained in or pursuant to any Loan Document, any agreement, instrument, certificate, document or other writing furnished at any time under or in connection with any Loan Document, and as of the effective date of any advance, continuation or conversion requested above is true and correct in all material respects (except to the extent any representation or warranty expressly related to an earlier date), (ii) each of the covenants and agreements contained in any Loan Document have been performed (to the extent required to be performed on or before the date hereof or each such effective date), and (iii) no Default or Event of Default has occurred and is continuing on the date hereof, nor will any thereof occur after giving effect to the request above.

Dated: ______________________________

THERMACLIME, INC., an Oklahoma corporation, as Administrative Borrower

By ______________________________

Name: ______________________________

Title: ______________________________

Acknowledged by:

WELLS FARGO FOOTHILL, INC.,

as Agent

By: ______________________________

Name: ______________________________

Title: ______________________________

Exhibit 31.1

CERTIFICATION

I, Jack E. Golsen, Chairman of the Board and Chief Executive Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of LSB Industries, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) [paragraph omitted pursuant to SEC Release Nos. 33-8238 and 34-47986];

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report, based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

    a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 5, 2007

/s/Jack E. Golsen
Jack E. Golsen
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Tony M. Shelby, Executive Vice President of Finance and Chief Financial Officer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of LSB Industries, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) [paragraph omitted pursuant to SEC Release Nos. 33-8238 and 34-47986];

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report, based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

    a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 5, 2007

/s/Tony M. Shelby________________
Tony M. Shelby
Executive Vice President of Finance and
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of LSB Industries, Inc. (“LSB”) on Form 10-Q for the period ending September 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"). I, Jack E. Golsen, Chairman of the Board and Chief Executive Officer of LSB, certify pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of LSB.

/s/ Jack E. Golsen
Jack E. Golsen
Chairman of the Board and
Chief Executive Officer
(Principal Executive officer)

November 5, 2007

This certification is furnished to the Securities and Exchange Commission solely for purpose of 18 U.S.C. §1350 subject to the knowledge standard contained therein, and not for any other purpose.

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of LSB Industries, Inc. (“LSB”), on Form 10-Q for the period ending September 30, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"). I, Tony M. Shelby, Executive Vice President of Finance and Chief Financial Officer of LSB, certify pursuant to 18 U.S.C. §1350, to §906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Tony M. Shelby
Tony M. Shelby
Executive Vice President of Finance and
Chief Financial Officer
(Principal Financial Officer)

November 5, 2007

This certification is furnished to the Securities and Exchange Commission solely for purpose of 18 U.S.C. §1350 subject to the knowledge standard contained therein and not for any other purpose.